



भारत का संविधान

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THE CONSTITUTION OF INDIA

[As on 1st May, 2024]

2024

भारत सरकार
विधि और न्याय मंत्रालय
विधायी विभाग, राजभाषा खण्ड
GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
LEGISLATIVE DEPARTMENT, OFFICIAL LANGUAGES WING

PREFACE

This is the sixth pocket size edition of the Constitution of India in the diglot form. In this edition, the text of the Constitution of India has been brought up-to-date by incorporating therein all the amendments up to the Constitution (One Hundred and Sixth Amendment) Act, 2023. The foot notes below the text indicate the Constitution Amendment Acts by which such amendments have been made.

The Constitution (One Hundredth Amendment) Act, 2015 containing details of acquired and transferred territories between the Governments of India and Bangladesh has been provided in Appendix I.

The Constitution (Application to Jammu and Kashmir) Order, 2019 and the declaration under article 370(3) of the Constitution have been provided respectively in Appendix II and Appendix III for reference.

New Delhi;
1st May, 2024

Dr. Rajiv Mani,
Secretary to the Government of India.

LIST OF ABBREVIATIONS USED

Art., arts.	<i>for</i> Article, articles.
Cl., cls.	" Clause, clauses.
C.O.	" Constitution Order.
Ins.	" Inserted.
P., pp.	" Page, pages.
Pt.	" Part.
Rep.	" Repealed.
Ss., ss.	" Section, sections.
Sch.	" Schedule.
Subs.	" Substituted.
w.e.f.	" with effect from.
w.r.e.f.	" with retrospective effect from.

THE CONSTITUTION OF INDIA

CONTENTS

PREAMBLE

PART I

THE UNION AND ITS TERRITORY

ARTICLES

1. Name and territory of the Union.
2. Admission or establishment of new States.
- [2A. Sikkim to be associated with the Union.—*Omitted.*]
3. Formation of new States and alteration of areas, boundaries or names of existing States.
4. Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

PART II

CITIZENSHIP

5. Citizenship at the commencement of the Constitution.
6. Rights of citizenship of certain persons who have migrated to India from Pakistan.
7. Rights of citizenship of certain migrants to Pakistan.
8. Rights of citizenship of certain persons of Indian origin residing outside India.
9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.
10. Continuance of the rights of citizenship.
11. Parliament to regulate the right of citizenship by law.

ARTICLES

PART III

FUNDAMENTAL RIGHTS

General

12. Definition.
13. Laws inconsistent with or in derogation of the fundamental rights.

Right to Equality

14. Equality before law.
15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
16. Equality of opportunity in matters of public employment.
17. Abolition of Untouchability.
18. Abolition of titles.

Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.
20. Protection in respect of conviction for offences.
21. Protection of life and personal liberty.
- 21A. Right to education.
22. Protection against arrest and detention in certain cases.

Right against Exploitation

23. Prohibition of traffic in human beings and forced labour.
24. Prohibition of employment of children in factories, etc.

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.
26. Freedom to manage religious affairs.
27. Freedom as to payment of taxes for promotion of any particular religion.
28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

ARTICLES*Cultural and Educational Rights*

- 29. Protection of interests of minorities.
- 30. Right of minorities to establish and administer educational institutions.
- [31. Compulsory acquisition of property —*Omitted.*]

Saving of Certain Laws

- 31A. Saving of Laws providing for acquisition of estates, etc.
- 31B. Validation of certain Acts and Regulations.
- 31C. Saving of laws giving effect to certain directive principles.
- [31D. Saving of laws in respect of anti-national activities.—*Omitted.*]

Right to Constitutional Remedies

- 32. Remedies for enforcement of rights conferred by this Part.
- [32A. Constitutional validity of State laws not to be considered in proceedings under article 32.—*Omitted.*]
- 33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.
- 34. Restriction on rights conferred by this Part while martial law is in force in any area.
- 35. Legislation to give effect to the provisions of this Part.

PART IV**DIRECTIVE PRINCIPLES OF STATE POLICY**

- 36. Definition.
- 37. Application of the principles contained in this Part.
- 38. State to secure a social order for the promotion of welfare of the people.
- 39. Certain principles of policy to be followed by the State.
- 39A. Equal justice and free legal aid.

ARTICLES

40. Organisation of village panchayats.
41. Right to work, to education and to public assistance in certain cases.
42. Provision for just and humane conditions of work and maternity relief.
43. Living wage, etc., for workers.
- 43A. Participation of workers in management of Industries.
- 43B. Promotion of co-operative societies.
44. Uniform civil code for the citizens.
45. Provision for early childhood care and education to children below the age of six years.
46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.
47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.
48. Organisation of agriculture and animal husbandry.
- 48A. Protection and improvement of environment and safeguarding of forests and wild life.
49. Protection of monuments and places and objects of national importance.
50. Separation of judiciary from executive.
51. Promotion of international peace and security.

PART IVA

FUNDAMENTAL DUTIES

- 51A. Fundamental duties.

PART V

THE UNION

CHAPTER I.—THE EXECUTIVE

The President and Vice-President

52. The President of India.
53. Executive power of the Union.
54. Election of President.

ARTICLES

55. Manner of election of President.
56. Term of office of President.
57. Eligibility for re-election.
58. Qualifications for election as President.
59. Conditions of President's office.
60. Oath or affirmation by the President.
61. Procedure for impeachment of the President.
62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.
63. The Vice-President of India.
64. The Vice-President to be *ex officio* Chairman of the Council of States.
65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.
66. Election of Vice-President.
67. Term of office of Vice-President.
68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.
69. Oath or affirmation by the Vice-President.
70. Discharge of President's functions in other contingencies.
71. Matters relating to, or connected with, the election of a President or Vice-President.
72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.
73. Extent of executive power of the Union.
Council of Ministers
74. Council of Ministers to aid and advise President.
75. Other provisions as to Ministers.
The Attorney-General for India
76. Attorney-General for India.

ARTICLES*Conduct of Government Business*

- 77. Conduct of business of the Government of India.
- 78. Duties of Prime Minister as respects the furnishing of information to the President, etc.

CHAPTER II.—PARLIAMENT*General*

- 79. Constitution of Parliament.
- 80. Composition of the Council of States.
- 81. Composition of the House of the People.
- 82. Readjustment after each census.
- 83. Duration of Houses of Parliament.
- 84. Qualification for membership of Parliament.
- 85. Sessions of Parliament, prorogation and dissolution.
- 86. Right of President to address and send messages to Houses.
- 87. Special address by the President.
- 88. Rights of Ministers and Attorney-General as respects Houses.

Officers of Parliament

- 89. The Chairman and Deputy Chairman of the Council of States.
- 90. Vacation and resignation of, and removal from, the office of Deputy Chairman.
- 91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.
- 92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.
- 93. The Speaker and Deputy Speaker of the House of the People.
- 94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.
- 95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

ARTICLES

96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.
97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.
98. Secretariat of Parliament.

Conduct of Business

99. Oath or affirmation by members.
100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

Disqualifications of Members

101. Vacation of seats.
102. Disqualifications for membership.
103. Decision on questions as to disqualifications of members.
104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.

Powers, Privileges and Immunities of Parliament and its Members

105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.
106. Salaries and allowances of members.

Legislative Procedure

107. Provisions as to introduction and passing of Bills.
108. Joint sitting of both Houses in certain cases.
109. Special procedure in respect of Money Bills.
110. Definition of “Money Bills”.
111. Assent to Bills.

Procedure in Financial Matters

112. Annual financial statement.
113. Procedure in Parliament with respect to estimates.
114. Appropriation Bills.

ARTICLES

- 115. Supplementary, additional or excess grants.
- 116. Votes on account, votes of credit and exceptional grants.
- 117. Special provisions as to financial Bills.
Procedure Generally
 - 118. Rules of procedure.
 - 119. Regulation by law of procedure in Parliament in relation to financial business.
 - 120. Language to be used in Parliament.
 - 121. Restriction on discussion in Parliament.
 - 122. Courts not to inquire into proceedings of Parliament.
- CHAPTER III.—LEGISLATIVE POWERS OF THE PRESIDENT
 - 123. Power of President to promulgate Ordinances during recess of Parliament.
- CHAPTER IV.—THE UNION JUDICIARY
 - 124. Establishment and constitution of the Supreme Court.
 - 124A. National Judicial Appointments Commission.
 - 124B. Functions of Commission.
 - 124C. Power of Parliament to make law.
 - 125. Salaries, etc., of Judges.
 - 126. Appointment of acting Chief Justice.
 - 127. Appointment of *ad hoc* Judges.
 - 128. Attendance of retired Judges at sittings of the Supreme Court.
 - 129. Supreme Court to be a court of record.
 - 130. Seat of Supreme Court.
 - 131. Original jurisdiction of the Supreme Court.
 - [131A. Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central laws.—*Omitted.*]
 - 132. Appellate jurisdiction of the Supreme Court in appeals from High Courts in certain cases.
 - 133. Appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil matters.
 - 134. Appellate jurisdiction of the Supreme Court in regard to criminal matters.

ARTICLES

- 134A. Certificate for appeal to the Supreme Court.
- 135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.
- 136. Special leave to appeal by the Supreme Court.
- 137. Review of judgments or orders by the Supreme Court.
- 138. Enlargement of the jurisdiction of the Supreme Court.
- 139. Conferment on the Supreme Court of powers to issue certain writs.
- 139A. Transfer of certain cases.
- 140. Ancillary powers of the Supreme Court.
- 141. Law declared by Supreme Court to be binding on all courts.
- 142. Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.
- 143. Power of the President to consult the Supreme Court.
- 144. Civil and judicial authorities to act in aid of the Supreme Court.
- [144A. Special provisions as to disposal of questions relating to constitutional validity of laws.—*Omitted.*]
- 145. Rules of Court, etc.
- 146. Officers and servants and the expenses of the Supreme Court.
- 147. Interpretation.
 - CHAPTER V.—COMPTROLLER AND AUDITOR-GENERAL OF INDIA
- 148. Comptroller and Auditor-General of India.
- 149. Duties and powers of the Comptroller and Auditor-General.
- 150. Form of accounts of the Union and of the States.
- 151. Audit reports.

PART VI
THE STATES
CHAPTER I.—GENERAL

- 152. Definition.

ARTICLES**CHAPTER II.—THE EXECUTIVE***The Governor*

- 153. Governors of States.
- 154. Executive power of State.
- 155. Appointment of Governor.
- 156. Term of office of Governor.
- 157. Qualifications for appointment as Governor.
- 158. Conditions of Governor's office.
- 159. Oath or affirmation by the Governor.
- 160. Discharge of the functions of the Governor in certain contingencies.
- 161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.
- 162. Extent of executive power of State.

Council of Ministers

- 163. Council of Ministers to aid and advise Governor.
- 164. Other provisions as to Ministers.

The Advocate-General for the State

- 165. Advocate-General for the State.
- Conduct of Government Business*
- 166. Conduct of business of the Government of a State.
 - 167. Duties of Chief Minister as respects the furnishing of information to Governor, etc.

CHAPTER III.—THE STATE LEGISLATURE*General*

- 168. Constitution of Legislatures in States.
- 169. Abolition or creation of Legislative Councils in States.
- 170. Composition of the Legislative Assemblies.

ARTICLES

171. Composition of the Legislative Councils.
172. Duration of State Legislatures.
173. Qualification for membership of the State Legislature.
174. Sessions of the State Legislature, prorogation and dissolution.
175. Right of Governor to address and send messages to the House or Houses.
176. Special address by the Governor.
177. Rights of Ministers and Advocate-General as respects the Houses.

Officers of the State Legislature

178. The Speaker and Deputy Speaker of the Legislative Assembly.
179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.
180. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.
181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.
182. The Chairman and Deputy Chairman of the Legislative Council.
183. Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.
184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.
185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.
186. Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.
187. Secretariat of State Legislature.

Conduct of Business

188. Oath or affirmation by members.
189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

Disqualifications of Members

190. Vacation of seats.

ARTICLES

191. Disqualifications for membership.
192. Decision on questions as to disqualifications of members.
193. Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.
Powers, privileges and immunities of State Legislatures and their Members
194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.
195. Salaries and allowances of members.
Legislative Procedure
196. Provisions as to introduction and passing of Bills.
197. Restriction on powers of Legislative Council as to Bills other than Money Bills.
198. Special procedure in respect of Money Bills.
199. Definition of “Money Bills”.
200. Assent to Bills.
201. Bills reserved for consideration.
Procedure in Financial Matters
202. Annual financial statement.
203. Procedure in Legislature with respect to estimates.
204. Appropriation Bills.
205. Supplementary, additional or excess grants.
206. Votes on account, votes of credit and exceptional grants.
207. Special provisions as to financial Bills.
Procedure Generally
208. Rules of procedure.
209. Regulation by law of procedure in the Legislature of the State in relation to financial business.

ARTICLES

- 210. Language to be used in the Legislature.
- 211. Restriction on discussion in the Legislature.
- 212. Courts not to inquire into proceedings of the Legislature.
- CHAPTER IV.—LEGISLATIVE POWER OF THE GOVERNOR
- 213. Power of Governor to promulgate Ordinances during recess of Legislature.
- CHAPTER V.—THE HIGH COURTS IN THE STATES
- 214. High Courts for States.
- 215. High Courts to be courts of record.
- 216. Constitution of High Courts.
- 217. Appointment and conditions of the office of a Judge of a High Court.
- 218. Application of certain provisions relating to Supreme Court to High Courts.
- 219. Oath or affirmation by Judges of High Courts.
- 220. Restriction on practice after being a permanent Judge.
- 221. Salaries, etc., of Judges.
- 222. Transfer of a Judge from one High Court to another.
- 223. Appointment of acting Chief Justice.
- 224. Appointment of additional and acting Judges.
- 224A. Appointment of retired Judges at sittings of High Courts.
- 225. Jurisdiction of existing High Courts.
- 226. Power of High Courts to issue certain writs.
- [226A. Constitutional validity of Central laws not to be considered in proceedings under article 226.—*Omitted.*]
- 227. Power of superintendence over all courts by the High Court.
- 228. Transfer of certain cases to High Court.
- [228A. Special provisions as to disposal of questions relating to constitutional validity of State laws.—*Omitted.*]

ARTICLES

- 229. Officers and servants and the expenses of High Courts.
- 230. Extension of jurisdiction of High Courts to Union territories.
- 231. Establishment of a common High Court for two or more States.
- [232. Articles 230, 231 and 232 substituted by articles 230 and 231].
CHAPTER VI.—SUBORDINATE COURTS
- 233. Appointment of district judges.
- 233A. Validation of appointments of, and judgments, etc., delivered by, certain district judges.
- 234. Recruitment of persons other than district judges to the judicial service.
- 235. Control over subordinate courts.
- 236. Interpretation.
- 237. Application of the provisions of this Chapter to certain class or classes of magistrates.

[PART VII.—Omitted]

THE STATES IN PART B OF THE FIRST SCHEDULE

[238. *Omitted.*]

PART VIII

THE UNION TERRITORIES

- 239. Administration of Union territories.
- 239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories.
- 239AA. Special provisions with respect to Delhi.
- 239AB. Provision in case of failure of constitutional machinery.
- 239B. Power of administrator to promulgate Ordinances during recess of Legislature.
- 240. Power of President to make regulations for certain Union territories.
- 241. High Courts for Union territories.
- [242. Coorg.—*Omitted.*]

PART IX

THE PANCHAYATS

- 243. Definitions.

ARTICLES

- 243A. Gram Sabha.
- 243B. Constitution of Panchayats.
- 243C. Composition of Panchayats.
- 243D. Reservation of seats.
- 243E. Duration of Panchayats, etc.
- 243F. Disqualifications for membership.
- 243G. Powers, authority and responsibilities of Panchayats.
- 243H. Powers to impose taxes by, and Funds of, the Panchayats.
- 243-I. Constitution of Finance Commission to review financial position.
- 243J. Audit of accounts of Panchayats.
- 243K. Elections to the Panchayats.
- 243L. Application to Union territories.
- 243M. Part not to apply to certain areas.
- 243N. Continuance of existing laws and Panchayats.
- 243-O. Bar to interference by courts in electoral matters.

PART IXA

THE MUNICIPALITIES

- 243P. Definitions.
- 243Q. Constitution of Municipalities.
- 243R. Composition of Municipalities.
- 243S. Constitution and composition of Wards Committees, etc.
- 243T. Reservation of seats.
- 243U. Duration of Municipalities, etc.
- 243V. Disqualifications for membership.
- 243W. Powers, authority and responsibilities of Municipalities, etc.
- 243X. Power to impose taxes by, and Funds of, the Municipalities.
- 243Y. Finance Commission.

ARTICLES

- 243Z. Audit of accounts of Municipalities.
- 243ZA. Elections to the Municipalities.
- 243ZB. Application to Union territories.
- 243ZC. Part not to apply to certain areas.
- 243ZD. Committee for district planning.
- 243ZE. Committee for Metropolitan planning.
- 243ZF. Continuance of existing laws and Municipalities.
- 243ZG. Bar to interference by courts in electoral matters.

PART IXB

THE CO-OPERATIVE SOCIETIES

- 243ZH. Definitions.
- 243Z-I. Incorporation of co-operative societies.
- 243ZJ. Number and term of members of board and its office bearers.
- 243ZK. Election of members of board.
- 243ZL. Supersession and suspension of board and interim management.
- 243ZM. Audit of accounts of co-operative societies.
- 243ZN. Convening of general body meetings.
- 243Z-O. Right of a member to get information.
- 243ZP. Returns.
- 243ZQ. Offences and penalties.
- 243ZR. Application to multi-State co-operative societies.
- 243ZS. Application to Union territories.
- 243ZT. Continuance of existing laws.

PART X

THE SCHEDULED AND TRIBAL AREAS

- 244. Administration of Scheduled Areas and Tribal Areas.
- 244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor.

ARTICLES

PART XI**RELATIONS BETWEEN THE UNION AND THE
STATES****CHAPTER I.—LEGISLATIVE RELATIONS***Distribution of Legislative Powers*

- 245. Extent of laws made by Parliament and by the Legislatures of States.
- 246. Subject-matter of laws made by Parliament and by the Legislatures of States.
- 246A. Special provision with respect to goods and services tax.
- 247. Power of Parliament to provide for the establishment of certain additional courts.
- 248. Residuary powers of legislation.
- 249. Power of Parliament to legislate with respect to a matter in the State List in the national interest.
- 250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.
- 251. Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.
- 252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.
- 253. Legislation for giving effect to international agreements.
- 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.
- 255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.

CHAPTER II.—ADMINISTRATIVE RELATIONS*General*

- 256. Obligation of States and the Union.
- 257. Control of the Union over States in certain cases.
- [257A. Assistance to States by deployment of armed forces or other forces of the Union.—*Omitted.*]
- 258. Power of the Union to confer powers, etc., on States in certain cases.

ARTICLES

- 258A. Power of the States to entrust functions to the Union.
- [259. Armed Forces in States in Part B of the First Schedule.—
Omitted.]
260. Jurisdiction of the Union in relation to territories outside India.
261. Public acts, records and judicial proceedings.

Disputes relating to Waters
262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.

Co-ordination between States
263. Provisions with respect to an inter-State Council.
- PART XII**
- FINANCE, PROPERTY, CONTRACTS AND SUITS
- CHAPTER I.—FINANCE
- General*
264. Interpretation.
265. Taxes not to be imposed save by authority of law.
266. Consolidated Funds and public accounts of India and of the States.
267. Contingency Fund.

Distribution of Revenues between the Union and the States
268. Duties levied by the Union but collected and appropriated by the States.
- [268A. Service tax levied by Union and collected by the Union and the States.—*Omitted.*]
269. Taxes levied and collected by the Union but assigned to the States.
- 269A. Levy and collection of goods and services tax in course of inter-State trade or commerce.
270. Taxes levied and distributed between the Union and the States.
271. Surcharge on certain duties and taxes for purposes of the Union.
- [272. Taxes which are levied and collected by the Union and may be distributed between the Union and the States.—*Omitted.*]
273. Grants in lieu of export duty on jute and jute products.
274. Prior recommendation of President required to Bills affecting taxation in which States are interested.

ARTICLES

- 275. Grants from the Union to certain States.
- 276. Taxes on professions, trades, callings and employments.
- 277. Savings.
- [278. Agreement with States in Part B of the First Schedule with regard to certain financial matters.—*Omitted.*]
- 279. Calculation of “net proceeds”, etc.
- 279A. Goods and Services Tax Council.
- 280. Finance Commission.
- 281. Recommendations of the Finance Commission.

Miscellaneous Financial Provisions

- 282. Expenditure defrayable by the Union or a State out of its revenues.
- 283. Custody, etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts.
- 284. Custody of suitors’ deposits and other moneys received by public servants and courts.
- 285. Exemption of property of the Union from State taxation.
- 286. Restrictions as to imposition of tax on the sale or purchase of goods.
- 287. Exemption from taxes on electricity.
- 288. Exemption from taxation by States in respect of water or electricity in certain cases.
- 289. Exemption of property and income of a State from Union taxation.
- 290. Adjustment in respect of certain expenses and pensions.
- 290A. Annual payment to certain Devaswom Funds.
- [291. Privy purse sums of Rulers.—*Omitted.*]

CHAPTER II.—BORROWING

- 292. Borrowing by the Government of India.
- 293. Borrowing by States.

ARTICLES**CHAPTER III.— PROPERTY, CONTRACTS, RIGHTS, LIABILITIES,
OBLIGATIONS AND SUITS**

- 294. Succession to property, assets, rights, liabilities and obligations in certain cases.
- 295. Succession to property, assets, rights, liabilities and obligations in other cases.
- 296. Property accruing by escheat or lapse or as *bona vacantia*.
- 297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union.
- 298. Power to carry on trade, etc.
- 299. Contracts.
- 300. Suits and proceedings.

CHAPTER IV.—RIGHT TO PROPERTY

- 300A. Persons not to be deprived of property save by authority of law.

PART XIII**TRADE, COMMERCE AND INTERCOURSE
WITHIN THE TERRITORY OF INDIA**

- 301. Freedom of trade, commerce and intercourse.
- 302. Power of Parliament to impose restrictions on trade, commerce and intercourse.
- 303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.
- 304. Restrictions on trade, commerce and intercourse among States.
- 305. Saving of existing laws and laws providing for State monopolies.
- [306. Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce.—*Omitted*]
- 307. Appointment of authority for carrying out the purposes of articles 301 to 304.

PART XIV**SERVICES UNDER THE UNION AND THE STATES****CHAPTER I.—SERVICES**

- 308. Interpretation.

ARTICLES

- 309. Recruitment and conditions of service of persons serving the Union or a State.
- 310. Tenure of office of persons serving the Union or a State.
- 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.
- 312. All-India services.
- 312A. Power of Parliament to vary or revoke conditions of service of officers of certain services.
- 313. Transitional provisions.
- [314. Provision for protection of existing officers of certain services.—*Omitted.*]

CHAPTER II.—PUBLIC SERVICE COMMISSIONS

- 315. Public Service Commissions for the Union and for the States.
- 316. Appointment and term of office of members.
- 317. Removal and suspension of a member of a Public Service Commission.
- 318. Power to make regulations as to conditions of service of members and staff of the Commission.
- 319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members.
- 320. Functions of Public Service Commissions.
- 321. Power to extend functions of Public Service Commissions.
- 322. Expenses of Public Service Commissions.
- 323. Reports of Public Service Commissions.

**PART XIVA
TRIBUNALS**

- 323A. Administrative tribunals.
- 323B. Tribunals for other matters.

ARTICLES

PART XV
ELECTIONS

- 324. Superintendence, direction and control of elections to be vested in an Election Commission.
- 325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
- 326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.
- 327. Power of Parliament to make provision with respect to elections to Legislatures.
- 328. Power of Legislature of a State to make provision with respect to elections to such Legislature.
- 329. Bar to interference by courts in electoral matters.
- [329A. Special provision as to elections to Parliament in the case of Prime Minister and Speaker.—*Omitted.*]

PART XVI
SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

- 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.
- 330A. Reservation of seats for women in the House of the People.
- 331. Representation of the Anglo-Indian community in the House of the People.
- 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.
- 332A. Reservation of seats for women in the Legislative Assemblies of the States.
- 333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States.
- 334. Reservation of seats and special representation to cease after certain period.
- 334A. Reservation of seats for women take effect.
- 335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.

ARTICLES

- 336. Special provision for Anglo-Indian community in certain services.
- 337. Special provision with respect to educational grants for the benefit of Anglo-Indian Community.
- 338. National Commission for Scheduled Castes.
- 338A. National Commission for Scheduled Tribes.
- 338B. National Commission for Backward Classes.
- 339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.
- 340. Appointment of a Commission to investigate the conditions of backward classes.
- 341. Scheduled Castes.
- 342. Scheduled Tribes.
- 342A. Socially and educationally backward classes.

PART XVII

OFFICIAL LANGUAGE

CHAPTER I.—LANGUAGE OF THE UNION

- 343. Official language of the Union.
- 344. Commission and Committee of Parliament on official language.

CHAPTER II.—REGIONAL LANGUAGES

- 345. Official language or languages of a State.
- 346. Official language for communication between one State and another or between a State and the Union.
- 347. Special provision relating to language spoken by a section of the population of a State.

**CHAPTER III.—LANGUAGE OF THE SUPREME COURT,
HIGH COURTS, ETC.**

- 348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.
- 349. Special procedure for enactment of certain laws relating to language.

ARTICLES

CHAPTER IV.—SPECIAL DIRECTIVES

- 350. Language to be used in representations for redress of grievances.
- 350A. Facilities for instruction in mother-tongue at primary stage.
- 350B. Special Officer for linguistic minorities.
- 351. Directive for development of the Hindi language.

PART XVIII
EMERGENCY PROVISIONS

- 352. Proclamation of Emergency.
- 353. Effect of Proclamation of Emergency.
- 354. Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation.
- 355. Duty of the Union to protect States against external aggression and internal disturbance.
- 356. Provisions in case of failure of constitutional machinery in States.
- 357. Exercise of legislative powers under Proclamation issued under article 356.
- 358. Suspension of provisions of article 19 during emergencies.
- 359. Suspension of the enforcement of the rights conferred by Part III during emergencies.
- [359A. Application of this Part to the State of Punjab.—*Omitted.*]
- 360. Provisions as to financial emergency.

PART XIX
MISCELLANEOUS

- 361. Protection of President and Governors and Rajpramukhs.
- 361A. Protection of publication of proceedings of Parliament and State Legislatures.
- 361B. Disqualification for appointment on remunerative political post.
- [362. Rights and privileges of Rulers of Indian States.—*Omitted.*]
- 363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.
- 363A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished.

ARTICLES

- 364. Special provisions as to major ports and aerodromes.
- 365. Effect of failure to comply with, or to give effect to, directions given by the Union.
- 366. Definitions.
- 367. Interpretation.

PART XX

AMENDMENT OF THE CONSTITUTION

- 368. Power of Parliament to amend the Constitution and procedure therefor.

PART XXI

**TEMPORARY, TRANSITIONAL AND
SPECIAL PROVISIONS**

- 369. Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.
- 370. Temporary provisions with respect to the State of Jammu and Kashmir.
- 371. Special provision with respect to the States of Maharashtra and Gujarat.
- 371A. Special provision with respect to the State of Nagaland.
- 371B. Special provision with respect to the State of Assam.
- 371C. Special provision with respect to the State of Manipur.
- 371D. Special provisions with respect to the State of Andhra Pradesh or the State of Telangana.
- 371E. Establishment of Central University in Andhra Pradesh.
- 371F. Special provisions with respect to the State of Sikkim.
- 371G. Special provision with respect to the State of Mizoram.
- 371H. Special provision with respect to the State of Arunachal Pradesh.
- 371-I. Special provision with respect to the State of Goa.
- 371J. Special provisions with respect to the State of Karnataka.
- 372. Continuance in force of existing laws and their adaptation.
- 372A. Power of the President to adapt laws.

ARTICLES

- 373. Power of President to make order in respect of persons under preventive detention in certain cases.
- 374. Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council.
- 375. Courts, authorities and officers to continue to function subject to the provisions of the Constitution.
- 376. Provisions as to Judges of High Courts.
- 377. Provisions as to Comptroller and Auditor-General of India.
- 378. Provisions as to Public Service Commissions.
- 378A. Special provision as to duration of Andhra Pradesh Legislative Assembly.
- [379. Provisions as to provisional Parliament and the Speaker and Deputy Speaker thereof.—*Omitted.*]
- [380. Provision as to President.—*Omitted.*]
- [381. Council of Ministers of the President.—*Omitted.*]
- [382. Provisions as to provisional Legislatures for States in Part A of the First Schedule. —*Omitted.*]
- [383. Provision as to Governors of Provinces. —*Omitted.*]
- [384. Council of Ministers of the Governors.—*Omitted.*]
- [385. Provision as to provisional Legislatures in States in Part B of the First Schedule.—*Omitted.*]
- [386. Council of Ministers for States in Part B of the First Schedule.
—*Omitted.*]
- [387. Special provision as to determination of population for the purposes of certain elections.—*Omitted.*]
- [388. Provisions as to the filling of casual vacancies in the provisional Parliament and provisional Legislatures of the States. —*Omitted.*]
- [389. Provision as to Bills pending in the Dominion Legislatures and in the Legislatures of Provinces and Indian States.—*Omitted.*]

ARTICLES

- [390. Money received or raised or expenditure incurred between the commencement of the Constitution and the 31st day of March, 1950. —*Omitted.*]
- [391. Power of the President to amend the First and Fourth Schedules in certain contingencies.—*Omitted.*]
- 392. Power of the President to remove difficulties.

PART XXII

SHORT TITLE, COMMENCEMENT,
AUTHORITATIVE TEXT
IN HINDI AND REPEALS

- 393. Short title.
- 394. Commencement.
- 394A. Authoritative text in the Hindi language.
- 395. Repeals.

SCHEDULES

FIRST SCHEDULE

- I. —The States.
- II. —The Union territories.

SECOND SCHEDULE

- PART A—Provisions as to the President and the Governors of States.
- PART B—[Omitted.]
- PART C—Provisions as to the Speaker and the Deputy Speaker of the House of the People and the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council of a State.
- PART D— Provisions as to the Judges of the Supreme Court and of the High Courts.
- PART E— Provisions as to the Comptroller and Auditor-General of India.

THIRD SCHEDULE— Forms of Oaths or Affirmations.

ARTICLES

FOURTH SCHEDULE—Allocation of seats in the Council of States.

FIFTH SCHEDULE—

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A—General.

PART B—Administration and Control of Scheduled Areas and Scheduled Tribes.

PART C— Scheduled Areas.

PART D—Amendment of the Schedule.

SIXTH SCHEDEULE—

Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.

SEVENTH SCHEDEULE—

List I— Union List.

List II— State List.

List III— Concurrent List.

EIGHTH SCHEDEULE— Languages.

NINTH SCHEDEULE—Validation of certain Acts and Regulations.

TENTH SCHEDEULE— Provisions as to disqualification on ground of defection.

ELEVENTH SCHEDEULE—Powers, authority and responsibilities of Panchayats.

TWELFTH SCHEDEULE—Powers, authority and responsibilities of Municipalities, etc.

APPENDICES

APPENDIX I.—The Constitution (One Hundredth Amendment) Act, 2015.

APPENDIX II.—The Constitution (Application to Jammu and Kashmir) Order, 2019.

APPENDIX III.— Declaration under article 370(3) of the Constitution.

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a ¹[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the ²[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

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1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s.2, for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3-1-1977).
 2. Subs. by s. 2, *ibid.*, for "Unity of the Nation" (w.e.f. 3-1-1977).

PART I

THE UNION AND ITS TERRITORY

1. Name and territory of the Union.—(1) India, that is Bharat, shall be a Union of States.

¹[(2) The States and the territories thereof shall be as specified in the First Schedule.]

(3) The territory of India shall comprise—

(a) the territories of the States;

²[(b) the Union territories specified in the First Schedule; and]

(c) such other territories as may be acquired.

2. Admission or establishment of new States.—Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

³[**2A.** [*Sikkim to be associated with the Union.*].—Omitted by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 5 (w.e.f. 26-4-1975).]

3. Formation of new States and alteration of areas, boundaries or names of existing States.—Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 2, for cl. (2) (w.e.f. 1-11-1956).

2. Subs. by s. 2 *ibid.* for sub-clause (b) (w.e.f. 1-11-1956).

3. Ins. by the Constitution (Thirty-fifth Amendment) Act, 1974, s. 2 (w.e.f. 1-3-1975).

THE CONSTITUTION OF INDIA

(Part I.—Union and its territory)

¹[Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States ^{2***}, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.]

³[*Explanation I.*—In this article, in clauses (a) to (e), “State” includes a Union territory, but in the proviso, “State” does not include a Union territory.]

Explanation II.—The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.]

4. Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.—(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

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1. Subs. by the Constitution (Fifth Amendment) Act, 1955, s. 2, for the proviso (w.e.f. 24-12-1955).
 2. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 3. Ins. by the Constitution (Eighteenth Amendment) Act, 1966, s. 2 (w.e.f. 27-8-1966).

PART II

CITIZENSHIP

5. Citizenship at the commencement of the Constitution.—At the commencement of this Constitution, every person who has his domicile in the territory of India and—

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

6. Rights of citizenship of certain persons who have migrated to India from Pakistan.—Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

- (b)(i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

- (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Rights of citizenship of certain migrants to Pakistan.—Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

THE CONSTITUTION OF INDIA

(Part II.—Citizenship)

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

8. Rights of citizenship of certain persons of Indian origin residing outside India.—Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.—No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

10. Continuance of the rights of citizenship.—Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

11. Parliament to regulate the right of citizenship by law.—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

PART III
FUNDAMENTAL RIGHTS
General

12. Definition.—In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

13. Laws inconsistent with or in derogation of the fundamental rights.—(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

¹[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

Right to Equality

14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

1. Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 2 (w.e.f. 5-11-1971).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

¹[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

²[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

³[(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

1. Added by the Constitution (First Amendment) Act, 1951, s. 2 (w.e.f. 18-6-1951).

2. Ins. by the Constitution (Ninety-third Amendment) Act, 2005, s. 2 (w.e.f. 20-1-2006).

3. Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019, s. 2 (w.e.f. 14-1-2019).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office¹[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

²[(4A) Nothing in this article shall prevent the State from making any provision for reservation³[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

⁴[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

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1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State" (w.e.f. 1-11-1956).
 2. Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, s. 2 (w.e.f. 17-6-1995).
 3. Subs. by the Constitution (Eighty-fifth Amendment) Act, 2001, s. 2, for certain words (retrospectively) (w.e.f. 17-6-1995).
 4. Ins. by the Constitution (Eighty-first Amendment) Act, 2000, s. 2 (w.e.f. 9-6-2000).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

¹[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]

17. Abolition of Untouchability.—“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

18. Abolition of titles.—(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.—

(1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions ²[or co-operative societies];
- (d) to move freely throughout the territory of India;

1. Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019, s. 3 (w.e.f. 14-1-2019).

2. Ins. by the Constitution (Ninety-seventh Amendment) Act, 2011, s. 2 (w.e.f. 8-2-2012).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

(e) to reside and settle in any part of the territory of India; ¹[and]

²[(f)* * * * *]

(g) to practise any profession, or to carry on any occupation, trade or business.

³[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of ⁴[the sovereignty and integrity of India], the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of ⁴[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of ⁴[the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in ⁵[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 2 (w.e.f. 20-6-1979).

2. Sub-clause (f) omitted by s.2, *ibid.* (w.e.f. 20-6-1979).

3. Subs. by the Constitution (First Amendment) Act, 1951, s. 3, for cl. (2) (with retrospective effect).

4. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, s. 2 (w.e.f. 5-10-1963).

5. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 2, for "sub-clauses (d), (e) and (f)" (w.e.f. 20-6-1979).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular,
¹[nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.]

20. Protection in respect of conviction for offences.—(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

²[**21A. Right to education.**—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

1. Subs. by the Constitution (First Amendment) Act, 1951, s. 3, for certain words (w.e.f. 18-6-1951).

2 Ins. by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 2 (w.e.f. 1-4-2010).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

^{*}(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

^{*} Cl. (4) shall stand substituted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 3 (date yet to be notified) as—

"(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention:

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court :

Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of clause (7).

Explanation.—In this clause, "appropriate High Court" means,—

(i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi;

(ii) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union territory), the High Court for that State; and

(iii) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf".

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

*(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

**(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under *sub-clause (a) of clause (4).

* Sub-clause (a) shall stand omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 3(b)(i) (date to be notified).

** Sub-clause (b) shall stand re-lettered as sub-clause (a) by s. 3(b)(ii), *ibid.* (date to be notified).

*** Sub-clause (c) shall stand re-lettered as sub-clause (b) by s. 3(b)(iii), *ibid.* (date to be notified).

**** Sub-clause (a) of clause (4) shall stand substituted as "clause (4)" by s. 3(b)(iii), *ibid.* (date to be notified).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

*Right against Exploitation***23. Prohibition of traffic in human beings and forced labour.**—(1)

Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

24. Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

¹[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

2* * * *

31. [Compulsory acquisition of property].—Omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 6 (w.e.f. 20-6-1979).

³[Saving of Certain Laws]

⁴[31A. Saving of laws providing for acquisition of estates, etc.—

⁵[(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights; or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property; or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations; or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof; or

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 4 (w.e.f. 20-6-1979).

2. Sub-heading "Right to Property" omitted by s. 5, *ibid.* (w.e.f. 20-6-1979).

3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 3 (w.e.f. 3-1-1977).

4. Ins. by the Constitution (First Amendment) Act, 1951, s. 4, (with retrospective effect).

5. Subs. by the Constitution (Fourth Amendment) Act, 1955, s. 3, for cl. (1) (with retrospective effect).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by¹[article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:]

²[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

(2) In this article,—

³[(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(i) any *jagir*, *inam* or *muafī* or other similar grant and in the States of⁴[Tamil Nadu] and Kerala, any *janmam* right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 7, for "article 14, article 19 or article 31" (w.e.f. 20-6-1979).

2. Ins. by the Constitution (Seventeenth Amendment) Act, 1964, s. 2(i) (w.e.f. 20-6-1964).

3. Subs. by s.2(ii), *ibid.*, for sub-clause (a) (with retrospective effect).

4. Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), s. 4, for "Madras" (w.e.f. 14-1-1969).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

(b) the expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, ¹[*raiyat, under-raiyat*] or other intermediary and any rights or privileges in respect of land revenue.]

²[31B. Validation of certain Acts and Regulations.]—Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

³[31C. Saving of laws giving effect to certain directive principles.]—Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing ⁴[all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by ⁵[article 14 or article 19;] ⁶[and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy]:

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.]

⁷31D. [Saving of laws in respect of anti-national activities].—Omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 2 (w.e.f. 13-4-1978).

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1. Ins. by the Constitution (Fourth Amendment) Act, 1955, s. 3 (with retrospective effect).
 2. Ins. by the Constitution (First Amendment) Act, 1951, s. 5 (w.e.f. 18-6-1951).
 3. Ins. by the Constitution (Twenty-fifth Amendment) Act, 1971, s. 3 (w.e.f. 20-4-1972).
 4. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 4, for “the principles specified in clause (b) or clause (c) of article 39” (w.e.f. 3-1-1977). Section 4 has been declared invalid by the Supreme Court in *Minerva Mills Ltd. and Others Vs Union of India and Others*, AIR 1980 SC 1789.
 5. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 8, for “article 14, article 19 or article 31” (w.e.f. 20-6-1979).
 6. The words in italics struck down by the Supreme Court in *Kesavananda Bharati vs. State of Kerala*, AIR 1973, SC 1461.
 7. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 5 (w.e.f. 03-01-1977).

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights)

Right to Constitutional Remedies

32. Remedies for enforcement of rights conferred by this Part.—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

¹32A. [Constitutional validity of State laws not to be considered in proceedings under article 32].—Omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 3 (w.e.f. 13-4-1978).

²[33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.]—Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 6 (w.e.f. 1-2-1977).

2. Subs. by the Constitution (Fiftieth Amendment) Act, 1984, s. 2, for art. 33 (w.e.f. 11-9-1984).

34. Restriction on rights conferred by this Part while martial law is in force in any area.—Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

35. Legislation to give effect to the provisions of this Part.—Notwithstanding anything in this Constitution,—

(a) Parliament shall have, and the Legislature of a State shall not have power to make laws—

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part,

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression "law in force" has the same meaning as in article 372.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

36. Definition.—In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.

37. Application of the principles contained in this Part.—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

38. State to secure a social order for the promotion of welfare of the people.—¹[(1)] The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

²[(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

1. Art. 38 renumbered as cl. (1) by the Constitution (Forty-fourth Amendment) Act, 1978, s. 9 (w.e.f. 20-6-1979).

2. Ins. by s. 9, *ibid.* (w.e.f. 20-6-1979).

THE CONSTITUTION OF INDIA

(Part IV.— Directive Principles of State Policy)

¹[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

²[**39A. Equal justice and free legal aid.**—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.]

40. Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

³[**43A. Participation of workers in management of industries.**—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.]

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 7, for cl. (f) (w.e.f. 3-1-1977).

2. Ins. by s. 8, *ibid.* (w.e.f. 3-1-1977).

3. Ins. by s. 9, *ibid.* (w.e.f. 3-1-1977).

THE CONSTITUTION OF INDIA

(Part IV.— Directive Principles of State Policy)

¹[**43B. Promotion of co-operative societies.**—The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.]

44. Uniform civil code for the citizens.—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

²[**45. Provision for early childhood care and education to children below the age of six years.**—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.]

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. Organisation of agriculture and animal husbandry.—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

³[**48A. Protection and improvement of environment and safeguarding of forests and wild life.**—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.]

1. Ins. by the Constitution (Ninety-seventh Amendment) Act, 2011, s. 3 (w.e.f. 15-2-2012).

2. Subs. by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 3, for art. 45 (w.e.f. 1-4-2010).

3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 10 (w.e.f. 3-1-1977).

(Part IV.— Directive Principles of State Policy)

49. Protection of monuments and places and objects of national importance.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, ¹[declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. Separation of judiciary from executive.—The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. Promotion of international peace and security.—The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 27, for "declared by Parliament by law" (w.e.f. 1-11-1956).

¹[PART IVA

FUNDAMENTAL DUTIES

51A. Fundamental duties.—It shall be the duty of every citizen of India—

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
 - (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
 - (c) to uphold and protect the sovereignty, unity and integrity of India;
 - (d) to defend the country and render national service when called upon to do so;
 - (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
 - (f) to value and preserve the rich heritage of our composite culture;
 - (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
 - (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
 - (i) to safeguard public property and to abjure violence;
 - (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;]
- ²[(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.]

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 11 (w.e.f. 3-1-1977).

2. Ins. by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 4 (w.e.f. 1-4-2010).

PART V

THE UNION

CHAPTER I.—THE EXECUTIVE

The President and Vice-President

52. The President of India.—There shall be a President of India.

53. Executive power of the Union.—(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

54. Election of President.—The President shall be elected by the members of an electoral college consisting of—

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States.

¹[*Explanation.*—In this article and in article 55, “State” includes the National Capital Territory of Delhi and the Union territory of *Puducherry.]

55. Manner of election of President.—(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

1. Ins. by the Constitution (Seventieth Amendment) Act, 1992, s. 2 (w.e.f. 1-6-1995).

* Now Puducherry *vide* the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006), s. 3 (w.e.f. 1-10-2006).

THE CONSTITUTION OF INDIA

(Part V.—The Union)

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

¹[*Explanation*.—In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year ²[2026] have been published, be construed as a reference to the 1971 census.]

56. Term of office of President.—(1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 12, for the *Explanation* (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 2, for "2000" (w.e.f. 21-2-2002).

(Part V.—The Union)

57. Eligibility for re-election.—A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

58. Qualifications for election as President.—(1) No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor^{1***} of any State or is a Minister either for the Union or for any State.

59. Conditions of President's office.—(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

60. Oath or affirmation by the President.—Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say—

1. The words "or Rajpramukh or Uparajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

THE CONSTITUTION OF INDIA

(Part V.—The Union)

"I, A.B., do swear in the name of God that I will faithfully execute the office solemnly affirm

of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

61. Procedure for impeachment of the President.—(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.—(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

63. The Vice-President of India.—There shall be a Vice-President of India.

64. The Vice-President to be *ex officio* Chairman of the Council of States.—The Vice-President shall be *ex officio* Chairman of the Council of the States and shall not hold any other office of profit:

(Part V.—The Union)

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.—(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

66. Election of Vice-President.—(1) The Vice-President shall be elected by the ¹[members of an electoral college consisting of the members of both Houses of Parliament] in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and

1. Subs. by the Constitution (Eleventh Amendment) Act, 1961, s. 2, for "members of both Houses of Parliament assembled at a joint meeting" (w.e.f. 19-12-1961).

(Part V.—The Union)

(c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor^{1***} of any State or is a Minister either for the Union or for any State.

67. Term of office of Vice-President.—The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.—

(1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

69. Oath or affirmation by the Vice-President.—Every Vice-President shall, before entering upon his office, make and subscribe before the

1. The words "or Rajpramukh or Uparajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

(Part V.—The Union)

President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

"I, A.B., do swear in the name of God that I will bear true faith and solemnly affirm

allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.".

70. Discharge of President's functions in other contingencies.—Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

[71. Matters relating to, or connected with, the election of a President or Vice-President.]—(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.]

72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

1. Subs. by the Constitution (Thirty-ninth Amendment) Act, 1975, s. 2 (w.e.f 10-8-1975) and further subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 10. (w.e.f. 20-6-1979).

THE CONSTITUTION OF INDIA

(Part V.—The Union)

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor ^{1***} of a State under any law for the time being in force.

73. Extent of executive power of the Union.—(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State ^{2***} to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

THE CONSTITUTION OF INDIA

(Part V.—The Union)

Council of Ministers

74. Council of Ministers to aid and advise President.—¹[(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:]

²[Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

75. Other provisions as to Ministers.—(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

³[(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.]

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s.13, for cl. (1) (w.e.f. 3-1-1977).

2. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 11 (w.e.f. 20-6-1979).

3. Ins. by the Constitution (Ninety-first Amendment) Act, 2003, s. 2 (w.e.f. 1-1-2004).

(Part V.—The Union)

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

The Attorney-General for India

76. Attorney-General for India.—(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

77. Conduct of business of the Government of India.—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules¹ to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

2(4) * * * *

1. See notifiin No. S.O. 2297, dated the 3rd November, 1958, Gazette of India, Extraordinary, Pt. II, Sec. 3 (ii), p. 1315, as amended from time to time.

2. Cl. (4) was ins. by the Constitution (Forty-second Amendment) Act, 1976, s.14 (w.e.f. 3-1-1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 12 (w.e.f. 20-6-1979).

(Part V.—The Union)

78. Duties of Prime Minister as respects the furnishing of information to the President, etc.—It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

CHAPTER II.—PARLIAMENT

General

79. Constitution of Parliament.—There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

80. Composition of the Council of States.—(1) ^{1[2***]} The Council of States] shall consist of—

(a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and

(b) not more than two hundred and thirty-eight representatives of the States ^{3[and of the Union territories].}

(2) The allocation of seats in the Council of States to be filled by representatives of the States ^{3[and of the Union territories]} shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art and social service.

1. Subs. by the Constitution (Thirty-fifth Amendment) Act, 1974, s. 3, for "The Council of States" (w.e.f. 1-3-1975).

2. The words "Subject to the provisions of para. 4 of the Tenth Schedule," omitted by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 5 (w.e.f. 26-4-1975).

3. Added by the Constitution (Seventh Amendment) Act, 1956, s. 3 (w.e.f. 1-11-1956).

THE CONSTITUTION OF INDIA

(Part V.—The Union)

(4) The representatives of each State ^{1***} in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the ²[Union territories] in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

³[**81. Composition of the House of the People.**—(1) ⁴[Subject to the provisions of article 331 ^{5***}], the House of the People shall consist of—

(a) not more than ⁶[five hundred and thirty members] chosen by direct election from territorial constituencies in the States; and

(b) not more than ⁷[twenty members] to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State:

⁸[Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.]

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1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 3 (w.e.f. 1-11-1956).
 2. Subs. by s. 3, *ibid.*, for "States specified in Part C of First Schedule" (w.e.f. 1-11-1956).
 3. Subs. by s. 4, *ibid.*, for arts. 81 and 82 (w.e.f. 1-11-1956).
 4. Subs. by the Constitution (Thirty-fifth Amendment) Act, 1974, s. 4, for "subject to the provisions of art. 331" (w.e.f. 1-3-1975).
 5. The words and figure "and para. 4 of the Tenth Schedule" omitted by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 5 (w.e.f. 26-4-1975).
 6. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), s. 63, for "five hundred and twenty-five members" (w.e.f. 30-5-1987).
 7. Subs. by the Constitution (Thirty-first Amendment) Act, 1973, s. 2, for "twenty-five members" (w.e.f. 17-10-1973).
 8. Ins. by s. 2, *ibid.* (w.e.f. 17-10-1973).

(Part V.—The Union)

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

¹[Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year ²[2026] have been published, ³[be construed,—

(i) for the purposes of sub-clause (*a*) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and

(ii) for the purposes of sub-clause (*b*) of clause (2) as a reference to the ⁴[2001] census.]]

82. Readjustment after each census.—Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:

⁵[Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year ⁶[2026] have been published, it shall not be necessary to ⁷[readjust,—

1. Added by the Constitution (Forty-second Amendment) Act, 1976, s. 15 (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 3, for "2000" (w.e.f. 21-2-2002).

3. Subs. by s.3, *ibid.*, for certain words (w.e.f. 21-2-2002).

4. Subs. by the Constitution (Eighty-seventh Amendment) Act, 2003, s. 2, for "1991" (w.e.f. 22-6-2003).

5. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 16 (w.e.f. 3-1-1977).

6. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 4, for "2000" (w.e.f. 21-2-2002).

7. Subs. by s.4, *ibid.*, for certain words (w.e.f. 21-2-2002).

THE CONSTITUTION OF INDIA

(Part V.—The Union)

- (i) the allocation of seats in the House of the People to the States as readjusted on the basis of the 1971 census; and
- (ii) the division of each State into territorial constituencies as may be readjusted on the basis of the ¹[2001] census,
under this article.]

83. Duration of Houses of Parliament.—(1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for ²[five years] from the date appointed for its first meeting and no longer and the expiration of the said period of ²[five years] shall operate as a dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

84. Qualification for membership of Parliament.—A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

³[(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

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1. Subs. by the Constitution (Eighty-seventh Amendment) Act, 2003, s. 3, for "1991" (w.e.f. 22-6-2003).
 2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 17, for "five years" (w.e.f. 3-1-1977) and further subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 13, for "six years" (w.e.f. 20-6-1979).
 3. Subs. by the Constitution (Sixteenth Amendment) Act, 1963, s. 3, for cl.(a) (w.e.f. 5-10-1963).

(Part V.—The Union)

¹[**85. Sessions of Parliament, prorogation and dissolution.**—(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

- (a) prorogue the Houses or either House;
- (b) dissolve the House of the People.]

86. Right of President to address and send messages to Houses.—(1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

87. Special address by the President.—(1) At the commencement of ²[the first session after each general election to the House of the People and at the commencement of the first session of each year] the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address ^{3***}.

88. Rights of Ministers and Attorney-General as respects Houses.—Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

1. Subs. by the Constitution (First Amendment) Act, 1951, s. 6, for art. 85 (w.e.f. 18-6-1951).

2. Subs. by the Constitution (First Amendment) Act, 1951, s. 7, for "every session" (w.e.f. 18-6-1951).

3. The words "and for the precedence of such discussion over other business of the House" omitted by s. 7, *ibid.* (w.e.f. 18-6-1951).

(Part V.—The Union)

Officers of Parliament

89. The Chairman and Deputy Chairman of the Council of States.—(1) The Vice-President of India shall be *ex officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

90. Vacation and resignation of, and removal from, the office of Deputy Chairman.—A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.—(1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent.

(Part V.—The Union)

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

93. The Speaker and Deputy Speaker of the House of the People.—The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—A member holding office as Speaker or Deputy Speaker of the House of the People—

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

(Part V.—The Union)

96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.—There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

98. Secretariat of Parliament.—(1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

99. Oath or affirmation by members.—Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.—(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

¹[(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.]

Disqualifications of Members

101. Vacation of seats.—(1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

1. Cls. (3) and (4) omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 18 (date not notified). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 45 (w.e.f. 20-6-1979).

(Part V.—The Union)

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State ^{1***}, and if a person is chosen a member both of Parliament and of a House of the Legislature of ^{2[a State]}, then, at the expiration of such period as may be specified in rules* made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

- (a) becomes subject to any of the disqualifications mentioned in ^{3[clause (1) or clause (2) of article 102]; or}
- ^{4[(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be.]}

his seat shall thereupon become vacant:

^{5[Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.]}

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. Subs. by s. 29 and Sch., *ibid.*, for "such a State" (w.e.f. 1-11-1956).

* See the Prohibition of Simultaneous Membership Rules, 1950, published with the Ministry of Law, notifn. No. F. 46/50-C, dated the 26th January, 1950, Gazette of India, Extraordinary, P. 678.

3. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, s. 2, for "cl. (1) of art. 102" (w.e.f. 1-3-1985).

4. Subs. by the Constitution (Thirty-third Amendment) Act, 1974, s. 2 (w.e.f. 19-5-1974).

5. Ins. by s.2, *ibid.* (w.e.f. 19-5-1974).

(Part V.—The Union)

102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

¹[(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;]

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

²[Explanation.—For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

³[(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]

103. Decision on questions as to disqualifications of members.—

(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 19 to read as "(a) if he holds any such office of profit under the Government of India or the Government of any State as is declared by Parliament by law to disqualify its holder" (date not notified). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 45 (w.e.f. 20-6-1979).
2. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, s. 3, for "(2) for the purposes of this art." (w.e.f. 1-3-1985).
3. Ins. by s. 3, *ibid.* (w.e.f. 1-3-1985).
4. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 20, for art. 103 (w.e.f. 3-1-1977) and further subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 14, for art. 103 (w.e.f. 20-6-1979).

(Part V.—The Union)

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.]

104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.—If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

Powers, Privileges and Immunities of Parliament and its Members

105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

¹[(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, ²[shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.]].

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 21 (date to be notified). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 45 (w.e.f. 20-6-1979).

2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 15, for certain words (w.e.f. 20-6-1979).

(Part V.—The Union)

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

106. Salaries and allowances of members.—Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

Legislative Procedure

107. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

108. Joint sitting of both Houses in certain cases.—(1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

(Part V.—The Union)

the President may, unless the Bill has elapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

109. Special procedure in respect of Money Bills.—(1) A Money Bill shall not be introduced in the Council of States.

(Part V.—The Union)

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

110. Definition of “Money Bills”.—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
- (d) the appropriation of moneys out of the Consolidated Fund of India;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

THE CONSTITUTION OF INDIA

(Part V.—The Union)

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

111. Assent to Bills.—When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

Procedure in Financial Matters

112. Annual financial statement.—(1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(Part V.—The Union)

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India—

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court;

(ii) the pensions payable to or in respect of Judges of the Federal Court;

(iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in¹[a Governor's Province of the Dominion of India];

(e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

113. Procedure in Parliament with respect to estimates.—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "a Province corresponding to a State specified in Part A of the First Schedule" (w.e.f. 1-11-1956).

(Part V.—The Union)

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

114. Appropriation Bills.—(1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

115. Supplementary, additional or excess grants.—(1) The President shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(Part V.—The Union)

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.

116. Votes on account, votes of credit and exceptional grants.—(1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year,

and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

117. Special provisions as to financial Bills.—(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(Part V.—The Union)

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Procedure Generally

118. Rules of procedure.—(1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure* and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

119. Regulation by law of procedure in Parliament in relation to financial business.—Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.

* The brackets and words "(including the quorum to constitute a meeting of the House" ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 22 (date not notified). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 45 (w.e.f. 20-6-1979).

(Part V.—The Union)

120. Language to be used in Parliament.—(1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English:

Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words “or in English” were omitted therefrom.

121. Restriction on discussion in Parliament.—No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

122. Courts not to inquire into proceedings of Parliament.—(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER III.—LEGISLATIVE POWERS OF THE PRESIDENT

123. Power of President to promulgate Ordinances during recess of Parliament.—(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

THE CONSTITUTION OF INDIA

(Part V.—The Union)

(b) may be withdrawn at any time by the President.

Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

1(4)* * * *

CHAPTER IV.—THE UNION JUDICIARY

124. Establishment and constitution of the Supreme Court.—(1)

There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than *[seven] other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal ²[on the recommendation of the National Judicial Appointments Commission referred to in article 124A] and shall hold office until he attains the age of sixty-five years:

3[* * * *]

⁴[Provided that]—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

1. Ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, s. 2 (with retrospective effect) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 16 (w.e.f. 20-6-1979).

* Now "thirty-three" *vide* the Supreme Court (Number of Judges) Amendment Act, 2019 (37 of 2019), s. 2 (w.e.f. 9-8-2019).

2. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 2, for "after consultation with such of the Judges of the Supreme Court and of the High Court in the States as the President may deem necessary for the purpose" (w.e.f. 13-4-2015). This amendment has been struck down by the Supreme Court in the case of Supreme Court Advocates-on-Record Association and another Vs. Union of India in its judgment dated 16-10-2015, AIR 2016 SC 117.

3. The first proviso was omitted by s. 2, *ibid*. The proviso was as under:—

"Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted;" This amendment has been struck down by the Supreme Court in the case of Supreme Court Advocates-on-Record Association and another Vs. Union of India in its judgment dated 16-10-2015, AIR 2016 SC 117.

4. Subs. by s. 2, *ibid*, for "provided further that" This amendment has been struck down by the Supreme Court in the Supreme Court Advocates-on-Record Association and another Vs Union of India judgment dated 16-10-2015, AIR 2016 SC 117.

THE CONSTITUTION OF INDIA

(Part V.—The Union)

¹[(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

- (a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
- (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
- (c) is, in the opinion of the President, a distinguished jurist.

Explanation I.—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

²[124A. **National Judicial Appointments Commission.**—(1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:—

1. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 2 (w.e.f. 5-10-1963).

2. Ins. by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 3 (w.e.f. 13-4-2015). This amendment has been struck down by the Supreme Court in the case of Supreme Court Advocates-on-Record Association and another Vs Union of India in its judgment dated 16-10-2015, AIR 2016 SC 117.

THE CONSTITUTION OF INDIA

(Part V.—The Union)

(a) the Chief Justice of India, Chairperson, *ex officio*;

(b) two other senior Judges of the Supreme Court next to the Chief Justice of India—Members, *ex officio*;

(c) the Union Minister in charge of Law and Justice—Member, *ex officio*;

(d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People—Members:

Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women:

Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for renomination.

(2) No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

124B. Functions of Commission.—It shall be the duty of the National Judicial Appointments Commission to—

(a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;

(b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and

(c) ensure that the person recommended is of ability and integrity.

124C. Power of Parliament to make law.—Parliament may, by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.]

125. Salaries, etc., of Judges.—¹[(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.]

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

1. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, s. 2, for cl. (1) (w.e.f. 1-4-1986).

(Part V.—The Union)

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

126. Appointment of acting Chief Justice.—When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

127. Appointment of *ad hoc* Judges.—(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, ¹[the National Judicial Appointments Commission on a reference made to it by the Chief Justice of India, may with the previous consent of the President] and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

128. Attendance of retired Judges at sittings of the Supreme Court.—Notwithstanding anything in this Chapter, ²[the National Judicial Appointments Commission] may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court ³[or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court] to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

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1. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 4, for "the Chief Justice of India may, with the previous consent of the President" (w.e.f. 13-4-2015). This amendment has been struck down by the Supreme Court in the case of Supreme Court Advocates-on-Record Association and another vs. Union of India in its judgment dated 16-10-2015, AIR 2016 SC 117.
 2. Subs. by s. 5, *ibid.*, for "the Chief Justice of India" (w.e.f. 13-4-2015). This amendment has been struck down by the Supreme Court in the case of Supreme Court Advocates-on-Record Association and another Vs. Union of India in its judgment dated 16-10-2015, AIR 2016 SC 117.
 3. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 3 (w.e.f. 5-10-1963).

(Part V.—The Union)

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

129. Supreme Court to be a court of record.—The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

130. Seat of Supreme Court.—The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

131. Original jurisdiction of the Supreme Court.—Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

- (a) between the Government of India and one or more States; or
- (b) between the Government of India and any State or States on one side and one or more other States on the other; or
- (c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

¹[Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sandad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.]

²[**131A. Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central laws.**.—Omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 4 (w.e.f. 13-4-1978).]

132. Appellate jurisdiction of the Supreme Court in appeals from High Courts in certain cases.—(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, ³[if the High Court certifies under article 134A] that the case involves a substantial question of law as to the interpretation of this Constitution.

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1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 5, for the proviso (w.e.f. 1-11-1956).
 2. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 23 (w.e.f. 1-2-1977).
 3. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 17, for "if the High Court certifies" (w.e.f. 1-8-1979).

(Part V.—The Union)

¹(2)* * * *

(3) Where such a certificate is given,^{2***} any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided^{2***}.

Explanation.—For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

133. Appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil matters.—³[(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India ⁴[if the High Court certifies under article 134A—]

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

134. Appellate jurisdiction of the Supreme Court in regard to criminal matters.—(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c)⁵[certifies under article 134A] that the case is a fit one for appeal to the Supreme Court:

1. Cl. (2) omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 17, for “if the High Court certifies” (w.e.f. 1-8-1979).

2. Certain words omitted by s. 17, *ibid.* (w.e.f. 1-8-1979).

3. Subs. by the Constitution (Thirty-ninth Amendment) Act, 1972, s. 2, for cl. (1) (w.e.f. 27-2-1973).

4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 18, for “if the High Court certifies.” (w.e.f. 1-8-1979).

5. Subs. by s. 19, *ibid.*, for “certifies” (w.e.f. 1-8-1979).

(Part V.—The Union)

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

¹[134A. Certificate for appeal to the Supreme Court.]—Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,—

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.]

135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.—Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

136. Special leave to appeal by the Supreme Court.—(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

137. Review of judgments or orders by the Supreme Court.—Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 20 (w.e.f. 1-8-1979).

(Part V.—The Union)

138. Enlargement of the jurisdiction of the Supreme Court.—(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

139. Conferment on the Supreme Court of powers to issue certain writs.—Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

¹[**139A. Transfer of certain cases.**—²[(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.]

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.]

140. Ancillary powers of the Supreme Court.—Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 24 (w.e.f. 1-2-1977).
 2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 21, for cl. (1) (w.e.f. 1-8-1979).

(Part V.—The Union)

141. Law declared by Supreme Court to be binding on all courts.—The law declared by the Supreme Court shall be binding on all courts within the territory of India.

142. Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order¹ prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

143. Power of the President to consult the Supreme Court.—(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in ^{2***} the proviso to article 131, refer a dispute of the kind mentioned in the ³[said proviso] to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

144. Civil and judicial authorities to act in aid of the Supreme Court.—All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

⁴[**144A. [Special provisions as to disposal of questions relating to constitutional validity of laws.]**—Omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 5 (w.e.f. 13-4-1978).]

145. Rules of Court, etc.—(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the Court;

1. See the Supreme Court (Decrees and Orders) Enforcement Order, 1954 (C.O. 47).

2. The words, brackets and figure "clause (i) of" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

3. Subs. by s. 29 and Sch., *ibid.*, for "said clause" (w.e.f. 1-11-1956).

4. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 25 (w.e.f. 1-2-1977).

THE CONSTITUTION OF INDIA

(Part V.—The Union)

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

¹[(cc) rules as to the proceedings in the Court under ²[article 139A];]

(d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the ³[provisions of ^{4***} clause (3)], rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) ⁵[^{4***}The minimum number] of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

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1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 26 (w.e.f. 1-2-1977).
 2. Subs. by the Constitution (Forty-third Amendment) Act, 1977, s. 6, for "articles 131A and 139A" (w.e.f. 13-4-1978).
 3. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 26, for "provisions of clause (3)" (w.e.f. 1-2-1977).
 4. Certain words omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 6 (w.e.f. 13-4-1978).
 5. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 26, for "The minimum number" (w.e.f. 1-2-1977).

(Part V.—The Union)

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

146. Officers and servants and the expenses of the Supreme Court.—

(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

(Part V.—The Union)

147. Interpretation.—In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

CHAPTER V.—COMPTRROLLER AND AUDITOR-GENERAL OF INDIA

148. Comptroller and Auditor-General of India.—(1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

149. Duties and powers of the Comptroller and Auditor-General.—

The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

¹[**150. Form of accounts of the Union and of the States.**—The accounts of the Union and of the States shall be kept in such form as the President may, ²[on the advice of] the Comptroller and Auditor-General of India, prescribe.]

151. Audit reports.—(1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor ^{3***} of the State, who shall cause them to be laid before the Legislature of the State.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 27, for art.150 (w.e.f. 1-4-1977).

2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 22, for "after consultation with" (w.e.f. 20-6-1979).

3. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

PART VI

THE STATES^{1***}

CHAPTER I.—GENERAL

152. Definition.—In this Part, unless the context otherwise requires, the expression “State”²[does not include the State of Jammu and Kashmir].

CHAPTER II.—THE EXECUTIVE

The Governor

153. Governors of States.—There shall be a Governor for each State:

³[Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.]

154. Executive power of State.—(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

155. Appointment of Governor.—The Governor of a State shall be appointed by the President by warrant under his hand and seal.

156. Term of office of Governor.—(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

1. The words "IN PART A OF THE FIRST SCHEDEULE" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. Subs. by s. 29 and Sch. *ibid.*, for "means a State specified in Part A of the First Schedule" (w.e.f. 1-11-1956).

3. Added by s. 6, *ibid.* (w.e.f. 1-11-1956).

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

157. Qualifications for appointment as Governor.—No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

158. Conditions of Governor's office.—(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

¹[(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.]

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

159. Oath or affirmation by the Governor.—Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say—

“I, A. B., do swear in the name of God that I will faithfully execute the solemnly affirm

office of Governor (or discharge the functions of the Governor) of(*name of the State*) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of(*name of the State*).”.

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 7 (w.e.f. 1-11-1956).

160. Discharge of the functions of the Governor in certain contingencies.—The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

162. Extent of executive power of State.—Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Council of Ministers

163. Council of Ministers to aid and advise Governor.—(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

164. Other provisions as to Ministers.—(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

THE CONSTITUTION OF INDIA

(Part VI.—The States)

Provided that in the States of ¹[Chhattisgarh, Jharkhand], Madhya Pradesh and ²[Odisha] there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

³[(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve:

Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date⁴ as the President may by public notification appoint.

(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.]

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

1. Subs. by the Constitution (Ninety-fourth Amendment) Act, 2006, s. 2, for "Bihar" (w.e.f. 12-6-2006).

2. Subs. by the Orissa (Alteration of Name) Act, 2011 (15 of 2011), s. 4, for "Orissa" (w.e.f. 1-11-2011).

3. Ins. by the Constitution (Ninety-first Amendment) Act, 2003, s. 3 (w.e.f. 1-1-2004).

4. 7-1-2004, *vide* notification number S.O. 21(E), dated 7-1-2004.

THE CONSTITUTION OF INDIA

(Part VI.—The States)

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

The Advocate-General for the State

165. Advocate-General for the State.—(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

Conduct of Government Business

166. Conduct of Business of the Government of a State.—(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

THE CONSTITUTION OF INDIA

(Part VI.—The States)

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167. Duties of Chief Minister as respects the furnishing of information to Governor, etc.—It shall be the duty of the Chief Minister of each State—

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

CHAPTER III.—THE STATE LEGISLATURE

General

168. Constitution of Legislatures in States.—(1) For every State there shall be a Legislature which shall consist of the Governor, and—

(a) in the States of ^{2***} ³[Andhra Pradesh], Bihar, ^{4***} ⁵[Madhya Pradesh], ^{6***} ⁷[Maharashtra], ⁸[Karnataka], ^{9***}

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 28 (w.e.f. 3-1-1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 23 (w.e.f. 20-6-1979).
2. The words "Andhra Pradesh," omitted by the Andhra Pradesh Legislative Council (Abolition) Act, 1985 (34 of 1985), s. 4 (w.e.f. 1-6-1985).
3. Ins. by the Andhra Pradesh Legislative Council Act, 2005 (1 of 2006), s. 3 (w.e.f. 30-3-2007).
4. The word "Bombay" omitted by the Bombay Reorganisation Act, 1960 (11 of 1960) s. 20 (w.e.f. 1-5-1960).
5. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 8 (w.e.f. 1-11-1956).
6. The words "Tamil Nadu," omitted by the Tamil Nadu Legislative Council (Abolition) Act, 1986 (40 of 1986), s. 4 (w.e.f. 1-11-1986).
7. Ins. by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 20 (w.e.f. 1-5-1960).
8. Subs. by the Mysore State (Alteration of Name) Act, 1973 (31 of 1973), s. 4, for "Mysore" (w.e.f. 1-11-1973), which was inserted by the Constitution (Seventh Amendment) Act, 1956, s. 8(1) (w.e.f. 1-11-1956).
9. The word "Punjab," omitted by the Punjab Legislative Council (Abolition) Act, 1969 (46 of 1969), s. 4 (w.e.f. 7-1-1970).

(Part VI.—The States)

¹[²[Tamil Nadu, Telangana]] ³[and Uttar Pradesh], two Houses;

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

169. Abolition or creation of Legislative Councils in States.—(1)

Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

⁴[170. Composition of the Legislative Assemblies.—(1)] Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

2. The words "Tamil Nadu" ins. by the Tamil Nadu Legislative Council Act, 2010 (16 of 2010), s. 3 (date to be notified).
2. Subs. by the Andhra Pradesh Reorganisation Act, 2014 (6 of 2014), s. 96, for "Tamil Nadu" (w.e.f. 1-6-2014).
3. Subs. by the West Bengal Legislative Council (Abolition) Act, 1969 (20 of 1969), s. 4 for "Uttar Pradesh and West Bengal" (w.e.f. 1-8-1969).
4. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 9, for art. 170 (w.e.f. 1-11-1956).

¹[*Explanation.*—In this clause, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year ²[2026] have been published, be construed as a reference to the ³[2001] census.]

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly:

⁴[Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year ²[2026] have been published, it shall not be necessary to ⁵[readjust—

- (i) the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and
 - (ii) the division of such State into territorial constituencies as may be readjusted on the basis of the ³[2001] census,
- under this clause.]

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- 1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 29, for the *Explanation* (w.e.f. 3-1-1977).
 - 2. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 5, for "2000" (w.e.f. 21-2-2002).
 - 3. Subs. by the Constitution (Eighty-seventh Amendment) Act, 2003, s. 4, for "1991" (w.e.f. 22-6-2003). The figures "1991" were substituted for the original figures "1971" by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 5 (w.e.f. 21-2-2002).
 - 4. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 29 (w.e.f. 3-1-1977).
 - 5. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 5, for certain words (w.e.f. 21-2-2002).

171. Composition of the Legislative Councils.—(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed ¹[one-third] of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 10, for "one-fourth" (w.e.f. 1-11-1956).

THE CONSTITUTION OF INDIA

(Part VI.—The States)

by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art, co-operative movement and social service.

172. Duration of State Legislatures.—(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for¹[five years] from the date appointed for its first meeting and no longer and the expiration of the said period of¹[five years] shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

173. Qualification for membership of the State Legislature.—A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

²[(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 30, for "five years" (w.e.f. 3-1-1977) and further subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 24, for "six years" (w.e.f. 6-9-1979).

2. Subs. by the Constitution (Sixteenth Amendment) Act, 1963, s. 4, for cl. (a) (w.e.f. 5-10-1963).

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

¹[174. Sessions of the State Legislature, prorogation and dissolution.]—(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

- (a) prorogue the House or either House;
- (b) dissolve the Legislative Assembly.]

175. Right of Governor to address and send messages to the House or Houses.—(1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

176. Special address by the Governor.—(1) At the commencement of ²[the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year], the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address ^{3***}.

1. Subs. by the Constitution (First Amendment) Act, 1951, s. 8, for art.174 (w.e.f. 18-6-1951).

2. Subs. by s. 9, *ibid.*, for "every session" (w.e.f. 18-6-1951).

3. The words "and for the precedence of such discussion over other business of the House" omitted by s. 9, *ibid.* (w.e.f. 18-6-1951).

177. Rights of Ministers and Advocate-General as respects the Houses.—Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature

178. The Speaker and Deputy Speaker of the Legislative Assembly.—Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—A member holding office as Speaker or Deputy Speaker of an Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

180. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

182. The Chairman and Deputy Chairman of the Legislative Council.—The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

183. Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.—A member holding office as Chairman or Deputy Chairman of a Legislative Council—

- (a) shall vacate his office if he ceases to be a member of the Council;
- (b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and
- (c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.—(1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Legislative Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

186. Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.—There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

187. Secretariat of State Legislature.—(1) The House or each House of the Legislature of a State shall have a separate secretarial staff:

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

188. Oath or affirmation by members.—Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.—(1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

¹[(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.]

1. Omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 31 (date not notified). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 45 (w.e.f. 20-6-1979).

Disqualifications of Members

190. Vacation of seats.—(1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one house or the other.

(2) No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules¹ made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in²[clause (1) or clause (2) of article 191]; or

³[(b) resigns his seat by writing under his hand addressed to the speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,]

his seat shall thereupon become vacant:

⁴[Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.]

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

1. See the Prohibition of Simultaneous Membership Rules, 1950 published by the Ministry of Law Notification number F. 46/50-C, dated the 26th January, 1950, Gazette of India, Extraordinary, p. 678.

2. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, s. 4, for "clause (1) of article 191" (w.e.f. 1-3-1985).

3 Subs. by the Constitution (Thirty-third Amendment) Act, 1974, s. 3 (w.e.f. 19-5-1974).

4. Ins. by s. 3, *ibid.* (w.e.f. 19-5-1974).

191. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

¹[(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;]

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

²[Explanation.—For the purposes of this clause], a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

³[(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.]

⁴[**192. Decision on questions as to disqualifications of members.**—(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 32 to read as "(a) if he holds any such office of profit under the Government of India or the Government of any State specified in the First Schedule as is declared by Parliament by law to disqualify its holder" (date not notified). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 45 (w.e.f. 20-6-1979).
2. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, s. 5, for "(2) For the purposes of this article" (w.e.f. 1-3-1985).
3. Ins. by s. 5, *ibid.* (w.e.f. 1-3-1985).
4. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 33, for art. 192 (w.e.f. 3-1-1977) and further subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 25, for art. 192 (w.e.f. 20-6-1979).

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.]

193. Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.—If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

*Powers, Privileges and Immunities of State Legislatures
and their Members*

194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

¹[(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 34 to read as follows :

"(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be those of that House, and of its members and Committees, at the commencement of section 34 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by such House of the House of the People, and of its members and committees where such House is the Legislative Assembly and in accordance with those of the Council of States, and of its members and committees where such House is the Legislative Council." (date not notified). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 45 (w.e.f. 19-6-1979)."

by the Legislature by law, and, until so defined,¹ [shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978].

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

195. Salaries and allowances of members.—Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province.

Legislative Procedure

196. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

197. Restriction on powers of Legislative Council as to Bills other than Money Bills.—(1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 26, for certain words (w.e.f. 20-6-1979).

THE CONSTITUTION OF INDIA

(Part VI.—The States)

(a) the Bill is rejected by the Council; or

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.

198. Special procedure in respect of Money Bills.—(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the

recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

199. Definition of “Money Bills”.—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;

(d) the appropriation of moneys out of the Consolidated Fund of the State;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of

a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

200. Assent to Bills.—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

201. Bills reserved for consideration.—When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House

or Houses with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

202. Annual financial statement.—(1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the “annual financial statement”.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

(a) the emoluments and allowances of the Governor and other expenditure relating to his office;

(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of Judges of any High Court;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

203. Procedure in Legislature with respect to estimates.—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly,

but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

204. Appropriation Bills.—(1) As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—

(a) the grants so made by the Assembly; and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.

205. Supplementary, additional or excess grants.—(1) The Governor shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

206. Votes on account, votes of credit and exceptional grants.—(1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 203 for the voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year,

and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of articles 203 and 204 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made

for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

207. Special provisions as to financial Bills.—(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure Generally

208. Rules of procedure.—(1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure* and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of

* The brackets and words "(including the quorum to constitute a meeting of the House)" ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 35 (date not notified). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 45 (w.e.f. 20-6-1979).

the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

209. Regulation by law of procedure in the Legislature of the State in relation to financial business.—The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail.

210. Language to be used in the Legislature.—(1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom:

¹[Provided that in relation to the ²[Legislatures of the States of Himachal Pradesh, Manipur, Meghalaya and Tripura] this clause shall have effect as if for the words "fifteen years" occurring therein, the words "twenty-five years" were substituted:]

³[Provided further that in relation to the ⁴[Legislatures of the States of ⁵[Arunachal Pradesh, Goa and Mizoram]], this clause shall have effect as if for

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1. Ins. by the State of Himachal Pradesh Act, 1970 (53 of 1970), s. 46 (w.e.f. 25-1-1971).
 2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971) s. 71, for "Legislature of the State of Himachal Pradesh" (w.e.f. 21-1-1972).
 3. Ins. by the State of Mizoram Act, 1986 (34 of 1986), s. 39 (w.e.f. 20-2-1987).
 4. Subs. by the State of Arunachal Pradesh Act, 1986 (69 of 1986), s. 42, for "Legislature of the State of Mizoram" (w.e.f. 20-2-1987).
 5. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), s. 63, for "Arunachal Pradesh and Mizoram" (w.e.f. 30-5-1987).

the words "fifteen years" occurring therein, the words "forty years" were substituted.]

211. Restriction on discussion in the Legislature.—No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

212. Courts not to inquire into proceedings of the Legislature.—(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER IV.—LEGISLATIVE POWER OF THE GOVERNOR

213. Power of Governor to promulgate Ordinances during recess of Legislature.—(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

THE CONSTITUTION OF INDIA

(Part VI.—The States)

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

¹(4)*

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1. Cl. (4) was ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, s. 3 (with retrospective effect) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 27 (w.e.f. 20-6-1979).

THE CONSTITUTION OF INDIA

(Part VI.—The States)

CHAPTER V.—THE HIGH COURTS IN THE STATES

214. High Courts for States.—^{1***} There shall be a High Court for each State.

² (2)*	*	*	*
² (3)*	*	*	*

215. High Courts to be courts of record.—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

216. Constitution of High Courts.—Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

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217. Appointment and conditions of the office of a Judge of a High Court.—(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal ⁴[on the recommendation of the National Judicial Appointments Commission referred to in article 124A], and the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, ⁵[shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of ⁶[sixty-two years:]]

Provided that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the

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1. The bracket and figure "(1)" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 2. Cls. (2) and (3) omitted by s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).
 3. Proviso omitted by the Constitution (Seventh Amendment) Act, 1956, s. 11 (w.e.f. 1-11-1956).
 4. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 6, for "after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court" (w.e.f. 13-4-2015). This amendment has been struck down by the Supreme Court in the case of Supreme Court Advocates-on-Record Association and Another Vs. Union of India in its judgment dated 16-10-2015, AIR 2016 SC 117.
 5. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 12, for "shall hold office until he attains the age of sixty years" (w.e.f. 1-11-1956).
 6. Subs. by the Constitution (Fifteenth Amendment) Act, 1963, s. 4(a), for "sixty years" (w.e.f. 5-10-1963).

(Part VI.—The States)

manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court^{1***} or of two or more such Courts in succession.^{2***}

^{2(c)*} * * * *

Explanation.—For the purposes of this clause—

³[(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;]

⁴[(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person⁵[has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law] after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this

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1. The words "in any State specified in the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 2. The word "or" and sub-clause (c) were ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 36 (w.e.f. 3-1-1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 28 (w.e.f. 20-6-1979).
 3. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 28 (w.e.f. 20-6-1979).
 4. Cl. (a) re-lettered as cl. (aa) by the Constitution (Forty-fourth Amendment) Act, 1978, s. 28 (w.e.f. 20-6-1979).
 5. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 36, for "has held judicial office" (w.e.f. 3-1-1977).

Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

¹[(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.]

218. Application of certain provisions relating to Supreme Court to High Courts.—The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

219. Oath or affirmation by Judges of High Courts.—Every person appointed to be a Judge of a High Court ^{2***} shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

³**[220. Restriction on practice after being a permanent Judge.]**—No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Explanation.—In this article, the expression “High Court” does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement⁴ of the Constitution (Seventh Amendment) Act, 1956.]

221. Salaries, etc., of Judges.—⁵[(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law

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1. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 4(b), (with retrospective effect).
 2. The words "in a State" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 3. Subs. by s. 13, *ibid.* (w.e.f. 1-11-1956).
 4. 1st November, 1956.
 5. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, s. 3, for clause (1) (w.e.f. 1-4-1986).

and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.]

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect to leave of absence or pension shall be varied to his disadvantage after his appointment.

222. Transfer of a Judge from one High Court to another.—(1) The President may, ¹[on the recommendation of the National Judicial Appointments Commission referred to in article 124A], transfer a Judge from one High Court to any other High Court ^{2***}.

³[(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.]

223. Appointment of acting Chief Justice.—When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

4[224. Appointment of additional and acting Judges.]—(1) If by reason of any temporary increase in the business of a High Court or by reason

1. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 7, for "after consultation with the Chief Justice of India" (w.e.f. 13-4-2015). This amendment has been struck down by the Supreme Court in the case of *Supreme Court Advocates-on-Record Association and Another Vs. Union of India* in its judgment dated 16-10-2015, AIR 2016 SC 117.

2. The words "within the territory of India" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 14 (w.e.f. 1-11-1956).

3. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 5 (w.e.f. 5-10-1963). Original cl. (2) was omitted by the Constitution (Seventh Amendment) Act, 1956, s. 14 (w.e.f. 1-11-1956).

4. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 15 for art. 224 (w.e.f. 1-11-1956).

of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, ¹[the President may, in consultation with the National Judicial Appointments Commission, appoint] duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, ¹[the President may, in consultation with the National Judicial Appointments Commission, appoint] a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of ²[sixty-two years].]

³**[224A. Appointment of retired Judges at sittings of High Courts.]** Notwithstanding anything in this Chapter, ⁴[the National Judicial Appointments Commission on a reference made to it by the Chief Justice of a High Court for any State, may with the previous consent of the President], request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.]

1. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 8, for "the President may appoint" (w.e.f. 13-4-2015). This amendment has been struck down, by the Supreme Court in the case of *Supreme Court Advocates-on-Record Association and Another Vs. Union of India* in its judgment, dated 16-10-2015, AIR 2016 SC 117.

2 Subs. by the Constitution (Fifteenth Amendment) Act, 1963, s. 6, for "sixty years" (w.e.f. 5-10-1963).

3. Ins. by s. 7, *ibid.* (w.e.f. 5-10-1963).

4. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 9, for "the Chief Justice of a High Court for any State may at any time, with the previous consent of the President" (w.e.f. 13-4-2015). This amendment has been struck down by the Supreme Court in the case of *Supreme Court Advocates-on-Record Association and Another Vs. Union of India* in its judgment dated 16-10-2015, AIR 2016 SC 117.

225. Jurisdiction of existing High Courts.—Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

¹[Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.]

²[**226. Power of High Courts to issue certain writs.**—(1) Notwithstanding anything in article 32 ^{3***}, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including ⁴[writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power,

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1. Omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 37 (w.e.f. 1-2-1977) and subsequently ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 29 (w.e.f. 20-6-1979).
 2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 38 for art. 226 (w.e.f. 1-2-1977).
 3. The words, figures and letters "but subject to the provisions of article 131A and article 226A" omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 7 (w.e.f. 13-4-1978).
 4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 30, for the portion beginning with "writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them" and ending with "such illegality has resulted in substantial failure of justice." (w.e.f. 1-8-1979).

notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

¹[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

²[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]

³[**226A. Constitutional validity of Central laws not to be considered in proceedings under article 226.**]—Omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 8 (w.e.f. 13-4-1978).

227. Power of superintendence over all courts by the High Court.—⁴[(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]

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1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s.30, for cl. (3), (4), (5) and (6) (w.e.f. 1-8-1979).
 2. Cl. (7) renumbered as cl. (4) by the Constitution (Forty-fourth Amendment) Act, 1978, s. 30 (w.e.f. 1-8-1979).
 3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 39 (w.e.f. 1-2-1977).
 4. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 40, for cl. (1) (w.e.f. 1-2-1977) and further subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 31, for cl. (1) (w.e.f. 20-6-1979).

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

¹(5)* * *

228. Transfer of certain cases to High Court.—If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case,²[it shall withdraw the case and ^{3***} may—]

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

1. Cl. (5) was ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 40 (w.e.f. 1-2-1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 31 (w.e.f. 20-6-1979).

2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 41, for "it shall withdraw the case and may—" (w.e.f. 1-2-1977).

3. The words, figures and letter, "subject to the provisions of article 131A," omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 9 (w.e.f. 13-4-1978).

¹[228A. *Special provisions as to disposal of questions relating to constitutional validity of State laws.*]—Omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 10 (w.e.f. 13-4-1978).

229. Officers and servants and the expenses of High Courts.—(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State ^{2***} may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State ^{2***}.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

³[230. Extension of jurisdiction of High Courts to Union territories.]—(1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory,—

(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and

(b) the reference in article 227 to the Governor shall, in relation to

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 42 (w.e.f. 1-2-1977).

2. The words "in which the High Court has its principal seat" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

3. Subs. by s. 16, *ibid.*, for arts. 230, 231 and 232 (w.e.f. 1-11-1956).

(Part VI.—The States)

any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

231. Establishment of a common High Court for two or more States.—(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,—

^{1(a)*} * * *

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the subordinate courts are situate; and

(c) the references in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in articles 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.]

[**232. Interpretation.**—Articles 230, 231 and 232 subs. by articles 230 and 231 by the Constitution (Seventh Amendment) Act, 1956, s. 16 (w.e.f. 1-11-1956)].

CHAPTER VI.—SUBORDINATE COURTS

233. Appointment of district judges.—(1) Appointments of persons to

1. Sub-clause (a) was omitted by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 10 (w.e.f. 13-4-2015). This amendment has been struck down by the Supreme Court *vide its order the 16-10-2015 in the Supreme Court Advocates-on-Record Association and Another Vs. Union of India reported AIR 2016 SC 117*. Before amendment, sub-clause (a) was as under:—

"(a) the reference in article 217 to the Governor of the State shall be construed as reference to the Governors of all the States in relation to which the High Court exercises jurisdiction".

be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

¹[233A. Validation of appointments of, and judgments, etc., delivered by, certain district judges.]—Notwithstanding any judgment, decree or order of any court,—

(a) (i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;

(b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions.]

234. Recruitment of persons other than district judges to the judicial service.—Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

1. Ins. by the Constitution (Twentieth Amendment) Act, 1966, s. 2 (w.e.f. 22-12-1966).

235. Control over subordinate courts.—The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

236. Interpretation.—In this Chapter—

(a) the expression “district judge” includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions Judge;

(b) the expression “judicial service” means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

237. Application of the provisions of this Chapter to certain class or classes of magistrates.—The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

***PART VII**

[*The States in Part B of the First Schedule*].

* Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956)

PART VIII

¹[THE UNION TERRITORIES]

²[**239. Administration of Union territories.**—(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.]

^{3*}[**239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories.**—(1) Parliament may by law create ⁴[for the Union territory of ⁵[Puducherry]]—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.]

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 17, for the heading "THE STATES IN PART C OF THE FIRST SCHEDULE" (w.e.f. 1-11-1956).

2. Subs. by s. 17, *ibid.*, for art. 239 (w.e.f. 1-11-1956).

3. Ins. by the Constitution (Fourteenth Amendment) Act, 1962, s. 4 (w.e.f. 28-12-1962).

4. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987) s. 63, for "for any of the Union territories of Goa, Daman and Diu and Pondicherry" (w.e.f. 30-5-1987).

5. Subs. by the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006), s. 4, for "Pondicherry" (w.e.f. 1-10-2006).

* Article 239A has been made applicable to Union Territory of Jammu and Kashmir by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019) S.13 (w.e.f. 31-10-2019).

¹[239AA. **Special provisions with respect to Delhi.**—(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.

(2)(a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

²[(ba) Seats shall be reserved for women in the Legislative Assembly of the National Capital Territory of Delhi.

(bb) As nearly as may be, one-third of the seats reserved for the Scheduled Castes in the Legislative Assembly of the National Capital Territory of Delhi shall be reserved for women.

(bc) As nearly as may be, one-third of the total number of seats to be filled by direct election in the Legislative Assembly of the National Capital Territory of Delhi (including the numbers of seats reserved for women belonging to the Scheduled Castes) shall be reserved for women in such manner as Parliament may by law determine.]

(c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively; and any reference in articles 326 and 329 to “appropriate Legislature” shall be deemed to be a reference to Parliament.

1. Arts 239AA and 239 AB ins. by the Constitution (Sixty-ninth Amendment) Act, 1991, s. 2 (w.e.f. 1-2-1992).

2. ins. by the Constitution (One-hundred and Sixth Amendment) Act, 2023, s. 2 (date yet to be notified).

(3) (a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

(4) There shall be a Council of Ministers consisting of not more than ten percent. of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion:

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

(5) The Chief Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

(6) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

¹[(7) (a)] Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.

²[(b)] Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution.]

(8) The provisions of article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of ³[Puducherry], the administrator and its Legislature, respectively; and any reference in that article to "clause (1) of article 239A" shall be deemed to be a reference to this article or article 239AB, as the case may be.

239AB. Provision in case of failure of constitutional machinery.—If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied—

(a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of article 239AA or of any law made in pursuance of that article; or

(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do,
the President may by order suspend the operation of any provision of article 239AA or of all or any of the provisions of any law made in pursuance of that

1. Subs. by the Constitution (Seventieth Amendment) Act, 1992, s. 3, for "(7)" (w.e.f. 21-12-1991).

2. Ins. by s. 3, *ibid.* (w.e.f. 21-12-1991).

3. Subs. by the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006), s. 4, for "Pondicherry" (w.e.f. 1-10-2006).

article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of article 239 and article 239AA.]

¹[**239B. Power of administrator to promulgate Ordinances during recess of Legislature.**—(1) If at any time, except when the Legislature of²[the Union territory of³[Puducherry]] is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that no such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf:

Provided further that whenever the said Legislature is dissolved, or its functioning remains suspended on account of any action taken under any such law as is referred to in clause (1) of article 239A, the administrator shall not promulgate any Ordinance during the period of such dissolution or suspension.

(2) An Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, but every such Ordinance—

(a) shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or if, before the expiration of that period, a resolution disapproving it is passed by the Legislature, upon the passing of the resolution; and

(b) may be withdrawn at any time by the administrator after obtaining instructions from the President in that behalf.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union

1. Ins. by the Constitution (Twenty-seventh Amendment) Act, 1971, s. 3 (w.e.f. 30-12-1971).

2. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987) s. 63, for "a Union territory referred to in clause (1) article 239A" (w.e.f. 30-5-1987).

3. Subs. by the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006), s. 4, for "Pondicherry" (w.e.f. 1-10-2006).

THE CONSTITUTION OF INDIA

(Part VIII.—The Union Territories)

territory made after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, it shall be void.]

¹(4)* * * *

²[**240. Power of President to make regulations for certain Union territories.**—(1) The President may make regulations for the peace, progress and good government of the Union territory of—

(a) the Andaman and Nicobar Islands;

³[(b) Lakshadweep;]

⁴[(c) Dadra and Nagar Haveli and Daman and Diu;]

⁵[(d) ****;]

⁶[(e) ⁷[Puducherry];]

⁸(f) * * *

⁹(g) * * *

¹⁰[Provided that when any body is created under article 239A to function as a Legislature for the Union territory of ⁷[Puducherry], the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature:]

1. Clause (4) ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, s. 4 (with retrospective effect). This amendment was omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 32 (w.e.f. 20-6-1979).
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 17, for art. 240 (w.e.f. 1-11-1956).
3. Subs. by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973 (34 of 1973), s. 4, for entry (b) (w.e.f. 1-11-1973).
4. Subs. by the Dadra and Nagar Haveli and Daman and Diu (Merger of Union territories) Act, 2019 (44 of 2019) s. 4(i) (w.e.f. 26-1-2020) for entry (c) which was ins. by the Constitution (Tenth Amendment) Act, 1961, s.3 (w.e.f. 11-8-1961).
5. Omitted by the Dadra and Nagar Haveli and Daman and Diu (Merger of Union territories) Act, 2019 (44 of 2019) s. 4(ii) (w.e.f. 26-1-2020).
6. Ins. by the Constitution (Fourteenth Amendment) Act, 1962, s. 5 (w.e.f. 16-8-1962).
7. Subs. by the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006), s. 4 for "Pondicherry" (w.e.f. 1-10-2006).
8. The entry (f) relating to Mizoram omitted by the State of Mizoram Act, 1986 (34 of 1986), s. 39 (w.e.f. 20-2-1987).
9. The entry (g) relating to Arunachal Pradesh omitted by the State of Arunachal Pradesh Act, 1986 (69 of 1986), s. 42 (w.e.f. 20-2-1987).
10. Ins. by the Constitution (Fourteenth Amendment) Act, 1962, s. 5 (w.e.f. 28-12-1962).

¹[Provided further that whenever the body functioning as a Legislature for the Union territory of²[Puducherry] is dissolved, or the functioning of that body as such Legislature remains suspended on account of any action taken under any such law as is referred to in clause (1) of article 239A, the President may, during the period of such dissolution or suspension, make regulations for the peace, progress and good government of that Union territory.]

(2) Any regulation so made may repeal or amend any Act made by Parliament or³[any other law], which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.]

241. High Courts for Union territories.—(1) Parliament may by law constitute a High Court for a⁴[Union territory] or declare any court in any⁵[such territory] to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide.

⁶[(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from, any Union territory or part thereof.]

242. [Coorg].—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.(w.e.f. 1-11-1956).

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1. Ins. by the Constitution (Twenty-seventh Amendment) Act, 1971, s. 4 (w.e.f. 15-2-1972).
 2. Subs. by the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006), s. 4, for "Pondicherry" (w.e.f. 1-10-2006).
 3. Subs. by the Constitution (Twenty-seventh Amendment) Act, 1971, s. 4, for "any existing law" (w.e.f. 15-2-1972).
 4. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "State specified in Part C of the First Schedule" (w.e.f. 1-11-1956).
 5. Subs. by s. 29. and Sch., *ibid.*, for "such State" (w.e.f. 1-11-1956).
 6. Subs. by s. 29, and Sch., *ibid.*, for cls. (3) and (4) (w.e.f. 1-11-1956).

¹[PART IX

THE PANCHAYATS

243. Definitions.—In this Part, unless the context otherwise requires,—

(a) “district” means a district in a State;

(b) “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

(c) “intermediate level” means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;

(d) “Panchayat” means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

(e) “Panchayat area” means the territorial area of a Panchayat;

(f) “Population” means the population as ascertained at the last preceding census of which the relevant figures have been published;

(g) “village” means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243A. Gram Sabha.—A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

243B. Constitution of Panchayats.—(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243C. Composition of Panchayats.—(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

1. Original Part IX relating to "The territories in Part D of the First Schedule and other territories not specified in that Schedule" was omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956) and subsequently ins. by the Constitution (Seventy-third Amendment) Act, 1992, s. 2 (w.e.f. 24-4-1993).

(Part IX.—The Panchayats)

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation—

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of—

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

243D. Reservation of seats.—(1) Seats shall be reserved for—

- (a) the Scheduled Castes; and
- (b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

243E. Duration of Panchayats, etc.—(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

243F. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243G. Powers, authority and responsibilities of Panchayats.—

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243H. Powers to impose taxes by, and Funds of, the Panchayats.—

The Legislature of a State may, by law,—

- (a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- (c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom,

as may be specified in the law.

243I. Constitution of Finance Commission to review financial position.—(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to—

- (a) the principles which should govern—
 - (i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

(Part IX.—The Panchayats)

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

(4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243J. Audit of accounts of Panchayats.—The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

243K. Elections to the Panchayats.—(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

243L. Application to Union territories.—The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243M. Part not to apply to certain areas.—(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part shall apply to—

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the hill areas in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this Part—

(a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;

(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(Part IX.—The Panchayats)

¹[(3A) Nothing in article 243D, relating to reservation of seats for the Scheduled Castes, shall apply to the State of Arunachal Pradesh.]

(4) Notwithstanding anything in this Constitution,—

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243N. Continuance of existing laws and Panchayats.—Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

243O. Bar to interference by courts in electoral matters.—Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

1. Ins. by the Constitution (Eighty-third Amendment) Act, 2000, s. 2 (w.e.f. 8-9-2000).

**¹[PART IXA
THE MUNICIPALITIES**

243P. Definitions.—In this Part, unless the context otherwise requires,—

(a) “Committee” means a Committee constituted under article 243S;

(b) “district” means a district in a State;

(c) “Metropolitan area” means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) “Municipal area” means the territorial area of a Municipality as is notified by the Governor;

(e) “Municipality” means an institution of self-government constituted under article 243Q;

(f) “Panchayat” means a Panchayat constituted under article 243B;

(g) “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities.—(1) There shall be constituted in every State,—

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

1. Part IXA ins. by the Constitution (Seventy-fourth Amendment) Act, 1992, s. 2
(w.e.f. 1-6-1993).

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

243R. Composition of Municipalities.—(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide—

(a) for the representation in a Municipality of—

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

243S. Constitution and composition of Wards Committees, etc.—(1)

There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to—

(a) the composition and the territorial area of a Wards Committee;

(b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of—

(a) one ward, the member representing that ward in the Municipality; or

(b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee,

shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the constitution of Committees in addition to the Wards Committees.

243T. Reservation of seats.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U. Duration of Municipalities, etc.—(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed,—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.

243V. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243W. Powers, authority and responsibilities of Municipalities, etc.—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X. Power to impose taxes by, and Funds of, the Municipalities.—The Legislature of a State may, by law,—

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(Part IXA.—The Municipalities)

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,

as may be specified in the law.

243Y. Finance Commission.—(1) The Finance Commission constituted under article 243I shall also review the financial position of the Municipalities and make recommendations to the Governor as to—

(a) the principles which should govern—

(i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;

(iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Municipalities;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

(2) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243Z. Audit of accounts of Municipalities.—The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA. Elections to the Municipalities.—(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZB. Application to Union territories.—The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243ZC. Part not to apply to certain areas.—(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2) of article 244.

(2) Nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243ZD. Committee for district planning.—(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect to—

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZE. Committee for Metropolitan planning.—(1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make provision with respect to—

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

THE CONSTITUTION OF INDIA

(Part IXA.—The Municipalities)

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF. Continuance of existing laws and Municipalities.—

Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

243ZG. Bar to interference by courts in electoral matters.—

Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.]

¹[PART IXB

THE CO-OPERATIVE SOCIETIES

243ZH. Definitions.—In this Part, unless the context otherwise requires,—

(a) “authorised person” means a person referred to as such in article 243ZQ;

(b) “board” means the board of directors or the governing body of a co-operative society, by whatever name called, to which the direction and control of the management of the affairs of a society is entrusted to;

(c) “co-operative society” means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(d) “multi-State co-operative society” means a society with objects not confined to one State and registered or deemed to be registered under any law for the time being in force relating to such co-operatives;

(e) “Office bearer” means a President, Vice-President, Chairperson, Vice-Chairperson, Secretary or Treasurer, of a co-operative society and includes any other person to be elected by the board of any co-operative society;

(f) “Registrar” means the Central Registrar appointed by the Central Government in relation to the multi-State co-operative societies and the Registrar for co-operative societies appointed by the State Government under the law made by the Legislature of a State in relation to co-operative societies;

(g) “State Act” means any law made by the Legislature of a State;

(h) “State level co-operative society” means a co-operative society having its area of operation extending to the whole of a State and defined as such in any law made by the Legislature of a State.

243ZI. Incorporation of co-operative societies.—Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.

1. Part IXB ins. by the Constitution (Ninety-seventh Amendment) Act, 2011, s. 4
(w.e.f. 15-2-2012).

243ZJ. Number and term of members of board and its office bearers.—(1) The board shall consist of such number of directors as may be provided by the Legislature of a State, by law:

Provided that the maximum number of directors of a co-operative society shall not exceed twenty-one:

Provided further that the Legislature of a State shall, by law, provide for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on board of every co-operative society consisting of individuals as members and having members from such class of category of persons.

(2) The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be conterminous with the term of the board:

Provided that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term.

(3) The Legislature of a State shall, by law, make provisions for co-option of persons to be members of the board having experience in the field of banking, management, finance or specialisation in any other field relating to the objects and activities undertaken by the co-operative society, as members of the board of such society:

Provided that the number of such co-opted members shall not exceed two in addition to twenty-one directors specified in the first proviso to clause (1):

Provided further that such co-opted members shall not have the right to vote in any election of the co-operative society in their capacity as such member or to be eligible to be elected as office bearers of the board:

Provided also that the functional directors of a co-operative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors specified in the first proviso to clause (1).

243ZK. Election of members of board.—(1) Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of members of the outgoing board.

(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such an authority or body, as may be provided by the Legislature of a State, by law:

Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such elections.

243ZL. Supersession and suspension of board and interim management.—(1) Notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months:

Provided that the board may be superseded or kept under suspension in a case—

- (i) of its persistent default; or
- (ii) of negligence in the performance of its duties; or
- (iii) the board has committed any act prejudicial to the interests of the co-operative society or its members; or
- (iv) there is stalemate in the constitution or functions of the board; or
- (v) the authority or body as provided by the Legislature of a State, by law, under clause (2) of article 243ZK, has failed to conduct elections in accordance with the provisions of the State Act:

Provided further that the board of any such co-operative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:

Provided also that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (10 of 1949) shall also apply:

(Part IXB.—Co-operative Societies)

Provided also that in case of a co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of this clause shall have the effect as if for the words "six months", the words "one year" had been substituted.

(2) In case of supersession of a board, the administrator appointed to manage the affairs of such co-operative society shall arrange for conduct of elections within the period specified in clause (1) and handover the management to the elected board.

(3) The Legislature of a State may, by law, make provisions for the conditions of service of the administrator.

243ZM. Audit of accounts of co-operative societies.—(1) The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year.

(2) The Legislature of a State shall, by law, lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing accounts of the co-operative societies.

(3) Every co-operative society shall cause to be audited by an auditor or auditing firms referred to in clause (2) appointed by the general body of the co-operative society:

Provided that such auditors or auditing firms shall be appointed from a panel approved by a State Government or an authority authorised by the State Government in this behalf.

(4) The accounts of every co-operative society shall be audited within six months of the close of the financial year to which such accounts relate.

(5) The audit report of the accounts of an apex co-operative society, as may be defined by the State Act, shall be laid before the State Legislature in the manner, as may be provided by the State Legislature, by law.

243ZN. Convening of general body meetings.—The Legislature of a State may, by law, make provisions that the annual general body meeting of every co-operative society shall be convened within a period of six months of close of the financial year to transact the business as may be provided in such law.

243ZO. Right of a member to get information.—(1) The Legislature of a State may, by law, provide for access to every member of a co-operative society to the books, information and accounts of the co-operative society kept in regular transaction of its business with such member.

(2) The Legislature of a State may, by law, make provisions to ensure the participation of members in the management of the co-operative society providing minimum requirement of attending meetings by the members and utilising the minimum level of services as may be provided in such law.

(3) The Legislature of a State may, by law, provide for co-operative education and training for its members.

243ZP. Returns.—Every co-operative society shall file returns, within six months of the close of every financial year, to the authority designated by the State Government including the following matters, namely:—

- (a) annual report of its activities;
- (b) its audited statement of accounts;
- (c) plan for surplus disposal as approved by the general body of the co-operative society;
- (d) list of amendments to the bye-laws of the co-operative society, if any;
- (e) declaration regarding date of holding of its general body meeting and conduct of elections when due; and
- (f) any other information required by the Registrar in pursuance of any of the provisions of the State Act.

243ZQ. Offences and penalties.—(1) The Legislature of a State may, by law, make provisions for the offences relating to the co-operative societies and penalties for such offences.

(2) A law made by the Legislature of a State under clause (1) shall include the commission of the following act or omission as offences, namely:—

- (a) a co-operative society or an officer or member thereof wilfully makes a false return or furnishes false information, or any person wilfully not furnishes any information required from him by a person authorised in this behalf under the provisions of the State Act;

(Part IXB.—Co-operative Societies)

- (b) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of the State Act;
- (c) any employer who, without sufficient cause, fails to pay to a co-operative society amount deducted by him from its employee within a period of fourteen days from the date on which such deduction is made;
- (d) any officer or custodian who wilfully fails to handover custody of books, accounts, documents, records, cash, security and other property belonging to a co-operative society of which he is an officer or custodian, to an authorised person; and
- (e) whoever, before, during or after the election of members of the board or office bearers, adopts any corrupt practice.

243ZR. Application to multi-State co-operative societies.—The provisions of this Part shall apply to the multi-State co-operative societies subject to the modification that any reference to “Legislature of a State”, “State Act” or “State Government” shall be construed as a reference to “Parliament”, “Central Act” or “the Central Government” respectively.

243ZS. Application to Union territories.—The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, having no Legislative Assembly as if the references to the Legislature of a State were a reference to the administrator thereof appointed under article 239 and, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by notification in the Official Gazette, direct that the provisions of this Part shall not apply to any Union territory or part thereof as he may specify in the notification.

243ZT. Continuance of existing laws.— Notwithstanding anything in this Part, any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less.]

PART X

THE SCHEDULED AND TRIBAL AREAS

244. Administration of Scheduled Areas and Tribal Areas.—(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State ^{1***} other than ²[the States of Assam, ³[, ⁴[Meghalaya, Tripura and Mizoram]]].

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in ²[the States of Assam, ³[, ⁵[Meghalaya, Tripura and Mizoram]]].

⁶[244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor.]—(1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in ⁷[Part I] of the table appended to paragraph 20 of the Sixth Schedule and create therefor—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or

(b) a Council of Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) may, in particular,—

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71, for "the State of Assam" (w.e.f. 21-1-1972).
3. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 2, for "and Meghalaya" (w.e.f. 1-4-1985).
4. Subs. by the State of Mizoram Act, 1986 (34 of 1986), s. 39, for "Meghalaya and Tripura" (w.e.f. 20-2-1987).
5. Subs. by s. 39, *ibid.*, for "Meghalaya and Tripura and the Union territory of Mizoram". (w.e.f. 20-2-1987).
6. Ins. by the Constitution (Twenty-second Amendment) Act, 1969, s. 2 (w.e.f. 25-9-1969).
7. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71, for "Part A" (w.e.f. 21-1-1972).

THE CONSTITUTION OF INDIA

(Part X.—The Scheduled and Tribal Areas)

(a) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise;

(b) define the matters with respect to which the executive power of the autonomous State shall extend;

(c) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State;

(d) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State; and

(e) make such supplemental, incidental and consequential provisions as may be deemed necessary.

(3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (a) or sub-clause (b) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two-thirds of the members present and voting.

(4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.]

PART XI
RELATIONS BETWEEN THE UNION AND THE STATES
CHAPTER I.—LEGISLATIVE RELATIONS

Distribution of Legislative Powers

245. Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States.—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State ^{1***} also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

(3) Subject to clauses (1) and (2), the Legislature of any State ^{1***} has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included ²[in a State] notwithstanding that such matter is a matter enumerated in the State List.

³[246A. Special provision with respect to goods and services tax.]—(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

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1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 2. Subs. by s. 29 and Sch., *ibid.*, for "in Part A or Part B of the First Schedule" (w.e.f. 1-11-1956).
 3. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 2 (w.e.f. 16-9-2016).

(Part XI.—Relations between the Union and the States)

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.]

247. Power of Parliament to provide for the establishment of certain additional courts.—Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

248. Residuary powers of legislation.—(1) ¹[Subject to article 246A, Parliament] has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

249. Power of Parliament to legislate with respect to a matter in the State List in the national interest.—(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to ²[goods and services tax provided under article 246A or] any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

1. Subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 3, for "Parliament" (w.e.f. 16-9-2016).

2. Ins. by s. 4, *ibid.* (w.e.f. 16-9-2016).

(Part XI.—Relations between the Union and the States)

250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.—(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to ¹[goods and services tax provided under article 246A or] any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

251. Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.—Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.—(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

1. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 5 (w.e.f. 16-9-2016).

(Part XI.—Relations between the Union and the States)

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

253. Legislation for giving effect to international agreements.—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State ^{1***} with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.—No Act of Parliament or of the Legislature of a State ^{1***}, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

THE CONSTITUTION OF INDIA

(Part XI.—Relations between the Union and the States)

- (a) where the recommendation required was that of the Governor, either by the Governor or by the President;
- (b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;
- (c) where the recommendation or previous sanction required was that of the President, by the President.

CHAPTER II.—ADMINISTRATIVE RELATIONS

General

256. Obligation of States and the Union.—The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose:

257. Control of the Union over States in certain cases.—(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

(Part XI.—Relations between the Union and the States)

¹[**257A.** *[Assistance to States by deployment of armed forces or other forces of the Union.]—Omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 33 (w.e.f. 20-6-1979).]*

258. Power of the Union to confer powers, etc., on States in certain cases.—(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

²[**258A. Power of the States to entrust functions to the Union.**—Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.]

[259. Armed Forces in States in Part B of the First Schedule.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

260. Jurisdiction of the Union in relation to territories outside India.—The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 43 (w.e.f. 3-1-1977).

2. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 18 (w.e.f. 1-11-1956).

(Part XI.—Relations between the Union and the States)

261. Public acts, records and judicial proceedings.—(1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Disputes relating to Waters

262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.—(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Co-ordination between States

263. Provisions with respect to an inter-State Council.—If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

PART XII
FINANCE, PROPERTY, CONTRACTS AND SUITS
CHAPTER I.—FINANCE

General

¹[**264. Interpretation.**—In this Part, “Finance Commission” means a Finance Commission constituted under article 280.]

265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.

266. Consolidated Funds and public accounts of India and of the States.—(1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled “the Consolidated Fund of India”, and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled “the Consolidated Fund of the State”.

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

267. Contingency Fund.—(1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled “the Contingency Fund of India” into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under article 115 or article 116.

1 Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for art. 264 (w.e.f. 1-11-1956).

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor^{1***} of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206.

Distribution of Revenues between the Union and the States

268. Duties levied by the Union but collected and appropriated by the States.—(1) Such stamp duties^{2***} as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

- (a) in the case where such duties are leviable within any³[Union territory], by the Government of India, and
- (b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

⁴268A. [Service tax levied by Union and collected and appropriated by the Union and the States.]—Omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 7 (w.e.f. 16-9-2016).

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- 1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 - 2. The words "and such duties of excise on medicinal and toilet preparations" omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 6, (w.e.f. 16-9-2016).
 - 3. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "State Specified in Part C of the First Schedule" (w.e.f. 1-11-1956).
 - 4. Ins. by the Constitution (Eighty-eighth Amendment) Act, 2003, s. 2 (date not notified).

(Part XII.—Finance, Property, Contracts and Suits)

269. Taxes levied and collected by the Union but assigned to the States.—¹[(1) Taxes on the sale or purchase of goods and taxes on the consignment of goods ²[except as provided in article 269A] shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Explanation.—For the purposes of this clause,—

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.]

³[(3) Parliament may by law formulate principles for determining when a ⁴[sale or purchase of, or consignment of goods] takes place in the course of inter-State trade or commerce.]

⁵[269A. Levy and collection of goods and services tax in course of inter-State trade or commerce.]—(1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

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1. Subs. by the Constitution (Eightieth Amendment) Act, 2000. s. 2, for cl. (1) and (2) (w.e.f. 9-6-2000).
 2. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016 s. 8, (w.e.f. 16-9-2016).
 3. Ins. by the Constitution (Sixth Amendment) Act, 1956, s. 3 (w.e.f. 11-9-1956).
 4. Subs. by the Constitution (Forty-sixth Amendment) Act, 1982. s. 2, for "sale or purchase of goods" (w.e.f. 2-2-1983).
 5. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 9 (w.e.f. 16-9-2016).

(Part XII.—Finance, Property, Contracts and Suits)

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.]

¹[270. Taxes levied and distributed between the Union and the States.]—(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in ²[articles 268, 269 and 269A], respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

³[(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).]

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).]

1. Subs. by the Constitution (Eightieth Amendment) Act, 2000, s. 3, for art. 270 (w.e.f. 1-4-1996).

2. Subs. by the Constitution (Eighty-eighth Amendment) Act, 2003, s. 3, for “articles 268 and 269” (not enforced) and further subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 10, for “arts. 268, 268A and 269” (w.e.f. 16-9-2016).

3. Ins. by s. 10, *ibid.* (w.e.f. 16-9-2016).

(Part XII.—Finance, Property, Contracts and Suits)

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means,—

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.]

271. Surcharge on certain duties and taxes for purposes of the Union.—Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles¹ [except the goods and services tax under article 246A,] by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

[**272. Taxes which are levied and collected by the Union and may be distributed between the Union and the States.**]—Omitted by the Constitution (Eightieth Amendment) Act, 2000, s. 4. (w.e.f. 9-6-2000).

273. Grants in lieu of export duty on jute and jute products.—(1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar,² [Odisha] and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution whichever is earlier.

1. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 11 (w.e.f. 16-9-2016).

2. Subs. by the Orissa (Alteration of Name) Act, 2011 (15 of 2011), s. 5, for "Orissa" (w.e.f. 1-11-2011).

(Part XII.—Finance, Property, Contracts and Suits)

(3) In this article, the expression “prescribed” has the same meaning as in article 270.

274. Prior recommendation of President required to Bills affecting taxation in which States are interested.—(1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression “agricultural income” as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression “tax or duty in which States are interested” means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

275. Grants from the Union to certain States.—(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

THE CONSTITUTION OF INDIA

(Part XII.—Finance, Property, Contracts and Suits)

(a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in ¹[Part I] of the table appended to paragraph 20 of the Sixth Schedule; and

(b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

²[(1A) On and from the formation of the autonomous State under article 244A,—

(i) any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State comprises all the tribal areas referred to therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify;

(ii) there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam.]

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament:

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

276. Taxes on professions, trades, callings and employments.—(1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971) s. 71, for "Part A" (w.e.f. 21-1-1972).

2. Ins. by the Constitution (Twenty-second Amendment) Act, 1969, s. 3 (w.e.f. 25-9-1969).

(Part XII.—Finance, Property, Contracts and Suits)

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed¹[two thousand and five hundred rupees] per annum.

2* * * *

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

277. Savings.—Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

278. [Agreement with States in Part B of the First Schedule with regard to certain financial matters].—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.(w.e.f. 1-11-1956).

279. Calculation of “net proceeds”, etc.—(1) In the foregoing provisions of this Chapter, “net proceeds” means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

1. Subs. by the Constitution (Sixtieth Amendment) Act, 1988, s. 2, for "two hundred and fifty rupees" (w.e.f. 20-12-1988).

2. Proviso omitted by s.2, *ibid.* (w.e.f. 20-12-1988).

(Part XII.—Finance, Property, Contracts and Suits)

¹[**279A. Goods and Services Tax Council.**—(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister — Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance — Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government — Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from, the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

1. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 12 (w.e.f. 12-9-2016).

(Part XII.—Finance, Property, Contracts and Suits)

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast; and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute—

(Part XII.—Finance, Property, Contracts and Suits)

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States,

arising out of the recommendations of the Council or implementation thereof.]

280. Finance Commission.—(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

¹[(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;]

²[(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;]

³[(d)] any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

1. Ins. by the Constitution (Seventy-third Amendment) Act, 1992, s. 3 (w.e.f. 24-4-1993).

2. Ins. by the Constitution (Seventy-fourth Amendment) Act, 1992, s. 3 (w.e.f. 1-6-1993).

3. Sub-clause (c) re-lettered as sub-clause (d) by s. 3, *ibid.* (w.e.f. 1-6-1993).

(Part XII.—Finance, Property, Contracts and Suits)

281. Recommendations of the Finance Commission.—The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Miscellaneous Financial Provisions

282. Expenditure defrayable by the Union or a State out of its revenues.—The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

283. Custody, etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts.—(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor^{1***} of the State.

284. Custody of suitors' deposits and other moneys received by public servants and courts.—All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be; or

(b) any court within the territory of India to the credit of any cause, matter, account or persons,

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

(Part XII.—Finance, Property, Contracts and Suits)

shall be paid into the public account of India or the public account of State, as the case may be.

285. Exemption of property of the Union from State taxation.—(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

286. Restrictions as to imposition of tax on the sale or purchase of goods.—(1) No law of a State shall impose, or authorise the imposition of, a tax on ¹[the supply of goods or of services or both, where such supply takes place]—

(a) outside the State; or

(b) in the course of the import of the ²[goods or services or both] into, or export of the ²[goods or services or both] out of, the territory of India.

³[* * * *]

⁴[(2) Parliament may by law formulate principles for determining when a ⁵[supply of goods or of services or both] in any of the ways mentioned in clause (1).]

⁶[(3) * * * *]

287. Exemption from taxes on electricity.—Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity

1. Subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 13, (i)(A) for "the sale or purchase of goods where such sale or purchase takes place" (w.e.f. 16-9-2016).

2. Subs. by s. 13 (i)(B), *ibid.*, for "goods" (w.e.f. 16-9-2016).

3. *Explanation* to cl. (1) omitted by the Constitution (Sixth Amendment) Act, 1956, s. 4 (w.e.f. 11-9-1956).

4. Subs. by s.4, *ibid.*, for cls. (2) and (3) (w.e.f. 11-9-1956).

5. Subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 13(ii), for "sale or purchase of goods takes place" (w.e.f. 16-9-2016).

6. Cl. (3) omitted by s. 13 (iii), *ibid.* (w.e.f. 16-9-2016).

(Part XII.—Finance, Property, Contracts and Suits)

(whether produced by a Government or other persons) which is—

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

288. Exemption from taxation by States in respect of water or electricity in certain cases.—(1) Save so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.—The expression “law of a State in force” in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

289. Exemption of property and income of a State from Union taxation.—(1) The property and income of a State shall be exempt from Union taxation.

(Part XII.—Finance, Property, Contracts and Suits)

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

290. Adjustment in respect of certain expenses and pensions.—Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

(a) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State; or

(b) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

[290A. Annual payment to certain Devaswom Funds.]—A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of ²[Tamil Nadu] every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin.]

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 19 (w.e.f. 1-11-1956).

2. Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), s. 4, for "Madras" (w.e.f. 14-1-1969).

(Part XII.—Finance, Property, Contracts and Suits)

291. [Privy purse sums of Rulers].—Omitted by the Constitution (Twenty-sixth Amendment) Act, 1971, s. 2 (w.e.f. 28-12-1971).

CHAPTER II.—BORROWING

292. Borrowing by the Government of India.—The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

293. Borrowing by States.—(1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

CHAPTER III.—PROPERTY, CONTRACTS, RIGHTS, LIABILITIES,

OBLIGATIONS AND SUITS

294. Succession to property, assets, rights, liabilities and obligations in certain cases.—As from the commencement of this Constitution—

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State; and

(Part XII.—Finance, Property, Contracts and Suits)

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

295. Succession to property, assets, rights, liabilities and obligations in other cases.—(1) As from the commencement of this Constitution—

(a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and

(b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).

296. Property accruing by escheat or lapse or as *bona vacantia*.—

Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or of a State, vest in the Union or in that State.

Explanation.—In this article, the expressions “Ruler” and “Indian State” have the same meanings as in article 363.

¹[297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union.]—(1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament.]

²[298. Power to carry on trade, etc.]—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.]

1. Subs. by the Constitution (Fortieth Amendment) Act, 1976, s. 2 (w.e.f. 27-5-1976).

2. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 20 (w.e.f. 1-11-1956).

(Part XII.—Finance, Property, Contracts and Suits)

299. Contracts.—(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor^{1***} of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor^{1***} by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor^{2***} shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

300. Suits and proceedings.—(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

³[CHAPTER IV.—RIGHT TO PROPERTY

300A. Persons not to be deprived of property save by authority of law.— No person shall be deprived of his property save by authority of law.]

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. The words "nor the Rajpramukh" omitted by s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).

3. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 34 (w.e.f. 20-6-1979).

PART XIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

301. Freedom of trade, commerce and intercourse.—Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

302. Power of Parliament to impose restrictions on trade, commerce and intercourse.—Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.—(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

304. Restrictions on trade, commerce and intercourse among States.—Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(a) impose on goods imported from other States¹ [or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

(Part XIII.—Trade, Commerce and Intercourse within the Territory of India)

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

[305. Saving of existing laws and laws providing for State monopolies.]—Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19.]

306. [Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.(w.e.f. 1-11-1956)

307. Appointment of authority for carrying out the purposes of articles 301 to 304.]—Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary.

1. Subs. by the Constitution (Fourth Amendment) Act, 1955, s. 4, for art. 305 (w.e.f. 27-4-1955).

PART XIV

SERVICES UNDER THE UNION AND THE STATES

CHAPTER I.— SERVICES

308. Interpretation.—In this Part, unless the context otherwise requires, the expression “State”¹[does not include the State of Jammu and Kashmir].

309. Recruitment and conditions of service of persons serving the Union or a State.—Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor^{2***} of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

310. Tenure of office of persons serving the Union or a State.—(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor^{3***} of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor^{2***} of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor^{2***}, as the case may be, deems it

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1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "means a State specified in Part A or Part B of the First Schedule" (w.e.f. 1-11-1956).
 2. The words "or Rajpramukh" omitted by s.29 and Sch., *ibid* (w.e.f. 1-11-1956).
 3. The words "or, as the case may be, the Rajpramukh" omitted by s.29 and Sch., *ibid*. (w.e.f. 1-11-1956).

(Part XIV.—Services under the Union and the States)

necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

¹[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges ^{2***}:

³[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

1. Subs. by the Constitution (Fifteenth Amendment) Act, 1963, s. 10, for cl. (2) and (3) (w.e.f. 5-10-1963).

2. Certain words omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 44 (w.e.f. 3-1-1977).

3. Subs. by s. 44, *ibid.*, for certain words (w.e.f. 3-1-1977).

(Part XIV.—Services under the Union and the States)

312. All-India services.—(1) Notwithstanding anything in ¹[Chapter VI of Part VI or Part XI], if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all India services ²[(including an all-India judicial service)] common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

²[(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.]

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.]

³[312A. Power of Parliament to vary or revoke conditions of service of officers of certain services.]—(1) Parliament may by law—

(a) vary or revoke, whether prospectively or retrospectively, the conditions of services as respects remuneration, leave and pension and the rights as respects disciplinary matters of persons who, having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India before the commencement of this Constitution, continue on and after the commencement of the Constitution (Twenty-eighth Amendment) Act, 1972, to serve under the Government of India or of a State in any service or post;

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 45, for "Part XI" (w.e.f. 3-1-1977).

2. Ins. by s. 45, *ibid.* (w.e.f. 3-1-1977).

3. Ins. by the Constitution (Twenty-eighth Amendment) Act, 1972, s. 2 (w.e.f. 29-8-1972).

(Part XIV.—Services under the Union and the States)

(b) vary or revoke, whether prospectively or retrospectively, the conditions of service as respects pension of persons who, having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India before the commencement of this Constitution, retired or otherwise ceased to be in service at any time before the commencement of the Constitution (Twenty-eighth Amendment) Act, 1972:

Provided that in the case of any such person who is holding or has held the office of the Chief Justice or other Judge of the Supreme Court or a High Court, the Comptroller and Auditor-General of India, the Chairman or other member of the Union or a State Public Service Commission or the Chief Election Commissioner, nothing in sub-clause (a) or sub-clause (b) shall be construed as empowering Parliament to vary or revoke, after his appointment to such post, the conditions of his service to his disadvantage except in so far as such conditions of service are applicable to him by reason of his being a person appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India.

(2) Except to the extent provided for by Parliament by law under this article, nothing in this article shall affect the power of any Legislature or other authority under any other provision of this Constitution to regulate the conditions of service of persons referred to in clause (1).

(3) Neither the Supreme Court nor any other court shall have jurisdiction in—

(a) any dispute arising out of any provision of, or any endorsement on, any covenant, agreement or other similar instrument which was entered into or executed by any person referred to in clause (1), or arising out of any letter issued to such person, in relation to his appointment to any civil service of the Crown in India or his continuance in service under the Government of the Dominion of India or a Province thereof;

(b) any dispute in respect of any right, liability or obligation under article 314 as originally enacted.

(4) The provisions of this article shall have effect notwithstanding anything in article 314 as originally enacted or in any other provision of this Constitution.]

(Part XIV.—Services under the Union and the States)

313. Transitional provisions.—Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

314. [Provision for protection of existing officers of certain services].—Omitted by the Constitution (Twenty-eighth Amendment) Act, 1972, s. 3 (w.e.f. 29-8-1972).

CHAPTER II.—PUBLIC SERVICE COMMISSIONS

315. Public Service Commissions for the Union and for the States.—

(1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor^{1***} of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

316. Appointment and term of office of members.—(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

(Part XIV.—Services under the Union and the States)

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

¹[(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.]

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of ²[sixty-two years], whichever is earlier:

Provided that—

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor ^{3****} of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

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1. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 11 (w.e.f. 5-10-1963).
 2. Subs. by the Constitution (Forty-first Amendment) Act, 1976, s. 2, for "sixty years" (w.e.f. 7-9-1976).
 3. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

(Part XIV.—Services under the Union and the States)

317. Removal and suspension of a member of a Public Service Commission.—(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor ^{1***} in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

318. Power to make regulations as to conditions of service of members and staff of the Commission.—In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor ^{1***} of the State may by regulations—

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

(Part XIV.—Services under the Union and the States)

(a) determine the number of members of the Commission and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members.—On ceasing to hold office—

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

320. Functions of Public Service Commissions.—(1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

THE CONSTITUTION OF INDIA

(Part XIV.—Services under the Union and the States)

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor^{1***} of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor^{2***}, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. The words "or Rajpramukh, as the case may be" omitted by s. 29 and Sch. *ibid.* (w.e.f. 1-11-1956).

(Part XIV.—Services under the Union and the States)

(5) All regulations made under the proviso to clause (3) by the President or the Governor ^{1***} of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

321. Power to extend functions of Public Service Commissions.—An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

322. Expenses of Public Service Commissions.—The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

323. Reports of Public Service Commissions.—(1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor ^{1***} of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor ^{1***} of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor ^{2***}, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

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1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 2. The words "or Rajpramukh, as the case may be" omitted by s. 29 and Sch. *ibid.* (w.e.f. 1-11-1956).

¹[PART XIVA
TRIBUNALS

323A. Administrative tribunals.—(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may—

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 46 (w.e.f. 3-1-1977).

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

323B. Tribunals for other matters.—(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:—

(a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

(c) industrial and labour disputes;

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;

(g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

¹[(h) rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;]

²[(i)] offences against laws with respect to any of the matters specified in sub-clauses (a) to ³[(h)] and fees in respect of any of those matters;

1. Ins. by the Constitution (Seventy-fifth Amendment) Act, 1993, s. 2 (w.e.f. 15-5-1994).

2. Sub-clause (h) re-lettered as sub-clause (i) by s. 2, *ibid.* (w.e.f. 15-5-1994).

3. Subs. by s. 2, *ibid.*, for the brackets and letter "(g)" (w.e.f. 15-5-1994).

¹[(j)] any matter incidental to any of the matters specified in sub-clauses (a) to ²[(i)].

(3) A law made under clause (1) may—

(a) provide for the establishment of a hierarchy of tribunals;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.—In this article, “appropriate Legislature”, in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.]

1. Sub-clause (i) re-lettered as sub-clause (j) by the Constitution (Seventy-fifth Amendment) Act, 1993, s. 2 (w.e.f. 15-5-1994).

2. Subs. by s. 2, *ibid.*, for “(h)” (w.e.f. 15-5-1994).

PART XV

ELECTIONS

324. Superintendence, direction and control of elections to be vested in an Election Commission.—(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution ^{1***} shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

1. The words "including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States" omitted by the Constitution (Nineteenth Amendment) Act, 1966, s. 2 (w.e.f. 11-12-1966).

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor ^{1***} of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.—There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than ²[eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

327. Power of Parliament to make provision with respect to elections to Legislatures.—Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. Subs. by the Constitution (Sixty-first Amendment) Act, 1988, s. 2, for "twenty-one years" (w.e.f. 28-3-1989).

328. Power of Legislature of a State to make provision with respect to elections to such Legislature.—Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

329. Bar to interference by courts in electoral matters.—
¹[Notwithstanding anything in this Constitution ^{2***}]—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

³329A. [Special provision as to elections to Parliament in the case of Prime Minister and Speaker.]—Omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 36 (w.e.f. 20-6-1979).

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1. Subs. by the Constitution (Thirty-ninth Amendment) Act, 1975, s. 3, for certain words (w.e.f. 10-8-1975).
 2. The words, figures and letter "but subject to the provisions of article 329A" omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 35 (w.e.f. 20-6-1979).
 3. Ins. by the Constitution (Thirty-ninth Amendment) Act, 1975, s. 4 (w.e.f. 10-8-1975).

PART XVI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.—(1) Seats shall be reserved in the House of the People for—

(a) the Scheduled Castes;

¹[(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and]

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State ²[or Union territory] for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State ²[or Union territory] in the House of the People as the population of the Scheduled Castes in the State ²[or Union territory] or of the Scheduled Tribes in the State ²[or Union territory] or part of the State ²[or Union territory], as the case may be, in respect of which seats are so reserved, bears to the total population of the State ²[or Union territory].

³[(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.]

⁴[*Explanation*.—In this article and in article 332, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year ⁵[2026] have been published, be construed as a reference to the ⁶[2001] census.]

1. Subs. By the Constitution (Fifty-first Amendment) Act, 1984, s. 2, for sub-clause (b) (w.e.f. 16-6-1986).

2. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

3. Ins. by the Constitution (Thirty-first Amendment) Act, 1973, s. 3 (w.e.f. 17-10-1973).

4. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 47 (w.e.f. 3-1-1977).

5. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 6, for “2000” (w.e.f. 21-2-2002).

6. Subs. by the Constitution (Eighty-seventh Amendment) Act, 2003, s. 5, for “1991” (w.e.f. 22-6-2003).

(Part XVI.—Special Provisions Relating to Certain Classes)

¹[330A. Reservation of seats for women in the House of the People.-

- (1) Seats shall be reserved for women in the House of the People.
- (2) As nearly as may be, one-third of the total number of seats reserved under clause (2) of article 330 shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes.
- (3) As nearly as may be, one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election to the House of the People shall be reserved for women.]

331. Representation of the Anglo-Indian Community in the House of the People.—Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes,²[except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State^{3***}.

- (2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

⁴[(3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the re-adjustment, on the basis of the first census after the year⁵[2026], of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be,—

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- 1. Ins. by the Constitution (One Hundred and Sixth Amendment) Act, 2023, s.3 (date yet to be notified).
 - 2. Subs. by the Constitution (Fifty-first Amendment) Act, 1984, s. 3, for certain words (w.e.f. 16-6-1986).
 - 3. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 - 4. Ins. by the Constitution (Fifty-seventh Amendment) Act, 1987, s. 2 (w.e.f. 21-9-1987).
 - 5. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 7, for "2000" (w.e.f. 21-2-2002).

THE CONSTITUTION OF INDIA

(Part XVI.—Special Provisions Relating to Certain Classes)

(a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one;

(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in the existing Assembly.]

¹[(3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year ²[2026], of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly.]

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district ^{3***}.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district ^{3***}:

⁴[Provided that for elections to the Legislative Assembly of the State of

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1. Ins. by the Constitution (Seventy-second Amendment) Act, 1992, s. 2 (w.e.f. 5-12-1992).
 2. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, s. 7, for "2000" (w.e.f. 21-2-2002).
 3. Certain words omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (w.e.f. 21-1-1972).
 4. Ins. by the Constitution (Ninetieth Amendment) Act, 2003, s. 2 (w.e.f. 28-9-2003).

(Part XVI.—Special Provisions Relating to Certain Classes)

Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, so notified, and existing prior to the constitution of Bodoland Territorial Areas District, shall be maintained.]

¹[**332A. Reservation of seats for women in the Legislative Assemblies of the States.**]—(1) Seats shall be reserved for women in the Legislative Assembly of every State.

(2) As nearly as may be, one-third of the total number of seats reserved under clause (3) of article 332 shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes.

(3) As nearly as may be, one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Sceduled Tribes) of the total number of seats to be filled by direct election in the Legislative Assembly of every State shall be reserved for women.]

333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States.—Notwithstanding anything in article 170, the Governor ^{2***} of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, ³[nominate one member of that community to the Assembly].

334. ⁴[Reservation of seats and special representation to cease after certain period].—Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

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1. Ins. by the Constitution (One Hundred and Sixth Amendment) Act, 2023, s.4 (date yet to be notified).
 2. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 3. Subs. by the Constitution (Twenty-third Amendment) Act, 1969, s. 4, for "nominate such number of members of the community to the Assembly as he considers appropriate" (w.e.f. 23-1-1970).
 4. Subs. by the Constitution (One hundred and fourth Amendment) Act, 2019, s. 2, for marginal heading (w.e.f. 25-1-2020).

(Part XVI.—Special Provisions Relating to Certain Classes)

shall cease to have effect on the expiration of a period of ¹[eighty years in respect of clause (a) and seventy years in respect of clause (b)] from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

²334A. Reservation of seats for women take effect. — (1) Notwithstanding anything in the foregoing provision of this Part or Part VIII, the provisions of the Constitution relating to the reservation of seats for women in the House of the People, the Legislative Assembly of a State and the Legislative Assembly of the National Capital Territory of Delhi shall come into effect after an exercise of delimitation is undertaken for this purpose after the relevant figures for the first census taken after commencement of the Constitution (One Hundred and Sixth Amendment) Act, 2023 have been published and shall cease to have effect on the expiration of a period of fifteen years from such commencement.

(2) Subject to the provisions of articles 239AA, 330A and 332A, seats reserved for women in the House of the People, the Legislative Assembly of a State and the Legislative Assembly of the National Capital Territory of Delhi shall continue till such date as the Parliament may by law determine.

(3) Rotation of seats reserved for women in the House of the People, the Legislative Assembly of a State and the Legislative Assembly of the National Capital Territory of Delhi shall take effect after each subsequent exercise of delimitation as the Parliament may by law determine.

(4) Nothing in this article shall affect any representation in the House of the People, the Legislative Assembly of a State or the Legislative Assembly of the National Capital Territory of Delhi until the dissolution of the then existing House of the People, Legislative Assembly of a State or the Legislative Assembly of the National Capital Territory of Delhi.]

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts. — The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

1. Subs. by the Constitution (One Hundred and Fourth Amendment) Act, 2019, s. 2, for “seventy years” (w.e.f. 25-1-2020). The words “seventy years” subs. for “sixty years” by the Constitution (Ninety-fifth Amendment) Act, 2009, s.2 (w.e.f. 25-1-2010). The words “sixty years” subs. for “fifty years” by the Constitution (Seventy-ninth Amendment) Act, 1999, s. 2 (w.e.f. 25-1-2000). The words “fifty years” subs. for “forty years” by the Constitution (Sixty-second Amendment) Act, 1989, s. 2 (w.e.f. 20-12-1989). The words “forty years” subs. for “thirty years” by the Constitution (Forty-fifth Amendment) Act, 1980, s. 2 (w.e.f. 25-1-1980).
2. Ins. by the Constitution (One Hundred and Sixth Amendment) Act, 2023, s.5 (date yet to be notified).

(Part XVI.—Special Provisions Relating to Certain Classes)

¹[Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters or promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.]

336. Special provision for Anglo-Indian community in certain services.—(1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent. than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

337. Special provision with respect to educational grants for the benefit of Anglo-Indian community.—During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State ^{2***} for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent. than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent. of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

1. Ins. by the Constitution (Eighty-second Amendment) Act, 2000, s. 2 (w.e.f. 8-9-2000).

2. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

(Part XVI.—Special Provisions Relating to Certain Classes)

338. ¹[**National Commission for Scheduled Castes**.—²[³[(1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.]

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes ^{4***} under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes ^{4***};

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes ^{1***} and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of

1. Subs. by the Constitution (Eighty-ninth Amendment) Act, 2003, s. 2, for the marginal heading (w.e.f. 19-2-2004).
2. Subs. by the Constitution (Sixty-fifth Amendment) Act, 1990, s. 2, for cl. (1) and (2) (w.e.f. 12-3-1992).
3. Subs. by the Constitution (Eighty-ninth Amendment) Act, 2003, s. 2, for cl. (1) and (2) (w.e.f. 19-2-2004).
4. The words "and Scheduled Tribes" omitted by the Constitution (Eighty-ninth Amendment) Act, 2003, s. 2 (w.e.f. 19-2-2004).

(Part XVI.—Special Provisions Relating to Certain Classes)

those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes ^{1***}, and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes ^{1***} as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes ^{1***}.

²[(10)] In this article, references to the Scheduled Castes ^{1***} shall be construed as including references ^{3***} to the Anglo-Indian community.

⁴[338A. **National Commission for Scheduled Tribes.**—(1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.

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1. The words "and Scheduled Tribes" omitted by the Constitution (Eighty-ninth Amendment) Act, 2003, s. 2 (w.e.f. 19-2-2004).
 2. Cl. (3) renumbered as cl. (10) by the Constitution (Sixty-fifth Amendment) Act, 1990, s. 2 (w.e.f. 12-3-1992).
 3. The words, brackets and figures "to such other backward classes as the President may, on receipt of the report of a Commission appointed under cl. (1) of article 340, by order specify and also" omitted by the Constitution (One Hundred and Second Amendment) Act, 2018, s. 2 (w.e.f. 15-8-2018).
 4. Art 338A ins. by the Constitution (Eighty-ninth Amendment) Act, 2003, s. 3 (w.e.f. 19-2-2004).

THE CONSTITUTION OF INDIA

(Part XVI.—Special Provisions Relating to Certain Classes)

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(Part XVI.—Special Provisions Relating to Certain Classes)

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.]

¹[338B. **National Commission for Backward Classes.**—(1) There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

- (4) The Commission shall have the power to regulate its own procedure.
- (5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;

(c) to participate and advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;

1.Art 338B ins. by the Constitution (One Hundred and Second Amendment) Act, 2018, s. 3 (w.e.f. 15-8-2018).

THE CONSTITUTION OF INDIA

(Part XVI.—Special Provisions Relating to Certain Classes)

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the State Government which shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes:]

(Part XVI.—Special Provisions Relating to Certain Classes)

¹[Provided that nothing in this clause shall apply for the purposes of clause (3) of article 342A.]

339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.—(1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States ^{2***}.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to ³[a State] as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

340. Appointment of a Commission to investigate the conditions of backward classes.—(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

341. Scheduled Castes.—(1) The President ⁴[may with respect to any State ⁵[or Union territory], and where it is a State ^{2***}, after consultation with

1. Ins. by the Constitution (One Hundred and Fifth Amendment) Act, 2021, s. 2 (w.e.f. 15-9-2021).
2. The words and letters for "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
3. Subs. by s. 29 and Sch. *ibid.* for "any such State" (w.e.f. 1-11-1956).
4. Subs. by the Constitution (First Amendment) Act, 1951, s. 10, for "may, after consultation with the Governor or Rajpramukh of a State" (w.e.f. 18-6-1951).
5. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

THE CONSTITUTION OF INDIA

(Part XVI.—Special Provisions Relating to Certain Classes)

the Governor^{1****} thereof], by public notification², specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State³[or Union territory, as the case may be.]

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes.—(1) The President⁴[may with respect to any State³[or Union territory], and where it is a State^{5****}, after consultation with the Governor^{1****} thereof], by public notification⁶, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State³[or Union territory, as the case may be.]

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

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1. The words "or Rajpramukh" omitted by the constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).
 2. See the Constitution (Scheduled Castes) Order, 1950 (C.O. 19), the Constitution (Scheduled Castes) (Union Territories) Order, 1951 (C.O. 32), the Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956 (C.O. 52), the Constitution (Dadra and Nagar Haveli) (Scheduled Castes) Order, 1962 (C.O. 64), the Constitution (Pondicherry) Scheduled Castes Order, 1964 (C.O. 68), the Constitution (Goa, Daman and Diu) Scheduled Castes Order, 1968 (C.O. 81) and the Constitution (Sikkim) Scheduled Castes Order, 1978 (C.O. 110).
 3. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 4. Subs. by the Constitution (First Amendment) Act, 1951, s. 11, for "may, after consultation with the Governor or Rajpramukh of State" (w.e.f. 18-6-1951).
 5. Certain words Omitted by the constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).
 6. See the Constitution (Scheduled Tribes) Order, 1950 (C.O. 22), the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 (C.O. 33), the Constitution (Andaman and Nicobar Islands) (Scheduled Tribes) Order, 1959 (C.O. 58), the Constitution (Dadra and Nagar Haveli) (Scheduled Tribes) Order, 1962 (C.O. 65), the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 (C.O. 78), the Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 (C.O. 82), the Constitution (Nagaland) Scheduled Tribes Order, 1970 (C.O. 88) the Constitution (Sikkim) Scheduled Tribes Order, 1978 (C.O. 111).

(Part XVI.—Special Provisions Relating to Certain Classes)

¹[**342A. Socially and educationally backward classes.**—(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify ²[the socially and educationally backward classes in the Central List which shall for the purposes of the Central Government] be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.]

³[*Explanation.*—For the purposes of clauses (1) and (2), the expression “Central List” means the list of socially and educationally backward classes prepared and maintained by and for the Central Government.]

(3) Notwithstanding any contained in clauses (1) and (2), every State or Union territory may, by law, prepare and maintain, for its own purposes, a list of socially and educationally backward classes, entries in which may be different from the Central List.]

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1. Art 342 A ins. by the Constitution (One Hundred and Second Amendment) Act, 2018, s. 4 (w.e.f. 15-8-2018).
 2. Subs. by the Constitution (One Hundred and Fifth Amendment) Act, 2021, s. 3 for socially and educationally backward classes which shall for the purposes of the Constitution (w.e.f. 15-9-2021).
 3. Ins. by the Constitution (One Hundred and Fifth Amendment) Act, 2021, s. 3 (w.e.f. 15-9-2021).

PART XVII

OFFICIAL LANGUAGE

CHAPTER I.—LANGUAGE OF THE UNION

343. Official language of the Union.—(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order¹ authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of—

(a) the English language; or

(b) the Devanagari form of numerals,

for such purposes as may be specified in the law.

344. Commission and Committee of Parliament on official language.—(1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 348;

1. See C.O. 41.

(d) the form of numerals to be used for any one or more specified purposes of the Union;

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.

(6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.

CHAPTER II.—REGIONAL LANGUAGES

345. Official language or languages of a State.—Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

346. Official language for communication between one State and another or between a State and the Union.—The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

347. Special provision relating to language spoken by a section of the population of a State.—On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III.—LANGUAGE OF THE SUPREME COURT,
HIGH COURTS, ETC.

348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.—(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides—

- (a) all proceedings in the Supreme Court and in every High Court;
- (b) the authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State;

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor^{1***} of a State; and

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor^{1***} of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor ^{1***} of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor ^{1***} of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

349. Special procedure for enactment of certain laws relating to language.—During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

CHAPTER IV.—SPECIAL DIRECTIVES

350. Language to be used in representations for redress of grievances.—Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

²[350A. Facilities for instruction in mother-tongue at primary stage.]—It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. Arts. 350A and 350B ins. by s.21., *ibid.* (w.e.f. 1-11-1956).

350B. Special Officer for linguistic minorities.—(1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.]

351. Directive for development of the Hindi language.—It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

PART XVIII

EMERGENCY PROVISIONS

352. Proclamation of Emergency.—(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or ¹[armed rebellion], he may, by Proclamation, make a declaration to that effect ²[in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation.]

³[*Explanation.*—A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.]

⁴[(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

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1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 37, for "internal disturbance" (w.e.f. 20-6-1979).
 2. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 48 (w.e.f. 3-1-1977).
 3. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 37 (w.e.f. 20-6-1979).
 4. Subs. by s. 37, *ibid.*, for cl. (2), (2A) and (3) (w.e.f. 20-6-1979).

THE CONSTITUTION OF INDIA

(Part XVIII.—EMERGENCY PROVISIONS)

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (4):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(6) For the purposes of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the Members of that House present and voting.

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

THE CONSTITUTION OF INDIA

(Part XVIII.—EMERGENCY PROVISIONS)

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,—

- (a) to the Speaker, if the House is in session; or
- (b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.]

¹[(9) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or ²[armed rebellion] or imminent danger of war or external aggression or ²[armed rebellion], whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.

* * * * *

353. Effect of Proclamation of Emergency.—While a Proclamation of Emergency is in operation, then—

(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List:

1. Cls. (4) and (5) ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, s. 5 (with retrospective effect) and subsequently cl. (4) renumbered as cl. (9) and cl. (5) omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 37 (w.e.f. 20-6-1979).

2. Subs. by s. 37, *ibid.* for "internal disturbance" (w.e.f. 20-6-1979).

¹[Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India,—

(i) the executive power of the Union to give directions under clause (a), and

(ii) the power of Parliament to make laws under clause (b),

shall also extend to any State other than a State in which or in any part of which the Proclamation of Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.]

354. Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation.—(1) The President may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

355. Duty of the Union to protect States against external aggression and internal disturbance.—It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.

356. Provisions in case of failure of constitutional machinery in States.—(1) If the President, on receipt of a report from the Governor^{2***} of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

1. Added by the Constitution (Forty-second Amendment) Act, 1976, s. 49 (w.e.f. 3-1-1977).

2. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

THE CONSTITUTION OF INDIA

(Part XVIII.—EMERGENCY PROVISIONS)

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor^{1***} or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

1. The words "or Rajpramukh, as the case may be" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of ¹[six months from the date of issue of the Proclamation]:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of ²[six months] from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of ²[six months] and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People:

³[Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to ⁴[five years].]

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1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 50, for "six months" (w.e.f. 3-1-1977) and further subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 38, for "one year from the date of the passing of the second of the resolutions approving the Proclamation under clause (3)" (w.e.f. 20-6-1979).
 2. Subs. by s. 50, *ibid.*, for "six months" (w.e.f. 3-1-1977) and further subs. by s. 38, *ibid.*, for "one year", respectively (w.e.f. 20-6-1979).
 3. Ins. by the Constitution (Sixty-fourth Amendment) Act, 1990, s. 2 (w.e.f. 16-4-1990).
 4. Subs. by the Constitution (Sixty-seventh Amendment) Act, 1990, s. 2 (w.e.f. 4-10-1990) and further subs. by the Constitution (Sixty-eighth Amendment) Act, 1991, s. 2 (w.e.f. 12-3-1991).

THE CONSTITUTION OF INDIA

(Part XVIII.—EMERGENCY PROVISIONS)

¹[(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless—

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:]

²[Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab.]

357. Exercise of legislative powers under Proclamation issued under article 356.—(1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;

(b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

1. Ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, s. 6 (with retrospective effect) and subsequently subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 38, for cl. (5) (w.e.f. 20-6-1979).

2. Proviso omitted by the Constitution (Sixty-third Amendment) Act, 1989, s. 2 (w.e.f. 6-1-1990) and subsequently ins. by the Constitution (Sixty-fourth Amendment) Act, 1990, s. 2 (w.e.f. 16-4-1990).

¹[(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.]

358. Suspension of provisions of article 19 during emergencies.—²[(1)] ³[While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation], nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect:

⁴[Provided that ⁵[where such Proclamation of Emergency] is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.]

⁶[(2) Nothing in clause (1) shall apply—

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1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 51 (w.e.f. 3-1-1977).
 2. Art. 358 re-numbered as cl. (1) by the Constitution (Forty-fourth Amendment) Act, 1978, s. 39 (w.e.f. 20-6-1979).
 3. Subs. by s. 39, *ibid*, for "While a Proclamation of Emergency is in operation" (w.e.f. 20-6-1979).
 4. Added by the Constitution (Forty-second Amendment) Act, 1976, s. 52 (w.e.f. 3-1-1977).
 5. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 39, for "where a Proclamation of Emergency" (w.e.f. 20-6-1979).
 6. Ins. by s. 39, *ibid*. (w.e.f. 20-6-1979).

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.]

359. Suspension of the enforcement of the rights conferred by Part III during emergencies.—(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of¹[the rights conferred by Part III (except articles 20 and 21)] as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

²[(1A) While an order made under clause (1) mentioning any of¹[the rights conferred by Part III (except articles 20 and 21)] is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect:]

³[Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.]

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1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 40, for "the rights conferred by Part III" (w.e.f. 20-6-1979).
 2. Ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, s. 7 (with retrospective effect).
 3. Added by the Constitution (Forty-second Amendment) Act, 1976, s. 53 (w.e.f. 3-1-1977).

THE CONSTITUTION OF INDIA

(Part XVIII.—EMERGENCY PROVISIONS)

¹[(1B) Nothing in clause (1A) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.]

(2) An order made as aforesaid may extend to the whole or any part of the territory of India:

²[Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary.]

(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

³**359A.** [*Application of this Part to the State of Punjab.*]—Omitted by the Constitution (Sixty-third Amendment) Act, 1989, s. 3 (w.e.f. 6-1-1990).

360. Provisions as to financial emergency.—(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

⁴[(2) A Proclamation issued under clause (1)—

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

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1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 40 (w.e.f. 20-6-1979).
 2. Added by the Constitution (Forty-second Amendment) Act, 1976, s. 53 (w.e.f. 3-1-1977).
 3. Ins. by the Constitution (Fifty-ninth Amendment) Act, 1988, s. 3 (w.e.f. 30-3-1988) and ceased to operate on the expiry of a period of two years from the commencement of that Act, i.e. 30th day of March, 1988.
 4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 41, for cl. (2) (w.e.f. 20-6-1979).

THE CONSTITUTION OF INDIA

(Part XVIII.—EMERGENCY PROVISIONS)

(c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.]

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

¹[(5) * * * * *]

1. Ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, s. 8 (with retrospective effect) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 41 (w.e.f. 20-6-1979).

PART XIX

MISCELLANEOUS

361. Protection of President and Governors and Rajpramukhs.—(1)

The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor ^{1***} of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor ^{1***} of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor ^{1***} of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor ^{1***} of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor ^{1***}, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

¹[**361A. Protection of publication of proceedings of Parliament and State Legislatures.**—(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation.—In this article, “newspaper” includes a news agency report containing material for publication in a newspaper.]

²[**361B. Disqualification for appointment on remunerative political post.**—A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

Explanation.—For the purposes of this article,—

- (a) the expression “House” has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;
- (b) the expression “remunerative political post” means any office—
 - (i) under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

1. Art. 361A ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 42

(w.e.f. 20-6-1979).

2. Art. 361B ins. by the Constitution (Ninety-first Amendment) Act, 2003, s. 4

(w.e.f. 1-1-2004).

THE CONSTITUTION OF INDIA

(Part XIX.—MISCELLANEOUS)

(ii) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of State, and the salary or remuneration for such office is paid by such body,

except where such salary or remuneration paid is compensatory in nature.]

362. [Rights and privileges of Rulers of Indian States].—*Omitted by the Constitution (Twenty-sixth Amendment) Act, 1971, s. 2 (w.e.f. 28-12-1971).*

363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.—(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article—

(a) “Indian State” means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) “Ruler” includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

¹[363A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished.]—Notwithstanding anything in this Constitution or in any law for the time being in force—

(a) the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler;

1. Art. 363A ins. by the Constitution (Twenty-sixth Amendment) Act, 1971, s. 3 (w.e.f. 28-12-1971).

(b) on and from the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, privy purse is abolished and all rights, liabilities and obligations in respect of *privy purse* are extinguished and accordingly the Ruler or, as the case may be, the successor of such Ruler, referred to in clause (a) or any other person shall not be paid any sum as *privy purse*.]

364. Special provisions as to major ports and aerodromes.—(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification; or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article—

(a) “major port” means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;

(b) “aerodrome” means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.

365. Effect of failure to comply with, or to give effect to, directions given by the Union.—Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.

366. Definitions.—In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

(1) “agricultural income” means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;

THE CONSTITUTION OF INDIA

(Part XIX.—MISCELLANEOUS)

(2) “an Anglo-Indian” means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;

(3) “article” means an article of this Constitution;

(4) “borrow” includes the raising of money by the grant of annuities, and “loan” shall be construed accordingly;

¹[(4A)* * * *]

(5) “clause” means a clause of the article in which the expression occurs;

(6) “corporation tax” means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:—

(a) that it is not chargeable in respect of agricultural income;

(b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;

(c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;

(7) “corresponding Province”, “corresponding Indian State” or “corresponding State” means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;

1. Cl. (4A) was ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 54 (w.e.f. 1-2-1977) and subsequently omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 11 (w.e.f. 13-4-1978).

THE CONSTITUTION OF INDIA

(Part XIX.—MISCELLANEOUS)

(8) “debt” includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and “debt charges” shall be construed accordingly;

(9) “estate duty” means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass;

(10) “existing law” means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;

(11) “Federal Court” means the Federal Court constituted under the Government of India Act, 1935;

(12) “goods” includes all materials, commodities, and articles;

¹[(12A) “goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption];

(13) “guarantee” includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;

(14) “High Court” means any Court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court; and

(b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution;

(15) “Indian State” means any territory which the Government of the Dominion of India recognised as such a State;

1. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 14(i) (w.e.f. 16-9-2016).

THE CONSTITUTION OF INDIA

(Part XIX.—MISCELLANEOUS)

(16) "Part" means a Part of this Constitution;

(17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable; a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

(18) "Proclamation of Emergency" means a Proclamation issued under clause (1) of article 352;

(19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State;

(20) "railway" does not include—

(a) a tramway wholly within a municipal area; or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway;

¹[(21)* * * *]

²[(22) "Ruler" means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler;]

(23) "Schedule" means a Schedule to this Constitution;

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;

1. Cl. (21) omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. Subs. by the Constitution (Twenty-sixth Amendment) Act, 1971, s. 4 (w.e.f. 28-12-1971).

THE CONSTITUTION OF INDIA

(Part XIX.—MISCELLANEOUS)

(26) "securities" includes stock;

** * **

²[(26A) "Services" means anything other than goods;

(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature];

³[(26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of the Central Government or the State or Union territory, as the case may be];

(27) "sub-clause" means a sub-clause of the clause in which the expression occurs;

(28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;

(29) "tax on income" includes a tax in the nature of an excess profits tax;

⁴[(29A) "tax on the sale or purchase of goods" includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

1. Cl. (26A) was ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 54 (w.e.f. 1-2-1977), and subsequently omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 11 (w.e.f. 13-4-1978).
2. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 14(ii) (w.e.f. 16-9-2016).
3. Cl. (26C) was ins. by the Constitution (One Hundred and second Amendment) Act, 2018, s. 5 (w.e.f. 14-8-2018), and subsequently subs. by the Constitution (One Hundred and Fifth Amendment) Act, 2021, s. 4 (w.e.f. 15-9-2021).
4. Cl. (29A) ins. by the Constitution (Forty-sixth Amendment) Act, 1982, s. 4 (w.e.f. 2-2-1983).

THE CONSTITUTION OF INDIA

(Part XIX.—MISCELLANEOUS)

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;]

[(30) "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule.]

367. Interpretation.—(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Acts or laws of, or made by, the Legislature of a State^{2***}, shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor^{3***}, as the case may be.

(3) For the purposes of this Constitution "foreign State" means any State other than India:

Provided that, subject to the provisions of any law made by Parliament, the President may by order⁴ declare any State not to be a foreign State for such purposes as may be specified in the order.

⁵[(4) * * * *]

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. for cl. (30) (w.e.f. 1-11-1956).

2. The words and letters "specified in Part A or Part B of the First Schedule" omitted by s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).

3. The words "or Rajpramukh" omitted by s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).

4. See the Constitution (Declaration as to Foreign States) Order, 1950 (C.O. 2).

5. Added by the Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) (w.e.f. 5-8-2019), for the text of this C.O., see Appendix II.

PART XX

AMENDMENT OF THE CONSTITUTION

368. ¹[Power of Parliament to amend the Constitution and procedure therefor].—²[(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.]

³[(2)] An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, ⁴[it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

- (a) article 54, article 55, article 73, ⁵[article 162, article 241 or article 279A]; or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI; or
- (c) any of the Lists in the Seventh Schedule; or
- (d) the representation of States in Parliament; or
- (e) the provisions of this article,

1. Subs. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 3, for "Procedure for amendment of the Constitution" (w.e.f. 5-11-1971).
2. Ins. by s. 3, *ibid.* (w.e.f. 5-11-1971).
3. Art. 368 re-numbered as cl. (2) thereof by s. 3, *ibid.* (w.e.f. 5-11-1971).
4. Subs. by s. 3, *ibid.*, (w.e.f. 5-11-1971).
5. Subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 15, for the words and figures "article 162 or article 241" (w.e.f. 16-9-2016).

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States ^{1***} by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

²[(3) Nothing in article 13 shall apply to any amendment made under this article.]

³[(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.]

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1. The words and letters "specified in Part A and Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 2. Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 3 (w.e.f. 5-11-1971).
 3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 55 (w.e.f. 3-1-1977). This section has been declared invalid by the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India and Others* AIR 1980 SC 1789.

PART XXI

¹[TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS]

369. Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.—Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely:—

(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or *kapas*), cotton seed, paper (including newsprint), food-stuffs (including edible oilseeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica;

(b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court,

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration thereof.

1. Subs. by the Constitution (Thirteenth Amendment) Act, 1962, s. 2, for "TEMPORARY AND TRANSITIONAL PROVISIONS" (w.e.f. 1-12-1963).

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

****¹[370. Temporary provisions with respect to the State of Jammu and Kashmir.]**—(1) Notwithstanding anything in this Constitution,—

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

** In exercise of the powers conferred by clause (3) of article 370 read with clause (1) of article 370 of the Constitution of India, the President, on the recommendation of Parliament, is pleased to declare that, as from the 6th August, 2019 all clauses of said article 370 shall cease to be operative except the following which shall read as under, namely:—

“370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgment, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.”.

(See Appendix III (C.O. 273).

1. In exercise of the powers conferred by clause (3) of the Constitution of India, the President, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir, declared that, as from the 17th day of November, 1952, the said art. 370 shall be operative with the modification that for the *Explanation* in cl. (1) thereof, the following *Explanation* is substituted, namely:—

“Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the *Sadar-I-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office.”.

(C.O. 44, dated the 15th November, 1952).

*Now “Governor”.

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order* specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the [clause (2) of Legislative Assembly of the State] shall be necessary before the President issues such a notification.

* See Appendix II.

1. Subs. by C.O. 272, dated the 5-8-2019, s.2. for "Constituent Assembly of the State referred to in clause (2)" (w.e.f. 5-8-2019).

(Part XXI.—Temporary, Transitional and Special Provisions)

¹[371. Special provision with respect to the States of Maharashtra and Gujarat.—³[(1)* * * * *] ^{2***}]

(2) Notwithstanding anything in this Constitution, the President may by order made with respect to ⁴[the State of Maharashtra or Gujarat], provide for any special responsibility of the Governor for—

(a) the establishment of separate development boards for Vidarbha, Marathwada, ⁵[and the rest of Maharashtra or, as the case may be], Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;

(b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole.]

⁶[371A. Special provision with respect to the State of Nagaland.—(1) Notwithstanding anything in this Constitution,—

(a) no Act of Parliament in respect of—

(i) religious or social practices of the Nagas;

(ii) Naga customary law and procedure;

(iii) administration of civil and criminal justice involving decisions according to Naga customary law;

(iv) ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 22, for art. 371 (w.e.f. 1-11-1956).

2. The words "Andhra Pradesh", omitted by the Constitution (Thirty-second Amendment) Act, 1973, s. 2 (w.e.f. 1-7-1974).

3. Cl. (1) omitted by s. 2, *ibid.* (w.e.f. 1-7-1974).

4. Subs. by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 85, for "the State of Bombay" (w.e.f. 1-5-1960).

5. Subs. by s. 85, *ibid.*, for "the rest of Maharashtra" (w.e.f. 1-5-1960).

6. Art. 371A ins. by the Constitution (Thirteenth Amendment) Act, 1962, s. 2 (w.e.f. 1-12-1963).

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

(b) the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub-clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Nagaland, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(c) in making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand;

(d) as from such date as the Governor of Nagaland may by public notification in this behalf specify, there shall be established a regional council for the Tuensang district consisting of thirty-five members and the Governor shall in his discretion make rules providing for—

(i) the composition of the regional council and the manner in which the members of the regional council shall be chosen:

Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman *ex officio* of the regional council and the Vice-Chairman of the regional council shall be elected by the members thereof from amongst themselves;

(ii) the qualifications for being chosen as, and for being, members of the regional council;

(iii) the term of office of, and the salaries and allowances, if any, to be paid to members of, the regional council;

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

(iv) the procedure and conduct of business of the regional council;
 (v) the appointment of officers and staff of the regional council and their conditions of services; and

(vi) any other matter in respect of which it is necessary to make rules for the constitution and proper functioning of the regional council.

(2) Notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council, by public notification specify in this behalf,—

(a) the administration of the Tuensang district shall be carried on by the Governor;

(b) where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State of Nagaland as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State;

(c) no Act of the Legislature of Nagaland shall apply to Tuensang district unless the Governor, on the recommendation of the regional council, by public notification so directs and the Governor in giving such direction with respect to any such Act may direct that the Act shall in its application to the Tuensang district or any part thereof have effect subject to such exceptions or modifications as the Governor may specify on the recommendation of the regional council:

Provided that any direction given under this sub-clause may be given so as to have retrospective effect;

(d) the Governor may make regulations for the peace, progress and good government of the Tuensang district and any regulations so made may repeal or amend with retrospective effect, if necessary, any Act of Parliament or any other law which is for the time being applicable to that district;

(e) (i) one of the members representing the Tuensang district in the Legislative Assembly of Nagaland shall be appointed Minister for Tuensang affairs by the Governor on the advice of the Chief Minister and the Chief Minister in tendering his advice shall act on the recommendation of the majority of the members as aforesaid¹;

1. Paragraph 2 of the Constitution (Removal of Difficulties) Order No. X provides (w.e.f. 1-12-1963) that article 371A of the Constitution of India shall have effect as if the following proviso were added to paragraph (i) of sub-clause (e) of clause (2) thereof, namely:—

"Provided that the Governor may, on the advice of the Chief Minister, appoint any person as Minister for Tuensang affairs to act as such until such time as persons are chosen in accordance with law to fill the seats allocated to the Tuensang district, in the Legislative Assembly of Nagaland.".

(Part XXI.—Temporary, Transitional and Special Provisions)

(ii) the Minister for Tuensang affairs shall deal with, and have direct access to the Governor on, all matters relating to the Tuensang district but he shall keep the Chief Minister informed about the same;

(f) notwithstanding anything in the foregoing provisions of this clause, the final decision on all matters relating to the Tuensang district shall be made by the Governor in his discretion;

(g) in articles 54 and 55 and clause (4) of article 80, references to the elected members of the Legislative Assembly of a State or to each such member shall include references to the members or member of the Legislative Assembly of Nagaland elected by the regional council established under this article;

(h) in article 170—

(i) clause (1) shall, in relation to the Legislative Assembly of Nagaland, have effect as if for the word “sixty”, the word “forty-six” had been substituted;

(ii) in the said clause, the reference to direct election from territorial constituencies in the State shall include election by the members of the regional council established under this article;

(iii) in clauses (2) and (3), references to territorial constituencies shall mean references to territorial constituencies in the Kohima and Mokokchung districts.

(3) If any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may by order do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing that difficulty:

Provided that no such order shall be made after the expiration of three years from the date of the formation of the State of Nagaland.

Explanation.—In this article, the Kohima, Mokokchung and Tuensang districts shall have the same meanings as in the State of Nagaland Act, 1962.]

[371B. Special provision with respect to the State of Assam.]
Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Assam, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of

1. Ins. by the Constitution (Twenty-second Amendment) Act, 1969, s. 4 (w.e.f. 25-9-1969).

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

members of that Assembly elected from the tribal areas specified in ¹[Part I] of the table appended to paragraph 20 of the Sixth Schedule and such number of other members of that Assembly as may be specified in the order and for the modifications to be made in the rules of procedure of that Assembly for the constitution and proper functioning of such committee.]

²[**371C. Special provision with respect to the State of Manipur.**—(1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Manipur, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the Hill Areas of that State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of such committee.

(2) The Governor shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Hill Areas in the State of Manipur and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

Explanation.—In this article, the expression “Hill Areas” means such areas as the President may, by order, declare to be Hill areas.]

³[**371D. Special provisions with respect to ⁴[the State of Andhra Pradesh or the State of Telangana].**—⁵[(1) The President may by order made with respect to the State of Andhra Pradesh or the State of Telangana, provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of such State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the States.]

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1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71, for "Part A" (w.e.f. 21-1-1972).
 2. Art 371C ins. by the Constitution (Twenty-seventh Amendment) Act, 1971, s. 5 (w.e.f. 15-2-1972).
 3. Art 371D and Art 371E ins. by the Constitution (Thirty-second Amendment) Act, 1973, s. 3 (w.e.f. 1-7-1974).
 4. Subs. by the Andhra Pradesh Reorganisation Act, 2014, (6 of 2014), s. 97, for “the State of Andhra Pradesh” (w.e.f. 2-6-2014).
 5. Subs. by s. 97, *ibid*, for cl. (1) (w.e.f. 2-6-2014).

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

(2) An order made under clause (1) may, in particular,—

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organised;

(b) specify any part or parts of the State which shall be regarded as the local area—

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

(c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made—

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order,

to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be.

(3) The President may, by order, provide for the constitution of an Administrative Tribunal for¹[the State of Andhra Pradesh and for the State of Telangana] to exercise such jurisdiction, powers and authority [including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, was exercisable by any court (other than the Supreme Court) or by any tribunal or other authority] as may be specified in the order with respect to the following matters, namely:—

1. Subs. by the Andhra Pradesh Reorganisation Act, 2014, (6 of 2014), s. 97, for “the State of Andhra Pradesh” (w.e.f. 2-6-2014).

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

(a) appointment, allotment or promotion to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

(b) seniority of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

(c) such other conditions of service of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State or to such class or classes of civil posts under the State or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order.

(4) An order made under clause (3) may—

(a) authorise the Administrative Tribunal to receive representations for the redress of grievances relating to any matter within its jurisdiction as the President may specify in the order and to make such orders thereon as the Administrative Tribunal deems fit;

(b) contain such provisions with respect to the powers and authorities and procedure of the Administrative Tribunal (including provisions with respect to the powers of the Administrative Tribunal to punish for contempt of itself) as the President may deem necessary;

(c) provide for the transfer to the Administrative Tribunal of such classes of proceedings, being proceedings relating to matters within its jurisdiction and pending before any court (other than the Supreme Court) or tribunal or other authority immediately before the commencement of such order, as may be specified in the order;

(d) contain such supplemental, incidental and consequential provisions (including provisions as to fees and as to limitation, evidence or for the application of any law for the time being in force subject to any exceptions or modifications) as the President may deem necessary.

(Part XXI.—Temporary, Transitional and Special Provisions)

***(5)** The Order of the Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier:

Provided that the State Government may, by special order made in writing and for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be.

(6) Every special order made by the State Government under the proviso to clause (5) shall be laid, as soon as may be after it is made, before both Houses of the State Legislature.

(7) The High Court for the State shall not have any powers of superintendence over the Administrative Tribunal and no court (other than the Supreme Court) or tribunal shall exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of, or in relation to, the Administrative Tribunal.

(8) If the President is satisfied that the continued existence of the Administrative Tribunal is not necessary, the President may by order abolish the Administrative Tribunal and make such provisions in such order as he may deem fit for the transfer and disposal of cases pending before the Tribunal immediately before such abolition.

(9) Notwithstanding any judgment, decree or order of any court, tribunal or other authority,—

(a) no appointment, posting, promotion or transfer of any person—

(i) made before the 1st day of November, 1956, to any post under the Government of, or any local authority within, the State of Hyderabad as it existed before that date; or

(ii) made before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, to any post under the Government of, or any local or other authority within, the State of Andhra Pradesh; and

(b) no action taken or thing done by or before any person referred to in sub-clause (a),

* In *P. Sambamurthy and Others Vs. State of Andhra Pradesh and Others* (1987) 1 S.C.C. 362, the Supreme Court declared cl. (5) of art. 371D along with the proviso to be unconstitutional and void.

(Part XXI.—Temporary, Transitional and Special Provisions)

shall be deemed to be illegal or void or ever to have become illegal or void merely on the ground that the appointment, posting, promotion or transfer of such person was not made in accordance with any law, then in force, providing for any requirement as to residence within the State of Hyderabad or, as the case may be, within any part of the State of Andhra Pradesh, in respect of such appointment, posting, promotion or transfer.

(10) The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

371E. Establishment of Central University in Andhra Pradesh.—Parliament may by law provide for the establishment of a University in the State of Andhra Pradesh.]

¹[371F. Special provisions with respect to the State of Sikkim.]—Notwithstanding anything in this Constitution,—

(a) the Legislative Assembly of the State of Sikkim shall consist of not less than thirty members;

(b) as from the date of commencement of the Constitution (Thirty-sixth Amendment) Act, 1975 (hereafter in this article referred to as the appointed day)—

(i) the Assembly for Sikkim formed as a result of the elections held in Sikkim in April, 1974 with thirty-two members elected in the said elections (hereinafter referred to as the sitting members) shall be deemed to be the Legislative Assembly of the State of Sikkim duly constituted under this Constitution;

(ii) the sitting members shall be deemed to be the members of the Legislative Assembly of the State of Sikkim duly elected under this Constitution; and

(iii) the said Legislative Assembly of the State of Sikkim shall exercise the powers and perform the functions of the Legislative Assembly of a State under this Constitution;

1. Art 371F ins. by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 3 (w.e.f. 26-4-1975).

(Part XXI.—Temporary, Transitional and Special Provisions)

(c) in the case of the Assembly deemed to be the Legislative Assembly of the State of Sikkim under clause (b), the references to the period of ¹[five years], in clause (1) of article 172 shall be construed as references to a period of ²[four years] and the said period of ²[four years] shall be deemed to commence from the appointed day;

(d) until other provisions are made by Parliament by law, there shall be allotted to the State of Sikkim one seat in the House of the People and the State of Sikkim shall form one parliamentary constituency to be called the parliamentary constituency for Sikkim;

(e) the representative of the State of Sikkim in the House of the People in existence on the appointed day shall be elected by the members of the Legislative Assembly of the State of Sikkim;

(f) Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim;

(g) the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim and in the discharge of his special responsibility under this clause, the Governor of Sikkim shall, subject to such directions as the President may, from time to time, deem fit to issue, act in his discretion;

(h) all property and assets (whether within or outside the territories comprised in the State of Sikkim) which immediately before the appointed day were vested in the Government of Sikkim or in any other authority or in any person for the purposes of the Government of Sikkim shall, as from the appointed day, vest in the Government of the State of Sikkim;

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 56, for "five years" (w.e.f. 3-1-1977) and further subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 43, for "six years" (w.e.f. 6-9-1979).

2. Subs. by s. 56, *ibid.*, for "four years" (w.e.f. 3-1-1977) and further subs. by s. 43, *ibid.*, for "five years", respectively (w.e.f. 6-9-1979).

(Part XXI.—Temporary, Transitional and Special Provisions)

(i) the High Court functioning as such immediately before the appointed day in the territories comprised in the State of Sikkim shall, on and from the appointed day, be deemed to be the High Court for the State of Sikkim;

(j) all courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State of Sikkim shall continue on and from the appointed day to exercise their respective functions subject to the provisions of this Constitution;

(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority;

(l) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law;

(m) neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day and to which the Government of India or any of its predecessor Governments was a party, but nothing in this clause shall be construed to derogate from the provisions of article 143;

(n) the President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of the notification;

(o) if any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may, by order*, do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing that difficulty:

* See the Constitution (Removal of Difficulties) Order No. XI (C.O. 99).

(Part XXI.—Temporary, Transitional and Special Provisions)

Provided that no such order shall be made after the expiry of two years from the appointed day;

(p) all things done and all actions taken in or in relation to the State of Sikkim or the territories comprised therein during the period commencing on the appointed day and ending immediately before the date on which the Constitution (Thirty-sixth Amendment) Act, 1975, receives the assent of the President shall, in so far as they are in conformity with the provisions of this Constitution as amended by the Constitution (Thirty-sixth Amendment) Act, 1975, be deemed for all purposes to have been validly done or taken under this Constitution as so amended.]

¹[371G. Special provision with respect to the State of Mizoram.—

Notwithstanding anything in this Constitution,—

(a) no Act of Parliament in respect of—

- (i) religious or social practices of the Mizos;
- (ii) Mizo customary law and procedure;
- (iii) administration of civil and criminal justice involving decisions according to Mizo customary law;
- (iv) ownership and transfer of land;

shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides:

Provided that nothing in this clause shall apply to any Central Act in force in the Union territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986;

(b) the Legislative Assembly of the State of Mizoram shall consist of not less than forty members.]

²[371H. Special provision with respect to the State of Arunachal Pradesh.—

Notwithstanding anything in this Constitution,—

(a) the Governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the State of Arunachal Pradesh and in the discharge of his functions in relation thereto, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

1. Art. 371G ins. by the Constitution (Fifty-third Amendment) Act, 1986.s. 2 (w.e.f. 20-2-1987).

2. Art. 371H ins. by the Constitution (Fifty-fifth Amendment) Act, 1986, s. 2 (w.e.f. 20-2-1987).

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Arunachal Pradesh, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(b) the Legislative Assembly of the State of Arunachal Pradesh shall consist of not less than thirty members.]

¹[371-I. Special provision with respect to the State of Goa.]—Notwithstanding anything in this Constitution, the Legislative Assembly of the State of Goa shall consist of not less than thirty members.]

²[371J. Special provisions with respect to State of Karnataka.]—(1) The President may, by order made with respect to the State of Karnataka, provide for any special responsibility of the Governor for—

(a) establishment of a separate development board for Hyderabad-Karnataka region with the provision that a report on the working of the board will be placed each year before the State Legislative Assembly;

(b) equitable allocation of funds for developmental expenditure over the said region, subject to the requirements of the State as a whole; and

(c) equitable opportunities and facilities for the people belonging to the said region, in matters of public employment, education and vocational training, subject to the requirements of the State as a whole.

(2) An order made under sub-clause (c) of clause (1) may provide for—

(a) reservation of a proportion of seats in educational and vocational training institutions in the Hyderabad-Karnataka region for students who belong to that region by birth or by domicile; and

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1. Art. 371-I ins. by the Constitution (Fifty-sixth Amendment) Act, 1987, s. 2 (w.e.f. 30-5-1987).
 2. Art. 371J ins. by the Constitution (Ninety-eighth Amendment) Act, 2012, s. 2 (w.e.f. 1-10-2013).

(Part XXI.—Temporary, Transitional and Special Provisions)

(b) identification of posts or classes of posts under the State Government and in any body or organisation under the control of the State Government in the Hyderabad-Karnataka region and reservation of a proportion of such posts for persons who belong to that region by birth or by domicile and for appointment thereto by direct recruitment or by promotion or in any other manner as may be specified in the order.]

372. Continuance in force of existing laws and their adaptation.—(1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order* make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of ¹[three years] from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

* See the Adaptation of Laws Order, 1950, dated the 26th January, 1950, Gazette of India, Extraordinary, p. 449, as amended by notification No. S.R.O. 115, dated the 5th June, 1950, Gazette of India, Extraordinary, Part II, Section 3, p. 51, notification No. S.R.O. 870, dated the 4th November, 1950, Gazette of India, Extraordinary, Part II, Section 3, p. 903, notification No. S.R.O. 508, dated the 4th April, 1951, Gazette of India, Extraordinary, Part II, Section 3, p. 287, notification No. S.R.O. 1140B, dated the 2nd July, 1952, Gazette of India, Extraordinary, Part II, Section 3, p. 616/1, and the Adaptation of the Travancore-Cochin Land Acquisition Laws Order, 1952, dated the 20th November, 1952, Gazette of India, Extraordinary, Part II, Section 3, p. 923.

1. Subs. by the Constitution (First Amendment) Act, 1951, s.12 for "two years" (w.e.f. 18-6-1951).

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

Explanation I.—The expression “law in force” in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.

Explanation IV.—An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

[372A. Power of the President to adapt laws.]—(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order* made before the first day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.]

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 23 (w.e.f. 1-11-1956).

* See the Adaptation of Laws Order of 1956 and 1957.

(Part XXI.—Temporary, Transitional and Special Provisions)

373. Power of President to make order in respect of persons under preventive detention in certain cases.—Until provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clauses (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

374. Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council.—(1) The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 125 in respect of the Judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such Court by this Constitution.

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, and disposed of by, the Supreme Court.

(5) Further provision may be made by Parliament by law to give effect to the provisions of this article.

(Part XXI.—Temporary, Transitional and Special Provisions)

375. Courts, authorities and officers to continue to function subject to the provisions of the Constitution.—All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution.

376. Provisions as to Judges of High Courts.—(1) Notwithstanding anything in clause (2) of article 217, the Judges of a High Court in any Province holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 221 in respect of the Judges of such High Court. ¹[Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court.]

(2) The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article, the expression “Judge” does not include an acting Judge or an additional Judge.

377. Provisions as to Comptroller and Auditor-General of India.—The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement.

1. Added by the Constitution (First Amendment) Act, 1951, s. 13 (w.e.f. 18-6-1951).

(Part XXI.—Temporary, Transitional and Special Provisions)

378. Provisions as to Public Service Commissions.—(1) The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The Members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the corresponding State or the members of the Joint State Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

¹[**378A. Special provision as to duration of Andhra Pradesh Legislative Assembly.**—Notwithstanding anything contained in article 172, the Legislative Assembly of the State of Andhra Pradesh as constituted under the provisions of sections 28 and 29 of the States Reorganisation Act, 1956, shall, unless sooner dissolved, continue for a period of five years from the date referred to in the said section 29 and no longer and the expiration of the said period shall operate as a dissolution of that Legislative Assembly.]

379. [Provisions as to provisional Parliament and the Speaker and Deputy Speaker thereof.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

380. [Provision as to President.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

381. [Council of Ministers of the President.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

382. [Provisions as to provisional Legislatures for States in Part A of the First Schedule.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

383. [Provision as to Governors of Provinces.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

1. Art 378A ins. by the Constitution (Seventh Amendment) Act, 1956, s. 24 (w.e.f. 1-11-1956).

THE CONSTITUTION OF INDIA

(Part XXI.—Temporary, Transitional and Special Provisions)

384. [*Council of Ministers of the Governors*.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

385. [*Provision as to provisional Legislatures in States in Part B of the First Schedule*.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

386. [*Council of Ministers for States in Part B of the First Schedule*.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

387. [*Special provision as to determination of population for the purposes of certain elections*.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

388. [*Provisions as to the filling of casual vacancies in the provisional Parliament and provisional Legislatures of the States*.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

389. [*Provision as to Bills pending in the Dominion Legislatures and in the Legislatures of Provinces and Indian States*.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

390. [*Money received or raised or expenditure incurred between the commencement of the Constitution and the 31st day of March, 1950*.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

391. [*Power of the President to amend the First and Fourth Schedules in certain contingencies*.]—Omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

392. Power of the President to remove difficulties.—(1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V.

(2) Every order made under clause (1) shall be laid before Parliament.

(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor-General of the Dominion of India.

PART XXII

SHORT TITLE, COMMENCEMENT,¹[AUTHORITATIVE TEXT IN HINDI] AND REPEALS

393. Short title.—This Constitution may be called the Constitution of India.

394. Commencement.—This article and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution.

²[394A. Authoritative text in the Hindi language.]—(1) The President shall cause to be published under his authority,—

(a) the translation of this Constitution in the Hindi language, signed by the members of the Constituent Assembly, with such modifications as may be necessary to bring it in conformity with the language, style and terminology adopted in the authoritative texts of Central Acts in the Hindi language, and incorporating therein all the amendments of this Constitution made before such publication; and

(b) the translation in the Hindi language of every amendment of this Constitution made in the English language.

(2) The translation of this Constitution and of every amendment thereof published under clause (1) shall be construed to have the same meaning as the original thereof and if any difficulty arises in so construing any part of such translation, the President shall cause the same to be revised suitably.

(3) The translation of this Constitution and of every amendment thereof published under this article shall be deemed to be, for all purposes, the authoritative text thereof in the Hindi language.]

395. Repeals.— The Indian Independence Act, 1947, and the Government of India Act, 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949, are hereby repealed.

1. Ins. by the Constitution (Fifty-eighth Amendment) Act, 1987, s. 2 (w.e.f. 9-12-1987).

2. Art 394A, Ins. by s. 3, *ibid.* (w.e.f. 9-12-1987).

¹[FIRST SCHEDULE

[Articles 1 and 4]

I. THE STATES

<i>Name</i>	<i>Territories</i>
1. Andhra Pradesh	² [The territories specified in sub-section (<i>I</i>) of section 3 of the Andhra State Act, 1953, sub-section (<i>I</i>) of section 3 of the States Reorganisation Act, 1956, the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, and the Schedule to the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968, but excluding the territories specified in the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959] ³ [and the territories specified in section 3 of the Andhra Pradesh Reorganisation Act, 2014].
2. Assam	The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951 ⁴ [and the territories specified in sub-section (<i>I</i>) of section 3 of the State of Nagaland Act, 1962] ⁵ [and the territories specified in sections 5, 6 and 7 of the North-Eastern Areas (Reorganisation) Act, 1971] ⁶ [and the territories referred to in Part I of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015, notwithstanding anything contained in clause (a) of section 3 of the Constitution (Ninth Amendment) Act, 1960, so far as it relates to the territories referred to in Part I of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015.]

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1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 2, for the First Sch. (w.e.f. 1-11-1956).
 2. Subs. by the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968 (36 of 1968), s. 4, for the former entry (w.e.f. 1-10-1968).
 3. Ins. by the Andhra Pradesh Reorganisation Act, 2014 (6 of 2014), s. 10 (w.e.f. 2-6-2014).
 4. Added by the State of Nagaland Act, 1962 (27 of 1962), s. 4 (w.e.f. 1-12-1963).
 5. Added by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 9 (w.e.f. 21-1-1972).
 6. Added by the Constitution (One Hundredth Amendment) Act, 2015, s. 3 (w.e.f. 31-7-2015). For the text of the Act, see Appendix I.

<i>Name</i>	<i>Territories</i>
3. Bihar	¹ [The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of that Province and the territories specified in clause (a) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, but excluding the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956, and the territories specified in clause (b) of sub-section (1) of section 3 of the first mentioned Act ² [and the territories specified in section 3 of the Bihar Reorganisation Act, 2000].]
³ [4. Gujarat	The territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960.]
5. Kerala	The territories specified in sub-section (1) of section 5 of the States Reorganisation Act, 1956.
6. Madhya Pradesh	The territories specified in sub-section (1) of section 9 of the States Reorganisation Act, 1956 ⁴ [and the First Schedule to the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959], ⁵ [but excluding the territories specified in section 3 of the Madhya Pradesh Reorganisation Act, 2000].

1. Subs. by the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968 (24 of 1968), s. 4, for the former entry (w.e.f. 10-6-1970).
2. Added by the Bihar Reorganisation Act, 2000 (30 of 2000), s. 5 (w.e.f. 15-11- 2000).
3. Subs. by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 4 (w.e.f. 1-5-1960).
4. Ins. by the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959 (47 of 1959), s. 4 (w.e.f. 1-10-1959).
5. Added by the Madhya Pradesh Reorganisation Act, 2000 (28 of 2000), s. 5 (w.e.f. 1-11-2000).

Name	Territories
¹ [7. Tamil Nadu]	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in section 4 of the States Reorganisation Act, 1956, ² [and the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959], but excluding the territories specified in sub-section (1) of section 3 and sub-section (1) of section 4 of the Andhra State Act, 1953 and ³ [the territories specified in clause (b) of sub-section (1) of section 5, section 6 and clause (d) of sub-section (1) of section 7 of the States Reorganisation Act, 1956 and the territories specified in the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959.]
⁴ [8. Maharashtra]	The territories specified in sub-section (1) of section 8 of the States Reorganisation Act, 1956, but excluding the territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960.]
⁵ [⁶ [9.] Karnataka]	The territories specified in sub-section (1) of section 7 of the States Reorganisation Act, 1956 ⁷ [but excluding the territory specified in the Schedule to the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968.]

1. Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), s. 5, for "7. Madras" (w.e.f. 14-1-1969).
2. Ins. by the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (56 of 1959), s. 6 (w.e.f. 1-4-1960).
3. Subs. by s. 6, *ibid.*, for certain words (w.e.f. 1-4-1960).
4. Ins. by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 4 (w.e.f. 1-5-1960).
5. Subs. by the Mysore State (Alteration of Name) Act, 1973 (31 of 1973), s. 5, for "9. Mysore" (w.e.f. 1-11-1973).
6. Entries 8 to 14 renumbered as entries 9 to 15 by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 4 (w.e.f. 1-5-1960).
7. Ins. by the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968 (36 of 1968), s. 4 (w.e.f. 1-10-1968).

<i>Name</i>	<i>Territories</i>
¹ [10.] ² [Odisha]	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.
¹ [11.] Punjab	The territories specified in section 11 of the States Reorganisation Act, 1956 ³ [and the territories referred to in Part II of the First Schedule to the Acquired Territories (Merger) Act, 1960] ⁴ [but excluding the territories referred to in Part II of the First Schedule to the Constitution (Ninth Amendment) Act, 1960] ⁵ [and the territories specified in sub-section (1) of section 3, section 4 and sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966.]
¹ [12.] Rajasthan	The territories specified in section 10 of the States Reorganisation Act, 1956 ⁶ [but excluding the territories specified in the First Schedule to the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959].

1. Entries 8 to 14 renumbered as entries 9 to 15 by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 4 (w.e.f. 1-5-1960).
2. Subs. by the Orissa (Alteration of Name) Act, 2011 (15 of 2011), s. 6, for "Orissa" (w.e.f. 1-11-2011).
3. Ins. by the Acquired Territories (Merger) Act, 1960 (64 of 1960), s. 4 (w.e.f. 17-1-1961).
4. Added by the Constitution (Ninth Amendment) Act, 1960, s. 3 (w.e.f. 17-1-1961).
5. Added by the Punjab Reorganisation Act, 1966 (31 of 1966), s. 7 (w.e.f. 1-11-1966).
6. Ins. by the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959 (47 of 1959), s. 4 (w.e.f. 1-10-1959).

<i>Name</i>	<i>Territories</i>
¹ [13.] Uttar Pradesh	² [The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province, the territories specified in clause (b) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, and the territories specified in clause (b) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979, but excluding the territories specified in clause (a) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, ³ [and the territories specified in section 3 of the Uttar Pradesh Reorganisation Act, 2000] and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979.]]
¹ [14.] West Bengal	The territories which immediately before the commencement of this Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province and the territory of Chandernagore as defined in clause (c) of section 2 of the Chandernagore (Merger) Act, 1954 and also the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 ⁴ [and also the territories referred to in Part III of the First Schedule but excluding the territories referred to in Part III of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015, notwithstanding anything contained in clause (c) of section 3 of the Constitution (Ninth Amendment) Act, 1960, so far as it relates to the territories referred to in Part III of the First Schedule and the territories referred to in Part III of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015.]

1. Entries 8 to 14 renumbered as entries 9 to 15 by the the Bombay Reorganisation Act, 1960 (11 of 1960), s. 4 (w.e.f. 1-5-1960).
2. Subs. by the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979 (31 of 1979), s. 5, for the entry against "13. Uttar Pradesh" (w.e.f. 15-9-1983).
3. Ins. by the Uttar Pradesh Reorganisation Act, 2000 (29 of 2000), s. 5 (w.e.f. 9-11-2000).
4. Added by the Constitution (One Hundredth Amendment) Act, 2015, s. 3 (w.e.f. 31-7-2015). For the text of the Act, see Appendix I.

<i>Name</i>	<i>Territories</i>		
¹ [² [**]	*	*	*]]
³ [⁴ [15.] Nagaland	The territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962.]		
³ [⁵ [16.] Haryana	⁶ [The territories specified in sub-section (1) of section 3 of the Punjab Reorganisation Act, 1966 and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979, but excluding the territories specified in clause (v) of sub-section (1) of section 4 of that Act.]]		
³ [⁷ [17.] Himachal Pradesh	The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioners' Provinces under the names of Himachal Pradesh and Bilaspur and the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966.]		
³ [⁸ [18.] Manipur	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur.]		

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1. **Entry 15 relating to Jammu and Kashmir deleted by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), s. 6 (w.e.f. 31-10-2019).
 2. Entries 8 to 14 renumbered as 9 to 15 by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 4 (w.e.f. 1-5-1960).
 3. Entries 16 to 29 renumbered as entries 15 to 28 by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), s. 6 (w.e.f. 31-10-2019).
 4. Ins. by the State of Nagaland Act, 1962 (27 of 1962), s. 4 (w.e.f. 1-12-1963).
 5. Ins. by the Punjab Reorganisation Act, 1966 (31 of 1966), s. 7 (w.e.f. 1-11-1966) and the entry therein subsequently amended by the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979 (31 of 1979), s. 5 (w.e.f. 15-9-1983).
 6. Subs. by the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979 (31 of 1979), s. 5, for the entry against "17. Haryana" (w.e.f. 15-9-1983).
 7. Ins. by the State of Himachal Pradesh Act, 1970 (53 of 1970), s. 4 (w.e.f. 25-1-1971).
 8. Ins. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 9 (w.e.f. 21-1-1972).

<i>Name</i>	<i>Territories</i>
¹ [19.] Tripura	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura ² [and the territories referred to in Part II of the First Schedule to the Constitution (One Hundredth Amendment) Act, 2015, notwithstanding anything contained in clause (d) of section 3 of the Constitution (Ninth Amendment) Act, 1960, so far as it relates to the territories referred to in Part II of the First Schedule to the Constitution (One Hundredth Amendment) Act, 2015.]
¹ [20.] Meghalaya	The territories specified in section 5 of the North-Eastern Areas (Reorganisation) Act, 1971] ² [and the territories referred to in Part I of the First Schedule but excluding the territories referred to in Part II of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015.]
¹ [³ [21.] Sikkim	The territories which immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, were comprised in Sikkim.]
¹ [⁴ [22.] Mizoram	The territories specified in section 6 of the North-Eastern Areas (Reorganisation) Act, 1971.]
¹ [⁵ [23.] Arunachal Pradesh	The territories specified in section 7 of the North-Eastern Areas (Reorganisation) Act, 1971.]
¹ [⁶ [24.] Goa	The territories specified in section 3 of the Goa, Daman and Diu Reorganisation Act, 1987.]

1. Entries 16 to 29 renumbered as entries 15 to 28 by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), s. 6 (w.e.f. 31-10-2019).
2. Added by the Constitution (One Hundredth Amendment) Act, 2015, s. 3 (w.e.f. 31-7-2015). For the text of the Act, see Appendix I.
3. Ins. by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 2 (w.e.f. 26-4-1975).
4. Ins. by the State of Mizoram Act, 1986 (34 of 1986), s. 4 (w.e.f. 20-2-1987).
5. Ins. by the State of Arunachal Pradesh Act, 1986 (69 of 1986), s. 4 (w.e.f. 20-2-1987).
6. Ins. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), s. 5 (w.e.f. 30-5-1987).

<i>Name</i>	<i>Territories</i>
¹ [² [25.] Chhattisgarh	The territories specified in section 3 of the Madhya Pradesh Reorganisation Act, 2000.]
¹ [³ [26.] ⁴ [Uttarakhand]	The territories specified in section 3 of the Uttar Pradesh Reorganisation Act, 2000.]
¹ [⁵ [27.] Jharkhand	The territories specified in section 3 of the Bihar Reorganisation Act, 2000.]
¹ [⁶ [28.] Telangana	The territories specified in section 3 of the Andhra Pradesh Reorganisation Act, 2014.]
II. THE UNION TERRITORIES	
<i>Name</i>	<i>Extent</i>
1. Delhi	The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Delhi.
⁷ [*]	* * * *
⁸ [2.] The Andaman and Nicobar Islands	The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the Andaman and Nicobar Islands.

1. Entries 16 to 29 renumbered as entries 15 to 28 by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), s. 6 (w.e.f. 31-10-2019).
2. Added by the Madhya Pradesh Reorganisation Act, 2000 (28 of 2000), s. 5 (w.e.f. 1-11-2000).
3. Ins. by the Uttar Pradesh Reorganisation Act, 2000 (29 of 2000), s. 5 (w.e.f. 9-11-2000).
4. Subs. by the Uttarakhand (Alteration of Name) Act, 2006 (52 of 2006), s. 4, for the word "Uttaranchal" (w.e.f. 1-1-2007).
5. Added by the Bihar Reorganisation Act, 2000 (30 of 2000), s. 5 (w.e.f. 15-11-2000).
6. Ins. by the Andhra Pradesh Reorganisation Act, 2014, s. 10 (w.e.f. 2-6-2014).
7. Entry 2 relating to "Himachal Pradesh" omitted and entries 3 to 10 renumbered as entries 2 to 9 respectively by the State of Himachal Pradesh Act, 1970 (53 of 1970), s. 4 (w.e.f. 25-1-1971) and subsequently entries relating to Manipur and Tripura (i.e. entries 2 and 3) omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971) s. 9 (w.e.f. 21-1-1972).
8. Entries 4 to 9 renumbered as entries 2 to 7 by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 9 (w.e.f. 21-1-1972).

<i>Name</i>	<i>Territories</i>
¹ [3.] ² [Lakshadweep]	The territory specified in section 6 of the States Reorganisation Act, 1956.
³ [¹ [4.] Dadra and Nagar Haveli and Daman and Diu	The territory which immediately before the eleventh day of August, 1961 was comprised in Free Dadra and Nagar Haveli and the territories specified in section 4 of the Goa, Daman and Diu Reorganisation Act, 1987.]
⁴ [¹ [*] ³ [* * * *
⁵ [¹ [6.] ⁶ [Puducherry]	The territories which immediately before the sixteenth day of August, 1962, were comprised in the French Establishments in India known as Pondicherry, Karikal, Mahe and Yanam.]
⁷ [¹ [7.] Chandigarh	The territories specified in section 4 of the Punjab Reorganisation Act, 1966.]

1. Entries 4 to 9 renumbered as entries 2 to 7 (respectively) by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 9 (w.e.f. 21-1-1972).
2. Subs. by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973 (34 of 1973), s. 5, for "The Laccadive, Minicoy and Amindivi Islands" (w.e.f. 1-11-1973).
3. Entry 4 relating to Dadra and Nagar Haveli was ins. by the Constitution (Tenth Amendment) Act, 1961, s.2 (w.e.f. 11-8-1961). And subsequently subs. by the Dadra and Nagar Haveli Daman and Diu (Merger of Union territories) Act, 2019 (44 of 2019), s. 5 for entries 4 and 5 (w.e.f. 19-12-2019).
4. Subs. by the Goa, Daman and Diu (Reorganisation) Act, 1987 (18 of 1987), s. 5, for entry 5 (w.e.f. 30-5-1987).
5. Ins. by the Constitution (Fourteenth Amendment) Act, 1962, s. 3 (with retrospective effect).
6. Subs. by the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006), s. 5 for "Pondicherry" (w.e.f. 1-10-2006).
7. Ins. by the Punjab Reorganisation Act, 1966 (31 of 1966), s. 7 (w.e.f. 1-11-1966).

<i>Name</i>	<i>Territories</i>			
¹ [*	*	*	*	*]
¹ [*	*	*	*	*]
² [8. Jammu and Kashmir	The territories specified in section 4 of the Jammu and Kashmir Reorganisation Act, 2019.			
9. Ladakh	The territories specified in section 3 of the Jammu and Kashmir Reorganisation Act, 2019.]			

1. Entry 8 relating to Mizoram omitted and entry 9 relating to Arunachal Pradesh renumbered as entry 8 by the State of Mizoram Act, 1986 (34 of 1986), s. 4 (w.e.f. 20-2-1987) and entry 8 relating to Arunachal Pradesh omitted by the State of Arunachal Pradesh Act, 1986 (69 of 1986) s. 4 (w.e.f. 15-4-1987).
2. Ins. by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019) s. 6 (w.e.f. 31-10-2019).

SECOND SCHEDULE

[Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164 (5), 186 and 221]

PART A

PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES ^{1*}**

1. There shall be paid to the President and to the Governors of the States ^{1***} the following emoluments per mensem, that is to say:—

The President	10,000 rupees*.
The Governor of a State	5,500 rupees**.

2. There shall also be paid to the President and to the Governors of the States ^{2***} such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3. The President and the Governors of ³[the States] throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.

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1. The words and letter "specified in Part A of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

* Now five lakh rupees, *vide* the Finance Act, 2018 (13 of 2018), s. 137. (w.e.f. 1-1-2016).

** Now three lakh fifty thousand rupees, by s. 161, *ibid.*, (w.e.f. 1-1-2016).

2. The words "so specified" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

3. Subs. by s. 29 and Sch., *ibid.*, for "such states" (w.e.f. 1-11-1956).

4. Part B omitted by s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).

PART C

PROVISIONS AS TO THE SPEAKER AND THE DEPUTY SPEAKER OF THE HOUSE
 OF THE PEOPLE AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN
 OF THE COUNCIL OF STATES AND THE SPEAKER AND THE
 DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLY ^{1***}
 AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN
 OF THE LEGISLATIVE COUNCIL OF ²[A STATE]

7. There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution, and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement.

8. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly ^{3***} and to the Chairman and the Deputy Chairman of the Legislative Council of ⁴[a State] such salaries and allowances as were payable respectively to the Speaker and the Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and, where the corresponding Province had no Legislative Council immediately before such commencement, there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine.

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1. The words and letter "OF A STATE IN PART A OF THE FIRST SCHEDULE" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
 2. Subs. by s. 29 and Sch., *ibid.*, for "ANY SUCH STATE." (w.e.f. 1-11-1956).
 3. The words and letter "of a State specified in Part A of the First Schedule" omitted by s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).
 4. Subs. by s. 29 and Sch., *ibid.*, for "such State" (w.e.f. 1-11-1956).

PART DPROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE
HIGH COURTS ^{1***}

9. [(1) There shall be paid to the Judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:—

The Chief Justice ..	² [10,000 rupees.]*
Any other Judge ..	³ [9,000 rupees.]**

Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court ⁴shall be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.]

(2) Every Judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a Judge who, immediately before the commencement of this Constitution,—

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1. The words and letter "IN STATES IN PART A OF THE FIRST SCHEDULE" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 25(a) (w.e.f. 1-11-1956).
 2. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, s. 4, for "5,000 rupees to 10,000 rupees" (w.e.f. 1-4-1986).

* Now two lakh eighty thousand rupees, *vide* the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2018 (10 of 2018), s. 6 (w.e.f. 1-1-2016).

3. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, s. 4, for "4,000 rupees" (w.e.f. 1-4-1986).

** Now two lakh fifty thousand rupees, *vide* the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2018 (10 of 2018), s. 6 (w.e.f. 1-1-2016).

4. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 25(b), for " shall be reduced by the amount of that pension" (w.e.f. 1-11-1956).

(Second Schedule)

(a) was holding office as the Chief Justice of the Federal Court and has become on such commencement the Chief Justice of the Supreme Court under clause (1) of article 374; or

(b) was holding office as any other Judge of the Federal Court and has on such commencement become a Judge (other than the Chief Justice) of the Supreme Court under the said clause,

during the period he holds office as such Chief Justice or other Judge, and every Judge who so becomes the Chief Justice or other Judge of the Supreme Court shall, in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, be entitled to receive in addition to the salary specified in sub-paragraph (1) of this paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

(4) Every Judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the Federal Court.

10. (1) ¹[There shall be paid to the Judges of High Courts, in respect of time spent on actual service, salary at the following rates per mensem, that is to say,—

The Chief Justice ..	² [9,000 rupees]*
Any other Judge ..	³ [8,000 rupees]:**

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 25(c), (i), for sub-paragraph (1) (w.e.f. 1-11-1956).

2. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, s. 4, for "4,000 rupees" (w.e.f. 1-4-1986).

* Now two lakh fifty thousand rupees, *vide* the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2018 (10 of 2018), s. 2 (w.e.f. 1-1-2016).

3. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, s. 4, for "3,500 rupees" (w.e.f. 1-4-1986).

** Now two lakh twenty-five thousand rupees, *vide* the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2018 (10 of 2018), s. 2 (w.e.f. 1-1-2016).

Provided that if a Judge of a High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.]

(2) Every person who immediately before the commencement of this Constitution—

(a) was holding office as the Chief Justice of a High Court in any Province and has on such commencement become the Chief Justice of the High Court in the corresponding State under clause (1) of article 376; or

(b) was holding office as any other Judge of a High Court in any Province and has on such commencement become a Judge (other than the Chief Justice) of the High Court in the corresponding State under the said clause,

shall, if he was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, be entitled to receive in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, in addition to the salary specified in the said sub-paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

¹[(3) Any person who, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, was holding office as the Chief Justice of the High Court of a State specified in Part B of the First Schedule and has on such commencement become the Chief Justice of the High Court of a State specified in the said Schedule as amended by the said Act, shall, if he was immediately before such commencement drawing any amount as allowance in addition to his salary, be entitled to receive in respect of time spent on actual service as such Chief Justice, the same amount as allowance in addition to the salary specified in sub-paragraph (1) of this paragraph.].

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 25(c), (ii), for sub-paragraphs (3) and (4) (w.e.f. 1-11-1956).

11. In this Part, unless the context otherwise requires,—

(a) the expression “Chief Justice” includes an acting Chief Justice, and a “Judge” includes an *ad hoc* Judge;

(b) “actual service” includes—

(i) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations, excluding any time during which the Judge is absent on leave; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.

PART E

PROVISIONS AS TO THE COMPTROLLER AND AUDITOR-GENERAL OF INDIA

12. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of *four thousand rupees per mensem.

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on such commencement the Comptroller and Auditor-General of India under article 377 shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing as Auditor-General of India immediately before such commencement.

(3) The rights in respect of leave of absence and pension and the other conditions of service of the Comptroller and Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President.

* The Comptroller and Auditor-General of India shall be paid a salary equal to the salary of the Judges of the Supreme Court *vide* s. 3 of the Comptroller and Auditor-General (Duties, Powers and Conditions of Service) Act, 1971 (56 of 1971). The salary of Judges of the Supreme Court has been raised to two lakh fifty thousand rupees per mensem by the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2018 (10 of 2018), s. 6 (w.e.f. 1-1-2016).

THIRD SCHEDULE

[Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219]*

Forms of Oaths or Affirmations

I

Form of oath of office for a Minister for the Union:—

“I, A. B., do swear in the name of God that I will bear true faith solemnly affirm

and allegiance to the Constitution of India as by law established,¹ [that I will uphold the sovereignty and integrity of India,] that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.”

II

Form of oath of secrecy for a Minister for the Union:—

“I, A.B., do swear in the name of God that I will not directly or solemnly affirm

indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister.”

²[III]

A

Form of oath or affirmation to be made by a candidate for election to Parliament:—

* See also arts. 84 (a) and 173 (a).

1. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, s. 5 (w.e.f. 5-10-1963).

2. Subs. by s. 5, *ibid.*, for Form III. (w.e.f. 5-10-1963).

"I, A.B., having been nominated as a candidate to fill a seat in the Council of States (or the House of the People) do swear in the name of God solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

B

Form of oath or affirmation to be made by a member of Parliament:—

"I, A.B., having been elected (or nominated) a member of the Council of States (or the House of the People) do swear in the name of God solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."]

IV

Form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India:—

"I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor-General of India) do swear in the name of God that I will bear true faith and solemnly affirm

faith and allegiance to the Constitution of India as by law established, [that I will uphold the sovereignty and integrity of India,] that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

1. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, s. 5 (w.e.f. 5-10-1963).

V

Form of oath of office for a Minister for a State:—

“I, A.B., do swear in the name of God that I will bear true faith solemnly affirm

and allegiance to the Constitution of India as by law established,¹ [that I will uphold the sovereignty and integrity of India,] that I will faithfully and conscientiously discharge my duties as a Minister for the State ofand that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will.”

VI

Form of oath of secrecy for a Minister for a State:—

“I, A.B., do swear in the name of God that I will not directly or solemnly affirm

indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the State ofexcept as may be required for the due discharge of my duties as such Minister.”

²[VII

A

Form of oath or affirmation to be made by a candidate for election to the Legislature of a State:—

“I, A.B., having been nominated as a candidate to fill a seat in the Legislative Assembly (or Legislative Council), do swear in the name of God that I will bear true faith and solemnly affirm

allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India.”

1. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, s. 5 (w.e.f. 5-10-1963).

2. Subs. by s. 5, *ibid.*, for Form VII (w.e.f. 5-10-1963).

B

Form of oath or affirmation to be made by a member of the Legislature of a State:—

“I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in the name of God that solemnly affirm

I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.”]

VIII

Form of oath or affirmation to be made by the Judges of a High Court:—

“I, A.B., having been appointed Chief Justice (or a Judge) of the High Court at (or of) do swear in the name of God that I will bear solemnly affirm

true faith and allegiance to the Constitution of India as by law established,¹ [that I will uphold the sovereignty and integrity of India,] that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.”

1. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, s. 5 (w.e.f. 5-10-1963).

¹[FOURTH SCHEDULE

[Articles 4(1) and 80(2)]

Allocation of seats in the Council of States

To each State or Union territory specified in the first column of the following table, there shall be allotted the number of seats specified in the second column thereof opposite to that State or that Union territory, as the case may be:

TABLE

1.	Andhra Pradesh	² [11]
³ [2.]	Telangana	7]
⁴ [3.]	Assam	7
⁴ [4.]	Bihar	⁵ [16]
⁶ [⁴ [5.]	Jharkhand	6]
⁷ [⁸ [⁴ [6.]	Goa	1]]
⁹ [⁸ [⁴ [7.]	Gujarat	11]]
¹⁰ [⁸ [⁴ [8.]	Haryana	5]]
⁸ [⁴ [9.]	Kerala	9

1. Fourth Schedule Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 3(2), for 'Fourth Schedule' (w.e.f. 1-11-1956).
2. Subs. by the Andhra Pradesh Reorganisation Act, 2014, s. 12, for "18" (w.e.f. 2-6-2014).
3. Ins. by s. 12, *ibid.* (w.e.f. 2-6-2014).
4. Entries 2 to 30 renumbered as entries 3 to 31 respectively by s. 12, *ibid.* (w.e.f. 2-6-2014).
5. Subs. by the Bihar Reorganisation Act, 2000 (30 of 2000), s. 7, for "22" (w.e.f. 15-11-2000).
6. Ins. by s. 7, *ibid.* (w.e.f. 15-11-2000).
7. Entries 4 to 26 renumbered as entries 5 to 27 respectively and entry "4 Goa...1" ins. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), s. 6(a) and (b) (w.e.f. 30-5-1987).
8. Entries 4 to 29 renumbered as entries 5 to 30 by the Bihar Reorganisation Act, 2000 (30 of 2000), s. 7 (w.e.f. 15-11-2000).
9. Subs. by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 6, for entry "4" (w.e.f. 1-5-1960).
10. Ins. by the Punjab Reorganisation Act, 1966 (31 of 1966), s. 9 (w.e.f. 1-11-1966).

THE CONSTITUTION OF INDIA

(Fourth Schedule)

¹ [² [10.]	Madhya Pradesh	³ [11]
⁴ [¹ [² [11.]	Chhattisgarh	⁵]]
⁵ [¹ [² [12.]	Tamil Nadu	⁶ [18]]
⁷ [¹ [² [13.]	Maharashtra	¹⁹]]
⁸ [¹ [² [14.]	Karnataka	¹²]]
¹ [² [15.]	⁹ [Odisha]	¹⁰]
¹ [² [16.]	Punjab	¹⁰ [7]
¹ [² [17.]	Rajasthan	¹⁰]
¹ [² [18.]	Uttar Pradesh	¹¹ [31]
¹ [² [19.]	¹³ [Uttarakhand]	³]]
¹ [² [20.]	West Bengal	¹⁶]
¹⁴ [¹ [² [**	* * *	*]
¹⁵ [¹ [² [21.]	Nagaland	¹]]

1. Entries 4 to 29 renumbered as entries 5 to 30 by the Bihar Reorganisation Act, 2000 (30 of 2000), s. 7 (w.e.f. 15-11-2000).
2. Entries 2 to 30 renumbered as entries 3 to 31 respectively by the Andhra Pradesh Reorganisation Act, 2014, s. 12 (w.e.f. 2-6-2014).
3. Subs. by the Madhya Pradesh Reorganisation Act, 2000 (28 of 2000), s. 7, for "16" (w.e.f. 1-11-2000).
4. Ins. by s. 7, *ibid.* (w.e.f. 1-11-2000).
5. Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), s. 5, for "8. Madras" (renumbered as "11") (w.e.f. 14-1-1969).
6. Subs. by the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (56 of 1959), s. 8, for "17" (w.e.f. 1-4-1960).
7. Ins. by the Bombay Reorganisation Act, 1960 (11 of 1960), s. 6 (w.e.f. 1-5-1960).
8. Subs. by the Mysore State (Alteration of Name) Act, 1973 (31 of 1973), s. 5, for "10. Mysore" (w.e.f. 1-11-1973).
9. Subs. by the Orissa (Alteration of Name) Act, 2011 (15 of 2011), s. 7 for "Orissa" (w.e.f. 1-11-2011).
10. Subs. by the Punjab Reorganisation Act, 1966 (31 of 1966), s. 9 for "11" (w.e.f. 1-11-1966).
11. Subs. by the Uttar Pradesh Reorganisation Act, 2000 (29 of 2000), s. 7 for "34" (w.e.f. 9-11-2000).
12. Ins. by s. 7, *ibid.* (w.e.f. 9-11-2000).
13. Subs. by the Uttarakhand (Alteration of Name) Act, 2006 (52 of 2006), s. 5 for "Uttarakhand" (w.e.f. 1-1-2007).
14. ** Entry 21 relating to Jammu and Kashmir deleted by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), s. 8 (w.e.f. 31-10-2019).
15. Entries 22 to 31 re-numbered as entries 21 to 30, respectively by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), s. 8 (w.e.f. 31-10-2019).
16. Ins. by the State of Nagaland Act, 1962 (27 of 1962), s. 6 (w.e.f. 1-12-1963).

(Fourth Schedule)

¹ [² [³ [⁴ [22.]	Himachal Pradesh	3]]]
³ [² [⁴ [23.]	Manipur	1]
³ [² [⁴ [24.]	Tripura	1]]
³ [² [⁴ [25.]	Meghalaya	1]]
⁵ [³ [² [⁴ [26.]	Sikkim	1]]
⁶ [³ [² [⁴ [27.]	Mizoram	1]]
⁷ [³ [² [⁴ [28.]	Arunachal Pradesh	1]]
³ [² [⁴ [29.]	Delhi	3]
³ [² [⁴ [30.]	⁸ [Puducherry]	1]]
⁹ [³ [² [⁴ [31.	Jammu and Kashmir.....	4]
Total		¹⁰ [233]

1. Ins. by the State of Himachal Pradesh Act, 1970 (53 of 1970), s. 5 (w.e.f. 25-1-1971).
2. Entries 4 to 29 renumbered as entries 5 to 30 by the Bihar Reorganisation Act, 2000 (30 of 2000), s. 7 (w.e.f. 15-11-2000).
3. Entries 2 to 30 renumbered as entries 3 to 31 respectively by the Andhra Pradesh Reorganisation Act, 2014 (6 of 2014), s. 12 (w.e.f. 2-6-2014).
4. Entries 22 to 31 renumbered as entries 21 to 30 respectively by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), s. 8 (w.e.f. 31-10-2019).
5. Ins. by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 4 (w.e.f. 26-4-1975).
6. Ins. by the State of Mizoram Act, 1986 (34 of 1986), s. 5 (w.e.f. 20-2-1987).
7. Ins. by the State of Arunachal Pradesh Act, 1986 (69 of 1986), s. 5 (w.e.f. 20-2-1987).
8. Subs. by the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006) s. 4, for "Pondicherry" (w.e.f. 1-10-2006).
9. Ins. by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), s. 8 (w.e.f. 31-10-2019).
10. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), s. 6, for "232" (w.e.f. 30-5-1987).

FIFTH SCHEDULE

[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A

GENERAL

1. **Interpretation.**—In this Schedule, unless the context otherwise requires, the expression "State" ^{1***} does not include the ²[States of Assam ³[, ⁴[Meghalaya, Tripura and Mizoram.]]]

2. **Executive power of a State in Scheduled Areas.**—Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. **Report by the Governor ^{5***} to the President regarding the administration of Scheduled Areas.**—The Governor ^{5***} of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. **Tribes Advisory Council.**—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

1. The words and letters "means a State specified in Part A or Part B of the First Schedule but" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71, for "State of Assam" (w.e.f. 21-1-1972).
3. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 3, for "and Meghalaya" (w.e.f. 1-4-1985).
4. Subs. by the State of Mizoram Act, 1986 (34 of 1986), s. 39, for "Meghalaya and Tripura" (w.e.f. 20-2-1987).
5. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor ^{1***}.

(3) The Governor ^{2***} may make rules prescribing or regulating, as the case may be,—

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5. Law applicable to Scheduled Areas.—(1) Notwithstanding anything in this Constitution, the Governor ^{1***} may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

1. The words "or Rajpramukh, as the case may be" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. The words "or Rajpramukh" omitted by s. 29 and Sch., *ibid.* (w.e.f. 1-11-1956).

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor ^{1***} may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor ^{1***} making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C

SCHEDULED AREAS

6. Scheduled Areas.—(1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order ^{*} declare to be Scheduled Areas.

(2) The President may at any time by order**—

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

²[(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;]

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

The words "or Rajpramukh" omitted by s. 29 and sch., *ibid.* (w.e.f. 1-11-1956).

* See the Scheduled Areas (Part A States) Order, 1950 (C.O. 9), the Scheduled Areas (Part B States) Order, 1950 (C.O.26), the Scheduled Areas (Himachal Pradesh) Order, 1975 (C.O. 102) and the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 (C.O. 109).

** See the Madras Scheduled Areas (Cessor) Order, 1950 (C.O. 30) and the Andhra Scheduled Areas (Cessor) Order, 1955 (C.O. 50).

2. Ins. by the Fifth Schedule to the Constitution (Amendment) Act, 1976 (101 of 1976), s. 2 (w.e.f. 7-9-1976).

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

¹[(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;]

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D

AMENDMENT OF THE SCHEDULE

7. Amendment of the Schedule.—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

1. Ins. by the Fifth Schedule to the Constitution (Amendment) Act, 1976 (101 of 1976), s. 2 (w.e.f. 7-9-1976).

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in ¹[the States of Assam, Meghalaya, Tripura and Mizoram]

²1. **Autonomous districts and autonomous regions.**—(1) Subject to the provisions of this paragraph, the tribal areas in each item of ³[⁴[Parts I, II and IIA] and in Part III] of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification,—

- (a) include any area in ³[any of the Parts] of the said table;
 - (b) exclude any area from ³[any of the Parts] of the said table;
 - (c) create a new autonomous district;
 - (d) increase the area of any autonomous district;
 - (e) diminish the area of any autonomous district;
 - (f) unite two or more autonomous districts or parts thereof so as to form one autonomous district;
- ⁵[(f) alter the name of any autonomous district];
- (g) define the boundaries of any autonomous district:

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1. Subs. by the State of Mizoram Act, 1986 (34 of 1986), s. 39, for certain words (w.e.f. 20-2-1987).
 2. Paragraph 1 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following proviso after sub-paragraph (2), namely :—

"Provided that nothing in this sub-paragraph shall apply to the Bodoland Territorial Areas District" (w.e.f. 7-9-2003).
 3. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for "Part A" (w.e.f. 21-1-1972).
 4. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4, for "Part I and II" (w.e.f. 1-4-1985).
 5. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule:

¹[Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the Parts of the said Table) as appear to the Governor to be necessary for giving effect to the provisions of the order.]

²2. Constitution of District Councils and Regional Councils.—

³[(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.]

1. Ins. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch. (w.e.f. 21-1-1972).
2. Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003(44 of 2003), s. 2, so as to insert the following proviso after sub-paragraph (1), namely:—

“Provided that the Bodoland Territorial Council shall consist of not more than forty-six members of whom forty shall be elected on the basis of adult suffrage, of whom thirty shall be reserved for the Scheduled Tribes, five for non-tribal communities, five open for all communities and the remaining six shall be nominated by the Governor having same rights and privileges as other members, including voting rights, from amongst the un-represented communities of the Bodoland Territorial Areas District, of which at least two shall be women.”

Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995(42 of 1995), s.2, so as to insert the following proviso after sub-paragraph (3), namely :—

“Provided that the District Council constituted for the North Cachar Hills District shall be called as the North Cachar Hills Autonomous Council and the District Council constituted for the Karbi Anglong District shall be called as the Karbi Anglong Autonomous Council.”

Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003(44 of 2003), s. 2, so as to insert the following proviso after sub-paragraph (3), namely:—

“Provided further that the District Council constituted for the Bodoland Territorial Areas District shall be called the Bodoland Territorial Council.”

3. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for sub-paraghaph (1) (w.c.f. 2-4-1970).

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (*name of district*)" and "the Regional Council of (*name of region*)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

- (a) the composition of the District Councils and Regional Councils and the allocation of seats therein;
- (b) the delimitation of territorial constituencies for the purpose of elections to those Councils;
- (c) the qualifications for voting at such elections and the preparation of electoral rolls therefor;
- (d) the qualifications for being elected at such elections as members of such Councils;
- (e) the term of office of members of ¹[Regional Councils];

1. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for "such Councils" (w.e.f. 2-4-1970).

(f) any other matter relating to or connected with elections or nominations to such Councils;

(g) the procedure and the conduct of business ¹[(including the power to act notwithstanding any vacancy)] in the District and Regional Councils;

(h) the appointment of officers and staff of the District and Regional Councils.

¹[(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.]

(7) The District or the Regional Council may after its first constitution make rules ¹[with the approval of the Governor] with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules ¹[with like approval] regulating—

(a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

(b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be:

1. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council.

* * * *

23. Powers of the District Councils and Regional Councils to make laws.—(1) The Regional Council for an autonomous region in

1. Second proviso omitted by s. 74 and Fourth Sch. of the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969) (w.e.f. 2-4-1970).
2. Paragraph 3 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to substitute sub-paragraph (3) as under (w.e.f. 7-9-2003).—

“(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3A or sub-paragraph (2) of paragraph 3B, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A or sub-paragraph (1) of paragraph 3B shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.”.

After paragraph 3, the following paragraph has been inserted in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2, (w.e.f. 12-9-1995), namely:—

“3A. Additional powers of the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council to make laws.—(1) Without prejudice to the provisions of paragraph 3, the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council within their respective districts, shall have power to make laws with respect to—

- (a) industries, subject to the provisions of entries 7 and 52 of List I of the Seventh Schedule;
- (b) communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I of the Seventh Schedule; municipal tramways, ropeways, inland waterways and traffic thereon subject to the provisions of List I and List III of the Seventh Schedule with regard to such waterways; vehicles other than mechanically propelled vehicles;
- (c) preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; cattle pounds;
- (d) primary and secondary education;
- (e) agriculture, including agricultural education and research, protection against pests and prevention of plant diseases;
- (f) fisheries;

(Foot-note Continue),—

- (g) water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I of the Seventh Schedule;
 - (h) social security and social insurance; employment and unemployment;
 - (i) flood control schemes for protection of villages, paddy fields, markets, towns, etc. (not of technical nature);
 - (j) theatre and dramatic performances, cinemas subject to the provisions of entry 60 of List I of the Seventh Schedule; sports, entertainments and amusements;
 - (k) public health and sanitation, hospitals and dispensaries;
 - (l) minor irrigation;
 - (m) trade and commerce in, and the production supply and distribution of, food stuffs, cattle fodder, raw cotton and raw jute;
 - (n) libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under any law made by Parliament to be of national importance; and
 - (o) alienation of land.
- (2) All laws made by the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council under paragraph 3 or under this paragraph shall, in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.
- (3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom:

Provided that the President may direct the Governor to return the law to the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, together with a message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will, consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six months from the date of receipt of such message and, if the law is again passed by the said Council with or without amendment it shall be presented again to the President for his consideration.".

After paragraph 3A, the following paragraph has been inserted in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, (w.e.f. 7-9-2003), namely:—

3B. Additional powers of the Bodoland Territorial Council to make laws.—(1) Without prejudice to the provisions of paragraph 3, the Bodoland Territorial Council within its areas shall have power to make laws with respect to :—

- (i) agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; (ii) animal husbandry and veterinary, that is to say, preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice, cattle pounds; (iii) co-operation; (iv) cultural affairs; (v) education, that is to say, primary education, higher secondary including vocational training, adult education, college education (general); (vi) fisheries; (vii) flood control for protection of village, paddy fields, markets and towns (not of technical nature); (viii) Food and civil

supply; (ix) forests (other than reserved forests); (x) handloom and textile; (xi) health and family welfare, (xii) intoxicating liquors, opium and derivatives, subject to the provisions of entry 84 of List I of the Seventh Schedule; (xiii) irrigation; (xiv) labour and employment; (xv) land and revenue; (xvi) library services (financed and controlled by the State Government); (xvii) lotteries (subject to the provisions of entry 40 of List I of the Seventh Schedule), theatres, dramatic performances and cinemas (subject to the provisions of entry 60 of List I of the Seventh Schedule); (xviii) markets and fairs; (xix) municipal corporation, improvement trust, district boards and other local authorities; (xx) museum and archaeology institutions controlled or financed by the State, ancient and historical monuments and records other than those declared by or under any law made by Parliament to be of national importance; (xxi) panchayat and rural development; (xxii) planning and development; (xxiii) printing and stationery; (xxiv) public health engineering; (xxv) public works department; (xxvi) publicity and public relations; (xxvii) registration of births and deaths; (xxviii) relief and rehabilitation; (xxix) sericulture; (xxx) small, cottage and rural industry subject to the provisions of entries 7 and 52 of List I of the Seventh Schedule; (xxx) social Welfare; (xxxii) soil conservation; (xxxiii) sports and youth welfare; (xxxiv) statistics; (xxxv) tourism; (xxxvi) transport (roads, bridges, ferries and other means of communications not specified in List I of the Seventh Schedule, municipal tramways, ropeways, inland waterways and traffic thereon subject to the provision of List I and List III of the Seventh Schedule with regard to such waterways, vehicles other than mechanically propelled vehicles); (xxxvii) tribal research institute controlled and financed by the State Government; (xxxviii) urban development—town and country planning; (xxxix) weights and measures subject to the provisions of entry 50 of List I of the Seventh Schedule; and (xl) Welfare of plain tribes and backward classes:

Provided that nothing in such laws shall—

(a) extinguish or modify the existing rights and privileges of any citizen in respect of his land at the date of commencement of this Act; and

(b) disallow any citizen from acquiring land either by way of inheritance, allotment, settlement or by any other way of transfer if such citizen is otherwise eligible for such acquisition of land within the Bodoland Territorial Areas District.

(2) All laws made under paragraph 3 or under this paragraph shall in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.

(3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom:

Provided that the President may direct the Governor to return the law to the Bodoland Territorial Council, together with the message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six months from the date of receipt of such message and, if the law is again passed by the said Council with or without amendments it shall be presented again to the President for his consideration.”.

respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes ¹[by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of *jhum* or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

²[(i) marriage and divorce;]

(j) social customs.

(2) In this paragraph, a “reserved forest” means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for certain words (w.e.f. 21-1-1972).

2. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for cl. (i) (w.e.f. 2-4-1970).

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

14. Administration of justice in autonomous districts and autonomous regions.—(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court ^{2***} shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

1. Paragraph 4 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, (w.e.f. 7-9-2003) so as to insert the following sub-paragraph after sub-paragraph (5), namely:—

“(6) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule.”.

2. The words "of Assam" omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch. (w.e.f. 21-1-1972).

(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating—

- (a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;
- (b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
- (c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;
- (d) the enforcement of decisions and orders of such councils and courts;
- (e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

¹[(5) On and from such date as the President may,² [after consulting the Government of the State concerned], by notification appoint in this behalf, this paragraph shall have effect in relation to such autonomous district or region as may be specified in the notification, as if—

- (i) in sub-paragraph (1), for the words “between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply,”, the words “not being suits and cases of the nature referred to in sub-paragraph (1) of paragraph (5) of this Schedule, which the Governor may specify in this behalf,” had been substituted;
- (ii) sub-paragraphs (2) and (3) had been omitted;
- (iii) in sub-paragraph (4)—
 - (a) for the words “A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating”, the words “the Governor may make rules regulating” had been substituted; and
 - (b) for clause (a), the following clause had been substituted, namely:—

1. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for certain words (w.e.f. 21-1-1972).

“(a) the constitution of village councils and courts, the powers to be exercised by them under this paragraph and the courts to which appeals from the decisions of village councils and courts shall lie;”;

(c) for clause (c), the following clause had been substituted, namely:—

“(c) the transfer of appeals and other proceedings pending before the Regional or District Council or any court constituted by such Council immediately before the date appointed by the President under sub-paragraph (5);”;

(d) in clause (e), for the words, brackets and figures “sub-paragraphs (1) and (2)”, the word, brackets and figure “sub-paragraph (1)” had been substituted.]

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898¹, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.—(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898¹, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898¹, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

1. See the Code of Criminal Procedure, 1973 (2 of 1974).

¹[(4) On and from the date appointed by the President under sub-paragraph (5) of paragraph 4 in relation to any autonomous district or autonomous region, nothing contained in this paragraph shall, in its application to that district or region, be deemed to authorise the Governor to confer on the District Council or Regional Council or on courts constituted by the District Council any of the powers referred to in sub-paragraph (1) of this paragraph.]

²[6. **Powers of the District Council to establish primary schools, etc.**—(1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, ³[cattle pounds], ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

(2) The Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State ^{4***} extends.

7. **District and Regional Funds.**—(1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

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1. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).
 2. Subs. by s. 74 and Fourth Sch., *ibid.* for "paragraph 6" (w.e.f. 2-4-1970).
 3. Subs. by the Repealing and Amending Act, 1974 (56 of 1974), s. 4, for "cattle ponds" (w.e.f. 20-12-1974).
 4. The words "of Assam or Meghalaya, as the case may be," omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch. (w.e.f. 21-1-1972).

¹[(2) The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

(3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

(4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think fit, and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.]

8. Powers to assess and collect land revenue and to impose taxes.—(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed ²[by the Government of the State in assessing lands for the purpose of land revenue in the State generally.]

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

- (a) taxes on professions, trades, callings and employments;
- (b) taxes on animals, vehicles and boats;

1. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for sub-paragraph (2) (w.e.f. 2-4-1970).

2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for certain words (w.e.f. 21-1-1972).

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries;^{1***}

(d) taxes for the maintenance of schools, dispensaries or roads;
^{2[and]}

^{3[(e)]} taxes on entertainment and amusements.]

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph^{4[and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect].}

59. Licences or leases for the purpose of prospecting for, or extraction of, minerals.—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by^{6[the Government of the State]} in respect of any area within an autonomous district as may be agreed upon between^{6[the Government of the State]} and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

1. The word "and" omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 16(i) (w.e.f. 16-9-2016).

2. Ins. by s. 16(ii), *ibid.* (w.e.f. 16-9-2016).

3. Ins. by s. 16(iii), *ibid.* (w.e.f. 16-9-2016).

4. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

5. Paragraph 9 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2 (w.e.f. 16-12-1988), so as to insert the following sub-paragraph after sub-paragraph (2), namely:—

“(3) The Governor may, by order, direct that the share of royalties to be made over to a District Council under this paragraph shall be made over to that Council within a period of one year from the date of any agreement under sub-paragraph (1) or, as the case may be, of any determination under sub-paragraph (2).”

6. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for "the Government of Assam" (w.e.f. 21-1-1972).

¹10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals.—(1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;

(b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;

(c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;

(d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council:

1. Paragraph 10 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988) (w.e.f. 16-12-1988) s.2, as under—

(a) in the heading, the words “by non-tribals” shall be omitted;

(b) in sub-paragraph (1), the words “other than Scheduled Tribes” shall be omitted;

(c) in sub-paragraph (2), for clause (d), the following clause shall be substituted, namely:—

“(d) prescribe that no person resident in the district shall carry on any trade, whether wholesale or retail, except under a licence issued in that behalf by the District Council.”

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

* * * *

11. Publication of laws, rules and regulations made under the Schedule.—All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

12. ¹[Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam].—(1) Notwithstanding anything in this Constitution,—

* Paragraph 10 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2 (w.e.f. 7-9-2003), so as to insert the following sub-paragraph after sub-paragraph (3), namely:—

"(4) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule.".

** Paragraph 12 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2 (w.e.f. 12-9-1995) as under,—

'in paragraph 12, in sub-paragraph (1), for the words and figure "matters specified in paragraph 3 of this Schedule", the words, figures and letter "matters specified in paragraph 3 or paragraph 3A of this Schedule" shall be substituted.'

*** Paragraph 12 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2 (w.e.f. 7-9-2003), as under,—

'in paragraph 12, in sub-paragraph (1), in clause (a), for the words, figures and letter "matters specified in paragraph 3 or paragraph 3A of this Schedule", the words, figures and letters "matters specified in paragraph 3 or paragraph 3A or paragraph 3B of this Schedule" shall be substituted.'

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for the heading (w.e.f. 21-1-1972).

(a) no Act of the ¹[Legislature of the State of Assam] in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Assam prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region ²[in that State] unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of Parliament or of the ¹[Legislature of the State of Assam] to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region ²[in that State], or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

³[12A. Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya.]—Notwithstanding anything in this Constitution,—

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for "Legislature of the State" (w.e.f. 21-1-1972).

2. Ins. by s. 71(i) and Eighth Sch., *ibid.* (w.e.f. 21-1-1972).

3. Subs. by s. 71(i) and Eighth Sch., *ibid.*, for paragraph 12A (w.e.f. 21-1-1972).

(a) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;

(b) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.]

¹[12AA. Application of Acts of Parliament and of the Legislature of the State of Tripura to the autonomous districts and autonomous regions in the State of Tripura.—Notwithstanding anything in this Constitution,—

(a) no Act of the Legislature of the State of Tripura in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Tripura prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to the autonomous district or an autonomous region in that State unless, in either case, the District Council for that district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall, in its application to that district or such region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

1. Paragraph 12AA ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985) and subsequently subs. by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2 (w.e.f. 16-12-1988).

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Tripura to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to the autonomous district or an autonomous region in that State, or shall apply to that district or such region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to the autonomous district or an autonomous region in the State of Tripura, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

12B. Application of Acts of Parliament and of the Legislature of the State of Mizoram to autonomous districts and autonomous regions in the State of Mizoram.—Notwithstanding anything in this Constitution,—

(a) no Act of the Legislature of the State of Mizoram in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Mizoram prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless, in either case, the District Council for such district or having jurisdiction over such region, by public notification, so directs, and the District Council, in giving such direction with respect to any Act, may direct that the Act shall, in its application to such district or region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Mizoram to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Mizoram, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.]]

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement.—The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State^{1***} shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 202.

²14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions.—(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

- (a) the provision of educational and medical facilities and communications in such districts and regions;
 - (b) the need for any new or special legislation in respect of such districts and regions; and
 - (c) the administration of the laws, rules and regulations made by the District and Regional Councils;
- and define the procedure to be followed by such Commission.

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1. The words "of Assam" omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch. (w.e.f. 21-1-1972).
 2. Paragraph 14 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2 (w.e.f. 12-9-1995) as under:—

‘in paragraph 14, in sub-paragraph (2), the words “with the recommendations of the Governor with respect thereto” shall be omitted.’

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by ¹[the Government of the State.]

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

²15. Annulment or suspension of acts and resolutions of District and Regional Councils.—(1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India ³[or is likely to be prejudicial to public order], he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made:

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for "the Government of Assam" (w.e.f. 21-1-1972).

2. Paragraph 15 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2 (w.e.f. 16-12-1988), as under,—

In Paragraph 15, in sub-paragraph (2), —

(a) in the opening paragraph, for the words "by the Legislature of the State", the words "by him" shall be substituted;

(b) the proviso shall be omitted.'

3. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

¹16. **Dissolution of a District or a Regional Council.**—²[(1)] The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council, and—

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council; or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

1. Paragraph 16 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988) s. 2 (w.e.f. 16-12-1988), as under,—

‘(a) in sub-paragraph (1), the words “subject to the previous approval of the Legislature of the State” occurring in clause (b), and the second proviso shall be omitted;

(b) for sub-paragraph (3), the following sub-paragraph shall be substituted, namely:—

“(3) Every order made under sub-paragraph (1) or sub-paragraph (2) of this paragraph, along with the reasons therefor shall be laid before the Legislature of the State.”.’

2. Paragraph 16 renumbered as sub-paragraph (1) thereof by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

¹[(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification, assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefor shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the order, unless, before the expiry of that period it has been approved by that State Legislature.]

217. Exclusion of areas from autonomous districts in forming constituencies in such districts.—For the purposes of elections to ³[the Legislative Assembly of Assam or Meghalaya] ⁴[or Tripura] ⁵[or Mizoram], the Governor may by order declare that any area within an autonomous district ⁶[in the State of Assam or Meghalaya ⁴[or Tripura] ⁵[or Mizoram], as the case may be,] shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

⁷[18.* * * * *]

1. Added by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).
2. Paragraph 17 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2 (w.e.f. 7-9-2003) so as to insert the following proviso, namely:—
“Provided that nothing in this paragraph shall apply to the Bodoland Territorial Areas District.”.
3. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for “the Legislative Assembly of Assam” (w.e.f. 21-1-1972).
4. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985).
5. Ins. by the State of Mizoram Act, 1986 (34 of 1986), s. 39 (w.e.f. 20-2-1987).
6. Ins. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for “the Legislative Assembly of Assam” (w.e.f. 21-1-1972).
7. Paragraph 18 omitted by s. 71(i) and Eighth Sch., *ibid.* (w.e.f. 21-1-1972).

¹19. **Transitional provisions.**—(1) As soon as possible after the commencement of this Constitution the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district instead of the foregoing provisions of this Schedule, namely:—

(a) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;

(b) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

(2) Any direction given by the Governor under clause (a) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

1. Paragraph 19 has been amended in its application to the State of Assam by the Sixth Sch. to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2 (w.e.f. 7-9-2003), so as to insert the following sub-paragraph after sub-paragraph (3), namely :—

‘(4) As soon as possible after the commencement of this Act and Interim Executive Council for Bodoland Territorial Areas District in Assam shall be formed by the Governor from amongst leaders of the Bodo movement, including the signatories to the Memorandum of Settlement, and shall provide adequate representation to the non-tribal communities in that area:

Provided that Interim Council shall be for a period of six months during which endeavour to hold the election to the Council shall be made.

Explanation.—For the purposes of this sub-paragraph, the expression “Memorandum of Settlement” means the Memorandum signed on the 10th day of February, 2003 between Government of India, Government of Assam and Bodo Liberation Tigers.’.

(3) All regulations made under clause (b) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

¹[20. **Tribal areas.**—(1) The areas specified in Parts I, II ²[, IIA] and III of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya ²[, the State of Tripura] and the ³[State] of Mizoram.

(2) ⁴[Any reference in Part I, Part II or Part III of the table below] to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (b) of section 2 of the North-Eastern Areas (Reorganisation) Act, 1971:

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the ⁵[Khasi Hills District].

²[(3) The reference in Part IIA in the table below to the "Tripura Tribal Areas District" shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979.]

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for paragraphs 20 and 20A (w.e.f. 21-1-1972) and paragraph 20A further substituted by the Government of Union Territory (Amendment) Act, 1971 (83 of 1971) s. 13 (w.e.f. 29-4-1972).
2. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985).
3. Subs. by the State of Mizoram Act, 1986 (34 of 1986), s. 39, for "Union territory" (w.e.f. 20-2-1987).
4. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4, for "any reference in the table below" (w.e.f. 1-4-1985).
5. Subs. by the Government of Meghalaya Notification No. DCA 31/72/11, dated the 14th June, 1973, Gazette of Meghalaya, Pt. VA, dated 23-6-1973, p. 200.

THE CONSTITUTION OF INDIA

(Sixth Schedule)

**TABLE
PART I**

1. The North Cachar Hills District.
2. ¹[The Karbi Anglong District.]
- ²[3. The Bodoland Territorial Areas District.]

PART II

- ³[1. Khasi Hills District.]
2. Jaintia Hills District.]
3. The Garo Hills District.

**⁴[PART II A]
Tripura Tribal Areas District]****Part III**

- ^{5*} * *
- ⁶[1. The Chakma District.]
 - ⁷[2. The Mara District.]
 3. The Lai District.]

⁸[20A. **Dissolution of the Mizo District Council.**—(1) Notwithstanding anything in this Schedule, the District Council of the Mizo District existing immediately before the prescribed date (hereinafter referred to as the Mizo District Council) shall stand dissolved and cease to exist.

1. Subs. by the Government of Assam Notification No. TAD/R/115/74/47, dated 14-10-1976 for "The Mikir Hills District".
2. Ins. by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2 (w.e.f. 7-9-2003).
3. Subs. by the Government of Meghalaya Notification No. DCA 31/72/11, dated the 14th June, 1973, Gazette of Meghalaya, Pt. VA, dated 23-6-1973, p. 200.
4. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985).
5. The words "The Mizo District." omitted by the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), s. 13 (w.e.f. 16-2-1972).
6. Ins. by the Mizoram District Councils (Miscellaneous Provisions) Order, 1972, published in the Mizoram Gazette, 1972, dated the 5th May, 1972, Vol. I, Pt. II, p.17 (w.e.f. 29-4-1972).
7. Subs. by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2, for serial numbers 2 and 3 and the entries relating thereto (w.e.f. 16-12-1988).
8. Subs. by the North-Eastern Areas (Recognition) Act, 1971 (81 of 1971), s. 71(i) and Eight Sch. for paragraph 20 (w.e.f. 21-1-1972) and further subs. by the Government of Union Territory (Amendment) Act, 1971 (83 of 1971), s. 13 for paragraph 20A (w.e.f. 16-2-1972).

- (2) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—
- (a) the transfer, in whole or in part, of the assets, rights and liabilities of the Mizo District Council (including the rights and liabilities under any contract made by it) to the Union or to any other authority;
 - (b) the substitution of the Union or any other authority for the Mizo District Council, or the addition of the Union or any other authority, as a party to any legal proceedings to which the Mizo District Council is a party;
 - (c) the transfer or re-employment of any employees of the Mizo District Council to or by the Union or any other authority, the terms and conditions of service applicable to such employees after such transfer or re-employment;
 - (d) the continuance of any laws, made by the Mizo District Council and in force immediately before its dissolution, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf, until such laws are altered, repealed or amended by a competent Legislature or other competent authority;
 - (e) such incidental, consequential and supplementary matters as the Administrator considers necessary.

Explanation.—In this paragraph and in paragraph 20B of this Schedule, the expression "prescribed date" means the date on which the Legislative Assembly of the Union territory of Mizoram is duly constituted under and in accordance with the provisions of the Government of Union Territories Act, 1963. (20 of 1963)]

¹[20B. **Autonomous regions in the Union territory of Mizoram to be autonomous districts and transitory provisions consequent thereto.**—(1) Notwithstanding anything in this Schedule,—

- (a) every autonomous region existing immediately before the prescribed date in the Union territory of Mizoram shall, on and from that date, be an autonomous district in that Union territory (hereafter referred to as the corresponding new district) and the Administrator thereof may, by one or more orders, direct that such consequential amendments as are necessary to give effect to the provisions of this clause shall be made in paragraph 20 of this Schedule (including Part III of the table appended to that paragraph) and thereupon the said paragraph and the said Part III shall be deemed to have been amended accordingly;

1. Sub. by the Government of Union Territory (Amendment) Act, 1971 (83 of 1971), s. 13 for paragraph 20A (w.e.f. 16-2-1972).

(b) every Regional Council of an autonomous region in the Union territory of Mizoram existing immediately before the prescribed date (hereafter referred to as the existing Regional Council) shall, on and from that date and until a District Council is duly constituted for the corresponding new district, be deemed to be the District Council of that district (hereafter referred to as the corresponding new District Council).

(2) Every member whether elected or nominated of an existing Regional Council shall be deemed to have been elected or, as the case may be, nominated to the corresponding new District Council and shall hold office until a District Council is duly constituted for the corresponding new district under this Schedule.

(3) Until rules are made under sub-paragraph (7) of paragraph 2 and sub-paragraph (4) of paragraph 4 of this Schedule by the corresponding new District Council, the rules made under the said provisions by the existing Regional Council and in force immediately before the prescribed date shall have effect in relation to the corresponding new District Council subject to such adaptations and modifications as may be made therein by the Administrator of the Union territory of Mizoram.

(4) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—

(a) the transfer in whole or in part of the assets, rights and liabilities of the existing Regional Council (including the rights and liabilities under any contract made by it) to the corresponding new District Council;

(b) the substitution of the corresponding new District Council for the existing Regional Council as a party to the legal proceedings to which the existing Regional Council is a party;

(c) the transfer or re-employment of any employees of the existing Regional Council to or by the corresponding new District Council, the terms and conditions of service applicable to such employees after such transfer or re-employment;

(d) the continuance of any laws made by the existing Regional Council and in force immediately before the prescribed date, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf until such laws are altered, repealed or amended by a competent Legislature or other competent authority;

(e) such incidental, consequential and supplementary matters as the Administrator considers necessary.]

¹[20BA. **Exercise of discretionary powers by the Governor in the discharge of his functions.**—The Governor in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1), (6), sub-paragraph (6A) excluding the first proviso and sub-paragraph (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub-paragraph (4) of paragraph 8, sub-paragraph (3) of paragraph 9, sub-paragraph (3) of paragraph 10, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers and the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, take such action as he considers necessary in his discretion.]

²[20BB. **Exercise of discretionary powers by the Governor in the discharge of his functions.**—The Governor, in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1) and (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub-paragraph (3) of paragraph 9, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers, and if he thinks it necessary, the District Council or the Regional Council concerned, take such action as he considers necessary in his discretion.]

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1. Paragraph 20BA has been inserted in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2 (w.e.f. 12-9-1995).
 2. Paragraph 20BB has been inserted in its application to the States of Tripura and Mizoram, by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2 (w.e.f. 16-12-1988).

¹[20C. **Interpretation.**—Subject to any provision made in this behalf, the provisions of this Schedule shall, in their application to the Union territory of Mizoram, have effect—

(1) as if references to the Governor and Government of the State were references to the Administrator of the Union territory appointed under article 239, references to State (except in the expression "Government of the State") were references to the Union territory of Mizoram and references to the State Legislature were references to the Legislative Assembly of the Union territory of Mizoram;

(2) as if—

(a) in sub-paragraph (5) of paragraph 4, the provision for consultation with the Government of the State concerned had been omitted;

(b) in sub-paragraph (2) of paragraph 6, for the words "to which the executive power of the State extends", the words "with respect to which the Legislative Assembly of the Union territory of Mizoram has power to make laws" had been substituted;

(c) in paragraph 13, the words and figures "under article 202" had been omitted.]

21. **Amendment of the Schedule.**—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

1. Sub. by the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), s. 13 for paragraph 20A (w.e.f. 16-2-1972).

SEVENTH SCHEDULE

(Article 246)

List I—Union List

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
2. Naval, military and air forces; any other armed forces of the Union.
- ¹[2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.]
3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
4. Naval, military and air force works.
5. Arms, firearms, ammunition and explosives.
6. Atomic energy and mineral resources necessary for its production.
7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
8. Central Bureau of Intelligence and Investigation.
9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
10. Foreign affairs; all matters which bring the Union into relation with any foreign country.
11. Diplomatic, consular and trade representation.
12. United Nations Organisation.
13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).

15. War and peace.
16. Foreign jurisdiction.
17. Citizenship, naturalisation and aliens.
18. Extradition.
19. Admission into, and emigration and expulsion from, India; passports and visas.
20. Pilgrimages to places outside India.
21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
22. Railways.
23. Highways declared by or under law made by Parliament to be national highways.
24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.
25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.
28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.
29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State^{1***} subject to legislation by the State, save in so far as Parliament by law otherwise provides.

²[33* * * * *]

34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post Office Savings Bank.

40. Lotteries organised by the Government of India or the Government of a State.

41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

45. Banking.

46. Bills of exchange, cheques, promissory notes and other like instruments.

47. Insurance.

48. Stock exchanges and futures markets.

49. Patents, inventions and designs; copyright; trade-marks and merchandise marks.

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

2. Entry 33 omitted by s. 26, *ibid.* (w.e.f. 1-11-1956).

50. Establishment of standards of weight and measure.
51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
55. Regulation of labour and safety in mines and oilfields.
56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
57. Fishing and fisheries beyond territorial waters.
58. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.
59. Cultivation, manufacture, and sale for export, of opium.
60. Sanctioning of cinematograph films for exhibition.
61. Industrial disputes concerning Union employees.
62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.
63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the ¹[Delhi University; the University established in pursuance of article 371E;] any other institution declared by Parliament by law to be an institution of national importance.

1. Subs. by the Constitution (Thirty-second Amendment) Act, 1973, s. 4, for "Delhi University and" (w.e.f. 1-7-1974).

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for—
 - (a) professional, vocational or technical training, including the training of police officers; or
 - (b) the promotion of special studies or research; or
 - (c) scientific or technical assistance in the investigation or detection of crime.
66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
67. Ancient and historical monuments and records, and archaeological sites and remains, ¹[declared by or under law made by Parliament] to be of national importance.
68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.
69. Census.
70. Union Public Service; All-India Services; Union Public Service Commission.
71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.
72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.
73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.
74. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.
75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General of India.

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 27, for "declared by Parliament by law" (w.e.f. 1-11-1956).

76. Audit of the accounts of the Union and of the States.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organisation ¹[(including vacations)] of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

²[79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.]

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes on income other than agricultural income.

83. Duties of customs including export duties.

³[84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.]

85. Corporation tax.

1. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 12 (with retrospective effect).

2. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. for entry 79 (w.e.f. 1-11-1956).

3. Subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(a)(i) for entry 84 (w.e.f. 16-9-2016).

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agricultural land.

89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.

90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

¹[92. * * * * *]

²[92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.]

³[92B. Taxes on the consignments of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.]

⁴[92C. * * * * *]

93. Offences against laws with respect to any of the matters in this List.

94. Inquires, surveys and statistics for the purpose of any of the matters in this List.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

1. Entry 92 omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(a)(ii) (w.e.f. 16-9-2016).

2. Ins. by the Constitution (Sixth Amendment) Act, 1956, s. 2 (w.e.f. 11-9-1956).

3. Ins. by the Constitution (Forty-sixth Amendment) Act, 1982, s. 5 (w.e.f. 2-2-1983).

4. Entry 92C was ins. by the Constitution (Eighty-eighth Amendment) Act, 2003, s. 4 (which was not enforced) and omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(a)(ii) (w.e.f. 16-9-2016).

List II—State List

1. Public order (but not including ¹[the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).
 - ²[2. Police (including railway and village police) subject to the provisions of entry 2A of List I.]
 3. ^{3***} Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.
 4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.
 5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
 6. Public health and sanitation; hospitals and dispensaries.
 7. Pilgrimages, other than pilgrimages to places outside India.
 8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
 9. Relief of the disabled and unemployable.
 10. Burials and burial grounds; cremations and cremation grounds.
- ⁴[11* * * * *]
12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those ⁵[declared by or under law made by Parliament] to be of national importance.

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1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 57, for certain words (w.e.f. 3-1-1977).
 2. Subs. by s. 57, for entry 2, *ibid.* (w.e.f. 3-1-1977).
 3. Certain words omitted by s. 57, *ibid.* (w.e.f. 3-1-1977).
 4. Entry 11 omitted by s. 57, *ibid.* (w.e.f. 3-1-1977).
 5. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 27, for "declared by Parliament by law" (w.e.f. 1-11-1956).

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

16. Pounds and the prevention of cattle trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

¹[19* * * *]

20* * * * *

21. Fisheries.

22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. Industries subject to the provisions of²[entries 7 and 52] of List I.

25. Gas and gas-works.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

1. Entries 19 and 20 omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 28 for entry 52 (w.e.f. 1-11-1956).

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

28. Markets and fairs.

¹[29* * * * *]

30. Money-lending and money-lenders; relief of agricultural indebtedness.

31. Inns and inn-keepers.

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.

34. Betting and gambling.

35. Works, lands and buildings vested in or in the possession of the State.

²[36* * * * *]

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State.

41. State public services; State Public Service Commission.

42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

43. Public debt of the State.

44. Treasure trove.

1. Entry 29 omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).

2. Entry 36 omitted by the Constitution (Seventh Amendment) Act, 1956, s. 26 (w.e.f. 1-11-1956).

45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

48. Estate duty in respect of agricultural land.

49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

¹[52. * * * * *]

53. Taxes on the consumption or sale of electricity.

²[54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.]

³[55. * * * * *]

56. Taxes on goods and passengers carried by road or on inland waterways.

1. Entry 52 omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(b)(i) (w.e.f. 16-9-2016).

2. Subs. by the Constitution (Sixth Amendment) Act, 1956, s. 2 (w.e.f. 11-9-1956) and further subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(b)(ii) (w.e.f. 16-9-2016).

3. Entry 55 omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(b)(iii) (w.e.f. 16-9-2016).

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.
58. Taxes on animals and boats.
59. Tolls.
60. Taxes on professions, trades, callings and employments.
61. Capitation taxes.
- ¹[62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.]
63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
64. Offences against laws with respect to any of the matters in this List.
65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

List III—Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.
3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

1. Subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(b)(iv), for entry 62 (w.e.f. 16-9-2016).

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
6. Transfer of property other than agricultural land; registration of deeds and documents.
7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
8. Actionable wrongs.
9. Bankruptcy and insolvency.
10. Trust and Trustees.
11. Administrators-general and official trustees.
- ¹[11A. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.]
12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.
14. Contempt of court, but not including contempt of the Supreme Court.
15. Vagrancy; nomadic and migratory tribes.
16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
17. Prevention of cruelty to animals.
- ¹[17A. Forests.
- 17B. Protection of wild animals and birds.]
18. Adulteration of foodstuffs and other goods.
19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.
20. Economic and social planning.
- ¹[20A. Population control and family planning.]

1. Entries 11A, 17A, 17B and 20A ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).

- 21. Commercial and industrial monopolies, combines and trusts.
- 22. Trade unions; industrial and labour disputes.
- 23. Social security and social insurance; employment and unemployment.
- 24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
- ¹[25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.]
- 26. Legal, medical and other professions.
- 27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.
- 28. Charities and charitable institutions, charitable and religious endowments and religious institutions.
- 29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.
- 30. Vital statistics including registration of births and deaths.
- 31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.
- 32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
- ²[33. Trade and commerce in, and the production, supply and distribution of,—
 - (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
 - (b) foodstuffs, including edible oilseeds and oils;
 - (c) cattle fodder, including oilcakes and other concentrates;
 - (d) raw cotton, whether ginned or unginned, and cotton seed; and
 - (e) raw jute.]

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).
 2. Subs. by the Constitution (Third Amendment) Act, 1954, s. 2 for entry 33 (w.e.f. 22-2-1955).

¹[33A. Weights and measures except establishment of standards.]

- 34. Price control.
- 35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.
- 36. Factories
- 37. Boilers.
- 38. Electricity.
- 39. Newspapers, books and printing presses.
- 40. Archaeological sites and remains other than those ²[declared by or under law made by Parliament] to be of national importance.
- 41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
- ³[42. Acquisition and requisitioning of property.]
- 43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
- 44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
- 45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.
- 46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
- 47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 27, for "declared by Parliament by law" (w.e.f. 1-11-1956).

3. Subs. by s. 26, *ibid.* for entry 42 (w.e.f. 1-11-1956).

EIGHTH SCHEDULE
[Articles 344(1) and 351]
Languages

1. Assamese.
2. Bengali.
- ¹[3. Bodo.
4. Dogri.]
- ²[5.] Gujarati.
- ³[6.] Hindi.
- ³[7.] Kannada.
- ³[8.] Kashmiri.
- ⁴[³[9.] Konkani.]
- ¹[10. Maithili.]
- ⁵[11.] Malayalam.
- ⁴[⁶[12.] Manipuri.]
- ⁶[13.] Marathi.
- ⁴[⁶[14.] Nepali.]
- ⁶[15.] ⁷[Odia].
- ⁶[16.] Punjabi.
- ⁶[17.] Sanskrit.

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1. Ins. by the Constitution (Ninety-second Amendment) Act, 2003, s. 2 (w.e.f. 7-1-2004).
 2. Entry 3 renumbered as entry 5 by s. 2, *ibid.* (w.e.f. 7-1-2004).
 3. Entries 4 to 7 renumbered as entries 6 to 9 by s. 2, *ibid.* (w.e.f. 7-1-2004).
 4. Ins. by the Constitution (Seventy-first Amendment) Act, 1992, s. 2 (w.e.f. 31-8-1992).
 5. Entry 8 renumbered as entry 11 by the Constitution (Ninety-second Amendment) Act, 2003, s. 2 (w.e.f. 7-1-2004).
 6. Entries 9 to 14 renumbered as entries 12 to 17 by s. 2, *ibid.* (w.e.f. 7-1-2004).
 7. Subs. by the Constitution (Ninety-sixth Amendment) Act, 2011, s. 2, for "Oriya" (w.e.f. 23-9-2011).

¹[18. Santhali.]

²[³[19.] Sindhi.]

⁴[20.] Tamil.

⁴[21.] Telugu.

⁴[22.] Urdu.

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1. Ins. by the Constitution (Ninety-second Amendment) Act, 2003, s. 2 (w.e.f. 7-1-2004).
 2. Added by the Constitution (Twenty-first Amendment) Act, 1967, s. 2 (w.e.f. 10-4-1967).
 3. Entry 15 renumbered as entry 19 by the Constitution (Ninety-second Amendment) Act, 2003, s. 2 (w.e.f. 7-1-2004).
 4. Entries 16 to 18 renumbered as entries 20 to 22 by s. 2, *ibid.* (w.e.f. 7-1-2004).

¹[NINTH SCHEDULE

(Article 31B)

1. The Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950).
2. The Bombay Tenancy and Agricultural Lands Act, 1948. (Bombay Act LXVII of 1948).
3. The Bombay Maleki Tenure Abolition Act, 1949 (Bombay Act LXI of 1949).
4. The Bombay Taluqdari Tenure Abolition Act, 1949. (Bombay Act LXII of 1949).
5. The Panch Mahals Mehwassi Tenure Abolition Act, 1949. (Bombay Act LXIII of 1949).
6. The Bombay Khoti Abolition Act, 1950 (Bombay Act VI of 1950).
7. The Bombay Paragana and Kulkarni Watan Abolition Act, 1950. (Bombay Act LX of 1950).
8. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act I of 1951).
9. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948).
10. The Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1950 (Madras Act I of 1950).
11. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act I of 1951).
12. The Hyderabad (Abolition of Jagirs) Regulation, 1358F (No. LXIX of 1358, Fasli).
13. The Hyderabad Jagirs (Commutation) Regulation, 1359F (No. XXV of 1359, Fasli).]- ²[14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).
- 15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act XXVI of 1948).
- 16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).
- 17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).
- 18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).

1. Ninth Schedule (entries 1 to 13) added by the Constitution (First Amendment) Act, 1951, s. 14 (w.e.f. 18-6-1951).

2. Ninth Schedule (entries 14 to 20) added by the Constitution (Fourth Amendment) Act, 1955, s. 5 (w.e.f. 27-4-1955).

19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).
20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951.]
¹[21. The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Andhra Pradesh Act X of 1961).
22. The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Validation) Act, 1961 (Andhra Pradesh Act XXI of 1961).
23. The Andhra Pradesh (Telangana Area) Ijara and Kowli Land Cancellation of Irregular Pattas and Abolition of Concessional Assessment Act, 1961 (Andhra Pradesh Act XXXVI of 1961).
24. The Assam State Acquisition of Lands belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act IX of 1961).
25. The Bihar Land Reforms (Amendment) Act, 1953 (Bihar Act XX of 1954).
26. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962), except section 28 of this Act.
27. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1954 (Bombay Act I of 1955).
28. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1957 (Bombay Act XVIII of 1958).
29. The Bombay Inams (Kutch Area) Abolition Act, 1958 (Bombay Act XC VIII of 1958).
30. The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat Act XVI of 1960).
31. The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act XXVI of 1961).
32. The Sagbara and Mehwassi Estates (Proprietary Rights Abolition, etc.) Regulation, 1962 (Gujarat Regulation I of 1962).

1. Entries 21 to 64 and *Explanation* added by the Constitution (Seventeenth Amendment) Act, 1964, s. 3 (w.e.f. 20-6-1964).

33. The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXIII of 1963), except in so far as this Act relates to an alienation referred to in sub-clause (d) of clause (3) of section 2 thereof.
34. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961).
35. The Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and Further Amendment) Act, 1961 (Maharashtra Act XLV of 1961).
36. The Hyderabad Tenancy and Agricultural Lands Act, 1950 (Hyderabad Act XXI of 1950).
37. The Jenmikaram Payment (Abolition) Act, 1960 (Kerala Act III of 1961).
38. The Kerala Land Tax Act, 1961 (Kerala Act XIII of 1961).
39. The Kerala Land Reforms Act, 1963 (Kerala Act I of 1964).
40. The Madhya Pradesh Land Revenue Code, 1959 (Madhya Pradesh Act XX of 1959).
41. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (Madhya Pradesh Act XX of 1960).
42. The Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955).
43. The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Madras Act XXIV of 1956).
44. The Madras Occupants of Kudiyiruppu (Protection from Eviction) Act, 1961 (Madras Act XXXVIII of 1961).
45. The Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Madras Act LVII of 1961).
46. The Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961).
47. The Mysore Tenancy Act, 1952 (Mysore Act XIII of 1952).
48. The Coorg Tenants Act, 1957 (Mysore Act XIV of 1957).
49. The Mysore Village Offices Abolition Act, 1961 (Mysore Act XIV of 1961).
50. The Hyderabad Tenancy and Agricultural Lands (Validation) Act, 1961 (Mysore Act XXXVI of 1961).
51. The Mysore Land Reforms Act, 1961 (Mysore Act X of 1962).

- 52. The Orissa Land Reforms Act, 1960 (Orissa Act XVI of 1960).
- 53. The Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act X of 1963).
- 54. The Punjab Security of Land Tenures Act, 1953 (Punjab Act X of 1953).
- 55. The Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955).
- 56. The Rajasthan Zamindari and Biswedari Abolition Act, 1959 (Rajasthan Act VIII of 1959).
- 57. The Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (Uttar Pradesh Act XVII of 1960).
- 58. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh Act I of 1961).
- 59. The West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954).
- 60. The West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).
- 61. The Delhi Land Reforms Act, 1954 (Delhi Act VIII of 1954).
- 62. The Delhi Land Holdings (Ceiling) Act, 1960 (Central Act 24 of 1960).
- 63. The Manipur Land Revenue and Land Reforms Act, 1960 (Central Act 33 of 1960).
- 64. The Tripura Land Revenue and Land Reforms Act, 1960 (Central Act 43 of 1960).
- ¹[65. The Kerala Land Reforms (Amendment) Act, 1969 (Kerala Act 35 of 1969).]
- 66. The Kerala Land Reforms (Amendment) Act, 1971 (Kerala Act 25 of 1971).]
- ²[67. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Andhra Pradesh Act 1 of 1973).]
- 68. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 (Bihar Act I of 1973).

1. Entries 65 and 66 ins. by the Constitution (Twenty-ninth Amendment) Act, 1972, s. 2 (w.e.f. 9-6-1972).

2. Entries 67 and 86 ins.. by the Constitution (Thirty-fourth Amendment) Act, 1974, s. 2 (w.e.f. 7-9-1974).

69. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1973 (Bihar Act IX of 1973).
70. The Bihar Land Reforms (Amendment) Act, 1972 (Bihar Act V of 1972).
71. The Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 (Gujarat Act 2 of 1974).
72. The Haryana Ceiling on Land Holdings Act, 1972 (Haryana Act 26 of 1972).
73. The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (Himachal Pradesh Act 19 of 1973).
74. The Kerala Land Reforms (Amendment) Act, 1972 (Kerala Act 17 of 1972).
75. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1972 (Madhya Pradesh Act 12 of 1974).
76. The Madhya Pradesh Ceiling on Agricultural Holdings (Second Amendment) Act, 1972 (Madhya Pradesh Act 13 of 1974).
77. The Mysore Land Reforms (Amendment) Act, 1973 (Karnataka Act 1 of 1974).
78. The Punjab Land Reforms Act, 1972 (Punjab Act 10 of 1973).
79. The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Rajasthan Act 11 of 1973).
80. The Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Tamil Nadu Act 24 of 1969).
81. The West Bengal Land Reforms (Amendment) Act, 1972 (West Bengal Act XII of 1972).
82. The West Bengal Estates Acquisition (Amendment) Act, 1964 (West Bengal Act XXII of 1964).
83. The West Bengal Estates Acquisition (Second Amendment) Act, 1973 (West Bengal Act XXXIII of 1973).
84. The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1972 (Gujarat Act 5 of 1973).
85. The Orissa Land Reforms (Amendment) Act, 1974 (Orissa Act 9 of 1974).
86. The Tripura Land Revenue and Land Reforms (Second Amendment) Act, 1974 (Tripura Act 7 of 1974).]

¹[287* * * *]

88. The Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951).

89. The Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act 30 of 1952).

90. The Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957).

*91. The Monopolies and Restrictive Trade Practices Act, 1969 (Central Act 54 of 1969).

²[92* * * *]

93. The Coking Coal Mines (Emergency Provisions) Act, 1971 (Central Act 64 of 1971).

94. The Coking Coal Mines (Nationalisation) Act, 1972 (Central Act 36 of 1972).

95. The General Insurance Business (Nationalisation) Act, 1972 (Central Act 57 of 1972).

96. The Indian Copper Corporation (Acquisition of Undertaking) Act, 1972 (Central Act 58 of 1972).

97. The Sick Textile Undertakings (Taking Over of Management) Act, 1972 (Central Act 72 of 1972).

98. The Coal Mines (Taking Over of Management) Act, 1973 (Central Act 15 of 1973).

99. The Coal Mines (Nationalisation) Act, 1973 (Central Act 26 of 1973).

**100. The Foreign Exchange Regulation Act, 1973 (Central Act 46 of 1973).

101. The Alcock Ashdown Company Limited (Acquisition of Undertakings) Act, 1973 (Central Act 56 of 1973).

1. Entries 87 to 124 ins. by the Constitution (Thirty-ninth Amendment) Act, 1975, s. 5 (w.e.f. 10-8-1975).

2. Entries 87 and 92 omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 44 (w.e.f. 20-6-1979).

* Rep. by the Competition Act, 2002 (12 of 2003) s. 66 (w.e.f. 1-9-2009).

** Rep. by the Foreign Exchange Management Act, 1999 (42 of 1999), s. 49 (w.e.f. 1-6-2000).

102. The Coal Mines (Conservation and Development) Act, 1974 (Central Act 28 of 1974).
103. The Additional Emoluments (Compulsory Deposit) Act, 1974 (Central Act 37 of 1974).
104. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).
105. The Sick Textile Undertakings (Nationalisation) Act, 1974 (Central Act 57 of 1974).
106. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1964 (Maharashtra Act XVI of 1965).
107. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1965 (Maharashtra Act XXXII of 1965).
108. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1968 (Maharashtra Act XVI of 1968).
109. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Second Amendment) Act, 1968 (Maharashtra Act XXXIII of 1968).
110. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1969 (Maharashtra Act XXXVII of 1969).
111. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Second Amendment) Act, 1969 (Maharashtra Act XXXVIII of 1969).
112. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1970 (Maharashtra Act XXVII of 1970).
113. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1972 (Maharashtra Act XIII of 1972).
114. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1973 (Maharashtra Act L of 1973).
115. The Orissa Land Reforms (Amendment) Act, 1965 (Orissa Act 13 of 1965).
116. The Orissa Land Reforms (Amendment) Act, 1966 (Orissa Act 8 of 1967).
117. The Orissa Land Reforms (Amendment) Act, 1967 (Orissa Act 13 of 1967).

118. The Orissa Land Reforms (Amendment) Act, 1969 (Orissa Act 13 of 1969).

119. The Orissa Land Reforms (Amendment) Act, 1970 (Orissa Act 18 of 1970).

120. The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (Uttar Pradesh Act 18 of 1973).

121. The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (Uttar Pradesh Act 2 of 1975).

122. The Tripura Land Revenue and Land Reforms (Third Amendment) Act, 1975 (Tripura Act 3 of 1975).

123. The Dadra and Nagar Haveli Land Reforms Regulation, 1971 (3 of 1971).

124. The Dadra and Nagar Haveli Land Reforms (Amendment) Regulation, 1973 (5 of 1973).]

¹[125. Section 66A and Chapter IVA of the Motor Vehicles Act, 1939* (Central Act 4 of 1939).

126. The Essential Commodities Act, 1955 (Central Act 10 of 1955).

127. The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (Central Act 13 of 1976).

128. The Bonded Labour System (Abolition) Act, 1976 (Central Act 19 of 1976).

129. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976 (Central Act 20 of 1976).

²130* * * *

131. The Levy Sugar Price Equalisation Fund Act, 1976 (Central Act 31 of 1976).

132. The Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976).

1. Entries 125 to 188 ins. by the Constitution (Fortieth Amendment) Act, 1976, s. 3 (w.e.f. 27-5-1976).

* See now the relevant provisions of the Motor Vehicles Act, 1988 (59 of 1988).

2. Entry 130 omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 44 (w.e.f. 20-6-1979).

133. The Departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976 (Central Act 59 of 1976).
134. The Assam Fixation of Ceiling on Land Holdings Act, 1956 (Assam Act I of 1957).
135. The Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (Bombay Act XCIX of 1958).
136. The Gujarat Private Forests (Acquisition) Act, 1972 (Gujarat Act 14 of 1973).
137. The Haryana Ceiling on Land Holdings (Amendment) Act, 1976 (Haryana Act 17 of 1976).
138. The Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Himachal Pradesh Act 8 of 1974).
139. The Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974 (Himachal Pradesh Act 18 of 1974).
140. The Karnataka Land Reforms (Second Amendment and Miscellaneous Provisions) Act, 1974 (Karnataka Act 31 of 1974).
141. The Karnataka Land Reforms (Second Amendment) Act, 1976 (Karnataka Act 27 of 1976).
142. The Kerala Prevention of Eviction Act, 1966 (Kerala Act 12 of 1966).
143. The Thiruppuvaram Payment (Abolition) Act, 1969 (Kerala Act 19 of 1969).
144. The Sreepadam Lands Enfranchisement Act, 1969 (Kerala Act 20 of 1969).
145. The Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971 (Kerala Act 20 of 1971).
146. The Kerala Private Forests (Vesting and Assignment) Act, 1971 (Kerala Act 26 of 1971).
147. The Kerala Agricultural Workers Act, 1974 (Kerala Act 18 of 1974).
148. The Kerala Cashew Factories (Acquisition) Act, 1974 (Kerala Act 29 of 1974).
149. The Kerala Chitties Act, 1975 (Kerala Act 23 of 1975).
150. The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Kerala Act 31 of 1975).

151. The Kerala Land Reforms (Amendment) Act, 1976 (Kerala Act 15 of 1976).
152. The Kanam Tenancy Abolition Act, 1976 (Kerala Act 16 of 1976).
153. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1974 (Madhya Pradesh Act 20 of 1974).
154. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1975 (Madhya Pradesh Act 2 of 1976).
155. The West Khandesh Mehwassi Estates (Proprietary Rights Abolition, etc.) Regulation, 1961 (Maharashtra Regulation 1 of 1962).
156. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Maharashtra Act XIV of 1975).
157. The Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972 (Maharashtra Act XXI of 1975).
158. The Maharashtra Private Forest (Acquisition) Act, 1975 (Maharashtra Act XXIX of 1975).
159. The Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Amendment Act, 1975 (Maharashtra Act XLVII of 1975).
160. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1975 (Maharashtra Act II of 1976).
161. The Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952).
162. The Rajasthan Colonisation Act, 1954 (Rajasthan Act XXVII of 1954).
163. The Rajasthan Land Reforms and Acquisition of Landowners' Estates Act, 1963 (Rajasthan Act 11 of 1964).
164. The Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Act, 1976 (Rajasthan Act 8 of 1976).
165. The Rajasthan Tenancy (Amendment) Act, 1976 (Rajasthan Act 12 of 1976).
166. The Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970 (Tamil Nadu Act 17 of 1970).
167. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1971 (Tamil Nadu Act 41 of 1971).

168. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1972 (Tamil Nadu Act 10 of 1972).
169. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1972 (Tamil Nadu Act 20 of 1972).
170. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Third Amendment Act, 1972 (Tamil Nadu Act 37 of 1972).
171. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Fourth Amendment Act, 1972 (Tamil Nadu Act 39 of 1972).
172. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Sixth Amendment Act, 1972 (Tamil Nadu Act 7 of 1974).
173. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Fifth Amendment Act, 1972 (Tamil Nadu Act 10 of 1974).
174. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1974 (Tamil Nadu Act 15 of 1974).
175. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Third Amendment Act, 1974 (Tamil Nadu Act 30 of 1974).
176. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1974 (Tamil Nadu Act 32 of 1974).
177. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1975 (Tamil Nadu Act 11 of 1975).
178. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1975 (Tamil Nadu Act 21 of 1975).
179. Amendments made to the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act I of 1951) by the Uttar Pradesh Land Laws (Amendment) Act, 1971 (Uttar Pradesh Act 21 of 1971) and the Uttar Pradesh Land Laws (Amendment) Act, 1974 (Uttar Pradesh Act 34 of 1974).
180. The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 (Uttar Pradesh Act 20 of 1976).
181. The West Bengal Land Reforms (Second Amendment) Act, 1972 (West Bengal Act XXVIII of 1972).
182. The West Bengal Restoration of Alienated Land Act, 1973 (West Bengal Act XXIII of 1973).

183. The West Bengal Land Reforms (Amendment) Act, 1974 (West Bengal Act XXXIII of 1974).

184. The West Bengal Land Reforms (Amendment) Act, 1975 (West Bengal Act XXIII of 1975).

185. The West Bengal Land Reforms (Amendment) Act, 1976 (West Bengal Act XII of 1976).

186. The Delhi Land Holdings (Ceiling) Amendment Act, 1976 (Central Act 15 of 1976).

187. The Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Goa, Daman and Diu Act 1 of 1976).

188. The Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (Pondicherry Act 9 of 1974).]

¹[189. The Assam (Temporarily Settled Areas) Tenancy Act, 1971 (Assam Act XXIII of 1971).

190. The Assam (Temporarily Settled Areas) Tenancy (Amendment) Act, 1974 (Assam Act XVIII of 1974).

191. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Amending Act, 1974 (Bihar Act 13 of 1975).

192. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1976 (Bihar Act 22 of 1976).

193. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1978 (Bihar Act VII of 1978).

194. The Land Acquisition (Bihar Amendment) Act, 1979 (Bihar Act 2 of 1980).

195. The Haryana Ceiling on Land Holdings (Amendment) Act, 1977 (Haryana Act 14 of 1977).

196. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1978 (Tamil Nadu Act 25 of 1978).

197. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1979 (Tamil Nadu Act 11 of 1979).

1. Entries 189 to 202 were ins. by the Constitution (Forty-seventh Amendment) Act, 1984, s. 2 (w.e.f. 26-8-1984).

198. The Uttar Pradesh Zamindari Abolition Laws (Amendment) Act, 1978 (Uttar Pradesh Act 15 of 1978).

199. The West Bengal Restoration of Alienated Land (Amendment) Act, 1978 (West Bengal Act XXIV of 1978).

200. The West Bengal Restoration of Alienated Land (Amendment) Act, 1980 (West Bengal Act LVI of 1980).

201. The Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Goa, Daman and Diu Act 7 of 1964).

202. The Goa, Daman and Diu Agricultural Tenancy (Fifth Amendment) Act, 1976 (Goa, Daman and Diu Act 17 of 1976).]

¹[203. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation 1 of 1959).

204. The Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 (Andhra Pradesh Regulation 2 of 1963).

205. The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 (Andhra Pradesh Regulation 1 of 1970).

206. The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1971 (Andhra Pradesh Regulation 1 of 1971).

207. The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1978 (Andhra Pradesh Regulation 1 of 1978).

208. The Bihar Tenancy Act, 1885 (Bihar Act 8 of 1885).

209. The Chota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) (Chapter VIII—sections 46, 47, 48, 48A and 49; Chapter X—sections 71, 71A and 71B; and Chapter XVIII—sections 240, 241 and 242).

210. The Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act 14 of 1949) except section 53.

211. The Bihar Scheduled Areas Regulation, 1969 (Bihar Regulation 1 of 1969).

212. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 (Bihar Act 55 of 1982).

1. Entries 203 to 257 were ins. by the Constitution (Sixty-sixth Amendment) Act, 1990, s. 2 (w.e.f. 7-6-1990).

213. The Gujarat Devasthan Inams Abolition Act, 1969 (Gujarat Act 16 of 1969).
214. The Gujarat Tenancy Laws (Amendment) Act, 1976 (Gujarat Act 37 of 1976).
215. The Gujarat Agricultural Lands Ceiling (Amendment) Act, 1976 (President's Act 43 of 1976).
216. The Gujarat Devasthan Inams Abolition (Amendment) Act, 1977 (Gujarat Act 27 of 1977).
217. The Gujarat Tenancy Laws (Amendment) Act, 1977 (Gujarat Act 30 of 1977).
218. The Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 (Gujarat Act 37 of 1980).
219. The Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act, 1982 (Gujarat Act 8 of 1982).
220. The Himachal Pradesh Transfer of Land (Regulation) Act, 1968 (Himachal Pradesh Act 15 of 1969).
221. The Himachal Pradesh Transfer of Land (Regulation) (Amendment) Act, 1986 (Himachal Pradesh Act 16 of 1986).
222. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979).
223. The Kerala Land Reforms (Amendment) Act, 1978 (Kerala Act 13 of 1978).
224. The Kerala Land Reforms (Amendment) Act, 1981 (Kerala Act 19 of 1981).
225. The Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976 (Madhya Pradesh Act 61 of 1976).
226. The Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (Madhya Pradesh Act 15 of 1980).
227. The Madhya Pradesh Akrishik Jot Uchchatam Seema Adhiniyam, 1981 (Madhya Pradesh Act 11 of 1981).
228. The Madhya Pradesh Ceiling on Agricultural Holdings (Second Amendment) Act, 1976 (Madhya Pradesh Act 1 of 1984).
229. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1984 (Madhya Pradesh Act 14 of 1984).

230. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1989 (Madhya Pradesh Act 8 of 1989).
231. The Maharashtra Land Revenue Code, 1966 (Maharashtra Act 41 of 1966), sections 36, 36A and 36B.
232. The Maharashtra Land Revenue Code and the Maharashtra Restoration of Lands to Scheduled Tribes (Second Amendment) Act, 1976 (Maharashtra Act 30 of 1977).
233. The Maharashtra Abolition of Subsisting Proprietary Rights to Mines and Minerals in certain Lands Act, 1985 (Maharashtra Act 16 of 1985).
234. The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 (Orissa Regulation 2 of 1956).
235. The Orissa Land Reforms (Second Amendment) Act, 1975 (Orissa Act 29 of 1976).
236. The Orissa Land Reforms (Amendment) Act, 1976 (Orissa Act 30 of 1976).
237. The Orissa Land Reforms (Second Amendment) Act, 1976 (Orissa Act 44 of 1976).
238. The Rajasthan Colonisation (Amendment) Act, 1984 (Rajasthan Act 12 of 1984).
239. The Rajasthan Tenancy (Amendment) Act, 1984 (Rajasthan Act 13 of 1984).
240. The Rajasthan Tenancy (Amendment) Act, 1987 (Rajasthan Act 21 of 1987).
241. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1979 (Tamil Nadu Act 8 of 1980).
242. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1980 (Tamil Nadu Act 21 of 1980).
243. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1981 (Tamil Nadu Act 59 of 1981).
244. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1983 (Tamil Nadu Act 2 of 1984).
245. The Uttar Pradesh Land Laws (Amendment) Act, 1982 (Uttar Pradesh Act 20 of 1982).

246. The West Bengal Land Reforms (Amendment) Act, 1965 (West Bengal Act 18 of 1965).

247. The West Bengal Land Reforms (Amendment) Act, 1966 (West Bengal Act 11 of 1966).

248. The West Bengal Land Reforms (Second Amendment) Act, 1969 (West Bengal Act 23 of 1969).

249. The West Bengal Estate Acquisition (Amendment) Act, 1977 (West Bengal Act 36 of 1977).

250. The West Bengal Land Holding Revenue Act, 1979 (West Bengal Act 44 of 1979).

251. The West Bengal Land Reforms (Amendment) Act, 1980 (West Bengal Act 41 of 1980).

252. The West Bengal Land Holding Revenue (Amendment) Act, 1981 (West Bengal Act 33 of 1981).

253. The Calcutta Thikka Tenancy (Acquisition and Regulation) Act, 1981 (West Bengal Act 37 of 1981).

254. The West Bengal Land Holding Revenue (Amendment) Act, 1982 (West Bengal Act 23 of 1982).

255. The Calcutta Thikka Tenancy (Acquisition and Regulation) (Amendment) Act, 1984 (West Bengal Act 41 of 1984).

256. The Mahe Land Reforms Act, 1968 (Pondicherry Act 1 of 1968).

257. The Mahe Land Reforms (Amendment) Act, 1980 (Pondicherry Act 1 of 1981).]

¹[257A. The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994).]

1. Entry 257A ins. by the Constitution (Seventy-sixth Amendment) Act, 1994, s. 2 (w.e.f. 31-8-1994).

¹[258. The Bihar Privileged Persons Homestead Tenancy Act, 1947 (Bihar Act 4 of 1948).

259. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of 1956).

260. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1970 (Bihar Act 7 of 1970).

261. The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1970 (Bihar Act 9 of 1970).

262. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1973 (Bihar Act 27 of 1975).

263. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1981 (Bihar Act 35 of 1982).

264. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1987 (Bihar Act 21 of 1987).

265. The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1989 (Bihar Act 11 of 1989).

266. The Bihar Land Reforms (Amendment) Act, 1989 (Bihar Act 11 of 1990).

267. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 (Karnataka Act 3 of 1984).

268. The Kerala Land Reforms (Amendment) Act, 1989 (Kerala Act 16 of 1989).

269. The Kerala Land Reforms (Second Amendment) Act, 1989 (Kerala Act 2 of 1990).

270. The Orissa Land Reforms (Amendment) Act, 1989 (Orissa Act 9 of 1990).

271. The Rajasthan Tenancy (Amendment) Act, 1979 (Rajasthan Act 16 of 1979).

272. The Rajasthan Colonisation (Amendment) Act, 1987 (Rajasthan Act 2 of 1987).

273. The Rajasthan Colonisation (Amendment) Act, 1989 (Rajasthan Act 12 of 1989).

1. Entries 258 to 284 ins. by the Constitution (Seventy-eighth Amendment) Act, 1995, s. 2 (w.e.f. 30-8-1995).

274. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1983 (Tamil Nadu Act 3 of 1984).

275. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1986 (Tamil Nadu Act 57 of 1986).

276. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1987 (Tamil Nadu Act 4 of 1988).

277. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) (Amendment) Act, 1989 (Tamil Nadu Act 30 of 1989).

278. The West Bengal Land Reforms (Amendment) Act, 1981 (West Bengal Act 50 of 1981).

279. The West Bengal Land Reforms (Amendment) Act, 1986 (West Bengal Act 5 of 1986).

280. The West Bengal Land Reforms (Second Amendment) Act, 1986 (West Bengal Act 19 of 1986).

281. The West Bengal Land Reforms (Third Amendment) Act, 1986 (West Bengal Act 35 of 1986).

282. The West Bengal Land Reforms (Amendment) Act, 1989 (West Bengal Act 23 of 1989).

283. The West Bengal Land Reforms (Amendment) Act, 1990 (West Bengal Act 24 of 1990).

284. The West Bengal Land Reforms Tribunal Act, 1991 (West Bengal Act 12 of 1991).]

Explanation:—Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), in contravention of the second proviso to clause(1) of article 31A shall, to the extent of the contravention, be void.]

¹[TENTH SCHEDULE
[Articles 102(2) and 191(2)]

Provisions as to disqualification on ground of defection

1. Interpretation.—In this Schedule, unless the context otherwise requires,—

(a) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or ^{2***} paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(c) "original political party", in relation to a member of a House, means the political party to which he belongs for the purposes of subparagraph (1) of paragraph 2;

(d) "paragraph" means a paragraph of this Schedule.

2. Disqualification on ground of defection.—(1) Subject to the provisions of ³[paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation.—For the purposes of this sub-paragraph,—

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,—

1. Tenth Schedule added by the Constitution (Fifty-second Amendment) Act, 1985, s. 6 (w.e.f. 1-3-1985).

2. Certain words omitted by the Constitution (Ninety-first Amendment) Act, 2003, s. 5 (w.e.f. 1-1-2004).

3. Subs. by s. 5, *ibid.*, for "paragraphs 3, 4 and 5" (w.e.f. 1-1-2004).

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,—

(i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

^{1*} * * * *

4. Disqualification on ground of defection not to apply in case of merger.— (1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group,

1. Paragraph 3 omitted by the Constitution (Ninety-first Amendment) Act, 2003, s. 5 (w.e.f. 1-1-2004).

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

5. Exemption.—Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,—

(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or

(b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

6. Decision on questions as to disqualification on ground of defection.—(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.

***7. Bar of jurisdiction of courts.**—Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. Rules.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for—

(a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished; and

(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.]

* Paragraph 7 declared invalid for want of ratification in accordance with the proviso to clause (2) of article 368 as per majority opinion in *Kihoto Hollohon Vs. Zachilhu and Others* A.I.R. 1993 SC 412.

¹[ELEVENTH SCHEDULE

(Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.]

1. Eleventh Schedule added by the Constitution (Seventy-third Amendment) Act, 1992, s. 4 (w.e.f. 24-4-1993).

¹[TWELFTH SCHEDULE

(Article 243W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.]

1. Twelfth Schedule added by the Constitution (Seventy-fourth Amendment) Act, 1992, s. 4 (w.e.f. 1-6-1993).

APPENDIX I
THE CONSTITUTION (ONE HUNDREDTH AMENDMENT)
ACT, 2015

[28th May, 2015.]

An Act further to amend the Constitution of India to give effect to the acquiring of territories by India and transfer of certain territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Constitution (One Hundredth Amendment) Act, 2015.

2. Definitions.—In this Act,—

(a) “acquired territory” means so much of the territories comprised in the India-Bangladesh agreement and its protocol and referred to in the First Schedule as are demarcated for the purpose of being acquired by India from Bangladesh in pursuance of the agreement and its protocol referred to in clause (c);

(b) “appointed day” means such date as the Central Government may, by notification in the Official Gazette, appoint as the date for acquisition of territories from Bangladesh and transfer of the territories to Bangladesh in pursuance of the India-Bangladesh agreement and its protocol, after causing the territories to be so acquired and transferred as referred to in the First Schedule and Second Schedule and demarcated for the purpose;

(c) “India-Bangladesh agreement” means the agreement between the Government of the Republic of India and the Government of the People’s Republic of Bangladesh concerning the Demarcation of the Land Boundary between India and Bangladesh and Related Matters dated the 16th day of May, 1974, Exchange of Letters dated the 26th day of December, 1974, the 30th day of December, 1974, the 7th day of October, 1982, the 26th day of March, 1992 and protocol to the said agreement dated the 6th day of September, 2011, entered into between the Governments of India and Bangladesh, the relevant extracts of which are set out in the Third Schedule;

* 31st day of July, 2015, *vide* notification No. S.O. 2094(E), dated 31st July, 2015.

(d) “transferred territory”, means so much of the territories comprised in the India-Bangladesh agreement and its protocol and referred to in the Second Schedule as are demarcated for the purpose of being transferred by India to Bangladesh in pursuance of the agreements and its protocol referred to in clause (c).

3. Amendment of First Schedule to Constitution.— As from the appointed day, in the First Schedule to the Constitution,—

(a) in the paragraph relating to the territories of the State of Assam, the words, brackets and figures “and the territories referred to in Part I of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015, notwithstanding anything contained in clause (a) of section 3 of the Constitution (Ninth Amendment) Act, 1960, so far as it relates to the territories referred to in Part I of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015”, shall be added at the end;

(b) in the paragraph relating to the territories of the State of West Bengal, the words, brackets and figures “and also the territories referred to in Part III of the First Schedule but excluding the territories referred to in Part III of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015, notwithstanding anything contained in clause (c) of section 3 of the Constitution (Ninth Amendment) Act, 1960, so far as it relates to the territories referred to in Part III of the First Schedule and the territories referred to in Part III of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015”, shall be added at the end;

(c) in the paragraph relating to the territories of the State of Meghalaya, the words, brackets and figures “and the territories referred to in Part I of the First Schedule but excluding the territories referred to in Part II of the Second Schedule to the Constitution (One Hundredth Amendment) Act, 2015”, shall be added at the end;

(d) in the paragraph relating to the territories of the State of Tripura, the words, brackets and figures “and the territories referred to in Part II of the First Schedule to the Constitution (One Hundredth Amendment) Act, 2015, notwithstanding anything contained in clause (d) of section 3 of the Constitution (Ninth Amendment) Act, 1960, so far as it relates to the territories referred to in Part II of the First Schedule to the Constitution (One Hundredth Amendment) Act, 2015”, shall be added at the end.

THE CONSTITUTION OF INDIA

(Appendix I)

THE FIRST SCHEDULE*[See sections 2(a), 2(b) and 3]***PART I**

The acquired territory in relation to Article 2 of the agreement dated the 16th day of May, 1974 and Article 3 (I) (b) (ii) (iii) (iv) (v) of the protocol dated the 6th day of September, 2011.

PART II

The acquired territory in relation to Article 2 of the agreement dated the 16th day of May, 1974 and Article 3 (I) (c) (i) of the protocol dated the 6th day of September, 2011.

PART III

The acquired territory in relation to Articles 1(12) and 2 of the agreement dated the 16th day of May, 1974 and Articles 2 (II), 3 (I) (a) (iii) (iv) (v) (vi) of the protocol dated the 6th day of September, 2011.

THE SECOND SCHEDULE*[See sections 2(b), 2(d) and 3]***PART I**

The transferred territory in relation to Article 2 of the agreement dated 16th day of May, 1974 and Article 3 (I) (d) (i) (ii) of the protocol dated 6th day of September, 2011.

PART II

The transferred territory in relation to Article 2 of the agreement dated the 16th day of May, 1974 and Article 3 (I) (b) (i) of the protocol dated 6th day of September, 2011.

PART III

The transferred territory in relation to Articles 1(12) and 2 of the agreement dated the 16th day of May, 1974 and Articles 2 (II), 3 (I) (a) (i) (ii) (vi) of the protocol dated the 6th day of September, 2011.

THE CONSTITUTION OF INDIA

(Appendix I)

THE THIRD SCHEDULE

[See section 2(c)]

I. EXTRACTS FROM THE AGREEMENT BETWEEN GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH CONCERNING THE DEMARCATON OF THE LAND BOUNDARY BETWEEN INDIA AND BANGLADESH AND RELATED MATTERS DATED THE 16TH DAY OF MAY, 1974

Article 1 (12): ENCLAVES

The Indian enclaves in Bangladesh and the Bangladesh enclaves in India should be exchanged expeditiously, excepting the enclaves mentioned in paragraph 14 without claim to compensation for the additional area going to Bangladesh.

Article 2:

The Governments of India and Bangladesh agree that territories in adverse possession in areas already demarcated in respect of which boundary strip maps are already prepared, shall be exchanged within six months of the signing of the boundary strip maps by the plenipotentiaries. They may sign the relevant maps as early as possible as and in any case not later than the 31st December, 1974. Early measures may be taken to print maps in respect of other areas where demarcation has already taken place. These should be printed by the 31st May, 1975 and signed by the plenipotentiaries thereafter in order that the exchange of adversely held possessions in these areas may take place by the 31st December, 1975. In sectors still to be demarcated, transfer of territorial jurisdiction may take place within six months of the signature by plenipotentiaries on the concerned boundary strip maps.

II. EXTRACTS FROM THE PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH CONCERNING THE DEMARCATON OF THE LAND BOUNDARY BETWEEN INDIA AND BANGLADESH AND RELATED MATTERS, DATED THE 6TH DAY OF SEPTEMBER, 2011

Article 2:

(II) Article 1 Clause 12 of the 1974 Agreement shall be implemented as follows:—

Enclaves

111 Indian Enclaves in Bangladesh and 51 Bangladesh Enclaves in India as per the jointly verified cadastral enclave maps and signed at the level of DGLR&S, Bangladesh and DLR&S, West Bengal (India) in April, 1997, shall be exchanged without claim to compensation for the additional areas going to Bangladesh.

Article 3:

(I) Article 2 of the 1974 Agreement shall be implemented as follows:—

The Government of India and the Government of Bangladesh agree that the boundary shall be drawn as a fixed boundary for territories held in Adverse Possession as determined through joint survey and fully depicted in the respective adversely possessed land area Index Map (APL map) finalised by the Land Records and Survey Departments of both the countries between December, 2010 and August, 2011, which are fully described in clause (a) to (d) below.

The relevant strip maps shall be printed and signed by the Plenipotentiaries and transfer of territorial jurisdiction shall be completed simultaneously with the exchange of enclaves. The demarcation of the boundary, as depicted in the above-mentioned Index Maps, shall be as under:—

(a) West Bengal Sector*(i) Bousmari – Madhugari (Kushtia-Nadia) area*

The boundary shall be drawn from the existing Boundary Pillar Nos. 154/5-S to 157/1-S to follow the centre of old course of river Mathabanga, as depicted in consolidation map of 1962, as surveyed jointly and agreed in June, 2011.

(ii) Andharkota (Kushtia-Nadia) area

The boundary shall be drawn from existing Boundary Pillar No. 152/5-S to Boundary Pillar No. 153/1-S to follow the edge of existing River Mathabanga as jointly surveyed and agreed in June, 2011.

THE CONSTITUTION OF INDIA

(Appendix I)

(iii) Pakuria (Kushtia-Nadia) area

The boundary shall be drawn from existing Boundary Pillar No. 151/1-S to Boundary Pillar No. 152/2-S to follow the edge of River Mathabanga as jointly surveyed and agreed in June, 2011.

(iv) Char Mahishkundi (Kushtia-Nadia) area

The boundary shall be drawn from existing Boundary Pillar No. 153/1-S to Boundary Pillar No. 153/9-S to follow the edge of River Mathabanga as jointly surveyed and agreed in June, 2011.

*(v) Haripal/Khutadah/Battoli/Sapameri/LNpur (Patari)
(Naogaon-Malda) area*

The boundary shall be drawn as line joining from existing Boundary Pillar No. 242/S/13, to Boundary Pillar No. 243/7-S/5 and as jointly surveyed and agreed in June, 2011.

(vi) Berubari (Panchagarh-Jalpaiguri area)

The boundary in the area Berubari (Panchagarh-Jalpaiguri) adversely held by Bangladesh, and Berubari and Singhapara-Khudipara (Panchagarh-Jalpaiguri), adversely held by India shall be drawn as jointly demarcated during 1996-1998.

(b) Meghalaya Sector

(i) Lobachera-Nuncherra

The boundary from existing Boundary Pillar No. 1315/4-S to Boundary Pillar No. 1315/15-S in Lailong - Balichera, Boundary Pillar No. 1316/1-S to Boundary Pillar No. 1316/11-S in Lailong- Nooncherra, Boundary Pillar No. 1317 to Boundary Pillar No. 1317/13-S in Lailong- Lahiling and Boundary Pillar No. 1318/1-S to Boundary Pillar No. 1318/2-S in Lailong- Lobhachera shall be drawn to follow the edge of tea gardens as jointly surveyed and agreed in December, 2010.

THE CONSTITUTION OF INDIA

(Appendix I)

(ii) Pyrdiwah/ Padua Area

The boundary shall be drawn from existing Boundary Pillar No. 1270/1-S as per jointly surveyed and mutually agreed line till Boundary Pillar No. 1271/1-T. The Parties agree that the Indian Nationals from Pyrdiwah village shall be allowed to draw water from Piyang River near point No. 6 of the agreed Map.

(iii) Lyngkhat Area

(aa) Lyngkhat-I/Kulumcherra and Lyngkhat-II/Kulumcherra

The boundary shall be drawn from existing Boundary Pillar No. 1264/4-S to Boundary Pillar No. 1265 and BP No. 1265/6-S to 1265/9-S as per jointly surveyed and mutually agreed line.

(ab) Lyngkhat-III/Sonarhat

The boundary shall be drawn from existing Boundary Pillar No. 1266/13-S along the nallah southwards till it meets another nallah in the east-west direction, thereafter it shall run along the northern edge of the nallah in east till it meets the existing International Boundary north of Reference Pillar Nos. 1267/4-R-B and 1267/3-R-I.

(iv) Dawki/Tamabil area

The boundary shall be drawn by a straight line joining existing Boundary Pillar Nos. 1275/1-S to Boundary Pillar Nos. 1275/7-S. The Parties agree to fencing on ‘zero line’ in this area.

THE CONSTITUTION OF INDIA

(Appendix I)

*(v) Naljuri/Sreepur Area**(aa) Naljuri I*

The boundary shall be a line from the existing Boundary Pillar No. 1277/2-S in southern direction up to three plots as depicted in the strip Map No. 166 till it meets the nallah flowing from Boundary Pillar No. 1277/5-T, thereafter it will run along the western edge of the nallah in the southern direction up to 2 plots on the Bangladesh side, thereafter it shall run eastwards till it meets a line drawn in southern direction from Boundary Pillar No. 1277/4-S.

(ab) Naljuri III

The boundary shall be drawn by a straight line from existing Boundary Pillar No. 1278/2-S to Boundary Pillar No. 1279/ 3-S.

(vi) Muktapur/ Dibir Hawor Area

The Parties agree that the Indian Nationals shall be allowed to visit Kali Mandir and shall also be allowed to draw water and exercise fishing rights in the water body in the Muktapur / Dibir Hawor area from the bank of Muktapur side.

(c) Tripura Sector

Chandannagar-Champarai Tea Garden area in Tripura/Moulvi Bazar sector

The boundary shall be drawn along Sonaraichhera river from existing Boundary Pillar No. 1904 to Boundary Pillar No. 1905 as surveyed jointly and agreed in July, 2011.

THE CONSTITUTION OF INDIA

(Appendix I)

(d) Assam Sector*(i) Kalabari (Boroibari) area in Assam sector*

The boundary shall be drawn from existing Boundary Pillar No. 1066/24-T to Boundary Pillar No. 1067/16-T as surveyed jointly and agreed in August, 2011.

(ii) Pallathal area in Assam sector

The boundary shall be drawn from existing Boundary Pillar No. 1370/3-S to 1371/ 6-S to follow the outer edge of the tea garden and from Boundary Pillar No. 1372 to 1373/2-S along outer edge of the pan plantation.

III. LIST OF EXCHANGE OF ENCLAVES BETWEEN INDIA AND BANGLADESH IN PURSUANT TO ARTICLE 1 (12) OF THE AGREEMENT DATED 16TH MAY, 1974 AND THE PROTOCOL TO THE AGREEMENT DATED 6TH SEPTEMBER, 2011

A. EXCHANGEABLE INDIAN ENCLAVES IN BANGLADESH WITH AREA

Sl.	Name of Chhits No.	Chhit No.	Lying within Police station Bangladesh	Lying within Police station in W. Bengal	Area acres
1	2	3	4	5	6

A. Enclaves with independent chhits

1.	Garati	75	Pochagar	Haldibari	58.23
2.	Garati	76	Pochagar	Haldibari	0.79
3.	Garati	77	Pochagar	Haldibari	18
4.	Garati	78	Pochagar	Haldibari	958.66
5.	Garati	79	Pochagar	Haldibari	1.74
6.	Garati	80	Pochagar	Haldibari	73.75
7.	Bingimari Part-I	73	Pochagar	Haldibari	6.07

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
8.	Nazirganja	41	Boda	Haldibari	58.32
9.	Nazirganja	42	Boda	Haldibari	434.29
10.	Nazirganja	44	Boda	Haldibari	53.47
11.	Nazirganja	45	Boda	Haldibari	1.07
12.	Nazirganja	46	Boda	Haldibari	17.95
13.	Nazirganja	47	Boda	Haldibari	3.89
14.	Nazirganja	48	Boda	Haldibari	73.27
15.	Nazirganja	49	Boda	Haldibari	49.05
16.	Nazirganja	50	Boda	Haldibari	5.05
17.	Nazirganja	51	Boda	Haldibari	0.77
18.	Nazirganja	52	Boda	Haldibari	1.04
19.	Nazirganja	53	Boda	Haldibari	1.02
20.	Nazirganja	54	Boda	Haldibari	3.87
21.	Nazirganja	55	Boda	Haldibari	12.18
22.	Nazirganja	56	Boda	Haldibari	54.04
23.	Nazirganja	57	Boda	Haldibari	8.27
24.	Nazirganja	58	Boda	Haldibari	14.22
25.	Nazirganja	60	Boda	Haldibari	0.52
26.	Putimari	59	Boda	Haldibari	122.8
27.	Daikhata Chhat	38	Boda	Haldibari	499.21
28.	Salbari	37	Boda	Haldibari	1188.93
29.	Kajal Dighi	36	Boda	Haldibari	771.44
30.	Nataktoke	32	Boda	Haldibari	162.26
31.	Nataktoke	33	Boda	Haldibari	0.26
32.	Beuladanga Chhat	35	Boda	Haldibari	0.83
33.	Balapara Iagrabar	3	Debiganj	Haldibari	1752.44
34.	Bara Khankikharia Citaldaha	30	Dimla	Haldibari	7.71

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
35.	Bara Khankikharia Citaldaha	29	Dimla	Haldibari	36.83
36.	Barakhangir	28	Dimla	Haldibari	30.53
37.	Nagarjikobari	31	Dimla	Haldibari	33.41
38.	Kuchlibari	26	Patgram	Mekliganj	5.78
39.	Kuchlibari	27	Patgram	Mekliganj	2.04
40.	Bara Kuchlibari	Fragment of J.L. 107 of P.S Mekliganj	Patgram	Mekliganj	4.35
41.	Jamaldaha- Balapukhari	6	Patgram	Mekliganj	5.24
42.	Uponchowki kuchlibari	115/2	Patgram	Mekliganj	0.32
43.	Uponchowki kuchlibari	7	Patgram	Mekliganj	44.04
44.	Bhothnri	11	Patgram	Mekliganj	36.83
45.	Balapukhari	5	Patgram	Mekliganj	55.91
46.	Bara Khangir	4	Patgram	Mekliganj	50.51
47.	Bara Khangir	9	Patgram	Mekliganj	87.42
48.	Chhat Bogdokra	10	Patgram	Mekliganj	41.7
49.	Ratanpur	11	Patgram	Mekliganj	58.91
50.	Bogdokra	12	Patgram	Mekliganj	25.49
51.	Fulker Dabri	Fragment of J.L. 107 of P.S Mekliganj	Patgram	Mekliganj	0.88

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
52.	Kharkharia	15	Patgram	Mekliganj	60.74
53.	Kharkharia	13	Patgram	Mekliganj	51.62
54.	Lotamari	14	Patgram	Mekliganj	110.92
55.	Bhotbari	16	Patgram	Mekliganj	205.46
56.	Komat Changrabandha	16A	Patgram	Mekliganj	42.8
57.	Komat Changrabandha	17A	Patgram	Mekliganj	16.01
58.	Panisala	17	Patgram	Mekliganj	137.66
59.	Dwarikamari Khasbash	18	Patgram	Mekliganj	36.5
60.	Panisala	153/P	Patgram	Mekliganj	0.27
61.	Panisala	153/O	Patgram	Mekliganj	18.01
62.	Panisala	19	Patgram	Mekliganj	64.63
63.	Panisala	21	Patgram	Mekliganj	51.4
64.	Lotamari	20	Patgram	Mekliganj	283.53
65.	Lotamari	22	Patgram	Mekliganj	98.85
66.	Dwarikamari	23	Patgram	Mekliganj	39.52
67.	Dwarikamari	25	Patgram	Mekliganj	45.73
68.	Chhat Bhothat	24	Patgram	Mekliganj	56.11
69.	Baakata	131	Patgram	Hathabhanga	22.35
70.	Baakata	132	Patgram	Hathabhanga	11.96
71.	Baakata	130	Patgram	Hathibhanga	20.48
72.	Bhogramguri	133	Patgram	Hathibhanga	1.44
73.	Chenakata	134	Patgram	Mekliganj	7.81
74.	Banskata	119	Patgram	Mathabanga	413.81
75.	Banskata	120	Patgram	Mathabanga	30.75
76.	Banskata	121	Patgram	Mathabanga	12.15
77.	Banskata	113	Patgram	Mathabanga	57.86
78.	Banskata	112	Patgram	Mathabanga	315.04
79.	Banskata	114	Patgram	Mathabanga	0.77

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
80.	Banskata	115	Patgram	Mathabanga	29.2
81.	Banskata	122	Patgram	Mathabanga	33.22
82.	Banskata	127	Patgram	Mathabanga	12.72
83.	Banskata	128	Patgram	Mathabanga	2.33
84.	Banskata	117	Patgram	Mathabanga	2.55
85.	Banskata	118	Patgram	Mathabanga	30.98
86.	Banskata	125	Patgram	Mathabanga	0.64
87.	Banskata	126	Patgram	Mathabanga	1.39
88.	Banskata	129	Patgram	Mathabanga	1.37
89.	Banskata	116	Patgram	Mathabanga	16.96
90.	Banskata	123	Patgram	Mathabanga	24.37
91.	Banskata	124	Patgram	Mathabanga	0.28
92.	Gotamari Chhit	135	Hatibandha	Sitalkuchi	126.59
93.	Gotamari Chhit	136	Hatibandha	Sitalkuchi	20.02
94.	Banapachai	151	Lalmonirhat	Dinhata	217.29
95.	Banapachai Bhitarkuthi	152	Lalmonirhat	Dinhata	81.71
96.	Dasiar Chhara	150	Fulbari	Dinhata	1643.44
97.	Dakurhat- Dakinirkuthi	156	Kurigram	Dinhata	14.27
98.	Kalamati	141	Bhurungamari	Dinhata	21.21
99.	Bhahobganj	153	Bhurungamari	Dinhata	31.58
100.	Baotikursa	142	Bhurungamari	Dinhata	45.63
101.	Bara Coachulka	143	Bhurungamari	Dinhata	39.99
102.	Gaochulka II	147	Bhurungamari	Dinhata	0.9
103.	Gaochulka I	146	Bhurungamari	Dinhata	8.92
104.	Dighaltari II	145	Bhurungamari	Dinhata	8.81
105.	Dighaltari I	144	Bhurungamari	Dinhata	12.31
106.	Chhoto Garajjhora II	149	Bhurungamari	Dinhata	17.85

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
107.	Chhoto Garajjhora I	148	Bhurungamari	Dinhata	35.74
108.	1 chhit* without name & JL No. at the southern and of JL No. 38 & southern and of JL No. 39 (locally known as Ashokabari**)		Patgram	Mathabhanga	3.5

Enclaves with Fragmented Chhits

109.	(i) Bewladanga	34	Haldibari	Boda	862.46
	(ii) Bewladanga	Fragment	Haldibari	Debiganj	
110.	(i) Kotbhajni	2	Haldibari	Debiganj	2012.27
	(ii) Kotbhajni	Fragment	Haldibari	Debiganj	
	(iii) Kotbhajni	Fragment	Haldibari	Debiganj	
	(iv) Kotbhajni	Fragment	Haldibari	Debiganj	
111.	(i) Dahala	Khagrabri	Haldibari	Debiganj	2650.35
	(ii) Dahala	Fragment	Haldibari	Debiganj	
	(iii) Dahala	Fragment	Haldibari	Debiganj	
	(iv) Dahala	Fragment	Haldibari	Debiganj	

* Corrected *vide* 150th (54th) India-Bangladesh Boundary Conference held at Kolkata from 29th September to 2nd October, 2002.

** Corrected *vide* 152nd (56th) India-Bangladesh Boundary Conference held at Kochbihar, India from 18th—20th September, 2003.

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
	(v) Dahala	Fragment	Haldibari	Debiganj	
	(vi) Dahala	Fragment	Haldibari	Debiganj	
17160.63					

The above given details of enclaves have been jointly compared and reconciled with records held by India and Bangladesh during the Indo-Bangladesh Conference held at Calcutta during 9th—12th October, 1996 as well as during joint field inspection at Jalpaiguri (West Bengal) Panchagarh (Bangladesh) sector during 21—24 November, 1996.

Note: Name of enclave in Sl. No. 108 above has been identified as Ashokabari by joint ground verification during field season 1996-97.

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 Director Land Records & Survey
(Ex-Officio) West Bengal, India &
 Director, Eastern Circle Survey of
 India, Calcutta.

Md. Shafi Uddin
 Director-General, Land Records
 and Surveys, Bangladesh.

B. EXCHANGEABLE BANGLADESH ENCLAVES IN INDIA WITH AREA

Sl. No.	Name of Chhits	Lying within Police station W. Bengal	Lying within Police station Bangladesh	J.L. No.	Area in acres
1	2	3	4	5	6

A. Enclaves with independent chhits

1.	Chhit Kuchlibari	Mekliganj	Patgram	22	370.64
2.	Chhit Land of Kuchlibari	Mekliganj	Patgram	24	1.83
3.	Balapukhari	Mekliganj	Patgram	21	331.64
4.	Chhit Land of Panbari No. 2	Mekliganj	Patgram	20	1.13

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
5.	Chhit Panbari	Mekliganj	Patgram	18	108.59
6.	Dhabalsati Mirgipur	Mekliganj	Patgram	15	173.88
7.	Bamandal	Mekliganj	Patgram	11	2.24
8.	Chhit Dhabalsati	Mekliganj	Patgram	14	66.58
9.	Dhabalsati	Mekliganj	Patgram	13	60.45
10.	Srirampur	Mekliganj	Patgram	8	1.05
11.	Jote Nijjama	Mekliganj	Patgram	3	87.54
12.	Chhit Land of Jagatber No. 3	Mathabhanga	Patgram	37	69.84
13.	Chhit Land of Jagatber No.1	Mathabhanga	Patgram	35	30.66
14.	Chhit Land of Jagatber No. 2	Mathabhanga	Patgram	36	27.09
15.	Chhit Kokoabari	Mathabhanga	Patgram	47	29.49
16.	Chhit Bhandardaha	Mathabhanga	Patgram	67	39.96
17.	Dhabalguri	Mathabhanga	Patgram	52	12.5
18.	Chhit Dhabalguri	Mathabhanga	Patgram	53	22.31
19.	Chhit Land of Dhabalguri No. 3	Mathabhanga	Patgram	70	1.33
20.	Chhit Land of Dhabalguri No. 4	Mathabhanga	Patgram	71	4.55
21.	Chhit Land of Dhabalguri No. 5	Mathabhanga	Patgram	72	4.12
22.	Chhit Land of Dhabalguri No. 1	Mathabhanga	Patgram	68	26.83
23.	Chhit Land of Dhabalguri No. 2	Mathabhanga	Patgram	69	13.95
24.	Mahishmari	Sitalkuchi	Patgram	54	122.77
25.	Bura Saradubi	Sitalkuchi	Hatibandha	13	34.96

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
26.	Falnapur	Sitalkuchi	Patgram	64	505.56
27.	Amjhol	Sitalkuchi	Hatibandha	57	1.25
28.	Kismat Batrigachh	Dinhata	Kaliganj	82	209.95
29.	Durgapur	Dinhata	Kaliganj	83	20.96
30.	Bansua Khamar Gitaldaha	Dinhata	Lalmonirhat	1	24.54
31.	Poaturkuthi	Dinhata	Lalmonirhat	37	589.94
32.	Paschim Bakalir Chhara	Dinhata	Bhurungamari	38	151.98
33.	Madhya Bakalir Chhara	Dinhata	Bhurungamari	39	32.72
34.	Purba Bakalir Chhara	Dinhata	Bhurungamari	40	12.23
35.	Madhya Masaldanga	Dinhata	Bhurungamari	3	136.66
36.	Madhya Chhit Masaldanga	Dinhata	Bhurungamari	8	11.87
37.	Paschim Chhit Masaldanga	Dinhata	Bhurungamari	7	7.6
38.	Uttar Masaldanga	Dinhata	Bhurungamari	2	27.29
39.	Kachua	Dinhata	Bhurungamari	5	119.74
40.	Uttar Bansjani	Tufanganj	Bhurungamari	1	47.17
41.	Chhat Tilai	Tufanganj	Bhurungamari	17	81.56
<i>B. Enclaves with Fragmented Chhits</i>					
42.	(i) Nalgram	Sitalkuchi	Patgarm	65	1397.34
	(ii) Nalgram (Fragment)	Sitalkuchi	Patgarm	65	
	(iii) Nalgram (Fragment)	Sitalkuchi	Patgarm	65	

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
43.	(i) Chhit Nalgram (ii) Chhit Nalgram (Fragment)	Sitalkuchi Sitalkuchi	Patgarm Patgarm	66 66	49.5
44.	(i) Batrigachh (ii) Batrigachh (Fragment) (iii) Batrigachh (Fragment)	Dinhata Dinhata Dinhata	Kaliganj Kaliganj Phulbari	81 81 9	577.37
45.	(i) Karala (ii) Karala (fragment) (iii) Karala (fragment)	Dinhata Dinhata Dinhata	Phulbari Phulbari Phulbari	9 9 8	269.91
46.	(i) Sipprasad Mustati (ii) Sipprasad Mustati (Fragment)	Dinhata Dinhata	Phulbari Phulbari	8 6	373.2
47.	(i) Dakshin Masaldanga (ii) Dakshin Masaldanga (Fragment) (iii) Dakshin Masaldanga (Fragment) (iv) Dakshin Masaldanga (Fragment) (v) Dakshin Masaldanga (Fragment) (vi) Dakshin Masaldanga (Fragment)	Dinhata Dinhata Dinhata Dinhata Dinhata Dinhata	Bhurungamari Bhurungamari Bhurungamari Bhurungamari Bhurungamari Bhurungamari	6 6 6 6 6 6	571.38

THE CONSTITUTION OF INDIA

(Appendix I)

1	2	3	4	5	6
48.	(i) Paschim Masaldanga	Dinhata	Bhurungamari	4	29.49
	(ii) Paschim Masaldanga (Fragment)	Dinhata	Bhurungamari	4	
49.	(i) Purba Chhit Masaldanga	Dinhata	Bhurungamari	10	35.01
	(ii) Purba Chhit Masaldanga (Fragment)	Dinhata	Bhurungamari	10	
50.	(i) Purba Masaldanga	Dinhata	Bhurungamari	11	153.89
	(ii) Purba Masaldanga (Fragment)	Dinhata	Bhurungamari	11	
51.	(i) Uttar Dhaldanga	Tufanganj	Bhurungamari	14	24.98
	(ii) Uttar Dhaldanga (Fragment)	Tufanganj	Bhurungamari	14	
	(iii) Uttar Dhaldanga (Fragment)	Tufanganj	Bhurungamari	14	
Total Area				7,110.02	

The above given details of enclaves have been jointly compared and reconciled with records held by India and Bangladesh during the Indo-Bangladesh Conference held at Calcutta during 9th—12th October, 1996 as well as during joint field inspection at Jalpaiguri (West Bengal) – Panchagarh (Bangladesh) sector during 21—24 November, 1996.

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(*Ex officio*) West Bengal, India &
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India, Calcutta.

Md. Shafi Uddin
Director General, Land Records
and Surveys, Bangladesh.

APPENDIX II

¹THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 2019

C.O. 272

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of State of Jammu and Kashmir, is pleased to make the following Order:—

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 2019.

(2) It shall come into force at once, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1954 as amended from time to time.

2. All the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:—

To article 367, there shall be added the following clause, namely:—

“(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir—

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

(c) references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and

(d) in proviso to clause (3) of article 370 of this Constitution, the expression “Constituent Assembly of the State referred to in clause (2)” shall read “Legislative Assembly of the State”.”

1.Published with the Ministry of Law and Justice, (Legislative Department) notification No. G.S.R. 551 (E), dated the 5th August, 2019, Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i).

APPENDIX III

¹DECLARATION UNDER ARTICLE 370(3) OF THE CONSTITUTION

C.O. 273

In exercise of the powers conferred by clause (3) of article 370 read with clause (1) of article 370 of the Constitution of India, the President, on the recommendation of Parliament, is pleased to declare that, as from the 6th August, 2019, all clauses of the said article 370 shall cease to be operative except the following which shall read as under, namely:—

“370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.”.

1.Published with the Ministry of Law and Justice, (Legislative Department) notification No. G.S.R. 562(E), dated the 6th August, 2019, Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i).

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ज्ञान-विज्ञान विमुक्तये

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Quadrant I- Description of the Module

Description of Module	
Subject Name	Criminology
Paper Name	Fundamentals of Criminal Justice and Criminal Law
Module Name/Title	Basic Principles of Code of Criminal Procedure
Module Id	
Pre-requisites	A general understanding of the primary principles of criminal law is required for a proper understanding of this module.
Objectives	To understand the purpose of criminal procedure To understand the basic framework of the Cr.PC To have an overview of the various classification of offences under Cr.PC To have an overview of some important Pre-Trial procedures To have an understanding of the various components of Fair Trial as incorporated under Cr.PC
Key Words	Trial, cognizable, non-cognizable, bailable, non-bailable, warrant cases, summons cases, arrest, search, interrogation, fair trial, public hearings, impartial judge

Quadrant- II- E-Text

The legal framework in any given area is generally divided into two aspects; substantive law and procedural law. Substantive law refers primarily to the area of law which defines the rights and duties of individuals and contains the prescriptions and prohibitions of law. Procedural law on the other hand regulates the manner in which such rights and duties will be enforced through the legal mechanism. For example, the Indian Contract Act defines the rights and duties of individuals who have entered into a contract and the conditions of their enforcement. Thus, whether A has the right to enforce a contract which he has entered into with B will be decided in reference to the provisions of the Indian Contract Act. On the other hand, issues such as the place of the suit, the court where the suit needs to be filed, the procedure to be adopted by the court while hearing such a suit and other such matters are determined by the provisions of the Code of Civil Procedure.



In the area of criminal law, Indian Penal Code constitutes the substantive law and the Code of Criminal Procedure constitutes the procedural law. Consisting of 38 Chapters and more than 480 Sections, the Code of Criminal Procedure contains detailed provisions as to how the criminal law of the land is to be enforced. The following are some of the important issues covered by the Code of Criminal Procedure;

1. Detection of Crime
2. Arrest of Suspects
3. Search and Seizure
4. Investigation and Collection of Evidence
5. Conducting Trial
6. Imposition of Punishment
7. Provisions regarding Appeal, Review etc.

While it is not practically possible to encapsulate the details of the entire code, it is important to be mindful of the certain fundamental aspects on the basis of which the structure of the criminal procedure is built.

Classification of Offences

It is important to understand that the nature of rules and prescriptions applicable in a particular situation under Code of Criminal Procedure depends on the classification of the offence in question. There are three main categories of classification of offences under the Code of Criminal Procedure which determine the different rules which are applicable to different types of cases in relation to certain matters.

Cognizable and Non-Cognizable Offences

Cognizable offences refers to the list of offences so identified in the First Schedule of the Code of Criminal Procedure for which a police officer may arrest a person without warrant.¹ Non-cognizable offences mean offences for which a police officer can arrest a person only with a warrant.² For example the offence of sedition is a cognizable offence whereas the offence of exerting undue influence at an election is a non-cognizable offence. Thus, when the offence is that of sedition, a police officer can arrest the accused without any warrant from any magistrate and also conduct investigation on the case without any authorisation from any magistrate.³ On the other hand, in case of the offence of exerting undue influence at an election, a police officer cannot as such arrest an accused without a warrant and would also require the authorisation from a judicial magistrate to conduct investigation.

It is important to remember that the distinction between cognizable and non-cognizable offences is not seemingly based on any generalised principle but on the basis of the identification listed in the First Schedule.⁴ However, a perusal of the offences listed as cognizable and non-cognizable indicates that the offences identified as non-cognizable are usually such offences which can be considered more as private wrongs where the initiative to pursue a criminal prosecution is left the discretion of the victim.⁵ In such cases, the victim can approach the court to make the police commence investigation on the case.

Bailable and Non-Bailable Offences

Bailable offences refer to the list of offences which are identified as a bailable offence in the First Schedule of the Code of Criminal Procedure or under any other law.⁶ In case of an offence identified as a bailable offence, when the accused person is arrested or detained without warrant, he/she has a right to be released on bail. In case of non-bailable offences, whether the arrested person will be granted bail or not is up to the discretion of the court.



Though there is no articulated general rule in this regard, generally more serious offences are categorised as non-bailable and less serious offences are categorised as bailable.

Summons Cases and Warrant Cases

Warrant cases refer to all such cases involving any offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.⁷ A summons case refers to any case which is not a warrant case.⁸ The purpose behind this classification is to determine the nature of trial procedure to be adopted in relation to the case in question.⁹ Under the Code of Criminal Procedure, separate trial procedures have been prescribed for warrant cases and summons cases. The trial procedure in relation to the warrant cases is more elaborate than in case of summons cases.¹⁰ The distinction between summons and warrant cases is also relevant in how the presence of the accused is secured by the court. In a summons case, once cognizance has been taken by the court, a summons is issued to the accused to secure his attendance in the court. On the other hand, in case of a warrants case, the attendance of the accused is secured by issuing a warrant of arrest.

- Cognizable Offences
- Non-Cognizable Offences

- Bailable Offences
- Non-Bailable Offences

- Warrant Cases
- Summons Cases

Pre-Trial Procedures

The Code of Criminal Procedure contains various important procedures which can generally be characterised as ‘Pre-Trial Procedures’. Pre-Trial procedures refer to the set of procedures which regulate the circumstances prior to the stage of trial. These procedures primarily cover the issues such as detection of crime, arrest of the suspected criminals, investigation of the crime, collection of evidence in relation to the crime etc. We will be focussing on three important aspect of pre-trial procedures;

1. Arrest
2. Search and Seizure
3. Interrogation during Investigation

Effecting the arrest of a suspected offender is one of the most important powers which is vested with the police. It is also one of the most controversial aspects of the police action as it results in direct loss of personal liberty.

A police officer can arrest an individual either with a warrant or without a warrant. When the matter concerns a non-cognizable offence, a police officer cannot as such arrest a suspect without a written warrant of arrest from a magistrate. A warrant of arrest can be issued even



in a cognizable case if the police has not arrested the accused.¹¹ A police officer can effect an arrest even without a warrant when the arrested person is actually concerned or reasonably suspected to be concerned in a cognizable offence.¹² Section 41 of the Code of Criminal Procedure also provides some further grounds where a police officer can arrest a person without a warrant.

The Code of Criminal Procedure provides a variety of safeguards to protect the rights of an arrested person. As getting arrested is an immediate and direct denial of the right of personal liberty of the arrested person, the Supreme Court in a catena of cases¹³ has also laid down detailed guidelines in relation to the rights of the arrested persons. Some important rights of the arrested person are as following:

1. Right to be informed of the grounds of arrest
2. Right to be informed of the right to bail
3. Right to be produced before a magistrate without delay
4. Right of not being detained for more than 24 hours without the permission of a judicial magistrate
5. Right to consult a legal practitioners
6. Right to be informed of his right to free legal aid in case of indigent person
7. Right to have one friend or relative be informed about his arrest and the place of his detainment
8. The right to have a memo of arrest attested by at least one witness who may be either a family member of the arrested person or a respectable person of the locality from where the arrest is made
9. The right to undergo a medical examination within 48 hours of the arrest

For collection of evidence, the police is authorised to search and seize things and documents. The police can conduct a search either with a warrant or without a warrant. A search warrant operates as a licence for the police to search any place either generally or for specific things. As conducting a search involves invasion of privacy, the courts are expected to exercise care while issuing search warrants.¹⁴ Section 93 of the Code of Criminal Procedure deal with the various grounds on the basis of which a court may be justified to issue a search warrant. Section 165 authorises a senior investigating police officer to conduct a search without warrant if during the investigation, there is no time to obtain a search warrant.

It is important to take note that there are certain general rules which would be applicable in relation to a search whether it is with or without warrant. The search is supposed to be made in the presence of at least two independent and respectable inhabitants of the locality in which the place to be searched is situated. The occupant of the place being searched has the right to attend the search. The person making the search is required to make a list of all the things seized and the places where such things were found and have the same signed by the witnesses.

For collection of evidence, the investigating officer is empowered under section 161 to orally examine any person supposed to be acquainted with the facts and circumstances of the case. It is important to note that an accused is also covered under the expression of 'any person acquainted with the facts and circumstances of the case' and thus is liable to answer the questions put to him by the investigating officer.¹⁵ However, a person being so examined is not bound to answer such questions the answers to which would have a tendency to expose him to a criminal charge, penalty or forfeiture.¹⁶ Though the investigating officer can reduce into writing the statements made to him, the person making the statement is ought not to sign such document.¹⁷ This provision is made to ensure that the person being examined is not put to harassment by the investigating officer. It is important to note that any statement made to the investigating officer under section 161 can be used only for limited



purposes. Under section 162, a statement made by a person under section 161 can be used to contradict his testimony when he is called as a prosecution witness. It is important to note that when such a person is called as a defence witness, his previous statement under section 161 cannot be used to contradict him.¹⁸ The investigating officer, under section 163 is duty bound not to offer any kind of inducement, threat or promise while examining a person under section 161.

Fair Trial

The criminal procedure is oriented to ensure that in trying to punish a person for the crimes he might have committed, we cannot afford to sacrifice the reasonable rights of the accused to have his case judged fairly and justly. Towards this end, the Code of Criminal Procedure incorporates within its scheme several elements through which a fair trial can be assured.

Adversary System

The adversary system of adjudication is based on affording an equal and fair opportunity to both the contesting parties to present the merits of their case before the court. The court in such a scenario operates as an unbiased umpire which decides as to which party has proved his case as per the requirements of law.¹⁹ The adversary system is supposed to provide and equal opportunity to both the parties to present their case but in a country like India with widespread illiteracy and poverty, this tenet of equality is often reduced to a mere theoretical abstraction. It is for this reason that in India the adversary system is not adopted in its theoretical extreme and provisions have been made for facilitating legal aid to indigent persona at State costs.²⁰ In fact the right to free legal aid services has been recognised as an inherent and important part of the right to life guaranteed under section 21 of the Constitution of India.²¹

Public Hearings

In order to ensure that judges adjudicating a case do no function out of personal prejudices or whimsical biases, conducting the trial openly operates an important instrumentality.²² An open and public hearing ensures a minimum objectivity and fairness in the proceedings. It is towards this end that section 327 of the Code of Criminal Procedure mandates that the place where the court shall be held will be an open court generally accessible to public subject to such reasonable restrictions which the court may consider necessary.

Impartial Judge

In order to ensure fairness in the trial, it is important to ensure that the judge adjudicating the matter should not have a conflict of interest. This requirement is expressed in the maxim *nemo debet esse judex in propria causa* which mandates that no man ought to be a judge in his own case. This maxim has been given statutory recognition in the form of section 479 of the Code of Criminal Procedure which prescribes that a judge or magistrate shall not try or commit for trial any case in which he is a party of in which he is personally interested except with the permission of the higher appellate court. It also prescribes that a judge shall not hear an appeal from any judgement passed by himself. The High Court has been empowered under section 407 to order for an offence be inquired into or tried by any other court when it feels that a fair and impartial inquiry or trial cannot be held in the court currently dealing with the matter.

Presumption of Innocence and Burden of Proof



Another essential aspect of a fair trial under the adversarial system of adjudication is the proposition that the accused is presumed to be innocent until proven guilty. Thus, the burden to prove that the accused is guilty of the alleged crimes is positively on the prosecution and unless the prosecution has discharged the burden, the court cannot return a verdict of guilty regardless of the nature of evidence produced by the defence.²³ Throughout the trial, that is a constant burden on the prosecution which must be discharged by proving the guilty of the accused beyond reasonable doubt.

Rights of the Accused

The essence of fair trial is to enable the accused to present his case in a proper manner. In order ensure that the accused gets a fair chance to defend the allegations against him, the Code of Criminal Procedure recognises certain rights which are available to the accused during the trial.

The right to know of the details of the accusations levelled against him is essential for the accused to prepare his defence. Thus, the Code of Criminal Procedure in through several provisions²⁴ guarantees to the accused the right to be properly informed of the allegations which have been levelled against him. When the offences that the accused is alleged to have committed are serious in nature, the court has the duty to frame the charges in writing and then also to explain the charges to the accused.

The accused also has the right to be present throughout the trial so that he can comprehend the case of the prosecution. Though no specific provision can be located in the Code of Criminal Procedure which specifically states this right of the accused, the same is implied by other specific provisions which empower the courts to dispense with the presence of the accused in some situations. The existence of such provisions in the form of section 205, 273 and 317 mean that other than under those provisions, the court cannot stop the accused from being present throughout the trial.²⁵

Section 273 of the Code of Criminal Procedure mandates that unless otherwise provided, all evidence in a trial or in any other proceeding ought to be taken in the presence of the accused. If the personal attendance of the accused has been dispensed with, then the evidence must be taken in the presence of his pleader. When evidence is taken in contravention of section 273 violates the very basic tenet of a fair trial.²⁶ When the evidence is taken in a language not understood by the accused and he happens to be present in the court in person, then he is entitled to the benefit of having the evidence be interpreted in a language he understands.²⁷ The accused also has the right to cross-examine the witnesses produced by the prosecution and a denial of this right vitiates the idea of fair trial.²⁸ As we have observed earlier, the burden to produce evidence is on the prosecution and the defence is not under any obligation to produce evidence of the innocence of the accused. However, if the accused intends to produce evidence in order to support his claim of innocence, he cannot be denied that right.²⁹ It is also important that the court delivers a reasoned decision summarising the arguments and evidences of both the parties.³⁰

One of the most important elements of the concept of fair trial is the doctrine of *autrefois acquit* and *autrefois convict*. As per the prescriptions of this doctrine, once a person is either convicted or acquitted of any offence, he cannot be tried for the same offence again and he also cannot be tried for another offence based on the same facts as the earlier trial. This doctrine is incorporated in section 300 of the Code of Criminal Procedure. The important of



this doctrine can be understood from the fact that the same has been given the status of a fundamental right under Article 20 (2) of the Constitution of India. Putting the person on another trial for the same offence where he has already been acquitted or convicted would constitute undue harassment.

Undergoing a criminal trial is an arduous experience and if the experience is a unnecessarily prolonged one, it would result in significant stress and harassment for the accused. It is for this reason that the accused also has the right to an expeditious trial. An unreasonably long trial cannot be considered a fair trial as it puts undue pressure on the accused. This right has been recognised as a part of the right to life under Article 21 of the Constitution of India.³¹

Summary

1. In the area of criminal law, Indian Penal Code constitutes the substantive law and the Code of Criminal Procedure constitutes the procedural law. Consisting of 38 Chapters and more than 480 Sections, the Code of Criminal Procedure contains detailed provisions as to how the criminal law of the land is to be enforced.
2. It is important to understand that the nature of rules and prescriptions applicable in a particular situation under Code of Criminal Procedure depends on the classification of the offence in question. There are three main categories of classification of offences under the Code of Criminal Procedure which determine the different rules which are applicable to different types of cases in relation to certain matters.
3. Cognizable offences refers to the list of offences so identified in the First Schedule of the Code of Criminal Procedure for which a police officer may arrest a person without warrant. Non-cognizable offences mean offences for which a police officer can arrest a person only with a warrant.
4. Bailable offences refer to the list of offences which are identified as a bailable offence in the First Schedule of the Code of Criminal Procedure or under any other law. In case of an offence identified as a bailable offence, when the accused person is arrested or detained without warrant, he/she has a right to be released on bail. In case of non-bailable offences, whether the arrested person will be granted bail or not is up to the discretion of the court.
5. Warrant cases refer to all such cases involving any offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. A summons case refers to any case which is not a warrant case. The purpose behind this classification is to determine the nature of trial procedure to be adopted in relation to the case in question. Under the Code of Criminal Procedure, separate trial procedures have been prescribed for warrant cases and summons cases.
6. The Code of Criminal Procedure provides a variety of safeguards to protect the rights of an arrested person. As getting arrested is an immediate and direct denial of the right of personal liberty of the arrested person, the Supreme Court in a catena of cases has also laid down detailed guidelines in relation to the rights of the arrested persons.
7. It is important to take note that there are certain general rules which would be applicable in relation to a search whether it is with or without warrant. The search is supposed to made in the presence of at least two independent and respectable inhabitants of the locality in which the place to be searched is situated. The occupant of the place being searched has the right to attend the search. The person making



the search is required to make a list of all the things seized and the places where such things were found and have the same signed by the witnesses.

8. For collection of evidence, the investigating officer is empowers under section 161 to orally examine any person supposed to be acquainted with the facts and circumstances of the case. It is important to note that an accused is also covered under the expression of 'any person acquainted with the facts and circumstances of the case' and thus is liable to answer the questions put to him by the investigating officer. However, a person being so examined is not bound to answer such questions the answers to which would have a tendency to expose him to a criminal charge, penalty or forfeiture.
9. The criminal procedure is oriented to ensure that in trying to punish a person for the crimes he might have committed, we cannot afford to sacrifice the reasonable rights of the accused to have his case judged fairly and justly. Towards this end, the Code of Criminal Procedure incorporates within its scheme several elements of through which a fair trial can be assured such as adoption of adversary system, public hearings, impartial judges, presumption of innocence, rights of the accused etc.

¹ Section 2 (c) Cr.PC

² Section 2 (l) Cr.PC

³ Section 156 (1) Cr.PC

⁴ Lectures on Criminal Procedure, R.V. Kelker, Eastern Book Company, 2004, 4

⁵ Kelker 5

⁶ Section 2 (a) Cr.PC

⁷ Section 2 (x) Cr.PC

⁸ Section 2 (w)

⁹ Kelker 5

¹⁰ Kelker 5

¹¹ Section 204 and 87 of Cr.PC

¹² Section 41 (1) (a)

¹³ Khatri (II) v State of Bihar (1981) 1 SCC 627, Joginder Singh v State of U.P. (1994) 4 SCC 260, D.K. Basu v State of West Bengal (1997) 1 SCC 416

¹⁴ Stephen v Chandramohan 1988 Cri LJ 308 (Ker HC)

¹⁵ Nandini Satpathy v P.L. Dani (1978) 2 SCC 424

¹⁶ Section 161 (2)

¹⁷ Section 162 (1)

¹⁸ Kelker 66

¹⁹ Kelker 140

²⁰ Kelker 140

²¹ Hussainara Khatoon (IV) v State of Bihar (1980) 1 SCC 98

²² Kehar Singh v State (Delhi) (1988) 3 SCC 609

²³ Kali Ram v State of H.P. (1973) 2 SCC 808

²⁴ Section 228, 240, 246 and 251 of the Code of Criminal Procedure



²⁵ Kelker 146

²⁶ State v Anant Singh 1972 Cri LJ 1327

²⁷ Section 279, Cr.PC

²⁸ Sukanraj v State of Rajasthan AIR 1967 Raj 267

²⁹ T.N. Jannardhanan Pillai v State 1992 Cri LJ 436

³⁰ Muktiar Singh v State of Punjab 1995 SCC (Cri) 296

³¹ Hussainara Khatoon (IV) v State of Bihar (1980) 1 SCC 98

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TOPIC - 3
FROM INVESTIGATION TO THE TRIAL STAGE

Sl. No.	Officer Name and Designation	Page Nos.
1.	Dr. M. Rama Krishna, I-Addl. District Judge, Machilipatnam.	2 – 15
2.	Sri G. Satya Prabhakara Rao, Chief Metropolitan Magistrate, Vijayawada.	16 – 26
3.	Sri Vinod Kumar, I-Addl. Junior Civil Judge, Machilipatnam.	27 – 35
4.	Smt D. Sony, Spl. JMFC for trying P&E offences, Machilipatnam.	36 – 57
5.	Sri Pattan Shiyaz Khan, Addl. Junior Civil Judge, Tiruvuru.	58 – 71
6.	Smt. D. Sharmila, Addl. Junior Civil Judge, Gannavaram.	72 - 87

FAIR TRIAL-FROM INVESTIGATING TO THE TRIAL STAGE

By
Dr. M. Rama Krishna,
I-Addl. District Judge,
Machilipatnam.

- 1) The investigation is of prime importance in a trial of the case. It is the foundation on which the whole case rests and revolves. The rights available to the accused as well as to the victim are to be protected from the initial stage of criminal investigation since it has an effect on the trial to be conducted in the court.
- 2) Each person has a right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and society. The fair trial norms include the right to be presumed as innocent, to be defended by a lawyer, to be informed of the charges levelled against the accused and to be informed of the rights available to the victim.
- 3) In order to ensure a fair trial, it is imperative to follow strict procedural safeguards embodied in the constitution and the criminal procedure code from the moment the police receive information about an offence and initiate criminal investigation. Non-implementation of fair trial principles at the early stages of criminal proceedings can jeopardize the possibility just out case.
- 4) Many of the rights available to the accused during investigation till the stage of trial emerge from Article-21 of the Constitution which reads “No the person shall be deprived of his life or personal liberty except according to the procedure established by law.” The manner in which a crime is investigated is not a matter for the police, but it has an effect on the trial to be conducted in the court.
- 5) If any information is relating to the cognizable offence is received by the

officer-in-charge of a police station orally. He shall reduce the same into writing and read over the same to the informant and he shall obtain the signature of the informant on it, if written complaint is given it shall be signed by the person giving it and substance thereof shall be entered in a book prescribed for the said purpose, as per Sec.154 of Cr.P.C.

6) Since there is a alarming increase in respect of offences against women and in view of the recent ghastly incidents i.e., sexual assault on a victim women which is popularly called as "Nirbhaya Case" thereafter an amendment was brought into Sec.154 of Cr.P.C. by making a proviso in order to protect the victim in such a cases.

7) The proviso of Sec.154 of Cr.P.C. goes to show that if the information is given by the women against whom an offence Under Secs.326-A, 326-B, 354, 354-A to D, 376, 376-A to E or Sec.509 of IPC, is alleged to have been committed or attempted such information shall be recorded by a Woman Police Officer or any Woman Officer. If such victim is temporarily or permanently mentally or physically disabled such information shall be recorded by a Police Officer at the residence of such person or at convenient place of such person's choice in the presence of interpreter or a special judicator. The recording of such information shall be video graphed and the police officer shall get the statement of such victim by a Judicial Magistrate as per Sec.154 Sub Sec.5 A (a) of Cr.P.C. as possible.

8) If the above provision is not followed strictly it would affect the fair trial norms and ultimately it affects the result of the trial process. Hence, the moment a report is given in respect of cognizable offence, the officer-in-charge of a police station shall follow the Sec.154 of Cr.P.C. strictly as this information sets the law into motion i.e., investigation would commence basing on this information.

9) So far as non-cognizable case is concerned Sec.155 of Cr.P.C. deals with

the same which reads as follows:

Information as to non-cognizable cases and investigation of such cases:-

1. When information is given to an officer-in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer, in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.
2. No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.
3. Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
4. Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

10) **Safeguards to be taken by the Investigating Officer during investigation:-**

1. The officer-in-charge of a police station may without the order of Magistrate investigate any cognizable case within the limits of such station as per Sec.156 of Cr.P.C. but so far as non-cognizable case is concerned police officer shall not investigate the same without the order of the Magistrate having power to trial such case or commit the case for trial.
2. Sec.157 of Cr.P.C. deals with the procedure for investigation which says if the police officer has reason to suspect commission of a cognizable offence he shall forthwith send a report to the

Magistrate and proceed to the scene of offence investigate the matter in person or to depute his sub-ordinate to investigate and investigate the facts and circumstances of this case and to take steps to discover and arrest of the offender.

- 11) If the offence alleged as a rape the statement of the victim shall be recorded at the residence of the victim by a Woman Police Officer in the presence of her parents or guardian or near relatives or social worker of the locality. Thus, Sec.157 of Cr.P.C. casts a duty on the investigating officer to forthwith sent a report pertaining to the cognizable offence to the concerned Magistrate to keep the Magistrate informed of the investigation of a cognizable offence to avoid suspicion that the FIR is the result of consultation and deliberation and antedated and to avoid that investigation is not fair and the report must be sent to the Magistrate concerned immediately after registration of the FIR it would ensure the fair trial.
- 12) During investigation the police officer may secure the attendance for the witnesses who are acquainted with the facts and circumstances of the case except a male person under the age of 15 years or above the age of 65 years, a woman, a male or physically disabled person who shall be examined at their residence.
- 13) During investigation and examination of witnesses by the police as per Sec.161 of Cr.P.C. the Magistrate may orally examine any person who are acquainted with the facts and circumstances of the case and such person shall be bound to answer truly the questions relating to the case other than the questions, the answers to which would have a tendency to expose him to a criminal charge or a penalty to a forfeiture.
- 14) As per Article-20 (3) of Constitution of India which provides that "no person accused of an offence shall be compelled to be a witness against

himself." Since as per our criminal jurisprudence, the accused is must be presumed to be innocent until the contrary is proved. Hence it is the duty of the prosecution to prove the offence. The accused need not make any admission or statement against his own freewill. As such as per Sec.161 (2) of Cr.P.C. he need not give any answer which would have a tendency to expose him to a criminal charge or to a penalty to a forfeiture.

15) So far as the statements of a woman against whom the offence Under Secs.354, 354-A to D, 376, 376-A(2) (e) and 506 of IPC are alleged to have been committed or attempted, shall be recorded by a women police officer and sometimes wherever necessary the statements may also be recorded by audio-video electronic means. We all know that the statement of witness before investigating officer cannot be used as evidence. It is only that part of the statement if duly proved may be used by the accused and sometimes the prosecution with the permission of the court may contradict to the witness concerned, in the manner provided by the Sec.145 of the Indian Evidence Act.

16) The investigating officer has to perform his duties with the sole object of investigating the allegations and in the course of investigation he has to take into consideration the relevant material which is against or in favour of the accused. The investigating officer makes investigation promptly after prompt recording of FIR sending the same to the court. If he does not follow the provisions of Criminal Procedure Code in recording FIR and sending the same to the court and it is not made prompt investigation, it effects the trial process itself as the investigation is tainted one ultimately it effects the fair trial norms.

17) **Procedure at the time of recording of confession and statements:-**

Section 164 of Cr.P.C. deals with the procedure. Said procedure to be adopted at the time of recording the statements of witnesses and confessional statements of the accused which reads as follows:

164. Recording of confessions and statements:

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not, he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the Inquiry or trial:

[Provided that any confession or statement made under this sub-section may also be recorded by audio – video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.]

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him, and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in Section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect.

If the above said procedural safeguards are taken at the time of recording confession of the accused and statements of the witnesses it would ensure fair trial.

Medical examination of victim and accused in rape cases during investigation:-

18) Belated medical examination of victim of rape and accused in rape cases would ultimately effect the result of the case. As per Sec.164-A of Cr.P.C. during investigation of rape cases the victim of rape shall be examined by Medical Expert i.e., by a Registered Medical Practitioner employed in a Government Hospital or by a local authority. In the absence of such practitioner by any other Registered Medical Practitioner with the consent of such victim within 24 hours from the time of receiving the information relating to the commission of offence.

19) Sec.53-A of Cr.P.C. says when a person is arrested on a charge of committing an offence of rape or an attempt to commit rape he shall be examined by a Registered Medical Practitioner without any delay and report shall be forwarded to the investigating officer without any delay who shall inturn forwarded to the Magistrate as referred in Sec.173 of Cr.P.C. so far as other persons arrested in other cases concerned and Sec.54 of Cr.P.C. says whenever person is arrested he shall be examined by the State or Central Government the Medical officer indicates they are not available he shall be examined by a Registered Medical Practitioner soon after if the arrested person is a female she shall be examined under supervision of a female Medical officer or a female Medical Practitioner. The Medical officer shall make a mention about the injuries or marks of violence upon a person arrested and the approximate the time with such injuries have been inflected and shall forwarded copy of said report immediately. A prompt medical examination of arrested person and the victim would help the court to adjudicate the matter and to come to a correct conclusion.

20) **Rights at the time of Arrest:-**

While making arrest the police officer shall follow the guidelines

prescribed under Sec.46 to 60-A of Cr.P.C. No woman shall be arrested after sun set and before sun rise and in exceptional circumstances exists a Woman Police Officer shall obtain prior permission from the Judl. Magistrate of I Class in writing can arrest a woman during the prohibited time also. At the time of arrest the police officer shall inform the grounds of arrest and of right to bail as per Sec.50 of Cr.P.C. The arrested person shall not be subjected to grow restrained than his answer to prevent his escape and inform about said arrest of the nearest relatives or friends of the person so arrested and shall inform a arrested person about his rights and shall produce before the court within 24 hours from the time of arrest it shall be the duty of the person having custody of the accused to take reasonable care of the health and safety of the accused.

21) Arrest forms an integral part of the investigation and rights at the time of arrest are also relevant. Hence it is necessary to make a note of the rights available to the accused at the time of arrest in brief.

22) The accused has a freedom from arbitrary arrest and detention. He must be informed of all the grounds of arrest, his relatives must be informed of his arrest and he has a right to consult an advocate i.e., representation by a legal practitioner of his choice as per Article-22 of the Constitution. The accused has a right to be produced before a Magistrate within 24 hours of arrest and not to be detained beyond 24 hours without the approval of a Magistrate.

23) Every police officer arresting the accused without any warrant shall immediately inform the arrested person of the full particulars of the offence for which he or she is arrested or other grounds of such arrest. Where police officer arrests any person without warrant other than a person accused of non-bailable offence, he shall inform a person that he is entitled to be released on bail and that he may arrange for sureties. The arresting officer shall inform the rights available to the accused as per the Constitution and Code of Criminal Procedure. If the arrested person is a female the searching police officer must

also be a female and perform the search with strict regard to decency. The women are protected from being arrested between sun set and sun rise, except in exceptional circumstances. With the prior permission from a judicial Magistrate, the accused has a right to freedom from torture during investigation.

Maintenance of dairy of proceedings by the investigating officer during investigation

24) The Code of Criminal Procedure, Section 172 requires the police to conduct investigations expeditiously, while keeping through records of their methods and findings. Section 172(1) requires a police officer to keep a day-to-day case diary of his investigation “setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.” Underlining the vital importance of executive record keeping, the Supreme Court has repeatedly reiterated that the case diary should be maintained with scrupulous completeness and efficiency.

The Police Officer's report on Completion of Investigation:

25) Section 173 of the Code of Criminal Procedure imposes further record-keeping duties on the police. The police must present a police report to the magistrate containing the following information:

1. The names of the parties;
2. The nature of the information;
3. The names of the persons who appear to be acquainted with the circumstances of the case;
4. Whether any offence appears to have been committed and, if so, by whom;
5. Whether the accused has been arrested;

6. Whether the accused is released on his bond and, if so, with or without sureties; and
7. Whether he has been forwarded to custody under Section 170.

26) In case of trial before a Magistrate, the police must give the Magistrate all relevant supporting documents as well as the statements of all witnesses on which the prosecution intends to rely. Section 173 places a continuous duty on the investigating officer to forward to the Magistrate any additional reports that may be necessary to keep the court updated of further facts that may have come to light or further evidence that the police may have obtained.

27) The Supreme Court has held, in catena of decisions that such investigation standards require police to question and record statements from parties who may possibly possess relevant information, to quickly take into custody hard evidence, and have experts file an urgent forensic report so that no valuable clues are lost. Police failure to swiftly prepare such records of investigation, resulting in undue delay at trial, might violate Article 21 of the Constitution, as the procedure prescribed by law for denying a person's liberty is not reasonable, fair and just, if the accused is not afforded a speedily trial.

Custodial violence torture during investigation

28) The recognition that there is violence and coercion in custody led to Section 176 of the Code of Criminal Procedure being amended to provide that in the case of death or disappearance of a person, or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry and in the case of death, an examination of the dead body shall be conducted within 24 hours of death. Whenever a person dies in police custody, Section 176 requires the Magistrate to investigate the cause of death. An inquiry under this Section is to be conducted independently by the Magistrate and not only with

the police (Nilabati Behara, para.9). This inquiry confers the Magistrate with all powers he would normally have when investigating any of these offences. The inquiring Magistrate shall record all his evidence and, if considered necessary, examine the dead body. Wherever practicable, the Magistrate may inform and allow the family of the deceased to participate in the enquiry.

29) The Code of Criminal Procedure certifies the duties of the Magistrate where it requires that at the time of production of an accused, the Magistrate: shall

- (a) the accused if he has been threatened, tortured or abused in custody;
- (b) see if the Memo of Arrest has been filled and then cross checks the facts in the Memo of Arrest by questioning the accused.

If he suspects that the accused is intimidated by police presence he can question and record the statement of the accused in the absence of the police;

- (c) ensure that the medical examination was conducted and the medical certificate is attached with the cases papers;
- (d) Examine each of these documents to ensure that their contents include everything that needs to be included.

30) When magistrates observe breaches of procedure by the police and prosecution or repreated transgressions, they must treat these violations as serious disrespect for the court and take all steps to address the breach.. These may include:

- i) Calling for explanations by superior officers about patterns of observed behavior by subordinates;
- ii) Seeking explanations from the Prosecutor whose duty it is to ensure that papers are in order before being submitted to court, Equally the magistrate can haul up the defence lawyer for not ensuring proper representation of his client;

If there is no defence lawyer at this stage the Magistrate has the additional duty of ensuring that a lawyer is provided.

31) Magistrate also need to recognize that the arrested person, even in court, is in an extremely vulnerable position. It is his duty, not only to ascertain whether the arrested person can communicate within the court room, where the arrested person can feel less intimidated and freer to voice his concerns. He should be particularly attentive to the detainee's condition. Where necessary, he should routinely carry out a visual inspection for any signs of physical injury- or order one to be carried out by a doctor. Magistrates should also be alert to other clues, such as the individual's and mental condition and overall demeanour, them. They should actively seek to demonstrate that they will take allegations of torture or ill treatment seriously and will take action where necessary to protect those at risk.

32) If the arrested person alleges before the Magistrate that he has been ill-treated in custody, it is incumbent on the magistrate to record the allegation in writing, immediately order a medical examination and take all necessary steps to ensure that the allegation is fully investigated. This should be done even in the absence of an express complaint or allegations, if the person concerned bears visible signs of physical or mental ill treatment. The court can further safeguard the accused by ensuring that the accused is accompanied by a relative to any medical examination.

The primary role of judges in preventing acts of torture, therefore, is to ensure that the law is upheld at all times.

Procedural Safeguards Against torture

33) Section 163 of the Criminal Procedure Code prohibits investigating officers from obtaining statements from witnesses through threaten in conduct. In order to reduce the possibility of torture and custodial violence and protect

the rights of anyone who finds themselves in police custody, first the Supreme Court and now the statutory law has laid down a considerable set of procedural safeguards. These include:

- 1) Immediately on arrest the arresting police officer has an obligation to give information about the arrest and the place of detention to any person nominated by the arrested person, and make an entry of the same in the general diary maintained in every police station, providing the details of the person who is informed.
 - 2) Draw up an “Arrest Memo” indicating the date, place and time of arrest; signed by two independent witnesses and countersigned by the arresting officer.
 - 3) Draw up an Inspection Memo” of all major and minor injuries on the body of the arrested person.
 - 4) Conduct a medical examination of the arrested person at the time of arrest. This is to be repeated every 48 hours if the arrestee is in police custody.
 - 5) It will also be the duty of the Magistrate before whom the accused is produced to check with the accused whether the police have complied with the above provisos.
 - 6) The Magistrate must inform the arrested person, when first produced, about the right to a medical examination and also inquire whether they have any complaints of torture or maltreatment in custody.
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- 34) The provisions along with the 24 hours production rule and the provisions that say that restraints must not be more than necessary to prevent escape, cumulatively create a procedural design aimed at ensuring that the dangers of torture and illegal detention are minimized.
 - 35) The requirement that accurate records be kept and produce before the court has a dual purpose. On the one hand, it is aimed at ensuring that no person is subjected to police action and perhaps even custody without there

being some reasonable basis for limiting his freedom. On the other hand, it is a check to ensure that the court's time and manpower, and the taxpayer money is not wasted on ill-prepared and shoddy case which will not stand the test of judicial scrutiny and eventually come to naught. Most importantly, the court's scrutiny of the record is designed as a check on police bias, manipulation or negligence.

36) The judge's signature on each page of the case diary at the time of remand before filing the charge sheet also operates as a safeguard against interpolation, embellishment and manipulation. Any mechanical attestation of the case diary vitiates the high standards of fair trial and can materially affect the life and liberty of the accused. This depends considerably on the exercise of the protective role of the court.

Right to be provided with copies of all the documents relied upon by the prosecution:-

37) Secs.207 and 208 of the Cr.P.C. mandate that in any criminal proceedings instituted upon a police report, the Magistrate must freely furnish the following copies to the accused.

1. Copy of police report.
2. Copy of FIR
3. All the statement of prosecution witnesses.
4. Any recorded confession
5. Any other documents

38) The object behind this is, to give adequate notice to the accused about the material to be used against them so that he is not prejudiced/surprised during trial. It ensured a just and fair trial and to ensure the accused an assessment whether there are real grounds for going forwards and to assist the accused to argue that there is no case to answer.

J O U R N E Y F R O M I N V E S T I G A T I O N T O T R I A L

By

Sri G. Satya Prabhakara Rao,
Chief Metropolitan Magistrate,
Vijayawada.

1. The “**Criminal Procedure Code, 1973**” (hereinafter referred to as ‘Cr.P.C.,’) consists of **XXXVII Chapters with 484 Sections besides Two (2) Schedules**. It has come into force with effect from ‘**1st day of April, 1974**’. It is referred to as the ‘**Act**’ by the Law-makers, although its title is ‘**Code of Criminal Procedure**’.

2. ‘**Clause (h) of Section 2 of Cr.P.C**’, defines the term “**Investigation**” in an inclusive manner “**so as to bring into its fold all the proceedings under the code for collection of evidence conducted by a Police Officer or by any person, other than a Magistrate, duly authorised by a Magistrate in that behalf.**”

3. The Hon'ble Apex Court in “**AIR 2009 SUPREME COURT – 984**”, **Between “Nirmal Singh Kahlon Vs. State of Punjab and others”** pleased to hold that,

"Definition and scope of the expressions investigation and Officer In-Charge of a Police Station must receive a liberal interpretation."

4. STAGES OF CRIMINAL TRIAL: -

- i) Registration of First Information Report;**
- ii) Commencement of investigation and conclusion of evidence by investigating agency;**
- iii) Production of accused before Magistrate within Twenty Four (24) hours of arrest;**
- iv) Bail hearing before appropriate court;**
- v) Completion of investigation;**
- vi) Hearing regarding charge;**
- vii) Discharge;**
- viii) Framing of Charge;**
- ix) Conviction on plea of guilt;**
- x) Recording of evidence of prosecution;**
- xi) Statement of accused (U/s 313 of Cr.P.C.,);**

- xii) Defence of accused;**
- xiii) Arguments;**
- xiv) Judgment and Sentence by the Court;**

5. INVESTIGATION & ENQUIRY-DIFFERENCE:-

'Investigation' is different from 'Enquiry'. ***Investigation is done by the Police Officer, whereas, enquiry is conducted by a Magistrate.*** In proceedings relating to Warrant Procedure Cases, there are two distinct stages. The first stage is known as '**Enquiry**' and the second stage is known as '**Trial**'. '**Enquiry**' starts when the Magistrate, who receives a complaint or charge sheet takes cognizance of an offence and it comes to a close with the framing of a Charge. '**Enquiry**' may even end in discharge of the accused in which cases no Charge will be framed and there will be no trial. The second stage called '**Trial**' begins with the framing of the Charge after enquiry and ends with the pronouncement of the Judgment, whether it is a Judgment of 'Conviction' or 'Acquittal'. In the case of offences, which are triable by summons procedure there will not be any enquiry and trial starts with the Magistrate taking cognizance of the offence and ends with the disposal of the case.

6. All offences which are punishable with '**Death, Imprisonment for Life or Imprisonment**' for a term exceeding Two (2) years shall be triable as

'Warrant Cases'. All other offences are triable by summons procedure and they are called as 'Summons Cases'. Sometimes in the course of the same transaction several offences might have been committed, some of which are triable by summons procedure and some by warrant procedure. For example, '**Rioting**' armed with deadly weapon punishable U/s 148 of IPC, which is a warrant case and simple hurt punishable U/s 323 of IPC, which is a summons case. In such a case, only warrant procedure should be adopted for the trial of all offences. It will not be irregular if a summons case is tried by warrant procedure. But, the entire trial would be vitiated and becomes irregular if a warrant case is tried by summons procedure.

7. **"The legislative intent behind in enacting the criminal laws is to maintain law and order, peace and tranquility in the society. Therefore, the prosecution shall be in the direction of achieving the such goal and in the said direction of inspiring confidence and faith of the people in the system and the process of law should never be promoted for wrecking vengeance against the persons for individual benefits in the said disguise". "(2015) 2 ALD (Criminal) – 1043," Between "**K.Venu Gopal Reddy and others Vs. Deputy Superintendent of Police, Ananthapuram Division, Ananthapuram and others."**"**

8. Cognizance of an offence is taken by a Magistrate (a) when he receives a complaint, or (b) when a Police Officer lays a Charge Sheet, or (c) when information is received by the Magistrate from any person than a Police Officer or upon his own knowledge that an offence has been committed. The first category relates to Private Complaints laid by private individuals or Officers other than Police Officers, such as Food Inspector or Income Tax Authority, Railway Protection Force etc., The second category obviously covers Charge Sheets laid by Police Officers. The third category relates to information, whereas the first category refers to complaint. The third category is of very wide amplitude and covers a variety of situation when a Magistrate may take cognizance of an offence upon his own personal knowledge or upon information received from some source other than a private complaint or a Police Charge Sheet. For example "**Section 319 deals with a case where the evidence in courts of the enquiry or trial before a Magistrate discloses that some person, who was not originally mentioned in the complaint or the Charge Sheet as the accused had committed the offence.**" The Court may take action against such other person also. Taking cognizance means the application of the judicial mind by the Magistrate to the facts brought to his notice with the object of taking proceedings under the code. It is a mental process which involves the assimilation of facts alleged in the Charge Sheet or information regarding commission of an offence and the decision made by the Magistrate to exercise his ministerial powers to take action as prescribed by the court. For example if a Magistrate who receives a private complaint proceeds

to record the Sworn Statement of a complaint or if a Magistrate who receives a Police Charge Sheet issue summons to the accused person, he can be said to have taken cognizance of the offence. But, if a Magistrate who receives a private complaint does not record the Sworn Statement of the complainant but merely forwards it to the concerned Station House Officer for Investigation and Report U/s 156 (3), he cannot be said to have been taken cognizance of the offence. If after receipt of the report from Station House officer, to whom the complaint was forwarded U/s 156 (3), the Magistrate issue summons to the accused or makes up his mind to record the sworn statement of the complainant, he can then be said to have taken cognizance.

9. D I F F E R E N T T Y P E S O F T R I A L S: -

i) Summary Trial: -

“Section 260 Cr.P.C.” provides that any **Chief Judicial Magistrate or Metropolitan Magistrate or a Magistrate of First Class** specifically empowered by the Hon'ble High Court may try summarily certain offences which are enumerated in that section. The offences are generally simple offences for which the imprisonment prescribed does not exceed Two (2) years. In the case of Summary Trial, as soon as the accused is brought before the court, he is questioned with reference to the accusation leveled against him. If he pleads guilty that fact should be recorded in the

Summary Trial Register, but the case record should contain the questions put to the accused and the answer given by him in his own words. When the accused pleads guilty the Magistrate can immediately pass the appropriate sentence by making an entry in the prescribed column in the Summary Trial Register. No separate Judgment need to be pronounced in such a case. If, on the other hand, the accused pleads not guilty, the evidence of the prosecution witnesses should be recorded. But, here again there is no need to record the evidence of the witnesses in the form of elaborate depositions as is done in the case of normal trial, but only the substance of their statements need to be recorded in the form of memorandum, which need not be signed by the witnesses. But, prudence requires that even in the Summary Trials, the statement of witnesses are recorded faithfully and elaborately and there is nothing wrong in obtaining the signatures of witnesses under their statements.

10. TRIAL OF WARRANT CASES INSTITUTED

ON POLICE REPORTS:-

After the Charge Sheet is filed, it should be registered as a Calendar Case and the summons should be issued to the accused. As soon as accused appears or is produced before the court, the Magistrate should

assure himself whether the accused was supplied with all the documents referred in Section 207 of Cr.P.C., After considering the record and the answers given by the accused to the questions put to him, the Magistrate may discharge the accused U/s 239 of Cr.P.C., after recording his reasons therefor, if he feels that the Charge against the accused is groundless. If after considering the material mentioned therein, the Magistrate feels that it is not a fit case for discharge and that charges under the appropriate sections should be framed, he may do so and record the plea of accused. If the accused pleads guilty he may straight away Convict and pass sentence U/s 241 of Cr.P.C., If the accused pleads not guilty, evidence of prosecution witnesses should be recorded. After the evidence of prosecution side witnesses, the accused should be questioned U/s 313 of Cr.P.C., The defence witnesses if any should thereafter be examined. After the evidence of defence witnesses, arguments are heard and Judgment of Conviction or Acquittal is to be pronounced U/s 248 of Cr.P.C.,

**11. TRIAL OF WARRANT CASES ON PRIVATE
COMPLAINTS:**

In cases instituted on private complaint there was no question of documents being supplied to the accused as in the case of prosecution instituted on police charge sheets. But, in "1992 (3) ALT 54 (NRC)", it was held that

"It is an elementary principle in Criminal Jurisdiction that in criminal proceedings the copies of the same have to be supplied to the accused and unless and until the copies of the documents are supplied to the accused it is very difficult for the accused to make out his defence."

12. "Section 204 (3)" lays down that along with summons or warrant issued to the accused, a copy of the complaint would also be forwarded to him. When the accused appears or is produced before court, the Magistrate may adjourn the case to another date to enable the complainant to produce his witnesses. When the witnesses are so produced, their evidence is recorded. If the Magistrate feels that after recording the evidence of witnesses that no case has been made out against the accused, if unrebutted would warrant his conviction, the

accused shall be discharged U/s 245 (1) of Cr.P.C. If upon taking of the evidence referred to in Section 244, the Magistrate considers for the reason to be recorded, that no case against the accused has been made out, it unrebutted would warrant his acquittal, the Magistrate shall discharge him. If a warrant case is instituted on a private complaint, the accused gets two opportunities to cross-examine prosecution side witnesses once before framing of the charge and again after the charge is framed. After the charge is framed the accused should be asked to plead. If the accused pleads guilty, the Magistrate may immediately convict and sentence him. If on the other hand, the accused pleads not guilty he should be questioned on the next date of hearing, whether he desires that any of the prosecution side witnesses already examined should be recalled for further cross-examination. If he expresses such a desire, though witnesses whom he proposed to further cross-examine should be recalled and the case should be adjourned to an other date. After such further cross-examination, evidence of remaining prosecution witnesses if any should be recorded. Thereafter, the accused once again be questioned U/s 313 of Cr.P.C., after completing the defence evidence, if any, arguments should be heard and a Judgment of Conviction or Acquittal should be delivered U/s 248 of Cr.P.C.,

13. T R I A L O F S U M M O N S C A S E S: -

There is no difference in the procedure between 'Trial of Summons Cases instituted on private complaints' and 'Trial of Summons Cases instituted on Police Charge Sheets'. When the accused appears or is brought before the court, he should first of all be questioned with reference to the contents of the complaint or Charge Sheet and he should be asked whether he pleads guilty or not U/s 251 of Cr.P.C., If the accused pleads guilty, he may immediately reconvicted and sentence U/s 252 of Cr.P.C., If he does not plead guilty the case should be adjourned to another date for examining of prosecution list of witnesses. If the witnesses are examined, the accused should be questioned generally with reference to their evidence U/s 313 of Cr.P.C., If the accused cites any defence witnesses or desires to give evidence, himself, their evidence should also be recorded and arguments should be heard. Thereafter, a Judgment of Conviction or Acquittal follows U/s 255 of Cr.P.C.,

From Investigation to the Trial Stage

By
 Sri Vinod Kumar,
**I-Addl. Junior Civil Judge,
 Machilipatnam.**

1. Introduction:

The concept of fair trial is based on the basic ideology that State and its agencies have the duty to bring the offenders before the law. In their battle against crime and delinquency, State and its officers cannot on any account forsake the decency of State behaviour and have recourse to extra-legal methods for the sake of detection of crime and even criminals. For how can they insist on good behaviour from other when their own behaviour is blameworthy, unjust and illegal? Therefore the procedure adopted by the State must be just, fair and reasonable. The Indian courts have recognised that the primary object of criminal procedure is to ensure a fair trial of accused persons. Human life should be valued and a person accused of any offence should not be punished unless he has been given a chance for fair trial and his guilt has been proved in such trial.

The Hon'ble Supreme Court of India has observed that "each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated." in Best Bakery case.

The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, most importantly of the right to liberty and security of person.

2. From Investigation to Trial Stage:

The Cr. P.C. entitles an accused of certain rights during the course of any investigation, enquiry or trial of an offence with which he is charged.

Fair trial requires that the accused person is given adequate opportunity to defend himself. But this opportunity will have no meaning if the accused person is not informed of the accusation against him. The Code therefore provides in section 228, 240, 246, 251 in plain words that when an accused person is brought before the court for trial, the particulars of the offence of which he is accused shall be stated to him.

In case of serious offences, the court is required to frame in writing a formal charge and then read and explain the charge to the accused

person. A charge is not an accusation in abstract, but a concrete accusation of an offence alleged to have been committed by a person. The right to have precise and specific accusation is contained in section 211, Cr. P.C.

Section 50 provides that any person arrested without warrant shall immediately be informed of the grounds of his arrest. The duty of the police when they arrest without warrant is to be quick to see the possibility of crime, but they ought to be anxious to avoid mistaking the innocent for the guilty. The burden is on the police officer to satisfy the court before which the arrest is challenged that he had reasonable grounds of suspicion.

In *Pranab Chatterjee v. State of Bihar* the court held that Section 50 is mandatory. If particulars of offence are not communicated to an arrested person, his arrest and detention are illegal. The grounds can be communicated orally or even impliedly by conduct.

Section 57 of Cr.P.C. and Article 22(2) of Constitution provides that a person arrested must be produced before a Judicial Magistrate within 24 hours of arrest. In *State of Punjab v. Ajaib Singh* the court held that arrest without warrant call for greater protection and production within 24 hours ensures the immediate application of judicial mind to the legality of the arrest.

The decisions of the Supreme Court in *Joginder Kumar v. State of Uttar Pradesh* and *D.K. Basu v. State of West Bengal*, were enacted in Section 50-A making it obligatory on the part of the police officer to inform the friend or relative of the arrested person about his arrest and also to make an entry in the register maintained by the police. This was done to ensure transparency and accountability in arrest. Sec.160 of Cr. P.C provides that investigation by any police officer of any male below 15 years or any woman can be made only at the place of their residence. Section 46(4) provides that no woman shall be arrested after sunset and before sunrise, save in exceptional circumstances and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

By virtue of Section 436 the accused can claim bail as a matter of right in cases which have been shown as bailable offences in the First schedule to the Code. Bail is basically release from restraint, more particularly, release from custody of the police. An order of bail gives back to the accused freedom of his movement on condition that he will appear to take his trial. If the offence is bailable, bail will be granted without more ado. But bail under Section 389(1) after conviction is not a matter of right whether the offence is bailable or non-bailable. If no charge-sheet is filed before the expiry of 60/90 days as the case

may be; the accused in custody has a right to be released on bail. In non-bailable offences, the Magistrate has the power to release on bail without notice to the other side if charge sheet is not filed within a period of sixty days. The provision of bail to women, sick and old age persons is given priority subject to the nature of the offence.

Legal Aid:

The requirement of fair trial involves two things: (a) an opportunity to the accused to secure a counsel of his own choice, and (b) the duty of the state to provide a counsel to the accused in certain cases. The Law Commission of India in its 14th Report has mentioned that free legal aid to persons of limited means is a service which a Welfare State owes to its citizens.

In India, right to counsel is recognised as fundamental right of an arrested person under article 22(1) which provides, *inter alia*, no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. Sections 303 and 304 of the Code are manifestation of this constitutional mandate.

In *Khatri v. State of Bihar* the court held that the accused is entitled to free legal services not only at the stage of trial but also when first produced before the Magistrate and also when remanded.

Further, article 39-A was also inserted in the Constitution as per 42nd Amendment, 1976, which requires that the state should pass suitable legislations for promoting and providing free legal aid. To fulfill this Parliament enacted Legal Services Authorities Act, 1987. Section 12 of the Act provides legal services to the persons specified in it.

In *Suk Das and Ors. v. Union Territory of Arunachal Pradesh*, the court strengthened the need for legal aid and held that “free legal assistance at state cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty. The exercise of this fundamental right is not conditional upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being afforded to him. On the other hand the Magistrate or the Sessions Judge before whom the accused appears is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty is entitled to obtain free legal services at the cost of the State.

In *Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi* the appellant an illiterate foreign national was tried, convicted and sentenced to death by the trial court without assignment of counsel for his defence. Such a result is confirmed by the High Court. The convict, is charged, convicted and sentenced under Sections 302/307 of Indian Penal Code and also under

Section 3 of The Explosive Substances Act, 1908. Fifty six witnesses and investigating officer were examined without appellant having a counsel and none were cross-examined by appellant. Only one witness cross-examined to complete the formality.

Fair trial also requires public hearing in an open court. The right to a public hearing means that the hearing should as a rule be conducted orally and publicly, without a specific request by the parties to that effect. A judgment is considered to have been made public either when it was orally pronounced in court or when it was published, or when it was made public by a combination of those methods.

Section 327 of the Code makes provision for open courts for public hearing but it also gives discretion to the presiding judge or magistrate that if he thinks fit, he can deny the access of the public generally or any particular person to the court during disclosure of indecent matter or when there is likelihood of a disturbance or for any other reasonable cause.

In the case of *Naresh Sridhar Mirajkar v. State of Maharashtra* the apex court observed that the right to open trial must not be denied except in exceptional circumstances. High court has inherent jurisdiction to hold trials or part of a trial *in camera* or to prohibit publication of a part of its proceedings.

In *State of Punjab v. Gurmit* the court held that the undue publicity is evidently harmful to the unfortunate women victims of rape and such other sexual offences. Such publicity would mar their future in many ways and may make their life miserable in society. Section 327(2) provide that the inquiry into and trial of rape or an offence under Section 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code shall be conducted *in camera*.

Speedy Trial:

Speedy trial is necessary to gain the confidence of the public in judiciary. Delayed justice leads to unnecessary harassment. The concept of speedy trial is an integral part of article 21 of the Constitution. The right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration, and continues at all stages namely, the stage of investigation, inquiry, trial, appeal and revision.

Section 309(1) provides “in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.”

In *Hussainara Khatoon v. State of Bihar* the Supreme Court declared that speedy trial is an essential ingredient of ‘reasonable just and fair’ procedure guaranteed by article 21 and it is the constitutional obligation of the state to set up such a procedure as would ensure speedy trial to the accused. The state cannot avoid its constitutional obligation by pleading financial or administrative inadequacy.

The Supreme Court in *A.R. Antulay v. R.S. Nayak* issued guidelines for the time period during which different classes of cases are to be concluded. It was held “it is neither advisable nor feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc.- what is called systematic delay.” The aforesaid decision came up for consideration in the case of *P. Ramachandra Rao* and was upheld and reaffirmed.

In *Ranjan Dwivedi vs C.B.I Tr.Director General* the accused was tried for the assassination of Shri. L.N. Mishra, the then Union Railway Minister. The trial was pending for the past 37 years. In view of delay in completion of trial for more than 37 years from date of the trial the Petitioners presented Writ Petitions praying for quashing of the charges and trial. But it was held that the trial cannot be terminated merely on the ground of delay without considering the reasons thereof. Hence the petition was dismissed.

For the conduct of a fair trial, it is necessary that all proceedings related to the case should take place in the presence of the accused or his counsel. The underlying principle behind this is that in a criminal trial the court should not proceed *ex parte* against the accused person. It is also necessary for the reason that it facilitates the accused to understand properly the prosecution case and to know the witnesses against him so that he can prepare his defence.

The Code does not explicitly provide for mandatory presence of the accused in the trial as section 317 provides that a magistrate may dispense with the attendance and proceed with the trial if personal presence of the accused is not necessary in the interests of justice or that the accused persistently disturbs the proceedings in court. The courts should insist upon the appearance of the accused only when it is in his interest to appear or when the court feels that his presence is necessary for effective disposal of the case. Court should see that undue harassment is not caused to the accused appearing before them. Section 273 of the Code provides that all evidence taken in the course of the trial shall be taken in the presence of the accused or if the personal attendance of the accused is dispensed with then the evidence shall be taken in the presence of his pleader.

For fair trial, the accused person has to be given full opportunity to

defend himself. This is possible only when he should be supplied with the copies of the charge sheet, all necessary documents pertaining to the investigation and the statements of the witnesses called by the police during investigation. Section 238 makes it obligatory on the Magistrate to supply copies of these documents to the accused free of cost.

Article 14 of the Constitution ensures that the parties be equally treated with respect to the introduction of evidences by means of interrogation of witnesses. The prosecution must inform the defence of the witnesses it intends to call at trial within a reasonable time prior to the trial so that the defendant may have sufficient time to prepare his/her defence. In fairness to the accused, he or his counsel must be given full opportunity to cross-examine the prosecution witness.

In *Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi* it was held that every person has a right to have a fair trial. A person accused of serious charges must not be denied of this valuable right. Appellant was not provided an opportunity to cross examine the fifty six witnesses. Only one witness was cross-examined to complete the formality. Hence appellant's conviction and sentence was set aside.

In *Badri v. State of Rajasthan*, the court held that where a prosecution witness was not allowed to be cross examined by the defence on a material point with reference to his earlier statement made before the police, his evidence stands untested by cross-examination and cannot be accepted as corroborating his previous statement.

The concept of double jeopardy is based on the doctrine of 'autrefois acquit' and 'autrefois convict' which mean that if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts for any other offence. This clause embodies the common law rule of *nemo debet vis vexari* which means that no man should be put twice in peril for the same offence.

Section 300 of the Code provides that persons once convicted or acquitted not to be tried for the same offence or on the same facts for any other offence. Plea of double jeopardy is not applicable in case the proceedings for which the accused is being tried are distinct and separate from the offence for which the accused has already been tried and convicted.

In *Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao* the Supreme Court differentiated between Section 300(1) of Cr. P.C. and article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that 'no one can be prosecuted and punished for the same offence more than once', Section 300(1) of Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts. Therefore the second prosecution would be barred by Section 300(1) of Cr.P.C.

In *S.A. Venkataraman v. Union of India* the appellant was dismissed from service as a result of an inquiry under the Public Servants (Inquiries) Act, 1960, after the proceedings were before the Enquiry Commissioner. Thereafter, he was prosecuted before the Court for having committed offences under the Indian Penal Code, and the Prevention of Corruption Act. The Supreme Court held that the proceeding taken before the Enquiry Commissioner did not amount to a prosecution for an offence. It was in the nature of a fact finding to advise the Government for disciplinary action against the appellant. It cannot be said that the person has been prosecuted.

In *Leo Roy Frey v. Superintendent, District Jail*, the accused was prosecuted and punished under the Sea Customs Act, 1878. Later on, he was prosecuted under Section 120 of the Indian Penal Code, 1860 for conspiracy to commit the act for which he was already convicted under the Sea Customs Act, 1878. It was held that the second prosecution was not barred by Article 20(2), since it was not for the same offence. Committing an offence and conspiracy to commit that offence has been held to be two distinct offences.

Clause (3) of Article 20 provides: “No person accused of any offence shall be compelled to be a witness against himself.” This Clause is based on the maxim nemo tenetur prodere accusare seipsum, which means that “no man is bound to accuse himself.

In *State of Bombay vs. Kathi Kalu*, the Supreme Court held that “to be a witness” is not equivalent to “furnishing evidence”. Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in Court which may throw a light on any of the points in the controversy, but which do not contain any statement of the accused based on his personal knowledge. Compulsion means duress which includes threatening, beating or imprisoning the wife, parent or child of a person. Thus where the accused makes a confession without any inducement, threat or promise article 20(3) does not apply.

The Apex Court in *Selvi v. State of Karnataka* drew following conclusions:

- The taking and retention of DNA samples which are in the nature of physical evidence, does not face constitutional hurdles in the Indian context.
- Subjecting person to narco- analysis, Polygraphy and Brain fingerprinting tests involuntarily, amounts to forcible interference with person’s mental processes, and hence violates the right of privacy as well as Article 20(3).
- A person administered the narco-analysis technique is encouraged to speak in a drug-induced State and there is no reason why such an act should be treated any differently from verbal answers during an ordinary

interrogation.

In *Dinesh Dalmia v. State of Madras*, the court held that the scientific tests resorted to by the investigating does not amount to testimonial compulsion. Hence, the petition was dismissed.

3. Post-Trial Rights

Article 20(1) explains that a person can be convicted of an offence only if that act is made punishable by a law in force. It gives constitutional recognition to the rule that no one can be convicted except for the violation of a law in force. In *Om Prakash v. State of Uttar Pradesh*, offering bribe was not an offence in 1948. Section 3 of the Criminal Law (Amendment) Act, 1952 inserted Section 165A in the Indian Penal Code, 1860, declaring offering bribe as punishable. It was held that the accused could not be punished under Section 165A for offering bribe in 1948. Article 20(1) provides that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It prohibits the enhancement of punishment for an offence retrospectively. But article 20(1) has no application to cases of preventive detention.

A prisoner does not become a non-person. Prison deprives liberty. Even while doing this, prison system must aim at reformation. In prison, treatment must be geared to psychic healing, release of stress, restoration of self-respect apart from training to adapt oneself to the life outside. Every prisoner has the right to a clean and sanitized environment in the jail, right to be medically examined by the medical officer, right to visit and access by family members, etc. Recognizing the right to medical facilities, the National Human Rights Commission recommended the award Rs. 1 Lakh to be paid as compensation by the Govt. of Maharashtra to the dependents of an under trial prisoner who died in the Nasik Road Prison due to lack of medical treatment.

Section 389(1) empowers the appellate court to suspend execution of sentence, or when the convicted person is in confinement, to grant bail pending any appeal to it. Court need not give notice to the public prosecutor before suspending sentence or releasing on bail. Existence of an appeal is a condition precedent for granting bail. Bail to a convicted person is not a matter of right irrespective of whether the offence is bailable or non-bailable and should be allowed only when after reading the judgement and hearing the accused it is considered justified.

The hanging of Afzal Guru was criticised by human rights activists, legal experts all over the country. In carrying out Afzal Guru's death sentence, the government deliberately ignored the view of the Supreme Court and courts

across the world that hanging a person after holding him in custody for years is inhuman. Mohammad Afzal Guru was convicted by Indian court for the December 2001 attack on the Indian Parliament, and sentenced to death in 2003 and his appeal was rejected by the Supreme Court of India in 2005. The sentence was scheduled to be carried out on 20 October 2006, but Guru was given a stay of execution after protests in Jammu and Kashmir and remained on death row. On 3 February 2013, his mercy petition was rejected by the President of India, Pranab Mukherjee. He was secretly hanged at Delhi's Tihar Jail around on 9 February 2013.

4. Conclusion

The judge is not to draw any inferences against the defendant from the fact that he has been charged with a crime and is present in court and represented by a counsel. He must decide the case solely on the evidence presented during the trial. *State of U.P. v. Naresh and Ors* In this case it was held that the law in this regard is well settled that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable.

FAIR TRIAL FROM INVESTIGATION TO TRIAL

By
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 Spl. JMFC for trying P&E offences,
 Machilipatnam.

INTRODUCTION:

Every person has the right to a fair trial both in civil and in criminal cases and the effective protection of all human rights very much depends on the practical availability at all times of access to competent, independent and impartial courts of law which can and will administer justice fairly. The right to a fair trial is an ancient one and is synonymous with the trial process itself. A trial is a process by which a court decides on the innocence or guilt of an accused person. The procedure for the trial is found in the Code of Criminal Procedure, 1973. The Indian Penal Code, 1860 and the Indian Evidence Act, 1872. The broader principles underline the trial processes are also found in international law and constitution of India. Fairness in procedural terms principally aims to achieve equality before the law.

In a Criminal matter inquiry is something different from trial. Under the Code of Criminal procedure, investigation consists steps of 1. Proceeding to the spot. 2. Ascertain all the facts and circumstances of the case. 3.

Discovery and arrest of suspected offender. 4. Collection of evidence relating to commence of the offence.

The word investigation cannot be limited only to Police investigation but includes the investigation carried by any agency whether he be the Police officer or empowered authorized officer. The word investigation has to be read understand in the light of not only the powers conferred on Police Officer but the restitutions placed on them in the use and exercise of such powers. The powers of the Police officer to investigate in the cognizable offence is ordinarily not to be interfered with by the Judiciary as was held in **State of Bihar Vs. JAC Saldenna reported in AIR 1980 SC 226.**

FAIR TRIAL FROM INVESTIGATION TO TRIAL:

Chapters XII to XVII of Code of Criminal Procedure covering Sections from 154 to 224 deals with investigation to the trial stage.

The manner in which a crime is investigated is not merely a matter for the police, it has an effect on the way the trial is conducted and its fair outcomes. This is the reason courts have independent powers to inquire into the manner of investigation.

It is trite that expeditious investigation of offences and trial is a facet of rule of law and a component of Article 21 of the Constitution. Many of the rights implicated during the investigation stage emanate from Article 21 of the Constitution which states “*No person shall be deprived of his life or personal liberty expect according to procedure established by law*”. Domestic statutory provisions and case law also protect these rights and Supreme Court decisions provide valuable instructions to judges on how to protect the rights of accused persons. International law reinforces these rights as well.

This section outlines the basic legal rules governing the investigation of an offence. It specifically examines some of the rights that belong to the accused from the stage of criminal investigations till the beginning of the trial. Arrest forms an integral part of the investigation stage and rights at the time of arrest are also relevant at this stage. These however, have been discussed in the previous chapter which is solely devoted to arrest and pre-trial detention.

In order to assure a fair trial, it is imperative to follow strict procedural safeguards embedded in the Constitution and the Criminal Procedure Code from the moment the police receive information about an offence and initiate

criminal investigation to the first production not the accused at court. But in practice, police conduct, the prosecution's role and judicial oversight of fair trial norms are riddled with breaches which have become so routine, that they are no longer paid attention to as being vital elements that must not be disobeyed. The courts provide the single most effective check on police malpractice. They are the first and most important means by which both victim and accused can be assured of a level playing field which is the essence of maintaining the balance between individual liberties and state power, to bring justice to people. It is for this reason that the independence of the judiciary is held sacred and judges and magistrates are expected to follow every procedural safeguard and protect every assurance provided by the law to all parties. The police frequently overstep their role of marshaling evidence and apprehending the suspect by taking on the role of the judge. Judicial inclinations, especially amongst hard-pressed judges or those unsure of their role and power, contend towards passive acceptance of police depredations and versions without bothering to test their veracity by ensuring that procedural tests are flowed. This abrogation of independence and role blurs the contours of independent adjudication and results in the possibility of basis which is fatal to fair trial.

It should be stressed that it is important for a fair trial that judges and

magistrates personally examine the evidence brought forth by the prosecution. This does not follow from distrust vis-a-vis the police but it is essential that judges and magistrates receive a direct impression of all the relevant evidence, since they are the ones who decide the case. Furthermore, the examination by the judge or magistrate is an additional safeguard against violations of the fair trial principle.

DELAYS IN INVESTIGATION :

The delay during the investigation stage before the case reaches the court is to be curtailed inorder to assure a fair trial. The causes for delay before the case reaches the Court for trial are as follows :

1. Apathy and inaction on the part of the police in registering the FIRs and taking up the investigation in right earnest for various reasons. This is so inspite of Police Manuals emphasizing the need for speedy and prompt investigation.
2. Police are either hesitant to proceed with the investigation against important/influential persons or they are under pressure not to actswiftly especially if the person accused is in power or an active member of the ruling party. They adopt a pusillanimous attitude when the accused are such persons.

3. Corruption at Police Station level is affecting the timely and qualitative investigation. Further, the Police Stations are understaffed and the police personnel lack motivation to act without fear or favour.

4. When the FIR is not registered within a reasonable time or the pace of investigation is tardy, there is no internal mechanism to check thiseffectively. Even in States where Addl. SPs are posted in every District to be mainly in charge of crimes (as distinct from general law and order duties) the situation has not improved, except marginally.

5. There is no periodical exercise to upgrade the skills of investigation.

6. There is no intelligence network worth the name to get the inputs of crime and corruption and to take up preventive measures.

7. Sufficient priority is not given for investigation of crimes. The diversion of personnel from the Police Stations for various relatively unimportant duties such as ‘Bandobust’ is a common phenomenon. Sanctions for prosecution are unduly delayed by the Governments.

These reasons are not peculiar to cases of public. They are all problems surrounding the Criminal Justice system as a whole which are to be answered to ensure the constitutional right of a person accused of an offence.

QUALITY OF INVESTIGATION AND DOCUMENTATION:

Police are quite often handicapped in undertaking effective investigation for want of modern gadgets such as cameras, video equipment etc. Forensic science laboratories are scarce and even at the district level, there is no lab which can render timely assistance to the investigating Police. Further, it is common knowledge that there is dearth of forensic and cyber experts in police departments of various States. The result is that Police heavily lean towards oral evidence, instead of concentrating on scientific and circumstantial evidence. Sufficient care and effort is not devoted for examining and recording the statements of witnesses. Further, promptness in this regard is found to be wanting. The statements/FIRs/reports recorded are not fed to the computer immediately either because there is no computer network or there is no personnel trained in the job or for want of specific instructions. Sufficient care and time is not bestowed in drafting the final reports/charge- sheets. Defective charge-sheets without narration of all relevant facts and charge-sheets unaccompanied by annexures are reported to be very common and tend to delay the proceedings. This important document

which is normally prepared by a ‘Writer’ at the Police Station, is not carefully scrutinized by the Station House Officer. The ‘Writer’ posted at heavy Police Stations is overworked and can hardly spare the needed time. The photographs of accused (not to speak of witnesses) are not affixed to the charge-sheets/arrest Memos etc. nor even the identification marks are noted, making it difficult to identify the accused in the course of trial or to trace the absconding accused.

PROTECTION OF FUNDAMENTAL RIGHTS :

In Indian law, torture is a violation of fundamental rights, a crime, and a civil wrong. As such, it attracts imprisonment, liability to compensate the victim, and contempt proceedings. In what has now become famously known as the **D.K. Basu case**, the Supreme Court characterized torture as one of “*the worst kind of crimes in a civilised society*”. The Court was convinced that the increasing incident of torture was “affecting the credibility of the rule of law and the administration of the criminal justice system”. Addressing the competing interests of individual liberty and society’s need to police criminals, the Court stated; “*Using any form of torture for extracting any kind of information would neither be right nor just nor fair and, therefore, would be impermissible, being offensive of Article 21*”.

In **Francis Coralie Mullin vs. Administrator, Union Territory of Delhi**, the Supreme Court made it clear that any form of torture, cruel, inhuman or degrading treatment or punishment, offensive to human dignity, violates the all-important right to life and personal liberty under Article 21 of the Constitution and stated. “*Obviously, any form of torture cruel, inhuman or degrading treatment would be offensive to human dignity... and it would on this view be prohibited by Article 21*”. The Supreme Court went on to say; “*No law which authorises and no procedure which leads to such torture can ever stand the test of reasonableness and non-arbitrariness. It would plainly be unconstitutional and void as being violative of Articles 14 and 21*”.

Section 163 of the Criminal Procedure Code prohibits investigating officers from obtaining statements from witness through threatening conduct. In order to reduce the possibility of torture and custodial violence and protect the rights of anyone who finds themselves in police custody, first the Supreme Court and now the statutory law has laid down a considerable set of procedural safeguards. These provisions along with the 24 hours production rule and the provisions that say that restraints must not be more than necessary to prevent escape, cumulatively create a procedural design aimed at ensuring that the

dangers of torture and illegal detention are minimized.

The Indian Penal Code makes clear that physical and psychological ill-treatment of the accused by law enforcement officials is impermissible and punishable. Causing of “hurt” or “grievous hurt” by public servants to obtain confessions or to compel restoration of property, carry sentences up to seven and ten years of imprisonment respectively.

Disobedience of the law by a public servant with intent to cause “injury” (any harm illegally caused to any person in body, mind, reputation or property) is punishable by imprisonment for up to one year for the disobedience and criminal liability for the injury. Similarly, wrongful confinement to extort confessions, compel restoration of property or obtain information that could lead to detection of an offence, carries up to three years of imprisonment. “Moreover, Section 330 of the Indian Penal Code explicitly criminalises torture during interrogation and investigation for purposes of extracting a confession.

In addition to possible imprisonment for up to seven years for violating Section 330 of the Indian Penal Code any police officer failing to comply with the aforementioned court mandated requirements intended to prevent torture is

liable to be punished for contempt of court. These can be instituted in any High Court that has territorial jurisdiction over the matter. Further, any police officer engaging in torture is liable for civil damages by the victim or victim's family.

The recognition that there is violence and coercion in custody led to Section 176 of the Code of Criminal Procedure being amended to provide that in the case of death or disappearance of a person, or a rape of a women while in the custody of the police, there shall be a mandatory judicial inquiry and in the case of death, an examination of the dead body shall be conducted within 24 hours of death. Whenever a person dies in police custody, Section 176 requires the Magistrate to investigate the case of death. An inquiry under this Section is to be conducted independently by the Magistrate and not jointly with the police (Nilabati Behara, para 9). This inquiry confers the Magistrate with all powers he would normally have when investigating any of these offences. The inquiring Magistrate shall record all his evidence and, if considered necessary, examine the dead body. Wherever practicable, the Magistrate may inform and allow the family of the deceased to participate in the enquiry.

"Preventing torture is the greatest task facing India's courts, and thus it is essential for courts to adopt a new outlook and attitude toward prosecuting

torture. The Supreme Court urges both transparency of action and accountability for police officer. This is not the task of Parliament.” In saying this, the Supreme Court cast a dual responsibility on magistrates who are the primary gatekeepers against torture. The first responsibility is to ensure adherence to all procedures designed to safeguard against torture and the second is to hold accountable and bring to justice any perpetrator of torture.

Torture is an illegal activity and any state actor such as the police who indulges in this engages in a criminal activity. Yet it is too often condoned by the courts. It persists as a common practice, in part, because courts turn a blind eye to police practices which they know to be common and also because they do not insist on going strictly by the law but tolerate the practice. In fact, by not being proactive in preventing and punishing the use of torture, courts become silent partners in the illegality. The code of Criminal Procedure and Supreme Court guidelines require the courts to be proactive in ensuring judges and magistrate have a responsibility to ensure that they do not themselves, unintentionally collude with acts of torture while carrying out their official functions. This means total intolerance of any form of custodial violence and bring vigilant and vocal when there is even the slighter likelihood of transgression. There are no circumstances in which even a “little torture” or “some violence” can be considered legal or

justified.

Preventing torture requires magistrates to take account of the fact that it is common and very likely and therefore it is necessary to make it clear to police and prosecutor that the court is ever alert to the possibility that defendants and witness may have been subject to torture or other ill -treatment.

When magistrates observes breaches of procedure by the police and prosecution or repeated transgressions, they must treat these violations as serious disrespect for the court and take all steps to address the breach. These may include;

2. Calling for explanations by superior officers about patterns of observed behavior by subordinates;
3. Seeking explanations from the Prosecutor whose duty it is ensure that papers are in order before being submitted to court. Equally the magistrate can haul up the defence lawyer for not ensuring proper representation of his client;
4. If there is no defence lawyer at this stage the Magistrate has the additional duty of ensuring that a lawyer is provided at state expense;

Magistrates also need to recognise that the arrested person, even in

courts, is in extremely vulnerable position. It is his duty, not only to ascertain whether the arrested person can communicate freely to the court without any threat or intimidation, but also to create circumstances within the courtroom where the arrested person can feel less intimidated and freer to voice his concerns. He should be particularly attentive to the detainee's condition. Where necessary, he should routinely carry out a visual inspection for any signs of physical injury—or order one to be carried out by doctor. Magistrates should also be alert to other dues, such as the individual's physical and mental condition and overall demeanour, the behavior of the police and guards involved in the case and the detainee's attitude towards them. They should actively seek to demonstrate that they will take allegations of torture or ill-treatment seriously and will take action where necessary to protect those at risk.

If the arrested person alleges before the Magistrate that he has been ill-treated in custody, it is incumbent on the magistrate to record the allegation in writing, immediately order a medical examination and take all necessary steps to ensure that the allegation is fully investigated. This should be done even in the absence of an express complaint or allegation, if the person concerned bears visible signs of physical or mental ill treatment. The court can further safeguard the accused by ensuring that accused is accompanied by a relative to any medical

examination.

The primary role of judges in preventing acts of torture, therefore, is to ensure that the law is upheld at all times.

RIGHT TO PRIVACY :

The right to privacy is essential and fundamental in an organised society. Without it, an individual would be unable to enjoy the privileges which belong to him as a member of society. It is a cherished right. There must be strong, cogent and legally justifiable reasons for law enforcement agencies to interfere with this right. Here it is essential that proper procedure is always followed because intrusion into a person's home, professional or family life in the name of investigation without any proper basis is not permitted.

The right to privacy is now established in India, but as part of Article 21, and not as an independent right in itself. The Constitution does not grant in express terms any right to privacy. It is not enumerated as a Fundamental Right in the Indian Constitution. However, such a right has been culled from Article 21 by the Supreme Court.

According to the majority, Clause 236 of the relevant regulations in UP, was bad in law, it offended Article 21 in that there was no law permitting interference by such visits. The majority did not question whether these visits violated the “right to privacy”. But, the minority view while concurring that the fundamental right to privacy was part of the right to liberty in Article 21, part of the right to freedom of speech and expression in Article 19(1)(a), and also of the right to movement in Article 19(1)(d), held that the Regulations permitting surveillance violated the fundamental right of privacy. In effect, all the seven learned Judges held that the “right to privacy” was part of the right to “life” in Article 21.

In **Malak Singh and others vs. State of Punjab reported in AIR 1981 SC 760**, the Supreme Court added another dimension to protections against invasion of privacy. Malak Singh reiterated that serious encroachments into privacy can infringe on an individual's right to personal liberty guaranteed by Article 21. Not only is police surveillance of particular individuals permitted under the limited circumstances articulated in Chapter 23.4 of the Punjab Police Act, 1861, but such surveillance must be unobtrusive and within bounds.

Telephone tapping or interception of communications must be limited to the addresses specified in the order or to those likely to be used by a person specified in the order. All copies of the intercepted material must be destroyed as soon as their retention is not necessary under the terms of Section 5 (2) of the Telegraph Act.

RECORDS OF INVESTIGATION :

The necessity to discover the truth in every case demands that police records must be kept with scrupulous completeness, and investigations carried out with promptness, urgency, and efficiency.”

The Code of Criminal Procedure, Section 172 requires the police to conduct investigations expediently, while keeping thorough records of their methods and findings. Section 172(1) requires a police officer to keep a day to day case diary of his investigation “ setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or place visited by him, and a statement of the circumstances ascertained through his investigation”. Underlining the vital importance of executive record keeping, the Supreme Court has repeatedly reiterated that the case diary should be

maintained with scrupulous completeness and efficiency”.

Section 173 of the Code of Criminal Procedure imposes further record keeping duties on the police. The police must present a police report to the magistrate containing the following information:

- The names of the parties;
- The nature of the information;
- The names of the persons who appear to be acquainted with the circumstances of the case;
- Whether any offence appears to have been committed and, if so, by whom;
- Whether the accused has been arrested;
- Whether the accused is released on his bond and, if so, with or without sureties; and
- Whether he has been forwarded in custody under section 170.

In case tried before a Magistrate, the police must give the Magistrate all relevant supporting documents as well as the statements of all witness on which the prosecution intends to rely. Section 173 places a continuous duty on the investigating officer to forward to the Magistrate any additional reports that may be necessary to keep the court updated of further facts that may have come to light or

further evidence that the police may have obtained.

The Supreme Court has held in **Bhagwant Singh v Commissioner of Police, Delhi reported in (1985) SC 1285** that such investigation standards require police to question and record statements from parties who may possibly possess relevant information, to quickly take into custody hard evidence, and have experts file an urgent forensic report so that no valuable clues are lost. Police failure to swiftly prepare such records of investigation, resulting in undue delay at trial, might violate Article 21 of the Constitution, as the procedure prescribed by law for denying a person's liberty is nor reasonable, fair and just, if the accused is not afforded a speedy trial.

Bhagwant Singh brought claim against his local police department, alleging that they did not adequately investigate the death of his daughter by burning. The Supreme Court found the police's investigation deficient in the following ways; The police did not taken into custody the blunker with which the fire was said to have been closed. They waited for over five weeks before attempting to obtain a fingerprint analysis fo a mirror located in the vicinity of the burning. They allowed a material witness to return to his village without ever examining him. The police did not question the victim about the incident before

she died, despite being informed by her doctors that she was capable of responding to questioning. They did not record the statement of the taxi driver who drove the victim to the hospital; and they did not record ;the statement of an important local witness.

The value of scrupulously following records keeping procedures laid down at law in a complete and timely manner cannot be over emphasised. Complete, detailed and consistent police records indicate the sequence of police actions in investigations that eventually lead to the specific charges being laid against the accused before the court. The papers accompanying the charge sheet reveal the logic that grounds the charges. These documents are only aid available to the judge when applying his minds as to whether or not the accused has a case to answer. Incomplete, illogical, records full of inconsistencies and incoherences mean that the judge has nothing substantial against which to measure to go ahead with the trial.

The requirement that accurate records be kept and produced before the court has dual purpose. On the hand, it is aimed at ensuring that no person is subjected to police action and perhaps even custody without there being some reasonable basis for limiting his freedom. On the other hand, it is a check to

ensure that the court's time and manpower, and the taxpayer money is not wasted on ill-prepared and shoddy cases which will not stand the test of judicial scrutiny and eventually come to naught. Most importantly, the court's scrutiny of the records is designed as a check on police bias, manipulation or negligence.

The judge's signature on each page of the case diary at the time of remand before filing the charge sheet also operates as a safeguard against interpolation, embellishment and manipulation. Any mechanical attestation of the case diary vitiates the high standards of fair trial and can materially affect the life and liberty of the Accused. This depends considerably on the exercise of the protective role of the court.

CONCLUSION:

What is true for the police is also true for the judge. Absence of timely attention by the judge to the quantity and quality of basic material and procedural safeguards relating to record keeping, which will ground the charge, increases pendency and breaches the safeguards built into the procedure that requires judicial scrutiny at this very juncture of the process. To be able to say that there is indeed a rational basis for his decision to proceed with or discharge the

case, the judge must ensure that all the required papers accompany the charge sheet. He must subsequently examine each paper carefully for chronological and factual consistency and detail. This must be done with absolute objectivity with the sole purpose of assessing that the alleged actions do ground the charges made against the accused.

FROM INVESTIGATION TO TRIAL

By
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 Tiruvuru,

Introduction

The right to a fair trial is a norm of international human rights law and also adopted by many countries in their procedural law^[1]. It is designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of their basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. The concept of fair trial is based on the basic principles of natural justice. Though the form and practice of the principles of natural justice may vary from system to system on the basis of prevailing conditions of the society concerned. The formal account of the concept of fair trial has been accepted as human rights jurisprudence in the Universal Declaration of Human Rights, 1948 (hereinafter as UDHR). The major features of fair criminal trial are preserved in Article 10 and 11 of the UDHR^[2]. Article 14 of the International Covenant on Civil and Political Rights (hereinafter as ICCPR)^[3] reaffirmed the objects of UDHR and provides that “Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” The standards against which a trial is to be assessed in terms of fairness are numerous, complex, and constantly evolving. They may constitute binding obligations that are included in human rights treaties to which the state is a party. But they may also be found in documents which, though not formally binding, can be taken to express the direction in which the law is evolving^[4]. As far as Indian legal system is concerned, the international promise of fair trial is very much reflected in its constitutional scheme as well as its procedural law. Indian Judiciary has also highlighted the pivotal role of fair trial in catena of cases.

1. Countries like U.S.A., Canada, U.K., India have adopted this norm and it is enshrined in their Constitution. The Sixth Amendment to the United States Constitution is the part of the United States Bill of Rights which sets forth rights of accused person in relation to fair criminal trial. Section 11 of the Canadian Charter of Rights and Freedoms, which is part of the Canadian Constitution's Charter of Rights, protects a person's basic legal rights in criminal prosecution. Article 6 of the European Convention on Human Rights also provides detailed right to a fair trial, which is discussed hereinafter.

2. Universal Declaration of Human Rights was adopted by the General Assembly on December 10, 1948. Article 10 of UDHR provides that “everyone is entitled in full equality to fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations of any criminal charge against him.” Article 11 extends the rights conferred by Article 10 and states that “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

3. International Covenant on Civil and Political Rights, UN General Assembly resolution 2200A (XXI), December 16, 1966, entered into force March 23, 1976. <http://www2.ohchr.org/english/law/pdf/ccpr.pdf> (accessed on 10-11-09).

4 For example, India is not a signatory of the ‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, (UN General Assembly resolution 39/46, December 10, 1984, entered into force June 26, 1987) but there are many provisions in Criminal Procedure Code, 1973 which tacitly affirmed the objects of the said Convention.

The Hon'ble Supreme Court of India observed the evolving horizons of fair trial and stated that the principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adopted to new and changing circumstances and exigencies of the situations, peculiar at times and related

to the nature of crime, person involved, directly or operating behind, social impart and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice^[5].

This paper proposes to trace different dimensions of fair trial standards under Indian criminal Justice System from the stage of investigation to the beginning of trial and will also focus on the process of achieving ends of justice.

Glimpse of fair trial under The Code of Criminal Procedure, 1973

Adversary trial system

The system adopted by the Criminal Procedure Code, 1973 is the adversary system based on the accusatorial method. In adversarial system responsibility for the production of evidence is placed on the opposing party that is prosecutions with the judge acting as a neutral referee between the parties. But if we take a close look of the Code then we will find that there are some provisions which negate the strict adherence of the adversarial trial system^[6]. The judiciary has also advocated the role of presiding judge as a participant in the trial rather than a mere spectator in order to be an effective instrument in dispense of justice^[7].

In INDIA

The Rights implicate during the investigation stage emanate from Article 21 of The Constitution of India which states:

“ No person shall be deprived of his life or personal liberty except according to procedure established by law ”.

The provisions which linger in The Code of Criminal Procedure 1973 from the stage of investigation to the beginning of trial are in *Chapter XII (Sections 154 to 176)*.

5. Zahira Habibullah Sheikh and ors v. State of Gujrat and Ors.

6. Provisions which show departure from the adversary trial system are sections 228 and 240 which suggest that charge against the accused is to be framed by the court and not by the prosecution, sections 303 and 304 which confers on the accused not only a right to be defended by a lawyer of his choice but also provide in case of an indigent accused person a right to get legal aid for his defence at state's cost (Article 22(1) of our Constitution confers similar right on the accused person), section 311 which empowers the court to examine any person as a witness though such person has not been called by any party as a witness (similar power is also given to the court under section 165 of the Indian Evidence Act, 1872), section 313 where the court can examine the accused at any time to get explanation from him, section 320 where certain offences to be compounded need prior permission of the court, section 321 where the prosecutor cannot withdraw the case without the consent of the court.

7. Ram chander v. State of Haryana (1981) 3 SCC 191. This viewpoint of judiciary acquires support of the recommendations made by Malimath Committee Report on Criminal Reforms. The Committee recommended that some of the good features of the inquisitorial system, like the duty of the court to search for truth, pro-active role of judges etc., could be adopted to strengthen the adversarial system and to make it more effective. See 'Recommendations of the Committee on Reforms of Criminal Justice System', Criminal Law Journal 110, 2004 (Jun) J 102.

Chapter XII: Information to the police and their powers to investigate.

5. Chapter XII envisages the manner in which a crime is investigated by the police. Investigation is not merely a matter for the police it has an effect on the way the trial is conducted and its fair outcomes, it is the reason where courts have independent powers to inquire into the manner of investigation.

6. In order to assure a fair trial, it is imperative to follow strict procedural safeguards embedded in the Constitution and the Criminal Procedure Code from the moment the police receive information about an offence and initiate criminal investigation to the first production of the accused at court. Non-implementation of fair trial principles in these early stages of criminal

proceedings can and does jeopardize the possibility of just outcomes.

7. The courts provide the single most effective check on police malpractice. It is for this reason that the independence of the judiciary is held sacred and judges and magistrates are expected to follow every procedural safeguard and protect every assurance provided by the law to all parties. The police frequently overstep their role of Marshalling evidence and apprehending the suspect by taking on the role of the judge. This abrogation of independence and role blurs the contours of independent adjudication and results in the possibility of bias which is fatal to fair trial.

8. Furthermore, the examination by the Judge or Magistrate is an additional safeguard against violations of the fair trial principle.

FIR

Criminal Law is put into motion by the FIR (First Information Report). Sections 154 and 155 of The Code of Criminal Procedure envisages about the Information. FIR is the important report with high evidentiary value. Section 154 deals with the information about cognizable offences and section 155 deals with information and investigation about non-cognizable offences. According to section 154 of The Code of Criminal Procedure when ever police officer receives information of commission of offence of cognizable offence he has no option except to register the case. FIR can be used as substantive piece of evidence^[8]. If the accused himself gives the First Information the fact of his giving the information is admissible against him as evidence of his conduct under section 8 of Indian Evidence Act^[9]. To ensure Fair Trial whether the police are empowered to conduct inquiry to know the truth and then register FIR and what is the role of magistrate on such preliminary investigation. If the information reveals the commission of cognizable offence the officer in-charge is bound to register the FIR. He cannot make preliminary inquiry.

8. *Damidar Prasad Vs State of U.P. AIR 1975 SC 757*

9. *Aghnoo Nageshia Vs State of Bihar. 1956 Crl.J. 100 SC.*

If it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case^[10]. The police officer has to mention about the investigation in column no.13 of printed FIR.

Role of the magistrate on the FIR and Preliminary investigation.

3. The power of the police to investigate any cognizable offence is uncontrolled by the magistrate.

4. On receiving the report under section 157(1) (b) the magistrate may direct an investigation subordinate to him to proceed to hold a preliminary inquiry into or to otherwise dispose of the case^[11].

5. Magistrate cannot interfere with the investigation but he can direct the investigation when police failed to do so^[12].

6. Investigation of offence is the field exclusively reserved for the executive through the police department^[13].

Conclusion: No court under the code has the power to stifle or impinge upon the proceedings in

the investigation and it is only in a case wherein the police officer decides not to investigate the offence under section 157(1)(b) of The Code of Criminal Procedure.

Investigation

Investigating officers should have open mind in their investigation. *It must be understood that the aim of investigation is only to find out the truth.* Section 157 to 176 of The Code of Criminal Procedure envisages the concept of investigation. Chapter: XXII, Chapter No: XXIII, Chapter XXV and Chapter XXVIII of A.P.Police Manual – Volume II prescribes the procedure and orders to the police officers for investigation.

10. Section 157 of The Code of Criminal Procedure: Procedure for investigation preliminary inquiry. *(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender; Provided that- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot; (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. (2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub- section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.*

11. King Emperor Vs Khwaja Nazir Ahmed AIR 1945 pc 18. Section 159 of The Code of Criminal Procedure:Power to hold investigation or preliminary inquiry : Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code. S.N.Sharma Vs. Bipin Kumar Tiwari.

12. Peral Beverages Ltd. New Delhi Vs State of A.P 2002(2)ALD32 AP.

13. State of Bihar Vs. J.A.C Saldana AIR 1980 SC 326.

Judicial Pronouncements To Ensure Fair Investigation.

1. An investigator is the kingpin of criminal justice delivery system^[14]. An accused is entitled to a Fair Investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India^[15].

2. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth. The entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Investigating agencies are guardians of the liberty of innocent citizens. Therefore, a heavy responsibility devolves on them of seeing that innocent persons are not charged on an irresponsible and false implication^[16].

3. Investigation is a delicate painstaking and dexterous process. The investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily. High responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not *prima-facie* be indicative of a biased mind and every effort should be made to bring the guilty to law^[17].

4. Fair investigation is part of constitutional guarantee under Article 20 and 21 of the Constitution and it is minimum requirement of Rule Of Law. Investigation must be fair, transparent and judicious and free from objectionable features like bias, ulterior motive or other similar infirmities. It is the duty of the Investigating Officer to conduct the investigation avoiding

any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness^[18].

5. ‘Fair and Proper Investigation’ in criminal jurisprudence has twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction^[19].

6. No one can insist that an offence be investigated by a particular agency. An aggrieved person can only claim that the alleged offence be investigated fairly and properly. Accused has no right with reference to the manner of investigation^[20].

14. Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348

15. Nirmal Singh Kahlon vs State Of Punjab & Ors (2009) 1 SCC 441

16. R.P. Kapur Vs. State of Punjab AIR 1960 SC 866

17.State of Bihar Vs. P.P. Sharma AIR 1991 SC 1260

18.Babubhai vs State Of Gujarat (2010) 12 SCC 254

19. Vinay Tyagi vs Irshad Ali @ Deepak (2013) (5) SCC 762

20.CBI vs Rajesh Gandhi(1996) 11 SCC 253

7. Section 156 (3) states: Any Magistrate empowered under Section 190 may order such an investigation as above mentioned (investigation by the officer in charge of the Police Station. Section 156(3) provides: Check by the Magistrate on the police performing its duties. In case the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same^[21].

The investigating officer has to remember the fair trial norms in the procedural aspects:

- Right to freedom from torture
- Right to respect for one's private life and
- Duty to keep records of investigation.

Right to Freedom from Torture

1. Torture is absolutely forbidden. The Hon'ble Supreme Court of India characterized torture as one of “the worst kind of crimes in a civilized society”. The Court was convinced that the increasing incidence of torture was “affecting the credibility of the rule of law and the administration of the criminal justice system”^[22].

2. A slew of judicial decisions have made it abundantly clear the Article 21 articulates a strict prohibition of torture. The Supreme Court made it clear that any form of torture, cruel, inhuman or degrading treatment or punishment, offensive to human dignity, violates the all-important right to life and personal liberty under Article 21 of the Constitution and stated:“Obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity...and it would on this view be prohibited by Article 21^[23].

3. Investigating officers are prohibited from obtaining statements from witnesses through threatening conduct^[24].

4. The Supreme Court and now the statutory law has laid down a considerable set of procedural safeguards. These include:

1. Immediately on arrest the arresting police officer has an obligation to give

information about the arrest and the place of detention to any person nominated by the arrested person^[25] and make an entry of the same in the general diary maintained in every police station^[26] providing the details of the person who is informed.

21. *Sakiri Vasu v. State of Uttar Pradesh* [(2008) 2 SCC 409]

22. *Francis Coralie Mullin v Administrator, Union Territory of Delhi*.

23. *D.K.Basu Vs. State of West Bengal*. AIR 1997 SC 610

24. section 163 of *The Code of Criminal Procedure: No inducement to be offered*. (1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872 (1 of 1872). (2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will: Provided that nothing in this sub- section shall affect the provisions of sub- section (4) of section 164.

25. *Code of Criminal Procedure, 1973, Section 50(A)(1)*.

26. *Section 50(A)(2)*.

1. Draw up an “Arrest Memo” indicating the date, place and time of arrest; signed by two independent witnesses and countersigned by the arresting officer^[27].

2. Draw up an “Inspection Memo” of all major and minor injuries on the body of the arrested person^[28].

3. Conduct a medical examination of the arrested person at the time of arrest. This is to be repeated every 48 hours if the arrestee is in police custody^[29].

4. It will also be the duty of the Magistrate before whom the accused is produced to check with the accused whether the police have complied with the above provisions^[30].

5. The Magistrate must inform the arrested person, when first produced, about the right to a medical examination and also inquire whether they have any complaints of torture or maltreatment in custody^[31].

If the arrested person alleges before the Magistrate that he has been ill treated in custody, it is incumbent on the magistrate to record the allegation in writing, immediately order a medical examination and take all necessary steps to ensure that the allegation is fully investigated. This should be done even in the absence of an express complaint or allegation, if the person concerned bears visible signs of physical or mental ill-treatment. The court can further safeguard the accused by ensuring that the accused is accompanied by a relative to any medical examination. The primary role of judges in preventing acts of torture, therefore, is to ensure that the law is upheld at all times.

Right to Respect for One’s Private Life

The right to privacy is essential and fundamental in an organized society. Without it, an individual would be unable to enjoy the privileges which belong to him as a member of society^[32]. It is a cherished right. There must be strong, cogent and legally justifiable reasons for law enforcement agencies to interfere with this right. Here it is essential that proper procedure is always followed because intrusion into a person’s home, professional or family life in the name of investigation without any proper basis is not permitted^[33].

Two cases decided by the Supreme Court of India laid the foundations for the right intrusion into a home by the police under state regulations, by way of “domiciliary visits”. Such visits could be conducted at any time of the night or day, to keep a tag on persons to unearth suspicious criminal activity, if any, on their part.

27. *D.K. Basu v State of West Bengal*.

28. *D.K. Basu v State of West Bengal*
 29. *D.K. Basu v State of West Bengal*.
 30. *Code of Criminal Procedure, 1973, Section 50(A)(4)*.
 31. *Sheela Barse v State of Maharashtra 1983 SCC 96*.
 32. *Roberson v Rochester Folding-box Co., 171 N.Y. 538*.
 33. *Kharak Singh v State of Uttar Pradesh and Others I (1964) SCR 332*.

The validity of these regulations came under challenge. In the first case, the majority did not question whether these visits violated the “right to privacy”. But, the minority view while concurring that the fundamental right to privacy was part of the right to liberty in Article 21^[34].

The second case which laid the foundation of this right has stated that, though, the “right to privacy was not absolute” and as the makers of our Constitution wanted to ensure conditions favourable to the pursuit of happiness, the privacy right can be denied only when an “important countervailing interest is shown to be superior”, or “where a compelling state interest is shown.” Any right to privacy “must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child bearing”. The Court explained that, if there was state intrusion, there must be “a reasonable basis for intrusion”. The right to privacy, in any event, would necessarily have to undergo a process of case-by-case development^[35].

Several years later in 1991, the Supreme Court observed that the right to privacy is part of the right to life and personal liberty under the proper procedure must be followed, as intrusion into a person’s home, professional or family life in the name of investigation or domiciliary visits – without a proper basis – is not permitted^[36].

Duty to Keep Records of Investigation Without Unnecessary Delay

The necessity to discover the truth in every case demands that police records must be kept with scrupulous completeness, and investigations carried out with promptness, urgency, and efficiency. It was held that such investigation standards require police to question and record statements from parties who may possibly possess relevant information, to quickly take into custody hard evidence, and have experts file an urgent forensic report so that no valuable clues are lost, underlining the vital importance of executive record keeping, the Supreme Court has repeatedly reiterated that the case diary should be maintained with scrupulous completeness and efficiency^[37].

The Code of Criminal Procedure, Section 172 requires the police to conduct investigations expediently, while keeping thorough records of their methods and findings. Section 172(1) requires a police officer to keep a day-to-day case diary of his investigation “setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation”^[38].

34. *Kharak Singh v State of Uttar Pradesh and Others I (1964) SCR 332*.

35. *Govind v State of Madhya Pradesh, AIR 1975 sc 1378*.

36. *People's Union for Civil Liberties v Union of India AIR 1991 SC 207*.

37. *Bhagwant Singh Vs Commissioner of Police, 1985(SC)1285*.

38. *Section 172(1) of The Code of Criminal Procedure*.

Police failure to swiftly prepare such records of investigation, resulting in undue delay at trial, might violate Article 21 of the Constitution, as the procedure prescribed by law for denying a person’s liberty is not reasonable, fair and just, if the accused is not afforded a speedy trial^[39].

The Settled Proposition of law is that the court would not interfere with the investigation

or during the course of investigation from the date of lodging of FIR till filing of report under section 173(2) The Code of Criminal Procedure^[40]. But indirectly the Magistrates play vital role in the process of investigation in the following modes.

5. Recording of confessions.
6. Recording of Dying Declaration.
7. Conducting Test Identification Parade.

Confessions

The law relating to confession is to be found generally in section 24 to 30 of Indian Evidence Act and section 162 to 164 of The Code of Criminal Procedure.

1. There is no repugnancy between section 164 of The Code of Criminal Procedure and Article 20(3) of Constitution of India, section 164 does not violate Article 21 of Constitution of India^[41].
2. Before recording a confession the magistrate is required to explain the person making the confession that he is not bound to make such confession and if he so desires it might be used against him. In the memorandum required under section 164(4) of The Code of Criminal Procedure the magistrate has to mention it.
3. The magistrate recording confession must ensure that the statement is voluntary and without pressure^[42].
4. When one of the co-accused making a confession was discharged and did not face the trial his confession cannot be used against the co-accused^[43].
5. When the accused retracted the confession at a belated stage making some allegations of torture against the police^[44].
6. When Two confessions are there^[45].
7. Appreciation of recording the confessional statement was discussed^[46].
8. Whether a magistrate can record the statement of any person under section 164 of The Code of Criminal Procedure even without the request of the investigating officer? No^[47].

39. Mihir Kumar Ghosh Vs. State of West Bengal & Othrs 1990 Crlj 26.

40. union of India Vs. Prakash Hinduja. AIR 2003 SC 2612.

41. Kalawati Vs. State of Himachal Pradesh AIR 1953 Sc 131.

42. Dhananjay Reddy Vs.,State of Karnataka 2001 SCC (Crl) 652.

43. Suresh Budharmal Kalani Vs. State of Maharashtra. AIR 1998 SC 3258.

44. Elenban Dhama Singh Vs.,State of Manipur. 1952 Crl.J 1500.

45. In BabuBhai Udesinh Parmar Vs. State of Gujarat it was held that when two confessions were recorded one after another in quick succession the first confession was recorded in 15 minutes and the accused was not provided legal aid. Conviction was set aside.

46. 2012 STPL web 464 Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid Vs. State of Maharashtra.

47. section 164 of The Cr.P.C does not empower Magistrate to record the statement of witnesses on his own even not asked by I.O.

1. It should be reasonable to insist upon giving an accuse person at least 24 hours to decide whether or not he should make a confession^[48].
2. Confession recorded with-out providing legal aid is not proper^[49].
3. Recording a statement of an accused on oath is prohibited^[50].

Dying Declaration

Section 32 and section 33 of Indian Evidence Act deal with the relevancy of statements by persons who cannot be called as witnesses. Guide lines on Dying Declaration^[51].

- (a) There should be no prompting at the time of recording of Statement for Dying

Declaration^[52].

- (b) It is the duty of the magistrate to take every possible step to ensure that no influence is brought to bear on the declarant and that he is not prompted or aided in any way in making his statement^[53].
- (c) Dying declaration statement recorded on gestures and signs can be accepted^[54].

In the process of fair trial and the innovations in the recent trend. Can the Declaration be recorded through audio, video (Electronic Means). Endorsement. Signature or thumb impression of the victim be obtained on the Digital Scribe or an application designed for this purpose, which is less expensive.

Test Identification Parade

Rule 34: For Fairness during the process and proper conduct of TIP the following points to be considered:

- (i) Suspect must be mixed up with other persons of the same height, build, age-group and appearance.
- (ii) To rule out the possibility of a chance identification fairly large number of other persons should be mixed with other suspects.
- (iii) When number of suspects are there it is fair enough to put up a single suspect separately for identification^[55].
- (iv) Any objections raised by the suspect during the proceedings should be given proper consideration. (Doubt)
- (v) If an accused desires his counsel to be present at the time of TIP he should be allowed^[56].

48. Sarwan Singh Ratan Singh Vs State of Punjab.

49. babubhai Udesinh Parmar Vs. State of Gujarat 2007 Crlj 786.

50. Bahubhai Udesinghparmar Vs State of Gujarat 2007 CRLJ. 786

51. Kushal Rao Vs Bombay AIR 1958 SC 22.

52. Abdul sattar Vs Mysore AIR 1956 SC 168.

53. Nem Singh Vs Emperor AIR 1934 ALL 908

54. Meesala Rama Krishna Vs State of A.P. 1994 SCC 4 182.

55. Satya Narain case.

56. Asharfi Case.

Instance: if the witness saw the offender while he was running or walking away and if the witness place such a request, it would be perfectly admissible for the magistrate to direct the persons in the parade to run or walk. The idea behind this that it should not be too easy or too difficult for a witness to pick out a suspect. It should be a real test of witnesses memory at the same time it should be fair for both the witness as well as to the suspects.

Right of legal aid Part of Fair Trial

The right is recognized because of the obvious fact that ordinarily an accused person does not have legal knowledge and the professional skill to defend him before a court of law where in the prosecution is conducted by a competent and experienced prosecutor.³⁹ In U.S.A., the 6th Amendment to the Constitution provides, *inter alia*, Similar right is also provided by the Constitution under article 20(2) but it only protects the person who is prosecuted and punished for the same offence and does not include previous acquittal as in case of section 300 of the Code which considered both situations^[57].

Right to counsel is recognized as fundamental right of an arrested person under article

22(1) which provides, inter alia, no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice, the right of an indigent person to be provided with a lawyer at state's expenses is an essential ingredient of article 21, for no procedure can be just and fair which does not make available legal services to an accused person who is too poor to pay for a lawyer.

Section 303 provides a right to accused person to be defended by a pleader of his choice, whereas section 304 casts a duty on the State to provide legal aid to indigent persons in a trial before the Court of Sessions. Further, article 39-A was also inserted in the Constitution as per Constitution (42nd Amendment) Act, 1976, which requires that the state should pass suitable legislations for promoting and providing free legal aid^[58]. To fulfill this constitutional mandate the Parliament enacted Legal Services Authorities Act, 1987. Section 12 of the said Act provides legal services to the persons specified in it.

Recommendations of Law Commission For Fair Trial

(a) To improve the credibility of the investigating Police and to improve its efficiency and professionalism and insulate it from external pressures. Officers of the level of Superintendents of Police or higher level officers are entrusted under the laws referred to above to record confessions fairly and without subjecting the accused to duress or inducement. If the confession is audio/video recorded, it would lend further assurance that the accused was not subjected to any form of compulsion. It is not our case that the conviction should be based only on a confession. The confession should be considered by the courts along with other evidence^[59].

57. *Jitendra Panchal v. Intelligence Officer NCB & Ors.* 2009 (2) SCALE 202.

58. *Maneka Gandhi v. Union of India*

59. Committee on Reforms of Criminal Justice System Government of India, CHAIRMAN Dr. Justice V.S. Malimath. 7.35.4.

- It was recommended that section 25 of the Evidence Act may be suitably substituted by a provision rendering admissible, the confessions made before a Police Officer of the rank of Superintendent of Police and above. Provision should also be made to enable audio/video recording^[60].

IDENTIFICATION OF PRISONERS ACT1920

Section 4 and 5 or the Identification of Prisoners Act, 1920, empower a Magistrate to permit taking of finger prints, foot prints and photographs of a convict or of an accused arrested for an offence punishable with imprisonment of one year or more. Magistrate to order an accused to give samples of hand writing, fingerprints, footprints, photographs, blood, saliva, semen, hair, voice etc, for purposes of scientific examination^[61].

Obstacles

In the processes of investigation these days the media is disturbing the fair trial process.

Influence Of Media On Accused

If the media projects a suspect or an accused as if he has already been adjudged guilty well before the trial in courts, there can be serious prejudice to the accused. Even if

Influence Of Media On Witness

If the identity of witnesses is published, there is danger of the witnesses coming under pressure both from the accused or his associates as well as from the police. At the early stage, the

ultimately the person is acquitted after the due process in the courts, such an acquittal may not help the accused to rebuilt his lost image in society. Excessive publicity in the media characterizing him as a person who indeed committed the crime, it amounts to undue interference with the administration of justice, calling for proceeding for contempt of court against the media.

60. Committee on Reforms of Criminal Justice System Government of India, CHAIRMAN Dr. Justice V.S. Malimath. 7.36.

61. On the Recommendations of Committee on Reforms of Criminal Justice System Government of India, CHAIRMAN Dr. Justice V.S. Malimath 7.36.1. Section 311-A of Cr.P.C inserted by the Cr.P.C9Amendment) Act, 2005.

To prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial which constitutes interference in the due course of administration of justice. Including:

- (1) Publications concerning the character of accused or previous conclusions;
- (2) Publication of Confessions :
- (3) Publications which comment or reflect upon the merits of the case;
- (4) Photographs of the case which may interfere with the identification of the accused;
- (5) direct imputations of the accused's innocence;
- (6) Creating an atmosphere of prejudice;
- (7) Criticism of witnesses;
- (8) Premature publication of evidence;
- (9) Publication of interviews with witnesses.

For the above said Law has to be enacted^[62]. The right to a fair trial does not *per se* supersede the press' right to free speech. The right to fair trial though read under Article 21 of the Constitution of India is more concerned with the conduct of the State in affording a fair trial to the accused rather than a private publisher or a journalist.

GUIDE FOR JUDICIAL ENFORCEMENT

Fair Trial is a level of playing field for maintaining the balance between individual liberties and state power, to bring justice to people. It is for this reason that the independence of the judiciary is held sacred and judges and magistrates are expected to follow every procedural safeguard and protect every assurance provided by the law to all parties. The police frequently overstep their role of Marshalling evidence and apprehending the suspect by taking on the role of the judge. This abrogation of independence and role of independent adjudication results in the possibility of bias which is fatal to fair trial.

1. Criminal trial is meant for doing justice not only to the victim but also to the accused and the Society at large. Every criminal trial is a voyage of discovery in which truth is the quest. The primary object of criminal trial is to ensure fair trial which is guaranteed under Art.21 of the Constitution of India. A fair trial has, therefore, two objects in view. It must be fair to the accused and must also be fair to the prosecution^[63].

2. The recent trend is to delay the trial and threaten the witnesses or to win over the witnesses by promise or inducement. These malpractices need to be curbed and public justice can

witnesses want to retract and get out of the muddle. Witness protection is then a serious casualty. This leads to the question about the admissibility of hostile witness evidence and whether the law should be amended to prevent witnesses changing their statements.

be ensured to the satisfaction of all concerned only when trial is conducted expeditiously^[64].

62. 178th report of Law Commission of India.

63. Ambika Pd. V. State (Delhi Administration)-2000 SCC Crl.522.

64. Krishnan V. Krishnaveni-1997 SCC Crl.544 = AIR 1997 SC 987.

3. The criminal law has a purpose to serve. Its object is to suppress criminal enterprise and punish the guilty. In this process it must however be ensured that reasonable doubts alone are given to the accused^[65].

4. Judges should remember that the power of the judge to put questions to any of the witnesses or parties under Sec. 165 of the Evidence Act is a wide power. The only functionary in the criminal trial who can ask even irrelevant questions is the presiding judge. Hence, whenever the presiding judge finds that a particular point emanating from the case needs elucidation or a further probe, he should not hesitate to intervene and clarify the position. He can also press into service Section 311 Cr.P.C. in his endeavor to arrive at the truth^[66].

5. When the accused objects to the presence of a police officer or other person inside the court hall, the trial judge has to consider his objections, having regard to the intelligence and the susceptibilities of the class to which he belongs and such other relevant circumstances^[67].

6. The investigating officer must be present at the time of trial of murder cases and if he fails to be present, the Sessions Judge must issue summons to him^[68].

7. Criminal justice should not be allowed to become a causality for the wrongs committed by the investigating officers. The conclusion of the court in a criminal trial cannot be allowed to depend solely on the probity of investigation. Even if the investigation is illegal or even suspicious, the court can independently scrutinize the rest of the evidence uninfluenced by ill-motivated investigation^[69].

8. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice. A Judge is looked upon as an embodiment of justice. Assurance of fair trial is the first imperative in the dispensation of justice. It cannot be denied that one of the most valuable rights of our citizens is to get a fair trial free from an atmosphere of prejudice^[70].

9. It is only the duty of the investigating officer to book the real culprit, but it is also duty of the investigating officer to protect the one who is innocent^[71].

10. The investigating officer is not merely present to strengthen the case of the prosecution with evidence to enable the court to record a conviction but to bring out the real unvarnished version of the truth^[72].

65. State of Kerala v. Narayanan Bhaskaran – 1991 Crl.L.J.238.

66. Sebastian v. Food Inspector - 1987 (1) KLT 130; Ram Chandra v. State of Haryana - AIR 1981 SC 1036.

67. State v. Charulata Joshi - AIR 1999 SC 1373; Kasi Iyer v. State of Kerala - 1966 KLT 452 = AIR 1966 Kerala 316.

68. Shyrendra Kumar v. State of Bihar - 2002 SCC Crl. 230 = AIR 2002 SC 270.

69. (Vide State of Karnataka v. Yarappa Reddy - JT 1999 (8) SC 10 = AIR 2000 SC 185).

70. Swaran Singh v. State of Punjab- AIR 2000 SC 2017.

71. Vijay Vs State of Maharashtra & oths 2009 ALL MR(Crl) 2713.

72. Karan Singh Vs. State of Haryana & Othrs AIR 2013 SC 2348

11. faulty investigation – Departmental Enquiry of investigating officer can be held^[73]. Defective Investigation- I.O liable for Departmental Action^[74]. Delay in

Forwarding copy of F.I.R to magistrate to be avoided^[75].

12. Procedure for arrest in offences punishable upto seven years^[76]. Rights and Duties of Police, Regarding arrest^[77].
13. Preliminary Inquiry has to be made Before Registering the case. The police officer has to make GD Entry when the Police Officer is satisfied that the contents are Genuine, he can register the case, he can complete preliminary inquiry in 7 days^[78].
14. Any Police Station can register the case on the point of jurisdiction Case can be transferred^[79].
15. Magistrate need not furnish the grounds to his satisfaction to make investigation^[80].
16. Proper way to record 161 statement. Bound and duty of the investigating officer to record the statement either it is contradictory or confronting and duty bound not to reproduce the report^[81].
17. Explanation of delay in recording 161 statement should be brought to the knowledge of defence^[82].
18. Investigation in a country or place outside India. Procedure is prescribed in sec 166 A and B and guidelines stated in boffers case. (*letter was issued by Indian courts to foreign competent court to help the investigation and collection of evidence. Money was deposited in Swiss bank- Boffors Case*) & Belgium Case - Dr. Mahender singh bhatia married Namita and killed his wife namita in honeymoon at Belgium.
19. The victim has a say in the grant of bail to an accused. S. 439 (2) Cr.PC, as interpreted by the courts, recognizes the right of the complainant or any “aggrieved party” to move the High Court or the Court of Sessions for cancellation of a bail granted to the accused^[83].

73. *State of Gujarat Vs. Kishanbhaite of Gujarat AIR 2014 SCW 557*

74. *Gajoo Vs. State of Uttarakhand, 2012 AIR SCW 5598*

75. *Bijiy singh Vs. State of Bihar 2002 AIR SC 1949*

76. *Arness Kumar Vs State of Bihar AIR 2014 SC 2756*

77. *Joginder Kumar Vs State of U.P. AIR 1994 SC 1349*

78. *State of Haryana vs. Bhajan Lal AIR 1992 Sc 604.*

79. *State vs Swamy behuva 1976 crlj 296*

80. *Karak singh vs hathi singh 1988 crlj 578.*

81. *g.rajesh vs state of ap 2011 crlj 3506.*

82. *Prudvi vs Manuraj air 2004 SC 2729*

83. *Puran v. Rambilas (2001) 6 SCC 338 and R.Rathinam v. State (2000) 2 SCC 391.*

Conclusion:

Whenever any offence is committed it results in the invasion of the rights of the citizen and the victim is entitled to complain about such invasion. The object of the penal law is to protect life, liberty and property of the citizen. Because of the burden placed on investigating and producing evidence large number of victims of non - cognizable offences do not file complaints. They stand deprived and discriminated. This is one of the reasons for the citizens' losing faith and confidence in the Criminal Justice System. As justice is the right of every citizen it is not fair to deny access to justice to a large section of citizens by classifying certain offences as non-cognizable. Law should provide free and equal access to all victims of crime. Victims feel ignored and are crying for attention and justice A victim of crime has a right to legal assistance at every stage of the case subject to the

fulfillment of the means test and the 'prima-facie case' criteria.

Key- word:- *Judges have to ensure that not only innocent man is not punished but also see that a guilty man shall not escape^[84].*

⁸⁴. *T.H.Hussain V. M.P.Modkakar-AIR 1958 SC 376*. It is, therefore, necessary to remember that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the judge has to perform. The object of criminal trial is thus to render public justice by punishing the criminal. It is also important to remember that the trial should be concluded expeditiously before the memory of the witnesses fades out.

From Investigation to Trial stage

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India adopted a criminal Justice System known as 'Adversial' Criminal Justice System. The prime aim of this system is to give a fair trial to the persons. The golden principles governing the Criminal Justice System in India are:

- * **Presumption of innocence** : The accused shall be presumed to be innocent till his guilt is proved.
- * **Protection of Innocence** : Let hundred criminals escape punishment but no single innocent person shall not be punished.
- * **Opportunity of hearing** : The accused shall not be punished unheard.
- * **Reasonable Proof** : The proof shall be beyond reasonable doubt to a criminal charge against the accused.
- * **Benefit of Doubt** : If doubt is created in the mind of the court the doubt shall go in favour of the accused. It is called the benefit of doubt.

In the criminal Justice System, we have four major functionaries for the cause of 'quest for truth'. The first functionary is the '**Police**' to whom the system has entrusted with the responsibility of investigation in accordance with the procedure established by law. Secondly the investigation done by police shall be prosecuted effectively against the accused by the '**Prosecution Agency**'. Successful prosecution is nothing but achieving the truth after due process of trial. Thirdly '**the Court**' which are prime in following the procedure by giving a fair trial to the accused and arriving at justice. The innocents are acquitted and the guilty are punished basing on the evidence before it. The forth one is '**Prison Department**' which is otherwise called as Correctional Agency. It will receive the guilty into the prison. They are treated and corrected for inducting

back into the society. These four important wings of Criminal Justice System are working on the foundation of Criminal laws .

Scope: Chapters XII to XVII (Sections 154 to 224) of Code of Criminal procedure deals with the procedure in respect of stages from **Investigation to Trial** .

Under the law the investigator is enjoined upon to unearth the crime. The object of investigation is not merely to enable the court to record conviction but to bring out the unvarnished truth.

INVESTIGATION: Section 2(h) Cr.P.C. defines investigation : “ Investigation” includes all the proceedings under this code for the collection of evidence conducted a by a Police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;

Main object of investigation of a crime :

- (1) Ascertain all the facts and circumstances of the case
- (2) Discovery and arrest of suspected offender and
- (3) Collection of evidence relating to commence of the offence.
- (4) Examination of various persons including the accused and recording their statements
- (5) Search of places, seizure of things considered necessary for the investigation
- (6) Formation of opinion as to whether it is a fit case for the accused to be sent up for trial and, so taking steps to file charge sheet.

The word investigation has to be read to understand in the light of not only the powers conferred on Police Officer but the restitutions placed on them in the use and exercise of such powers.

Importance of " Fair Investigation" :

Stressing the importance of fair and impartial investigation, Hon'ble Supreme Court in **Jammuna Chaudhary vs. The State of Bihar**, observed that the duty of investigating officer is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring the real unvarnished truth.

Effect of Omissions, Negligence, illegalities and irregularities in Investigation:

Irregularities in conduct of investigation are not intended to vitiate the trial before the courts. The Magistrates are expected to decide cases on the evidence produced before them (**State vs. Dhanpal, 1967 Cri.L.J. 1450**).

Defect in investigation itself cannot be a ground for discharge (**State of Tamil Nadu by Inspector of Police Vigilance and Anti Corruption vs. N.Suresh Rajan& Ors., 2014(1) Crimes 1 (SC)**). The Apex court of India in **Shri Durga Das vs. State of H.P., 1973 Cri.L.J 1138** held that if there is any irregularity in the investigation that would not vitiate the trial or the conviction, in the absence of evidence that accused has been prejudiced.

F.I.R : Section 154 Cr.P.C:

According to Sec.154 Cr.P.C., once Police officer receives information relating cognizable offence shall enter into the book to be kept for the purpose of mentioning the information. Whenever the S.H.O. registered the crime and copy of report shall be furnished to the informant (154 (2) Cr.P.C.). If the Police officer failed to register the crime, the report may be sent to the Superintendent of Police concerned for the proper action on the report(s.154(3) Cr.P.C).

Object of F.I.R:

(1) From the point of view of the **informant** is to set the criminal law in motion.
 (2) From the point of view of **investigating authorities** is **to obtain information about the alleged criminal activity** so as to able to take suitable steps for tracing and bringing to book the guilty party. FIR need not be encyclopedia of all facts and circumstances. Delay in lodging FIR cannot be a ground by itself for throwing away the entire prosecution case.

(Jitender Kumar Vs. State of Haryana, 2012(3) ALT Crl 456 (SC).

In Non-cognizable offences the Police Officer has no authority to investigate the matter without order of the Magistrate. If the Police officer received information in Non-Cognizable cases including cognizable offences there is no bar to the Police officer to proceed investigation as if all the offences treated as cognizable offences.

Sec.156 Cr.P.C: Power of Magistrate to order investigation:

The Investigation Officer can start investigation without order of the Magistrate in a cognizable offence. Under Sec.156(3) Cr.P.C, Magistrate is empowered to order for police investigation on a complaint at a pre-cognizance stage. The Magistrate can also direct a police officer to register a case against the accused.

Sec.157 Cr.P.C: Procedure for investigation :

After receipt of the report in a cognizable offence the Police officer shall proceed or depute on his behalf to the spot to investigate the facts and circumstances of the case. Recording of the statement of the woman victim shall be conducted at the residence of victim or in her place of choice by women Police Officer in the presence of her parents or Guardian or any social worker of the locality.

Sec.160 Cr.P.C :

According to Sec.160 Cr.P.C., any Police officer made investigation by ordering

in writing to attend any person before him who acquainted with the facts and the circumstances of the case.

Sec.161 Cr.P.C:

Any Police Officer making an investigation may examine orally any person who supposed to be acquainted the facts and circumstances of the case. The Police officer may reduce into writing any statement made to him in course of her examination. Examination of the women witnesses against women offences shall be recorded by a women Police officer. (as amended act No.13 of 2013 w.e.f. 3-2-2013). The witness also can be examine by audio video electronic means (as amended Act No.5 of 2009 with effect from 31-12-2009). If a significant omission is made in a statement of a witness U/s.161 Cr.P.C., the same may amount to contradiction (**Shyamala Ghosh vs. State of Bengal (2013(1) SCJ 61)**)

Sec.162 Cr.P.C :

Section 162 Cr.P.C imposes a bar on the use of any statement made by any person to a police officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by Sec.145 of the Indian Evidence Act (**Hazari Lal Vs. The state (Delhi Admin.), 1980 CrLJ 564**).

Sec. 164 Cr.P.C: Confession :

Recording of Statements of the witnesses is a vital part of the investigation. Whenever any person accused of any offence desires voluntarily to confess to any crime of which he is alleged to have committed or any co-accused or a person who is an accomplice voluntarily offers to confess his crime, the Magistrate shall proceed to record the statement. The investigating Officer can file a requisition before the Magistrate Under Rule 31 of Criminal Rules of

Practice to record the confessional statement U/sec.164 Cr.P.C. The Magistrate shall take precautionary before recording while recording the confession. The Magistrate must satisfy himself that the confession the accused proposes to make is genuinely voluntary. Before recording the statement, the Magistrate shall give the accused adequate time to reconsider his decision and after giving him correct and clear warning that the statement the accused confesses might be used against him. The statement so recorded by the magistrate shall be signed by the accused and the magistrate must affix his signature after taking confession is recorded. Confession shall be signed by the person who confessed it. According to Sec.25 of Indian Evidence act confession made before the Police is in admissible evidence but the confession leading to the recovery of fact or material is relevant U/sec.27 of Indian Evidence Act.

Sec.164 (A): deals with medical examination of the victim of rape and the Medical officer without delay shall prepare report.

Sec.165, 166 Cr.P.C: dealing with search by the Police officer whenever necessary and the Police Officer may conduct search during the course of investigation by issued warrant to enable him for collection of the evidence.

Remand : Sec.167 Cr.P.C.

Section 167 Cr.P.C deals with remand of the accused. During the course of investigation the Investigation officer can arrest the accused by following the arrest procedure Under Sec. 41 to 60 (A) Cr.P.C. According to Sec.57 Cr.P.C. Police officer has no authority to detained the arrested person more than 24 hours in his custody. If he fails to do investigation within 24 hours he shall produce arrested person before the Magistrate for Judicial custody.

Section 167(2) Cr.P.C: Remand :

The procedure under this section controls investigation by police otherwise the

accused who is in prison is entitled for bail. Magistrate has authority to detain the accused person for a period of **90 days** where the investigation reveals the offence is punishable with Imprisonment for life or imprisonment for a time of not less than 10 years and in other cases the investigation must completed within **60 days** from the date of first remand of the accused. During the course of investigation, if the investigation officer feels that the accused is necessary for Police custody he can file a requisition for Police custody. Police custody can be ordered only during the period of first 15 days prescribed U/sec.167 Cr.P.C.

(Shaik Basha and others Vs. State of Andhra Pradesh 2002 (1) ALD Crl.116

AP.38) After collecting the material during the course of investigation Officer shall release the accused on executing a bond with or without sureties to appear before the Magistrate if he takes cognizance on Police report.

Undertrial prisoners detained for period longer than maximum sentence which could be imposed upon conviction is violation of not only human dignity but also fundamental right of personal liberty (**Hussainara Khanoon and others Vs. Home Secretary, State of Bihar, 1979 CrLJ 1134**)

Stoppage of Investigation: Sec. 167(5) Cr.P.C:

In a case triable by a Magistrate as a Summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation, satisfies the magistrate that for a special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.

Sec.167(6) Cr.P.C: The Session Court has the power to vacate the order made by the Magistrate stopping the investigation.

Case Diary: Section 172 Cr.P.C:

The Police Officer making investigation shall enter his proceedings in a Diary with time and place of investigation. After collection of the witnesses, material objects, documents the investigation officer shall file a report before the Magistrate concerned U/sec.173 (2) Cr.P.C along with all the documents, objects, medical evidence report and other material papers dealing with a case.

Charge Sheet: Section 173(2) Cr.P.C:

When the investigation is complete, the police officer is required to submit a report under Section 173 of the Code of Criminal Procedure (in short Cr PC) to the Magistrate stating the name of the parties, the nature of information, etc. This report is known as the 'charge-sheet' or 'challan'. If a *prima facie* case is made out against the accused or 'Final Report' if no such case is made out. Charge-sheet forms the basis of the case in the Court. The police report under Section 173, Cr PC will contain the facts and the conclusions drawn by the police there from. The Magistrate is expected to apply his judicial mind to the report and he is not bound by the conclusions drawn by the police. He may differ with the police report, be it a 'charge-sheet' (or 'final report'). He may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further (**H.S. Bains vs. State 1981 SCR (1) 935.**

Further Investigation Section 173(8) Cr.P.C :

Power of police to conduct further investigation, even after laying final report, is recognized under Section 173(8) of Cr PC (**Sri BSSVVV Maharaj vs. State of UP 1999 CrLJ 3661 SC**). When a power under sub section (8) of Section 173 of Cr PC is exercised, the Court ordinarily should not interfere with the statutory powers of the investigating agency. The Court cannot issue directions to investigate the case from a particular angle or by a particular agency (**Popular Muthiah vs. State 2006 (7) SCC 296**).

Inquest : Section 174 Cr.P.C:

The Police officer when receives information if a person committed a suicide or killed by any person by any animal by machinery, accident or died under raising reasonable suspicion. Police officer shall immediately give a information

to the nearest Executive Magistrate. The Executive Magistrate shall proceed and conduct Inquest U/sec.174 Cr.P.C. The Police Officer shall file a report signed by him.

In Podda Narayana v. State of A.P. AIR 1975 SC 1252 it was held that the proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of such death.

Section 176 Cr.P.C:

An inquiry into the cause of death of a person while in police custody under Section 176 of the Code is to be held independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry.

The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any prescribed manner according to the circumstances of the case.

The statements recorded by the Magistrate in the course of an inquiry under Section 176 can be treated in subsequent proceedings as former statements of witnesses, or confessions or admissions of accused persons, in accordance with the subject to the relevant provisions of the Evidence Act.

The inquiry by the Magistrate into the cause of death under Section 176 of the Code has nothing to do with the exercise of the judicial power. Such inquiry cannot best be treated as quasi-judicial in character. The report or a finding by the Magistrate into the cause of death is not the part of proceedings.

Evidential Value of various Reports prepared during the course of Investigation :

- 1. F.I.R- Not a substantive piece of evidence but** can be used for corroboration and contradiction.
- 2. Scene Observation Report - Not a substantive piece of evidence but** can be used for corroboration and contradiction.
- 3. Rough Sketch - Not a substantive piece of evidence but** can be used for corroboration and contradiction.
- 4. 161 Cr.P.C Statements - Not a substantive piece of evidence.** It cannot be used for corroboration . It can be used for contradiction only.
- 5. 164 Cr.P.C Statements - Not a substantive piece of evidence but** can be used for corroboration and contradiction.
- 6. Confession before Magistrate - substantive piece of evidence.**
- 7. Inquest - Not a substantive piece of evidence but** can be used for corroboration and contradiction.
- 8. Postmortem Report - Not a substantive piece of evidence but** can be used for corroboration and contradiction.
- 9. Dying Declaration - substantive piece of evidence**

JURISDICTION OF THE CRIMINAL COURTS IN ENQUIRY AND TRIALS:CHAPTER XIII

Every offence shall be enquired and tried by the court within local jurisdiction. According to Sec.178 Cr.P.C.when the offence committed in different places it may be tried by the court having jurisdiction over such area. If the offence is

committed when one person was in journey the offence may be tried by the court whose local jurisdiction the person or thing passed in the course of journey. According to sec.188 Cr.P.C. when a Indian citizen committed offence outside India he may dealt with in respect of such offence as if he committed the offence in India. But, the previous sanction of the government is necessary Sanapureddy Mahidar Seshagiri and another Vs. State of A.P. and another 2007 (1) ALD criminal 526 AP.

Conditions requisite for institution of proceeding : CHAPTER XIV :

The Magistrate may take the cognizance of offence U/sec.190Cr.P.C

- (a)Upon receive a complaint of facts which constitute such offence
- (b) Upon a Police report of such facts
- (c) upon information received other than Police Officer or
- (d) Magistrate knowledge that offence has been committed.

Before taking the cognizance, the Magistrate has to peruse the entire Police report for taking necessary action. Non examination of witness except complaint would not procured the Magistrate from taking cognizance or offence U/sec.190 Cr.P.C. (**Thota Papireddy and another Vs. Gudalli Eliah, 2006 (2)**

ALD Criminal 447 AP) According to **Sec.195 to 197** Cr.P.C, there are specific bars to take the cognizance by the Magistrate. According to Sec.195Cr.P.C, No court shall take cognizance except on the complaint in writing of that court. According to Sec.196Cr.P.C. there is specific bar to take the cognizance for the offence against the state and Criminal conspiracy. According to Sec.197 Cr.P.C. No court shall take cognizance against public servant except with the previous sanction of the concern Government. Sanction to the Public Servant depending upon facts and circumstances of the each case. **Jaisingh Vs. K.K. Velayutham and another 2006 (2) ALD Criminal 161 SC. 4.**

COMPLAINTS TO MAGISTRATE: CHAPTER -XV :

A Magistrate shall examine the complainant and his witness upon oath. The Magistrate need not examine the complainant and witness if a public servant acting while discharging his duties. When a person filed a complaint before the Magistrate, when the Magistrate is not competent to take cognizance it shall be return to the party to be present before the Proper court. According to Sec.202 Cr.P.C., the Magistrate can examine the complainant to take the evidence. If the offence is exclusive triable by the sessions he shall call upon to produce all his witness and examine upon oath. After considering the statements of complainant and his witness on oath if the Magistrate opined that there is no sufficient grounds he shall dismiss the complaint.

Dismissal of the first complaint and filed a second complaint can be entertained only exceptional circumstances. **Poonam VS fazru AIR 2010 SC 659.**

Commencement of proceedings before Magistrate : CHAPTER -XVI (Sec.204 to 210 Cr.P.C):

If the Magistrate opined that there is a sufficient grounds for proceeding and it appears to the Magistrate that in a summons case he shall issue summons and in the warrant case he may issue summons or warrants on payment of process. If, the process are not paid within during the time the Magistrate may dismiss the complaint. Magistrate can also dispense with the person attendance of the accused U/sec.205 Cr.P.C. When the Magistrate taking the cognizance basing on the Police report the Magistrate shall furnish the copy of the Police report and documents to the free of costs to the accused U/sec.207 Cr.P.C. In the cases triable by the court of sessions the Magistrate shall furnish the copies statements recorded U/sec.200 and 202, 161 164 Cr.P.C. and any other documents U/sec.208 Cr.P.C. If the accused appear before the Magistrate in an offence triable by the exclusively Hon'ble Court of Sessions the Magistrate shall commit the case to the court of sessions after compliance the 207 and 208 Cr.P.C and also take the custody of the accused subject to the

provisions of the bail. Send the record to the Hon'ble Court of Sessions and notified the Public Prosecutor by following the procedure U/sec.209 Cr.P.C. Once the charge sheet is filed in a supporting of offence triable by the court of sessions the Magistrate shall not looking into a merits thereof except the following provisions of 207 and 208. **Chandrabhushan Vs. State of Uttara Pradesh 1991 (1) crimes 504, 506 (all)** The Magistrate cannot discharge the accused in an offence triable by the court of sessions. **Sanjay Gandhi Vs. Union of India AIR 1978 SC 514.**

When in a case private complaint was filed and it appears to Magistrate that investigation by the Police is in progress in relation to the offence, the Magistrate shall stay the proceedings of such enquiry or trial and call for the report from the Police. The Police Officer filed the report U/sec.173 Cr.P.C. and cognizance was taken by the Magistrate against the accused who is an accused in a complainant case, the Magistrate shall enquire into and tried together the complaint case as if both cases were investigated into Police cases. The object of sec.210 Cr.P.C. prevents the harassment of the accused more than one offence.

Charge : CHAPTER -XVII (Sec.211 to 225 Cr.P.C):

The purpose of the charge is to ascertain the accused person as precisely and concisely as possible of the matter with which he is charged and must convicted him with sufficient clearness and certainty what the prosecution intention to prove against accused. At the time of framing of charge court is not required to screen evidence or to apply the standards whether the prosecution able to prove the case against the accused at the trial. In a summons case there is no formal charge need be framed. But in warrants case charge must be framed. In a criminal trial charge is the foundation of the acquisition and every care must be taken to see that it is not only properly framed. But, the evidence is available in respect of the matter within the charge.

The court must be equipped with at least *prima facie* material to show that the person who is sought to be charged is guilty of offence alleged against him. If, there is no *prima facie* case framing of the charge amounts to illegal exercise of jurisdiction. The time, place of offence must be spelt out in the charge. This is an essential requirement for charge. The charge should be so framed referred to the Section of the Penal code under which the offence charge is framed. The evidence tendered must relate to matter stated in the charge and not the matters not covered by the charge.

The accused is entitled to know with certainty and accuracy exact nature of charge brought against him otherwise he would be seriously prejudiced in his defence. Absence/error in the charge is only material if prejudiced has been caused to the accused. According to Sec.216 Cr.P.C. court may **alter charge** at any time before pronouncing the Judgment. During the trial, the trial court on consideration of broad probability of the case based upon total effect of evidence and documents produced is satisfied that any addition or alteration of the charge is necessary it is free to do so and there can be no legal bar to appropriately act as the exigencies of the case warrant necessity. The court has a very wide power to alter the charge; however, the court is to act judiciously and to exercise the discretion wisely. It should not alter the charge to the prejudice of the accused person (**Harihar Chakravorthy v. State of W.B., AIR 1954 SC 266**)

The object of the section 216 Cr.P.C. is ensure to fail trial. After alteration or addition it shall be read over and explained to the accused. The accused has a right to recall the prosecution witness after alteration of charge and the court shall give an opportunity to recall, resummon, examine any witnesses to such alterations, additions and also court can summons any further witness if the court thinks fit to be material. When charge is altered, conviction without recalling or re-summoning witness is illegal (**Mousa Abdul Rahman Vs. State of Kerala 1982 Crl. Law Journal 2087 Kerala Division Bench**).

There should be a separate charge for each distinct offence and separate trial for such charge excepting the provisions Under Sec.219, 220, 221 and 223 Cr.P.C. According to Sec.219 Cr.P.C., that the three charges of three offences of the same kind committed within one year to be tried together. An accused person may be charged at one trial with three offences of the same kind though committed against different persons. Where any one series of acts are so connected together as to form same transaction and where more than one offence is committed there can be a joint trial (State of Punjab Vs R. Syam Cri.L.J. 60 SC). Sec.220 Cr.P.C. deals with if more than one offence was committed by the same person he may be charged with at one trial for every such offence. The offences which are committed in a series of acts are to be tried together.

The provisions under Sec.221 Cr.P.C. safeguard the powers of the Criminal court to convict an accused for an offence to which he is not actually charged (**K. Prema S Rao Vs. Yadla Srinivasarao AIR 2003 SC 11**).

According to Sec.222 Cr.P.C. when a person is charged with major charge but he may be convicted of the minor offence although he is not charged. According to Sec.223 Cr.P.C. Clauses (a) to (g) are permitted to be tried jointly. When a charge more than one is framed against the same person on conviction the complainant or the officer conducting the prosecution may withdraw the remaining charge or charges. After framing the charges trial to be commenced before court of Sessions as per the procedure prescribed under chapter XVIII (Sec.225 to 237 Cr.P.C) and trial to be commenced before Magistrate as per procedure under Chapter XIX (sec.238 to 265 Cr.P.C).

Conclusion: Criminal trial is meant for doing justice not only to the victim but also to the accused and the Society at large. Every criminal trial is a voyage of discovery in which truth is the quest. The primary object of criminal trial is to ensure fair trial which is guaranteed under **Art.21** of the Constitution of India.

A fair trial has, therefore, two objects in view. It must be fair to the accused and must also be fair to the prosecution. Judges should remember that the power of the judge to put questions to any of the witnesses or parties under Sec. 165 of the Evidence Act is a wide power. Assurance of fair trial is the first imperative in the dispensation of justice. It cannot be denied that one of the most valuable rights of our citizens is to get a fair trial free from an atmosphere of prejudice.

Power to issue directions regarding investigation:

“Any court shall, at any stage of inquiry or trial under Cr.P.C, shall have such power to issue directions to the investigating officer to make further investigation or to direct the Supervisory Officer to take appropriate action for proper or adequate investigation so as to assist the court in search for truth.

It is apparent that ample powers are vested in the magistrate to check arbitrary arrests and to facilitate a more incisive probe into the discovery of truth, at various stages of an investigation, and even after filing of the police report. A conscientious magistrate’s Dharma also lies in the deft use of these provisions, in order to uphold **Constitutional values** and **the Rule of law**, and in this he ought not to hesitate in recalibrating the scales of justice and even protectively discriminating to correct systematic asymmetries & disadvantages towards the weaker accused, witness or the complainant. Existing provisions can be interpreted creatively. Cues can be taken from the magisterial role, as envisaged in other jurisdictions.

Hence monitoring of investigation by the Magistrate is, therefore, of vital importance to protect the integrity of prosecution. In this regard, the Magistrate has to **walk a tightrope** and balance, on one side – **the separation of executive from judiciary** and **the investigative autonomy of the police** on the other, to ensure **a fair, free and impartial investigation**.

THE CODE OF CRIMINAL PROCEDURE, 1973

ARRANGEMENT OF SECTIONS

CHAPTER I PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Construction of references.
4. Trial of offences under the Indian Penal Code and other laws.
5. Saving.

CHAPTER II

CONSTITUTION OF CRIMINAL COURTS AND OFFICES

6. Classes of Criminal Courts.
7. Territorial divisions.
8. Metropolitan areas.
9. Court of Session.
10. Subordination of Assistant Sessions Judges.
11. Courts of Judicial Magistrates.
12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.
13. Special Judicial Magistrates.
14. Local jurisdiction of Judicial Magistrates.
15. Subordination of Judicial Magistrates.
16. Courts of Metropolitan Magistrates.
17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.
18. Special Metropolitan Magistrates.
19. Subordination of Metropolitan Magistrates.
20. Executive Magistrates.
21. Special Executive Magistrates.
22. Local Jurisdiction of Executive Magistrates.
23. Subordination of Executive Magistrates.
24. Public Prosecutors.
25. Assistant Public Prosecutors.
- 25A. Directorate of Prosecution.

CHAPTER III

POWER OF COURTS

26. Courts by which offences are triable.
27. Jurisdiction in the case of juveniles.

SECTIONS

28. Sentences which High Courts and Sessions Judges may pass.
29. Sentences which Magistrates may pass.
30. Sentence of imprisonment in default of fine.
31. Sentence in cases of conviction of several offences at one trial.
32. Mode of conferring powers.
33. Powers of officers appointed.
34. Withdrawal of powers.
35. Powers of Judges and Magistrates exercisable by their successors-in-office.

CHAPTER IV

A.—POWERS OF SUPERIOR OFFICERS OF POLICE

36. Powers of superior officers of police.

B.—AID TO THE MAGISTRATES AND THE POLICE

37. Public when to assist Magistrates and police.
38. Aid to person, other than police officer, executing warrant.
39. Public to give information of certain offences.
40. Duty of officers employed, in connection with the affairs of a village to make certain report.

CHAPTER V

ARREST OF PERSONS

41. When police may arrest without warrant.
- 41A. Notice of appearance before police officer.
- 41B. Procedure of arrest and duties of officer making arrest.
- 41C. Control room at districts.
- 41D. Right of arrested person to meet an advocate of his choice during interrogation.
42. Arrest on refusal to give name and residence.
43. Arrest by private person and procedure on such arrest.
44. Arrest by Magistrate.
45. Protection of members of the Armed Forces from arrest.
46. Arrest how made.
47. Search of place entered by person sought to be arrested.
48. Pursuit of offenders into other jurisdictions.
49. No unnecessary restraint.
50. Person arrested to be informed of grounds of arrest and of right to bail.
- 50A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.
51. Search of arrested person.

SECTIONS

52. Power to seize offensive weapons.
53. Examination of accused by medical practitioner at the request of police officer.
- 53A. Examination of person accused of rape by medical practitioner.
54. Examination of arrested person by medical officer.
- 54A. Identification of person arrested.
55. Procedure when police officer deputes subordinate to arrest without warrant.
- 55A. Health and safety of arrested person.
56. Person arrested to be taken before Magistrate or officer in charge of police station.
57. Person arrested not to be detained more than twenty-four hours.
58. Police to report apprehensions.
59. Discharge of person apprehended.
60. Power, on escape, to pursue and retake.
- 60A. Arrest to be made strictly according to the Code.

CHAPTER VI

PROCESSES TO COMPEL APPEARANCE

A.—*Summons*

61. Form of summons.
62. Summons how served.
63. Service of summons on corporate bodies and societies.
64. Service when persons summoned cannot be found.
65. Procedure when service cannot be effected as before provided.
66. Service on Government servant.
67. Service of summons outside local limits.
68. Proof of service in such cases and when serving officer not present.
69. Service of summons on witness by post.

B.—*Warrant of arrest*

70. Form of warrant of arrest and duration.
71. Power to direct security to be taken.
72. Warrants to whom directed.
73. Warrant may be directed to any person.
74. Warrant directed to police officer.
75. Notification of substance of warrant.
76. Person arrested to be brought before Court without delay.
77. Where warrant may be executed.
78. Warrant forwarded for execution outside jurisdiction.
79. Warrant directed to police officer for execution outside jurisdiction.
80. Procedure on arrest of person against whom warrant issued.

SECTIONS

81. Procedure by Magistrate before whom such person arrested is brought.

C.—Proclamation and attachment

82. Proclamation for person absconding.

83. Attachment of property of person absconding.

84. Claims and objections to attachment.

85. Release, sale and restoration of attached property.

86. Appeal from order rejecting application for restoration of attached property.

D.—Other rules regarding processes

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

88. Power to take bond for appearance.

89. Arrest on breach of bond for appearance.

90. Provisions of this Chapter generally applicable to summonses and warrants of arrest.

CHAPTER VII

PROCESSES TO COMPEL THE PRODUCTION OF THINGS

A.—Summons to produce

91. Summons to produce document or other thing.

92. Procedure as to letters and telegrams.

B.—Search-warrants

93. When search-warrant may be issued.

94. Search of place suspected to contain stolen property, forged documents, etc.

95. Power to declare certain publications forfeited and to issue search-warrants for the same.

96. Application to High Court to set aside declaration of forfeiture.

97. Search for persons wrongfully confined.

98. Power to compel restoration of abducted females.

C.—General provisions relating to searches

99. Direction, etc., of search-warrants.

100. Persons in charge of closed place to allow search.

101. Disposal of things found in search beyond jurisdiction.

D.—Miscellaneous

102. Power of police officer to seize certain property.

103. Magistrate may direct search in his presence.

104. Power to impound document, etc., produced.

105. Reciprocal arrangements regarding processes.

CHAPTER VIIA

RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND FORFEITURE OF PROPERTY

105A. Definitions.

105B. Assistance in securing transfer of persons.

SECTIONS

- 105C. Assistance in relation to orders of attachment or forfeiture of property.
- 105D. Identifying unlawfully acquired property.
- 105E. Seizure or attachment of property.
- 105F. Management of properties seized or forfeited under this Chapter.
- 105G. Notice of forfeiture of property.
- 105H. Forfeiture of property in certain cases.
- 105-I. Fine in lieu of forfeiture.
- 105J. Certain transfers to be null and void.
- 105K. Procedure in respect of letter of request.
- 105L. Application of this Chapter.

CHAPTER VIII

SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

- 106. Security for keeping the peace on conviction.
- 107. Security for keeping the peace in other cases.
- 108. Security for good behaviour from persons disseminating seditious matters.
- 109. Security for good behaviour from suspected persons.
- 110. Security for good behaviour from habitual offenders.
- 111. Order to be made.
- 112. Procedure in respect of person present in Court.
- 113. Summons or warrant in case of person not so present.
- 114. Copy of order to accompany summons or warrant.
- 115. Power to dispense with personal attendance.
- 116. Inquiry as to truth of information.
- 117. Order to give security.
- 118. Discharge of person informed against.
- 119. Commencement of period for which security is required.
- 120. Contents of bond.
- 121. Power to reject sureties.
- 122. Imprisonment in default of security.
- 123. Power to release persons imprisoned for failing to give security.
- 124. Security for unexpired period of bond.

CHAPTER IX

ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS

- 125. Order for maintenance of wives, children and parents.
- 126. Procedure.
- 127. Alteration in allowance.
- 128. Enforcement of order of maintenance.

CHAPTER X
MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY
A.—Unlawful assemblies

SECTIONS

129. Dispersal of assembly by use of civil force.
130. Use of armed forces to disperse assembly.
131. Power of certain armed force officers to disperse assembly.
132. Protection against prosecution for acts done under preceding sections.

B.—Public nuisances

133. Conditional order for removal of nuisance.
134. Service or notification of order.
135. Person to whom order is addressed to obey or show cause.
136. Consequences of his failing to do so.
137. Procedure where existence of public right is denied.
138. Procedure where he appears to show cause.
139. Power of Magistrate to direct local investigation and examination of an expert.
140. Power of Magistrate to furnish written instructions, etc.
141. Procedure on order being made absolute and consequences of disobedience.
142. Injunction pending inquiry.
143. Magistrate may prohibit repetition or continuance of public nuisance.

C.—Urgent cases of nuisance or apprehended danger

144. Power to issue order in urgent cases of nuisance or apprehended danger.
- 144A. Power to prohibit carrying arms in procession or mass drill or mass training with arms.

D.—Disputes as to immovable property

145. Procedure where dispute concerning land or water is likely to cause breach of peace.
146. Power to attach subject of dispute and to appoint receiver.
147. Dispute concerning right of use of land or water.
148. Local inquiry.

CHAPTER XI
PREVENTIVE ACTION OF THE POLICE

149. Police to prevent cognizable offences.
150. Information of design to commit cognizable offences.
151. Arrest to prevent the commission of cognizable offences.
152. Prevention of injury to public property.
153. Inspection of weights and measures.

CHAPTER XII

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

154. Information in cognizable cases.
155. Information as to non-cognizable cases and investigation of such cases.

SECTIONS

156. Police officer's power to investigate cognizable case.
157. Procedure for investigation.
158. Report how submitted.
159. Power to hold investigation or preliminary inquiry.
160. Police officer's power to require attendance of witnesses.
161. Examination of witnesses by police.
162. Statements to police not to be signed: Use of statements in evidence.
163. No inducement to be offered.
164. Recording of confessions and statements.
- 164A. Medical examination of the victim of rape.
165. Search by police officer.
166. When officer in charge of police station may require another to issue search-warrant.
- 166A. Letter of request to competent authority for investigation in a country or place outside India.
- 166B. Letter of request from a country or place outside India to a Court or an authority for investigation in India.
167. Procedure when investigation cannot be completed in twenty-four hours.
168. Report of investigation by subordinate police officer.
169. Release of accused when evidence deficient.
170. Cases to be sent to Magistrate, when evidence is sufficient.
171. Complainant and witnesses not to be required to accompany police officer and not to be subjected to restraint.
172. Diary of proceedings in investigation.
173. Report of police officer on completion of investigation.
174. Police to enquire and report on suicide, etc.
175. Power to summon persons.
176. Inquiry by Magistrate into cause of death.

CHAPTER XIII

JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

177. Ordinary place of inquiry and trial.
178. Place of inquiry or trial.
179. Offence triable where act is done or consequence ensues.
180. Place of trial where act is an offence by reason of relation to other offence.
181. Place of trial in case of certain offences.
182. Offences committed by letters, etc.
183. Offence committed on journey or voyage.
184. Place of trial for offences triable together.
185. Power to order cases to be tried in different sessions divisions.
186. High Court to decide, in case of doubt, district where inquiry or trial shall take place.
187. Power to issue summons or warrant for offence committed beyond local jurisdiction.

SECTIONS

188. Offence committed outside India.
189. Receipt of evidence relating to offences committed outside India.

CHAPTER XIV

CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS

190. Cognizance of offences by Magistrates.
191. Transfer on application of the accused.
192. Making over of cases to Magistrates.
193. Cognizance of offences by Courts of Session.
194. Additional and Assistant Sessions Judges to try cases made over to them.
195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.
- 195A. Procedure for witnesses in case of threatening, etc.
196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.
197. Prosecution of Judges and public servants.
198. Prosecution for offences against marriage.
- 198A. Prosecution of offences under section 498A of the Indian Penal Code.
- 198B. Cognizance of offence.
199. Prosecution for defamation.

CHAPTER XV

COMPLAINTS TO MAGISTRATES

200. Examination of complainant.
201. Procedure by Magistrate not competent to take cognizance of the case.
202. Postponement of issue of process.
203. Dismissal of complaint.

CHAPTER XVI

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

204. Issue of process.
205. Magistrate may dispense with personal attendance of accused.
206. Special summons in cases of petty offence.
207. Supply to the accused of copy of police report and other documents.
208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.
209. Commitment of case to Court of Session when offence is triable exclusively by it.
210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

CHAPTER XVII

THE CHARGE

A.-*Form of charges*

211. Contents of charge.
212. Particulars as to time, place and person.

SECTIONS

213. When manner of committing offence must be stated.
214. Words in charge taken in sense of law under which offence is punishable.
215. Effect of errors.
216. Court may alter charge.
217. Recall of witnesses when charge altered.

B.—*Joinder of charges*

218. Separate charges for distinct offences.
219. Three offences of same kind within year may be charged together.
220. Trial for more than one offence.
221. Where it is doubtful what offence has been committed.
222. When offence proved included in offence charged.
223. What persons may be charged jointly.
224. Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER XVIII

TRIAL BEFORE A COURT OF SESSION

225. Trial to be conducted by Public Prosecutor.
226. Opening case for prosecution.
227. Discharge.
228. Framing of charge.
229. Conviction on plea of guilty.
230. Date for prosecution evidence.
231. Evidence for prosecution.
232. Acquittal.
233. Entering upon defence.
234. Arguments.
235. Judgment of acquittal or conviction.
236. Previous conviction.
237. Procedure in cases instituted under section 199(2).

CHAPTER XIX

TRIAL OF WARRANT-CASES BY MAGISTRATES

A.—*Cases instituted on a police report*

238. Compliance with section 207.
239. When accused shall be discharged.
240. Framing of charge.
241. Conviction on plea of guilty.
242. Evidence for prosecution.
243. Evidence for defence.

SECTIONS

B.—*Cases instituted otherwise than on police report*

- 244. Evidence for prosecution.
- 245. When accused shall be discharged.
- 246. Procedure where accused is not discharged.
- 247. Evidence for defence.

C.—*Conclusion of trial*

- 248. Acquittal or conviction.
- 249. Absence of complainant.
- 250. Compensation for accusation without reasonable cause.

CHAPTER XX TRIAL OF SUMMONS-CASES BY MAGISTRATES

- 251. Substance of accusation to be stated.
- 252. Conviction on plea of guilty.
- 253. Conviction on plea of guilty in absence of accused in petty cases.
- 254. Procedure when not convicted.
- 255. Acquittal or conviction.
- 256. Non-appearance or death of complainant.
- 257. Withdrawal of complaint.
- 258. Power to stop proceedings in certain cases.
- 259. Power of Court to convert summons-cases into warrant-cases.

CHAPTER XXI SUMMARY TRIALS

- 260. Power to try summarily.
- 261. Summary trial by Magistrate of the second class.
- 262. Procedure for summary trials.
- 263. Record in summary trials.
- 264. Judgment in cases tried summarily.
- 265. Language of record and judgment.

CHAPTER XXIA PLEA BARGAINING

- 265A. Application of the Chapter.
- 265B. Application for plea bargaining.
- 265C. Guidelines for mutually satisfactory disposition.
- 265D. Report of the mutually satisfactory disposition to be submitted before the Court.
- 265E. Disposal of the case.
- 265F. Judgment of the Court.
- 265G. Finality of the judgment.
- 265H. Power of the Court in plea bargaining.

SECTIONS

- 265-I. Period of detention undergone by the accused to be set-off against the sentence of imprisonment.
- 265J. Savings.
- 265K. Statements of accused not to be used.
- 265L. Non-application of the Chapter.

CHAPTER XXII

ATTENDANCE OF PERSONS CONFINED OR DETAINED IN PRISONS

- 266. Definitions.
- 267. Power to require attendance of prisoners.
- 268. Power of State Government to exclude certain persons from operation of section 267.
- 269. Officer in charge of prison to abstain from carrying out order in certain contingencies.
- 270. Prisoner to be brought to Court in custody.
- 271. Power to issue commission for examination of witness in prison.

CHAPTER XXIII

EVIDENCE IN INQUIRIES AND TRIALS

A.—*Mode of taking and recording evidence*

- 272. Language of Courts.
- 273. Evidence to be taken in presence of accused.
- 274. Record in summons-cases and inquiries.
- 275. Record in warrant-cases.
- 276. Record in trial before Court of Session.
- 277. Language of record of evidence.
- 278. Procedure in regard to such evidence when completed.
- 279. Interpretation of evidence to accused or his pleader.
- 280. Remarks respecting demeanour of witness.
- 281. Record of examination of accused.
- 282. Interpreter to be bound to interpret truthfully.
- 283. Record in High Court.

B.—*Commissions for the examination of witnesses*

- 284. When attendance of witness may be dispensed with and commission issued.
- 285. Commission to whom to be issued.
- 286. Execution of commissions.
- 287. Parties may examine witnesses.
- 288. Return of commission.
- 289. Adjournment of proceeding.
- 290. Execution of foreign commissions.
- 291. Deposition of medical witness.
- 291A. Identification report of Magistrate.

SECTIONS

292. Evidence of officers of the Mint.
293. Reports of certain Government scientific experts.
294. No formal proof of certain documents.
295. Affidavit in proof of conduct of public servants.
296. Evidence of formal character on affidavit.
297. Authorities before whom affidavits may be sworn.
298. Previous conviction or acquittal how proved.
299. Record of evidence in absence of accused.

CHAPTER XXIV

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

300. Person once convicted or acquitted not to be tried for same offence.
301. Appearance by Public Prosecutors.
302. Permission to conduct prosecution.
303. Right of person against whom proceedings are instituted to be defended.
304. Legal aid to accused at State expense in certain cases.
305. Procedure when corporation or registered society is an accused.
306. Tender of pardon to accomplice.
307. Power to direct tender of pardon.
308. Trial of person not complying with conditions of pardon.
309. Power to postpone or adjourn proceedings.
310. Local inspection.
311. Power to summon material witness, or examine person present.
- 311A. Power of Magistrate to order person to give specimen signatures or handwriting.
312. Expenses of complainants and witnesses.
313. Power to examine the accused.
314. Oral arguments and memorandum of arguments.
315. Accused person to be competent witness.
316. No influence to be used to induce disclosure.
317. Provision for inquiries and trial being held in the absence of accused in certain cases.
318. Procedure where accused does not understand proceedings.
319. Power to proceed against other persons appearing to be guilty of offence.
320. Compounding of offences.
321. Withdrawal from prosecution.
322. Procedure in cases which Magistrate cannot dispose of.
323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.
324. Trial of persons previously convicted of offences against coinage, stamp-law or property.
325. Procedure when Magistrate cannot pass sentence sufficiently severe.

SECTIONS

- 326. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.
- 327. Court to be open.

CHAPTER XXV

PROVISIONS AS TO ACCUSED PERSONS OF UNSOUND MIND

- 328. Procedure in case of accused being lunatic.
- 329. Procedure in case of person of unsound mind tried before Court.
- 330. Release of person of unsound mind pending investigation or trial.
- 331. Resumption of inquiry or trial.
- 332. Procedure on accused appearing before Magistrate or Court.
- 333. When accused appears to have been of sound mind.
- 334. Judgment of acquittal on ground of unsoundness of mind.
- 335. Person acquitted on such ground to be detained in safe custody.
- 336. Power of State Government to empower officer-in-charge to discharge.
- 337. Procedure where lunatic prisoner is reported capable of making his defence.
- 338. Procedure where lunatic detained is declared fit to be released.
- 339. Delivery of lunatic to care of relative or friend.

CHAPTER XXVI

PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

- 340. Procedure in cases mentioned in section 195.
- 341. Appeal.
- 342. Power to order costs.
- 343. Procedure of Magistrate taking cognizance.
- 344. Summary procedure for trial for giving false evidence.
- 345. Procedure in certain cases of contempt.
- 346. Procedure where Court considers that case should not be dealt with under section 345.
- 347. When Registrar or Sub-Registrar to be deemed a Civil Court.
- 348. Discharge of offender on submission of apology.
- 349. Imprisonment or committal of person refusing to answer or produce document.
- 350. Summary procedure for punishment for non-attendance by a witness in obedience to summons.
- 351. Appeals from convictions under sections 344, 345, 349 and 350.
- 352. Certain Judges and Magistrates not to try certain offences when committed before themselves.

CHAPTER XXVII

THE JUDGMENT

- 353. Judgment.
- 354. Language and contents of judgment.
- 355. Metropolitan Magistrate's judgment.

SECTIONS

- 356. Order for notifying address of previously convicted offender.
- 357. Order to pay compensation.
- 357A. Victim compensation scheme.
- 357B. Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.
- 357C. Treatment of victims.
- 358. Compensation to persons groundlessly arrested.
- 359. Order to pay costs in non-cognizable cases.
- 360. Order to release on probation of good conduct or after admonition.
- 361. Special reasons to be recorded in certain cases.
- 362. Court not to alter judgment.
- 363. Copy of judgment to be given to the accused and other persons.
- 364. Judgment when to be translated.
- 365. Court of Session to send copy of finding and sentence to District Magistrate.

CHAPTER XXVIII

SUBMISSION OF DEATH SENTENCES FOR CONFIRMATION

- 366. Sentence of death to be submitted by Court of Session for confirmation.
- 367. Power to direct further inquiry to be made or additional evidence to be taken.
- 368. Power of High Court to confirm sentence or annul conviction.
- 369. Confirmation or new sentence to be signed by two Judges.
- 370. Procedure in case of difference of opinion.
- 371. Procedure in cases submitted to High Court for confirmation.

CHAPTER XXIX

APPEALS

- 372. No appeal to lie unless otherwise provided.
- 373. Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour.
- 374. Appeals from convictions.
- 375. No appeal in certain cases when accused pleads guilty.
- 376. No appeal in petty cases.
- 377. Appeal by the State Government against sentence.
- 378. Appeal in case of acquittal.
- 379. Appeal against conviction by High Court in certain cases.
- 380. Special right of appeal in certain cases.
- 381. Appeal to Court of Session how heard.
- 382. Petition of appeal.
- 383. Procedure when appellant in jail.
- 384. Summary dismissal of appeal.
- 385. Procedure for hearing appeals not dismissed summarily.
- 386. Powers of the Appellate Court.
- 387. Judgments of Subordinate Appellate Court.
- 388. Order of High Court on appeal to be certified to lower Court.

SECTIONS

389. Suspension of sentence pending the appeal; release of appellant on bail.
390. Arrest of accused in appeal from acquittal.
391. Appellate Court may take further evidence or direct it to be taken.
392. Procedure where Judges of Court of Appeal are equally divided.
393. Finality of judgments and orders on appeal.
394. Abatement of appeals.

CHAPTER XXX

REFERENCE AND REVISION

395. Reference to High Court.
396. Disposal of case according to decision of High Court.
397. Calling for records to exercise powers of revision.
398. Power to order inquiry.
399. Sessions Judge's powers of revision.
400. Power of Additional Sessions Judge.
401. High Court's powers of revision.
402. Power of High Court to withdraw or transfer revision cases.
403. Option of Court to hear parties.
404. Statement by Metropolitan Magistrate of ground of his decision to be considered by High Court.
405. High Court's order to be certified to lower Court.

CHAPTER XXXI

TRANSFER OF CRIMINAL CASES

406. Power of Supreme Court to transfer cases and appeals.
407. Power of High Court to transfer cases and appeals.
408. Power of Sessions Judge to transfer cases and appeals.
409. Withdrawal of cases and appeals by Sessions Judges.
410. Withdrawal of cases by Judicial Magistrate.
411. Making over or withdrawal of cases by Executive Magistrates.
412. Reasons to be recorded.

CHAPTER XXXII

EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES

A.—*Death Sentences*

413. Execution of order passed under section 368.
414. Execution of sentence of death passed by High Court.
415. Postponement of execution of sentence of death in case of appeal to Supreme Court.
416. Postponement of capital sentence on pregnant woman.

SECTIONS

B.—*Imprisonment*

- 417. Power to appoint place of imprisonment.
- 418. Execution of sentence of imprisonment.
- 419. Direction of warrant for execution.
- 420. Warrant with whom to be lodged.

C.—*Levy of fine*

- 421. Warrant for levy of fine.
- 422. Effect of such warrant.
- 423. Warrant for levy of fine issued by a Court in any territory to which this Code does not extend.
- 424. Suspension of execution of sentence of imprisonment.

D.—*General provisions regarding execution*

- 425. Who may issue warrant.
- 426. Sentence on escaped convict when to take effect.
- 427. Sentence on offender already sentenced for another offence.
- 428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.
- 429. Saving.
- 430. Return of warrant on execution of sentence.
- 431. Money ordered to be paid recoverable as a fine.

E.—*Suspension, remission and commutation of sentences*

- 432. Power to suspend or remit sentences.
- 433. Power to commute sentence.
- 433A. Restriction on powers of remission or commutation in certain cases.
- 434. Concurrent power of Central Government in case of death sentences.
- 435. State Government to act after consultation with Central Government in certain cases.

CHAPTER XXXIII

PROVISIONS AS TO BAIL AND BONDS

- 436. In what cases bail to be taken.
- 436A. Maximum period for which an undertrial prisoner can be detained.
- 437. When bail may be taken in case of non-bailable offence.
- 437A. Bail to require accused to appear before next appellate Court.
- 438. Direction for grant of bail to person apprehending arrest.
- 439. Special powers of High Court or Court of Session regarding bail.
- 440. Amount of bond and reduction thereof.
- 441. Bond of accused and sureties.
- 441A. Declaration by sureties.
- 442. Discharge from custody.

SECTIONS

- 443. Power to order sufficient bail when that first taken is insufficient.
- 444. Discharge of sureties.
- 445. Deposit instead of recognizance.
- 446. Procedure when bond has been forfeited.
- 446A. Cancellation of bond and bail bond.
- 447. Procedure in case of insolvency of death of surety or when a bond is forfeited.
- 448. Bond required from minor.
- 449. Appeal from orders under section 446.
- 450. Power to direct levy of amount due on certain recognizances.

CHAPTER XXXIV

DISPOSAL OF PROPERTY

- 451. Order for custody and disposal of property pending trial in certain cases.
- 452. Order for disposal of property at conclusion of trial.
- 453. Payment to innocent purchaser of money found on accused.
- 454. Appeal against orders under section 452 or section 453.
- 455. Destruction of libellous and other matter.
- 456. Power to restore possession of immovable property.
- 457. Procedure by police upon seizure of property.
- 458. Procedure where no claimant appears within six months.
- 459. Power to sell perishable property.

CHAPTER XXXV

IRREGULAR PROCEEDINGS

- 460. Irregularities which do not vitiate proceedings.
- 461. Irregularities which vitiate proceedings.
- 462. Proceedings in wrong place.
- 463. Non-compliance with provisions of section 164 or section 281.
- 464. Effect of omission to frame, or absence of, or error in, charge.
- 465. Finding or sentence when reversible by reason of error, omission or irregularity.
- 466. Defect or error not to make attachment unlawful.

CHAPTER XXXVI
LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES

SECTIONS

- 467. Definitions.
- 468. Bar to taking cognizance after lapse of the period of limitation.
- 469. Commencement of the period of limitation.
- 470. Exclusion of time in certain cases.
- 471. Exclusion of date on which Court is closed.
- 472. Continuing offence.
- 473. Extension of period of limitation in certain cases.

CHAPTER XXXVII
MISCELLANEOUS

- 474. Trials before High Courts.
- 475. Delivery to commanding officers of persons liable to be tried by Court-martial.
- 476. Forms.
- 477. Power of High Court to make rules.
- 478. Power to alter functions allocated to Executive Magistrate in certain cases.
- 479. Case in which Judge or Magistrate is personally interested.
- 480. Practising pleader not to sit as Magistrate in certain Courts.
- 481. Public servant concerned in sale not to purchase or bid for property.
- 482. Saving of inherent power of High Court.
- 483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.
- 484. Repeal and savings.

THE FIRST SCHEDULE.—CLASSIFICATION OF OFFENCES.

THE SECOND SCHEDULE.—FORMS.

- FORM NO. 1.—Summons to an accused person.
- FORM NO. 2.—Warrant of arrest.
- FORM NO. 3.—Bond and bail-bond after arrest under a warrant.
- FORM NO. 4.—Proclamation requiring the appearance of a person accused.
- FORM NO. 5.—Proclamation requiring the attendance of a witness.
- FORM NO. 6.—Order of attachment to compel the attendance of a witness.
- FORM NO. 7.—Order of attachment to compel the appearance of a person accused.
- FORM NO. 8.—Order authorising an attachment by the District Magistrate or Collector.
- FORM NO. 9.—Warrant in the first instance to bring up a witness.
- FORM NO. 10.—Warrant to search after information of a particular offence.
- FORM NO. 11.—Warrant to search suspected place of deposit.

- FORM NO. 12.—Bond to keep the peace.
- FORM NO. 13.—Bond for good behaviour.
- FORM NO. 14.—Summons on information of a probable breach of the peace.
- FORM NO. 15.—Warrant of commitment on failure to find security to keep the peace.
- FORM NO. 16.—Warrant of commitment on failure to find security for good behaviour.
- FORM NO. 17.—Warrant to discharge a person imprisoned on failure to give security.
- FORM NO. 18.—Warrant of imprisonment on failure to pay maintenance.
- FORM NO. 19.—Warrant to enforce the payment of maintenance by attachment and sale.
- FORM NO. 20.—Order for the removal of nuisances.
- FORM NO. 21.—Magistrate's notice and peremptory order.
- FORM NO. 22.—Injunction to provide against imminent danger pending inquiry.
- FORM NO. 23.—Magistrate's order prohibiting the repetition, etc., of a nuisance.
- FORM NO. 24.—Magistrate's order to prevent obstruction, riot, etc.
- FORM NO. 25.—Magistrate's order declaring party entitled to retain possession of land, etc., in dispute.
- FORM NO. 26.—Warrant of attachment in the case of a dispute as to the possession of land, etc.
- FORM NO. 27.—Magistrate's order prohibiting the doing of anything on land or water.
- FORM NO. 28.—Bond and bail-bond on a preliminary inquiry before a Police Officer.
- FORM NO. 29.—Bond to prosecute or give evidence.
- FORM NO. 30.—Special summons to a person accused of a petty offence.
- FORM NO. 31.—Notice of commitment by Magistrate to Public Prosecutor.
- FORM NO. 32.—Charges.
- I. Charges with one-head.
 - II. Charges with two or more heads.
 - III. Charges for theft after previous conviction.
- FORM NO. 33.—Summons to witness.
- FORM NO. 34.—Warrant of commitment on a sentence of imprisonment or fine if passed by a Court.
- FORM NO. 35.—Warrant of imprisonment on failure to pay compensation.
- FORM NO. 36.—Order requiring production in Court of person in prison for answering to charge of offence.
- FORM NO. 37.—Order requiring production in Court of person in prison for giving evidence.
- FORM NO. 38.—Warrant of commitment in certain cases of contempt when a fine is imposed.
- FORM NO. 39.—Magistrate's or Judge's warrant of commitment of witness refusing to answer or to produce document.
- FORM NO. 40.—Warrant of commitment under sentence of death.
- FORM NO. 41.—Warrant after a commutation of a sentence.
- FORM NO. 42.—Warrant of execution of a sentence of death.

FORM NO. 43.—Warrant to levy a fine by attachment and Sale.

FORM NO. 44.—Warrant for recovery of fine.

FORM NO. 44A.—Bond for appearance of offender released pending realisation of fine.

FORM NO. 45.—Bond and bail-bond for attendance before officer in charge of police station or Court.

FORM NO. 46.—Warrant to discharge a person imprisoned on failure to give security.

FORM NO. 47.—Warrant of attachment to enforce a bond.

FORM NO. 48.—Notice to surety on breach of a bond.

FORM NO. 49.—Notice to surety of forfeiture of bond for good behaviour.

FORM NO. 50.—Warrant of attachment against a surety.

FORM NO. 51.—Warrant of commitment of the surety of an accused person admitted to bail.

FORM NO. 52.—Notice to the principal of forfeiture of bond to keep the peace.

FORM NO. 53.—Warrant to attach the property of the principal on breach of a bond to keep the peace.

FORM NO. 54.—Warrant of imprisonment on breach of a bond to keep the peace.

FORM NO. 55.—Warrant of attachment and sale on forfeiture of bond for good behaviour.

FORM NO. 56.—Warrant of imprisonment on forfeiture of bond for good behaviour.

APPENDIX I.—[Extracts from the Code of Criminal Procedure (Amendment) Act, 2005 (25 of 2005).]

THE CODE OF CRIMINAL PROCEDURE, 1973

ACT NO. 2 OF 1974

[25th January, 1974.]

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

BE it enacted by Parliament in the twenty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Code of Criminal Procedure, 1973.

(2) It extends to the whole of India ^{1***:}

Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply—

(a) to the State of Nagaland,

(b) to the tribal areas,

but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

Explanation.—In this section, “tribal areas” means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

(3) It shall come into force on the 1st day of April, 1974.

STATE AMENDMENT

Haryana

In the Code of Criminal Procedure (Haryana Amendment) Act, 2014.—In section 1, after figures “2014”, the words “as extended to the Union territory of Chandigarh” shall be inserted;

[*Vide* Notification No. GSR929(E) dated 16th December, 2019.]

2. Definitions.—In this Code, unless the context otherwise requires,—

(a) “bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence;

(b) “charge” includes any head of charge when the charge contains more heads than one;

(c) “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an

1. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

offence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

(e) “High Court” means,—

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

(f) “India” means the territories to which this Code extends;

(g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(i) “judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath;

(j) “local jurisdiction”, in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code ¹[and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify];

(k) “metropolitan area” means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;

(l) “non-cognizable offence” means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant;

(m) “notification” means a notification published in the Official Gazette;

(n) “offence” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);

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

(p) “place” includes a house, building, tent, vehicle and vessel;

(q) “pleader”, when used with reference to any proceeding in any Court, means a person authorised by or under any law for the time being in force, to practise in such Court, and includes any other person appointed with the permission of the Court to act in such proceeding;

(r) “police report” means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

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

1. Ins. by Act 45 of 1978, s. 2 (w.e.f. 18-12-1978).

(t) "prescribed" means prescribed by rules made under this Code;

(u) "Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

(v) "sub-division" means a sub-division of a district;

(w) "summons-case" means a case relating to an offence, and not being a warrant-case;

¹[(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;]

(x) "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.

STATE AMENDMENT

Haryana

In section 2, for the words "State of Haryana", the words "Union territory of Chandigarh" shall be substituted.

[*Vide* Notification No. GSR929(E) dated 16th December, 2019.]

3. Construction of references.—(1) In this Code,—

(a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires,—

(i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;

(ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(b) any reference to a Magistrate of the second class shall, in relation to an area outside a metropolitan area, be construed as a reference to a Judicial Magistrate of the second class, and, in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(c) any reference to a Magistrate of the first class shall,—

(i) in relation to a metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area;

(ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;

(d) any reference to the Chief Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area.

(2) In this Code, unless the context otherwise requires, any reference to the Court of a Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Court of the Metropolitan Magistrate for that area.

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code,—

(a) to a Magistrate of the first class, shall be construed as a reference to a Judicial Magistrate of the first class;

1. Ins. by Act 5 of 2009, s. 2 (w.e.f. 31-12-2009).

- (b) to a Magistrate of the second class or of the third class, shall be construed as a reference to a Judicial Magistrate of the second class;
- (c) to a Presidency Magistrate or Chief Presidency Magistrate, shall be construed as a reference, respectively, to a Metropolitan Magistrate or the Chief Metropolitan Magistrate;
- (d) to any area which is included in a Metropolitan area, as a reference to such metropolitan area, and any reference to a Magistrate of the first class or of the second class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area.

(4) Where, under any law, other than this Code, the function exercisable by a Magistrate relate to matters,—

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

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

STATE AMENDMENT

Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep

Insertion of New section 3A. —In the Code, as it applies to the Union territory of Andaman and Nicobar Islands, after section 3, the following section shall be inserted, namely:—

“3A. Special provision relating to Andaman and Nicobar Islands. —(1) Reference in this Code to—

(a) The Chief Judicial Magistrate shall be construed as references to the District Magistrate or, where the State Government so directs, also to the Additional District Magistrate;

(b) a Magistrate or Magistrate of the first class or of the second class or Judicial Magistrate of the first class or of the second class, shall be construed as references to such Executive Magistrate as the State Government may, by notification in the Official Gazette, specify.

(2) The State Government may, if it is of opinion that adequate number of persons are available for appointment as Judicial Magistrate, by notification in the Official Gazette, declare that the provisions of this section shall, on and from such day as may be specified in the notification, cease to be in force and different dates may be specified for different islands.

(3) On the cessation of operation of the provisions of this section, every inquiry or trial pending, immediately before such cessation, before the District Magistrate or Additional District Magistrate or any Executive Magistrate, as the case may be, shall stand transferred, and shall be dealt with, from the stage which was reached before, such cessation, by such Judicial Magistrate as the State Government may specify in this behalf.”.

[*Vide* The Code of Criminal Procedure (Amendment) Regulation, 1974 Act (1 of 1974), s. 3.]

4. Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

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

5. Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

CHAPTER II

CONSTITUTION OF CRIMINAL COURTS AND OFFICES

6. Classes of Criminal Courts.—Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:—

- (i) Courts of Session;
- (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the second class; and
- (iv) Executive Magistrates.

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

Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district.

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts.

(3) The State Government may, after consultation with the High Court, divide any district into sub-divisions and may alter the limits or the number of such sub-divisions.

(4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section.

8. Metropolitan areas.—(1) The State Government may, by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purposes of this Code.

(2) As from the commencement of this Code, each of the Presidency-towns of Bombay, Calcutta and Madras and the city of Ahmedabad shall be deemed to be declared under sub-section (1) to be a metropolitan area.

(3) The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million.

(4) Where, after an area has been declared, or deemed to have been declared to be, a metropolitan area, the population of such area falls below one million, such area shall, on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place.

(5) Where the State Government reduces or alters, under sub-section (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place.

Explanation.—In this section, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

STATE AMENDMENT

Delhi

In its application to the National Capital Territory of Delhi, in section 8,—

- (a) in sub-section (1), for the words “a city or town”, substitute “a city or town or part thereof”;

(b) for sub-section (3), substitute the following sub-section, namely:—

“(3) The State Government may, by notification divide a metropolitan area into two or more such areas or extend or reduce or alter the limits of a metropolitan area:

Provided that—

(a) the division of metropolitan area shall not be so made as to result in the population of any of the areas into which it has been divided being less than one million; and

(b) the reduction or alteration of metropolitan area shall not be so made as to reduce the population of such area to less than one million.”;

(c) after sub-section (4), insert the following sub-section, namely: —

“(4-A) Where any metropolitan area is divided under sub-section (3), the High Court may issue such directions as it deems fit with respect to the disposal of the proceedings pendings immediately before such division before any Magistrate or court having jurisdiction in respect of such area.”

[*Vide* Delhi Act 9 of 2011, s. 2.]

9. Court of Session.—(1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Session Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation.—For the purposes of this Code, “appointment” does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government.

STATE AMENDMENT

West Bengal.—

To sub-section (3) of section 9 of the principal Act, the following provisos shall be added:—

Provided that notwithstanding anything to the contrary contained in this Code, an Additional Sessions Judge in a sub-division, other than the sub-division, by whatever name called, wherein the headquarters of the Sessions Judges are situated, exercising jurisdiction in a Court of Session, shall have all the powers of the Sessions Judge under this Code, in respect of the cases and proceedings in the Criminal Courts in that sub-division, for the purposes of sub-section (7) of section 116, sections 193 and 194, clause (a) of section 209 and sections 409, 439 and 449:

Provided further that the above powers shall not be in derogation of the powers otherwise exercisable by an Additional Sessions Judge or a Sessions Judge under this Code.”.

[*Vide* West Bengal Act, 24 of 1988, s. 3.]

Orissa

Amendment of section 9.—In Section 9 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as the principal Act), to sub-section (3), the following provisions shall be added, namely:—

“Provided that notwithstanding anything to the contrary contained in this Code, an Additional Sessions Judge in a district or subdivision, other than the district or subdivision, by whatever name called, wherein the headquarters of the Sessions Judge are situated, exercising jurisdiction in a Court of Sessions shall have all the powers of the Sessions Judge under this Code, in respect of the cases and the proceedings in the Criminal Courts in that district or subdivision for the purposes of sub-section (7) of section 116, sections 193 and 194, clause (a) of section 209 and sections 409 and 449:

Provided further that the above powers shall not be in derogation of the powers otherwise exercisable by an Additional Sessions Judge or a Sessions Judge under this Code.”

[*Vide* Orissa Act 6 of 2004, s. 2]

10. Subordination of Assistant Sessions Judges.—(1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

(2) The Sessions Judge may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges.

(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.

11. Courts of Judicial Magistrates.—(1) In every district (not being a metropolitan area) there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

¹[Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.]

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of

1. Added by Act 45 of 1978, s. 3 (w.e.f. 18-12-1978).

a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

STATE AMENDMENT

Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep

In the Code, as it applies to the Union Territories to which this regulation extends, in sub-section (3) of section 11, for the words “any member of the judicial service of the state functioning as a judge in a civil court”, the words “any person discharging the functions of a civil court”, shall be substituted.

[*Vide* The Code of Criminal Procedure (Amendment) Regulation, 1974 Act (1 of 1974), s. 4.]

12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.—(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

(3) (a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

13. Special Judicial Magistrates.—(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate ¹[of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area:]

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

²[(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.]

STATE AMENDMENT

Assam

For section 13 of the Code, the following shall be substituted, namely:—

“13. (1) The State Government may appoint as many persons as it thinks fit to be sub divisional Magistrates in any district in the State of Assam.

(2) The State Government, or subject to the control of the State Government, the District Magistrate may place one or more Sub divisional Magistrates in charge of a subdivision”.

[*Vide* Assam Act 13 of 1964, s. 2.]

1. Subs. Act 45 of 1978, s. 4, for certain words (w.e.f. 18-12-1978).

2. Ins. by s. 4, *ibid.* (w.e.f. 18-12-1978).

Himachal Pradesh

Amendment of Section 13.— in Sub-section (1) of section 13 of the Code of Criminal Procedure, 1973 (2 of 1974) in its application to the State of Himachal Pradesh for the words “in any district” the words “in any local area” shall be substituted.

[*Vide* Himachal Pradesh Act 40 of 1976, s. 2.]

14. Local jurisdiction of Judicial Magistrates.—(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code:

¹[Provided that the Court of Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.]

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

²[(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.]

15. Subordination of Judicial Magistrates.—(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

16. Courts of Metropolitan Magistrates.—(1) In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area.

17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.—(1) The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.

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

18. Special Metropolitan Magistrates.—(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases ^{3***}, in any metropolitan area within its local jurisdiction:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Metropolitan Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

⁴[(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan

1. Added by Act 45 of 1978, s. 5, (w.e.f. 18-12-1978).

2. Ins. by s. 5, *ibid.* (w.e.f. 18-12-1978).

3. The words “or to cases generally” omitted by s. 6, *ibid.*, (w.e.f. 18-12-1978).

4. Subs. by Act 45 of 1978, s. 6, for sub-section (3) (w.e.f. 18-12-1978).

Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class.]

19. Subordination of Metropolitan Magistrates.—(1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

(2) The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

(3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.

20. Executive Magistrates.—(1) In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have¹ [such] of the powers of a District Magistrate under this Code or under any other law for the time being in force² [as may be directed by the State Government].

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

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

³[(4A) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.]

(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

21. Special Executive Magistrates.—The State Government may appoint, for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

22. Local Jurisdiction of Executive Magistrates.—(1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

23. Subordination of Executive Magistrates.—(1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with

1. Subs. by Act 45 of 1978, s. 7, for "all or any" (w.e.f. 18-12-1978).

2. Ins. by s. 7, *ibid*, (w.e.f. 18-12-1978).

3. Ins. by Act 25 of 2005, s. 2 (w.e.f. 23-6-2006).

this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

¹[**24. Public Prosecutors.**—(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

²[*Explanation.*—For the purposes of this sub-section,—

(a) “regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) “Prosecuting Officer” means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.]

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

³[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.]

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person

1. Subs. by Act 45 of 1978, s. 8, for section 24 (w.e.f. 18-12-1978).

2. Ins. by Act 25 of 2005, s. 3 (w.e.f. 23-6-2006).

3. Ins. by Act 5 of 2009, s. 3 (w.e.f. 31-12-2009).

has been in practice as an advocate.]

STATE AMENDMENT

Karnataka

Amendment of section 24.—In section 24 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) (hereinafter referred to as the principal Act) in sub-section (1),—

(i) the words and punctuation mark “or the State Government shall”, shall be omitted; and

(ii) for the words “appoint a Public Prosecutor” the words “or the State Government shall appoint a Public Prosecutor” shall be substituted.

[*Vide* Karnataka Act 20 of 1982, s. 2.]

Maharashtra

Amendment of section 24.—In Section 24 of the Code of Criminal Procedure, 1973, (2 of 1974) in its application to the State of Maharashtra:—

(a) in sub-section (6), the proviso shall be deleted;

(b) after sub-section (6), the following sub-section shall be inserted, namely:—

“(6-A) Notwithstanding anything contained in sub-section (6), the State Government may, subject to the provisions of sub-sections (4) and (5), appoint a person who has been in practice as an advocate for not less than seven years, as the Public Prosecutor or Additional Public Prosecutor for the district.”.

[*Vide* Maharashtra Act 33 of 2014, s. 2.]

Madhya Pradesh

Amendment of Section 24.—In Section 24 of the principal Act.—

(i) in sub-section (6), for the words, “brackets and figure “Notwithstanding anything contained in sub-section (5)”, the words, brackets, letter and figures “Notwithstanding anything contained in sub-section (5), but subject to the provisions of sub-section (6-A)” shall be substituted and shall be deemed to have been substituted with effect from 18th December, 1978;

(ii) after sub-section (6), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from 18th December, 1978, namely:—

“(6-A) Notwithstanding anything contained in sub-section (6), the State Government may appoint a person who has been in practice as an advocate for not less than seven years as the Public Prosecutor or Additional Public Prosecutor for the district and it shall not be necessary to appoint the Public Prosecutor or Additional Public Prosecutor for the district from among the person constituting the Cadre of Prosecuting Officers in the State of Madhya Pradesh and the provisions of sub-sections (4) and (5) shall apply to the appointment of a Public Prosecutor Additional Public Prosecutor under this sub-section”;

(iii) in sub-section (7), after the words, bracket and figure “sub-section (6)”, the words, brackets, figure and letter “or sub-section (6-A)” shall be inserted and shall be deemed to have been inserted with effect from 18th December, 1978; and

(iv) in sub-section (9), for the words, brackets and figure, “sub-section (7)”, the words, brackets, figures and letter “sub-section (6-A) and sub-section (7)” shall be substituted and shall be deemed to have been substituted with effect from 18th December, 1978.

[*Vide* Madhya Pradesh Act 21 of 1995, s. 3.]

West Bengal

In Sub-section (6) of section 24 of the principal Act, for the words “shall appoint a Public Prosecutor or an Additional Public Prosecutor only”, the words “may also appoint a Public Prosecutor or an Additional Public Prosecutor” shall be substituted.

[*Vide* West Bengal Act 26 of 1990, s. 3.]

West Bengal

In sub-section (6) of section 24 of the principal Act, the proviso shall be omitted.

[*Vide* West Bengal Act 25 of 1992, s. 3.]

STATE AMENDMENT

Jammu and Kashmir and Ladakh (UTs).—

Section 24.— After sub-section (6), insert the following sub-section, namely:—

“(6A).—Notwithstanding anything contained in sub-section (1) and sub-section (6), the Government of the Union territory of Jammu and Kashmir may appoint a person who has been in practice as an Advocate for not less than seven years as Public Prosecutor or Additional Public Prosecutor for High Court and for the District Courts and it shall not be necessary to appoint Public Prosecutor or Additional Public Prosecutor for the High Court in consultation with High Court and Public Prosecutor or Additional Public Prosecutor for the District Court from amongst the person constituting the cadre of Prosecution for the State of Jammu and Kashmir.”

[*vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020).*]

25. Assistant Public prosecutors.—(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

¹[(IA) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.]

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed—

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector.

1. Ins. by Act 45 of 1978, s. 9 (w.e.f. 18-12-1978).

STATE AMENDMENT

Orissa

Amendment of section 25.—In section 25 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as the said Code), to sub-section (2), the following proviso shall be inserted, namely:—

“Provided that nothing in this sub-section shall be construed, to prohibit the State Government from exercising its control over Assistant Public Prosecutors through police officers.”

[*Vide Orissa Act 6 of 1995, s. 2]*

[25A. Directorate of Prosecution.]—(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.]

STATE AMENDMENT

Karnataka

In section 25A of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974),—

(a) for sub-section (2), the following shall be substituted, namely:—“(2) The post of Director of prosecution and Government litigations, or a Deputy Director of Prosecution and other cadres shall be filled in accordance with the Cadre and Recruitment Rules framed under the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990).”

(b) for sub-section (5), the following shall be substituted, namely:—“(5) Every Public Prosecutor, Additional Public Prosecutor appointed by the State Government from the cadre of Prosecutors recruited under the recruitment rules framed by the Government under the Karnataka State Civil Services Act, 1978

1. Ins. by Act 25 of 2005, s. 4 (w.e.f. 23-6-2006).

shall be subordinate to the Director of Prosecution and Government litigations and every Public Prosecutor, Additional Prosecutor and Special Prosecutor appointed under sub-section (8) of section 24 shall be subordinate to the Advocate General.”

(c) in sub-section (6), for the words “Deputy Director of Prosecution, the words “Director of Prosecution” shall be substituted.

[*Vide* Karnataka Act 39 of 2012, s. 2]

Madhya Pradesh

Substitution of Section 25A.—For section 25A of the principal Act, the following section shall be substituted, namely: —

“25A. Directorate of Prosecution.—(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Additional Directors of Prosecution, Joint Directors of Prosecution, Deputy Directors of Prosecution and Assistant Directors of Prosecution and such other posts as it thinks fit.

(2) The post of Director of Prosecution, Additional Directors of Prosecution, Joint Directors of Prosecution, Deputy Directors of Prosecution and Assistant Directors of Prosecution and other post shall be filled in accordance with the Madhya Pradesh Public Prosecution (Gazetted) Service Recruitment Rules, 1991, as amended from time to time.

(3) The head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the head of the Home Department in the State.

(4) Every Additional Director of Prosecution, Joint Director of Prosecution, Deputy Director of Prosecution and Assistant Director of Prosecution and other posts specified in sub-section (2) shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor and Additional Public Prosecutor appointed under the Madhya Pradesh Public Prosecution (Gazetted) Service Recruitment Rules, 1991, shall be subordinate to the Director of Prosecution and every Public Prosecutor and Additional Public Prosecutor appointed under sub-section (1) of Section 24 and every Special Public Prosecutor appointed under sub-section (8) of Section 24 to conduct cases in the High Court shall be subordinate to the Advocate General.

(6) Every Public Prosecutor and Additional Public Prosecutor appointed under sub-section (3) of Section 24 and every Special Public Prosecutor appointed under sub-section (8) of Section 24 to conduct cases in District Courts shall be subordinate to the District Magistrate.

(7) The powers and functions of the Director of Prosecution shall be such as the State Government may, by notification, specify.”.

[*Vide* Madhya Pradesh Act 18 of 2014, s. 3.]

STATE AMENDMENT

Jammu and Kashmir and Ladakh (UTs).—

Section 25A.-(i)** for sub-sections (1) and (2), substitute—**

(1) The Government of the Union territory of Jammu and Kashmir shall establish a Directorate of Prosecution consisting of a Director General of Prosecution and such other officers, as may be provided in rules to be framed by the said Government; and

(2) The Post of Director General of Prosecution and all other officers, constituting the prosecution cadre, shall be filled in accordance with the rules to be framed by the said Government.

(ii) in sub-section (3), substitute “Director of Prosecution” with “Director General of Prosecution”;

(iii) for sub-section (4), substitute “(4) subject to the control of the Director General of Prosecution, the Deputy Director shall be subordinate to and under the Control of a Joint Director.”

(iv) substitute sub-section (5),—

“Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the Government of the Union territory of Jammu and Kashmir under subsection (1), or the case may be under sub-section (8) of section 24 to conduct cases in the High Court shall be subordinate to the Advocate General.”;

(v) for sub-section (7), substitute—

“(7) The powers and functions of the Director General of Prosecution and other officers of the prosecution cadre shall be such as may be provided by the rules”.

[*vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020).*]

CHAPTER III

POWER OF COURTS

26. Courts by which offences are triable.—Subject to the other provisions of this Code,—

(a) any offence under the Indian Penal Code (45 of 1860) may be tried by—

(i) the High Court, or

(ii) the Court of Session, or

(iii) any other Court by which such offence is shown in the First Schedule to be triable:

¹[Provided that any ²[offence under section 376, ³[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)] shall be tried as far as practicable by a Court presided over by a woman.]

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

27. Jurisdiction in the case of juveniles.—Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

28. Sentences which High Courts and Sessions Judges may pass.—(1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

29. Sentences which Magistrates may pass.—(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not

1. Ins. by Act 5 of 2009, s. 4 (w.e.f. 31-12-2009).

2. Subs. by Act 13 of 2013, s. 11, for “offence under section 376 and sections 376A to 376D of the Indian Penal Code (45 of 1860)” (w.e.f. 3-2-2013).

3. Subs. by Act 22 of 2019, s. 10, for “section 376A, section 376B, section 376C, section 376D” (w.e.f. 21-4-2018).

exceeding three years, or of fine not exceeding ¹[ten thousand rupees], or of both.

(3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding ²[five thousand rupees], or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

30. Sentence of imprisonment in default of fine.—(1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:

Provided that the term—

(a) is not in excess of the powers of the Magistrate under section 29;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 29.

31. Sentence in cases of conviction of several offences at one trial.—(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

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

Provided that—

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

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

32. Mode of conferring powers.—(1) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.

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

33. Powers of officers appointed.—Whenever any person holding an office in the service of Government who has been invested by the High Court or the State Government with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the High Court or the State Government, as the case may be, otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

34. Withdrawal of powers.—(1) The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Code on any person or by any officer

1. Subs. by Act 25 of 2005, s. 5, for “five thousand rupees” (w.e.f. 23-6-2006).

2. Subs. by s. 5, *ibid.*, for “one thousand rupees” (w.e.f. 23-6-2006).

subordinate to it.

(2) Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred.

35. Powers of Judges and Magistrates exercisable by their successors-in-office.—(1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.

(2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge.

(3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purpose of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate.

CHAPTER IV

A.—POWERS OF SUPERIOR OFFICERS OF POLICE

36. Powers of superior officers of police.—Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

B.—AID TO THE MAGISTRATES AND THE POLICE

37. Public when to assist Magistrates and police.—Every person is bound to assist a Magistrate or police officer reasonably demanding his aid—

- (a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest; or
- (b) in the prevention or suppression of a breach of the peace; or
- (c) in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

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

39. Public to give information of certain offences.—(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:—

- (i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);
- (ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);
- (iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);
- (iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);
- (v) sections 302, 303 and 304 (that is to say, offences affecting life);

¹[(va) section 364A (that is to say, offence relating to kidnapping for ransom, etc.)]

(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);

(vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);

(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);

(ix) sections 431 and 439, both inclusive (that is to say, offences of mischief against property);

(x) sections 449 and 450 (that is to say, offence of house trespass);

(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house trespass); and

(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes),

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

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

40. Duty of officers employed in connection with the affairs of a village to make certain report.—(1) Every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village;

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

(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, section 144, section 145, section 147, or section 148 of the Indian Penal Code (45 of 1860);

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

(e) the commission of, or intention to commit, at any place out of India near such village any act which, if committed in India, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 231 to 238 (both inclusive), 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450, 457 to 460 (both inclusive), 489A, 489B, 489C and 489D;

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

(2) In this section,—

(i) “village” includes village-lands;

(ii) the expression “proclaimed offender” includes any person proclaimed as an offender by any Court or authority in any territory in India to which this Code does not extend, in respect of any act which if committed in the territories to which this Code extends, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450 and 457 to 460 (both inclusive);

(iii) the words “officer employed in connection with the affairs of the village” means a member

of the panchayat of the village and includes the headman and every officer or other person appointed to perform any function connected with the administration of the village.

CHAPTER V

ARREST OF PERSONS

41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

¹[(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

²[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.];

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;]

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

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

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

1. Subs. by Act 5 of 2009, s. 5, for cls. (a) and (b) (w.e.f. 1-11-2010).

2. Ins. by Act 41 of 2010, s. 2 (w.e.f. 2-11-2010).

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

¹[(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.]

²**[41A. Notice of appearance before police officer.]**—(1) ³[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

⁴[(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]

41B. Procedure of arrest and duties of officer making arrest.—Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

41C. Control room at districts.—(1) The State Government shall establish a police control room—

(a) in every district; and

(b) at State level.

(2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.

(3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

41D. Right of arrested person to meet an advocate of his choice during interrogation.—When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.]

42. Arrest on refusal to give name and residence.—(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand

1. Subs. by Act 5 of 2009, s. 5, for sub-section (2) (w.e.f. 1-11-2010).

2. Ins. by s. 6, *ibid.* (w.e.f. 1-11-2010).

3. Subs. by Act 41 of 2010, s. 3, for “The police officer may” (w.e.f. 2-11-2010).

4. Subs. by s. 3, *ibid.*, for sub-section (4) (w.e.f. 2-11-2010).

of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

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

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

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

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

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

44. Arrest by Magistrate.—(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

45. Protection of members of the Armed Forces from arrest.—(1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

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

¹[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.]

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

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

1. Ins. by Act 5 of 2009, s. 7 (w.e.f. 31-12-2009).

¹[(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.]

47. Search of place entered by person sought to be arrested.—(1) If any person acting under warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

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

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

48. Pursuit of offenders into other jurisdictions.—A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

49. No unnecessary restraint.—The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

50. Person arrested to be informed of grounds of arrest and of right to bail.—(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

²[50A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.]—(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.]

51. Search of arrested person.—(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

1. Ins. by Act 25 of 2005, s. 6 (w.e.f. 23-6-2006).

2. Ins. by Act 25 of 2005, s. 7 (w.e.f. 23-6-2006).

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

the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

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

53. Examination of accused by medical practitioner at the request of police officer.—(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

¹[*Explanation.*—In this section and in sections 53A and 54,—

(a) “examination” shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) “registered medical practitioner” means a medical practitioner who possesses any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.]

²[**53A. Examination of person accused of rape by medical practitioner.**—(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:—

- (i) the name and address of the accused and of the person by whom he was brought,
- (ii) the age of the accused,
- (iii) marks of injury, if any, on the person of the accused,
- (iv) the description of material taken from the person of the accused for DNA profiling, and
- (v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

1. Subs. by Act 25 of 2005, s. 8, for the *Explanation* (w.e.f. 23-6-2006).

2. Ins. by s. 9, *ibid.* (w.e.f. 23-6-2006).

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.]

¹[**54. Examination of arrested person by medical officer.**—(1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.]

²[**54A. Identification of person arrested.**—Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:]

³[Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed.]

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

(2) Nothing in sub-section (1) shall affect the power of a police officer to arrest a person under section 41.

⁴[**55A. Health and safety of arrested person.**—It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.]

56. Person arrested to be taken before Magistrate or officer in charge of police station.—A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

57. Person arrested not to be detained more than twenty-four hours.—No police officer shall

1. Subs. by Act 5 of 2009, s. 8, for section 54 (w.e.f. 31-12-2009).

2. Ins. by Act 25 of 2005, s. 11 (w.e.f. 23-6-2006).

3. Ins. by Act 13 of 2013, s. 12 (w.e.f. 3-2-2013).

4. Ins. by Act 5 of 2009, s. 9 (w.e.f. 31-12-2009).

detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

58. Police to report apprehensions.—Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

59. Discharge of person apprehended.—No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

60. Power, on escape, to pursue and retake.—(1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

(2) The provisions of section 47 shall apply to arrests under sub-section (1) although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

¹[**60A. Arrest to be made strictly according to the Code.**—No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.]

CHAPTER VI

PROCESSES TO COMPEL APPEARANCE

A.—*Summons*

61. Form of summons.—Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

62. Summons how served.—(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

63. Service of summons on corporate bodies and societies.—Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Explanation.—In this section, “corporation” means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

64. Service when persons summoned cannot be found.—Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Explanation.—A servant is not a member of the family within the meaning of this section.

65. Procedure when service cannot be effected as before provided.—If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the

1. Ins. by Act 5 of 2009, s.10 (w.e.f. 31-12-2009).

duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

66. Service on Government servant.—(1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

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

68. Proof of service in such cases and when serving officer not present.—(1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

69. Service of summons on witness by post.—(1) Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

(2) When an acknowledgement purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served.

STATE AMENDMENT

Andaman and Nicobar Islands U.T.

In section 69 of the Code of Criminal Procedure, 1974 in its application to the Union Territories of the Andaman and Nicobar Islands and Lakshdeep,—

(a) in sub-section (1), after the words “to be served by registered post” the words “or of the substance thereof to be served by wireless message” shall be inserted.

(b) in sub-section (2), for the words “that the witness refused to take delivery of the summons” the words “or a wireless messenger that the witness refused to take delivery of the summons or the message, as the ease may be” shall be substituted.

[*Vide* Andaman and Nicobar Islands U.T. Act 6 of 1977, s. 2.]

B.—Warrant of arrest

70. Form of warrant of arrest and duration.—(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

71. Power to direct security to be taken.—(1) Any Court issuing a warrant for the arrest of any person may

in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

72. Warrants to whom directed.—(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

73. Warrant may be directed to any person.—(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

74. Warrant directed to police officer.—A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

75. Notification of substance of warrant.—The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

76. Person arrested to be brought before Court without delay.—The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

77. Where warrant may be executed.—A warrant of arrest may be executed at any place in India.

78. Warrant forwarded for execution outside jurisdiction.—(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person.

79. Warrant directed to police officer for execution outside jurisdiction.—(1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it

for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

80. Procedure on arrest of person against whom warrant issued.—When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

81. Procedure by Magistrate before whom such person arrested is brought.—(1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.

C.—*Proclamation and attachment*

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

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

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

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

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

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

¹[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]

83. Attachment of property of person absconding.—(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court,

it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

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

(a) by seizure; or

(b) by the appointment of a receiver; or

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

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

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

(a) by taking possession; or

(b) by the appointment of a receiver; or

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

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

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

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

1. Ins. by Act 25 of 2005, s. 12 (w.e.f. 23-6-2006).

84. Claims and objections to attachment.—(1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

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

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

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

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

85. Release, sale and restoration of attached property.—(1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 84 has been disposed of under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

86. Appeal from order rejecting application for restoration of attached property.—Any person referred to in sub-section (3) of section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court.

D.—*Other rules regarding processes*

87. Issue of warrant in lieu of, or in addition to, summons.—A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

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

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

88. Power to take bond for appearance.—When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.

89. Arrest on breach of bond for appearance.—When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

90. Provisions of this Chapter generally applicable to summonses and warrants of arrest.—The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII

PROCESSES TO COMPEL THE PRODUCTION OF THINGS

A.—*Summons to produce*

91. Summons to produce document or other thing.—(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

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

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

92. Procedure as to letters and telegrams.—(1) If any document, parcel or thing in the custody of a postal or telegraph authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authority, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub-section (1).

B.—*Search-warrants*

93. When search-warrant may be issued.—(1) (a) Where any Court has reason to believe that a person to whom a summons order under section 91 or a requisition under sub-section (1) of section 92 has

been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

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

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

94. Search of place suspected to contain stolen property, forged documents, etc.—(1) If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable—

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

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

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies,

(d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies.

(2) The objectionable articles to which this section applies are—

(a) counterfeit coin;

(b) pieces of metal made in contravention of the Metal Tokens Act, 1889 (1 of 1889), or brought into India in contravention of any notification for the time being in force under section 11 of the Customs Act, 1962 (52 of 1962);

(c) counterfeit currency note; counterfeit stamps;

(d) forged documents;

(e) false seals;

(f) obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860);

(g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

95. Power to declare certain publications forfeited and to issue search-warrants for the same.—(1) Where—

(a) any newspaper, or book, or

(b) any document,

wherever printed, appears to the State Government to contain any matter the publication of which is

punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue, or any such book or other document may be or may be reasonably suspected to be.

(2) In this section and in section 96,—

(a) “newspaper” and “book” have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867);

(b) “document” includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96.

96. Application to High Court to set aside declaration of forfeiture.—(1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in sub-section (1) of section 95.

(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court.

(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.

(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section (1) of section 95, set aside the declaration of forfeiture.

(5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

97. Search for persons wrongfully confined.—If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

98. Power to compel restoration of abducted females.—Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

C.—General provisions relating to searches

99. Direction, etc., of search-warrants.—The provisions of sections 38, 70, 72, 74, 77, 78 and 79 shall, so far as may be, apply to all search-warrants issued under section 93, section 94, section 95 or

section 97.

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

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

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

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

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

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

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

D.—*Miscellaneous*

102. Power of police officer to seize certain property.—(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

¹[(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, ²[or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation,] he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:]

³[Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.]

103. Magistrate may direct search in his presence.—Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

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

105. Reciprocal arrangements regarding processes.—(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant,

⁴[issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.]

(2) Where a Court in the said territories has received for service or execution—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant,

1. Ins. by Act 45 of 1978, s. 10 (w.e.f. 18-12-1978).

2. Ins. by Act 25 of 2005, s. 13 (w.e.f. 23-6-2006).

3. Added by s. 13, *ibid.*, (w.e.f. 23-6-2006).

4. Subs. by Act 32 of 1988, s. 2, for certain words (w.e.f. 25-5-1988).

²[issued by—

- (I) a Court in any State or area in India outside the said territories;
- (II) a Court, Judge or Magistrate in a contracting State,

it shall cause the same to be served or executed] as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81,

(ii) a search-warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101:

¹[Provided that in a case where a summons or search-warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.]

²[CHAPTER VIIA

RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND FORFEITURE OF PROPERTY

105A. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) “identifying” includes establishment of a proof that the property was derived from, or used in, the commission of an offence;

(c) “proceeds of crime” means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property;

(d) “property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime;

(e) “tracing” means determining the nature, source, disposition, movement, title or ownership of property.

105B. Assistance in securing transfer of persons.—(1) Where a Court in India, in relation to a criminal matter, desires that a warrant for arrest of any person to attend or produce a document or other thing issued by it shall be executed in any place in a contracting State, it shall send such warrant in duplicate in such form to such Court, Judge or Magistrate through such authority, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Notwithstanding anything contained in this Code, if, in the course of an investigation or any inquiry into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that the attendance of a person who is in any place in a contracting State is required in connection with such investigation or inquiry and the Court is satisfied that such attendance is so required, it shall issue a summons or warrant, in duplicate, against the said person to such Court, Judge or Magistrate, in such form as the Central Government may, by notification, specify in this behalf, to cause the same to be served or executed.

(3) Where a Court in India, in relation to a criminal matter, has received a warrant for arrest of any person

1. Ins. by Act 32 of 1988, s. 2, (w.e.f. 25-5-1988).

2. Ins. by Act 40 of 1993, s. 2 (w.e.f. 20-7-1994).

requiring him to attend or attend and produce a document or other thing in that Court or before any other investigating agency, issued by a Court, Judge or Magistrate in a contracting State, the same shall be executed as if it is the warrant received by it from another Court in India for execution within its local limits.

(4) Where a person transferred to a contracting State pursuant to sub-section (3) is a prisoner in India, the Court in India or the Central Government may impose such conditions as that Court or Government deems fit.

(5) Where the person transferred to India pursuant to sub-section (1) or sub-section (2) is a prisoner in a contracting State, the Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

105C. Assistance in relation to orders of attachment or forfeiture of property.—(1) Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J (both inclusive).

(2) Where the Court has made an order for attachment or forfeiture of any property under sub-section (1), and such property is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.

(3) Where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J (both inclusive) or, as the case may be, any other law for the time being in force.

105D. Identifying unlawfully acquired property.—(1) The Court shall, under sub-section (1), or on receipt of a letter of request under sub-section (3) of section 105C, direct any police officer not below the rank of Sub-Inspector of Police to take all steps necessary for tracing and identifying such property.

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions issued by the said Court in this behalf.

105E. Seizure or attachment of property.—(1) Where any officer conducting an inquiry or investigation under section 105D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made.

105F. Management of properties seized or forfeited under this Chapter.—(1) The Court may appoint the District Magistrate of the area where the property is situated, or any other officer that may be nominated by the District Magistrate, to perform the functions of an Administrator of such property.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which the order has been made under sub-section (1) of section 105E or under section 105H in such manner and subject to such conditions as may be specified by the Central Government.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

105G. Notice of forfeiture of property.—(1) If as a result of the inquiry, investigation or survey under section 105D, the Court has reason to believe that all or any of such properties are proceeds of crime, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the source of income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be proceeds of crime and forfeited to the Central Government.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

105H. Forfeiture of property in certain cases.—(1) The Court may, after considering the explanation, if any, to the show-cause notice issued under section 105G and the material available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are proceeds of crime:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the Court or represent his case before it within a period of thirty days specified in the show-cause notice, the Court may proceed to record a finding under this sub-section *ex parte* on the basis of evidence available before it.

(2) Where the Court is satisfied that some of the properties referred to in the show-cause notice are proceeds of crime but it is not possible to identify specifically such properties, then, it shall be lawful for the Court to specify the properties which, to the best of its judgment, are proceeds of crime and record a finding accordingly under sub-section (1).

(3) Where the Court records a finding under this section to the effect that any property is proceeds of crime, such property shall stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

105-I. Fine in lieu of forfeiture.—(1) Where the Court makes a declaration that any property stands forfeited to the Central Government under section 105H and it is a case where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the Court may, by order, revoke the declaration of forfeiture under section 105H and thereupon such property shall stand released.

105J. Certain transfers to be null and void.—Where after the making of an order under sub-section (1) of section 105E or the issue of a notice under section 105G, any property referred to in the said order or notice is transferred by any mode whatsoever such transfers shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 105H, then, the transfer of such property shall be deemed to be null and void.

105K. Procedure in respect of letter of request.—Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf.

105L. Application of this Chapter.—The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.]

CHAPTER VIII

SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

106. Security for keeping the peace on conviction.—(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub-section (1) are—

(a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence punishable under section 153A or section 153B or section 154 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

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

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

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

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

1. Ins. by Act 45 of 1978, s. 11 (w.e.f. 18-12-1978).

108. Security for good behaviour from persons disseminating seditious matters.—(1) When ¹[an Executive Magistrate] receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,—

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,—

(a) any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 295A of the Indian Penal Code (45 of 1860), or

(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code (45 of 1860),

(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code (45 of 1860),

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

(2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867), with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf.

109. Security for good behaviour from suspected persons.—When ²[an Executive Magistrate] receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

110. Security for good behaviour from habitual offenders.—When ²[an Executive Magistrate] receives information that there is within his local jurisdiction a person who—

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

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

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

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

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

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

1. Subs. by Act 63 of 1980, s. 2, for “a Judicial Magistrate of the first class” (w.e.f. 23-9-1980).

¹[(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);]

(c) the Employees' Provident Fund ²[and Family Pension Fund] Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962); ³***

⁴[(h) the Foreigners Act, 1946 (31 of 1946); or]

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

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

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

111. Order to be made.—When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

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

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

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

114. Copy of order to accompany summons or warrant.—Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

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

116. Inquiry as to truth of information.—(I) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

1. Subs. by Act 56 of 1974, s. 3 and the Second Sch., for item (b) (w.e.f. 10-1-1975).

3. Ins. by s. 3 and the Second Sch., *ibid.* (w.e.f. 10-1-1975).

3. The word "or" omitted by Act 25 of 2005, s. 14 (w.e.f. 23-6-2006).

4. Ins. by s. 14, *ibid.* (w.e.f. 23-6-2006).

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases.

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that—

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

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

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

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

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

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

Provided that—

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

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

118. Discharge of person informed against.—If, on an inquiry under section 116, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

119. Commencement of period for which security is required.—(1) If any person, in respect of whom an order requiring security is made under section 106 or section 117, is at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

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

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

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

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

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

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

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

122. Imprisonment in default of security.—(1) (a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(b) If any person after having executed a ¹[bond, with or without sureties] without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed

1. Subs. by Act 25 of 2005, s. 15, for “bond without sureties” (w.e.f. 23-6-2006).

three years.

(4) If security has been required in the course of the same proceeding from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub-section (2) such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security.

(5) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (4) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(6) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(7) Imprisonment for failure to give security for keeping the peace shall be simple.

(8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple, and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

123. Power to release persons imprisoned for failing to give security.—(1) Whenever ¹[the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case] is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or, where the order was made by any other Court, ²[District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case], may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

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

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

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

(5) If any condition upon which any person has been discharged is, in the opinion of ²[District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case] by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the ³[District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case].

(7) Unless such person gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), ¹[District Magistrate, in the

1. Subs. by Act 45 of 1978, s. 12, for “the Chief Judicial Magistrate” (w.e.f. 18-12-1978).

2. Subs. by s. 12, *ibid.*, for “Chief Judicial Magistrate” (w.e.f. 18-12-1978).

3. Subs. by s. 12, *ibid.*, for “Chief Judicial Magistrate” (w.e.f. 18-12-1978).

case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case] may remand such person to prison to undergo such unexpired portion.

(8) A person remanded to prison under sub-section (7) shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

(9) The High Court or Court of Session may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by any order made by it, and ¹[District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case] may make such cancellation where such bond was executed under his order or under the order of any other Court in his district.

(10) Any surety for the peaceable conduct or good behaviour of another person ordered to execute a bond under this Chapter may at any time apply to the Court making such order to cancel the bond and on such application being made, the Court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bond appear or to be brought before it.

124. Security for unexpired period of bond.—(1) When a person for whose appearance a summons or warrant has been issued under the proviso to sub-section (3) of section 121 or under sub-section (10) of section 123, appears or is brought before the Magistrate or Court, the Magistrate or Court shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security.

(2) Every such order shall, for the purposes of sections 120 to 123 (both inclusive) be deemed to be an order made under section 106 or section 117, as the case may be.

CHAPTER IX

ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS

125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain—

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate ^{1***} as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

²[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

1. Certain words omitted by Act 50 of 2001, s. 2 (w.e.f. 24-9-2001).

2. Ins. by s. 2, *ibid.* (w.e.f. 24-9-2001).

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.—For the purposes of this Chapter,—

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

¹[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s ²[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife’s refusal to live with him.

(4) No wife shall be entitled to receive an ³[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent.

STATE AMENDMENTS

Madhya Pradesh

Amendment of Section 125.— In sub-section (1) of section 125 of the Principal Act, for the words “five hundred rupees” the words “three thousand rupees” shall be substituted

[*Vide* Madhya Pradesh Act, 10 of 1998, s. 3.]

Madhya Pradesh

Amendment of Section 125.— In section 125 of the principal Act,—

1. Subs. by Act 50 of 2001, s. 2, for sub-section (2) (w.e.f. 24-9-2001).
2. Subs. by s. 2, *ibid.*, for “allowance” (w.e.f. 24-9-2001)
3. Subs. by s. 2, *ibid.*, for “allowance” (w.e.f. 24-9-2001).

(i) for the marginal heading, the following marginal heading shall be substituted, namely:—

“Order for maintenance of wives, children, parents and grand parents.”

(ii) In sub-section (1), —

(a) after clause (d), the following clause shall be inserted, namely: —

“(e) his grand father, grand mother unable to maintain himself or her self.”;

(b) In the existing para, for the words “a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother at such monthly rate not exceeding three thousand rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct”, the words “a Magistrate of the first class may upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father, mother, grand father, grand mother at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct” shall be substituted;

(c) After the existing first proviso, the following proviso shall be inserted, namely:—

“Provided further that the relatives in clause (e) shall only be entitled to monthly allowance for maintenance if their sons daughters are not alive and they are unable to maintain themselves.”

[*Vide* Madhya Pradesh Act 15 of 2004, s. 3.]

West Bengal

In Sub-section (1) of section 125 of the Principal Act, —

(1) for the words “five hundred rupees”, the words “one thousand and five hundred rupees” shall be substituted;

(2) after the existing proviso, the following proviso shall be inserted:—

“Provided further that where in any proceeding under this section it appears to the Magistrate that the wife referred to in clause (a) or the minor child referred to in clause (b) or the child (not being a married daughter) referred to in clause (c) or the father or the mother referred to in clause (d) is in need of immediate relief for her or its or his support and the necessary expenses of the proceeding, the Magistrate may, on the application of the wife or the minor child or the child (not being a married daughter) or the father or the mother, as the case may be, order the person against whom the allowance for maintenance is claimed, to pay to the petitioner, pending the conclusion of the proceeding, the expenses of the proceeding, and monthly during the proceeding such allowance as, having regard to the income of such person, it may seem to the Magistrate to be reasonable.”.

[*Vide* West Bengal Act, 25 of 1992, s. 4.]

West Bengal

In sub-section (1) of section 125 of the principal Act, as amended by the Code of Criminal Procedure (West Bengal Amendment) Act, 1992, the words “not exceeding one thousand and five hundred rupees” the proviso shall be omitted.

[*Vide* West Bengal Act 33 of 2001, s. 3.]

126. Procedure.—(1) Proceedings under section 125 may be taken against any person in any district—

- (a) where he is, or
- (b) where he or his wife resides, or
- (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

127. Alteration in allowance.—¹[(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to²[maintenance or interim maintenance, as the case may be,] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a³[monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such

1. Subs. by Act 50 of 2001, s. 3, for sub-section (1) (w.e.f. 24-9-2001).

2. Subs. by Act 50 of 2001, s. 3, for “maintenance” (w.e.f. 24-9-2001).

3. Subs. by s. 3, *ibid.*, for “monthly allowance has been ordered” (w.e.f. 24-9-2001).

person¹[as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.

STATE AMENDMENTS

Madhya Pradesh

Amendment of section 127.—In sub-section (I) of section 127 of the principal Act, for the words “father or mother”, the words “father, mother, grand father, grand mother” shall be substituted.

[*Vide* Madhya Pradesh Act 15 of 2004, s. 4.]

West Bengal

In the proviso to sub-section (I) of section 127 of the principal Act, for the words “five hundred rupees”, the words “one thousand and five hundred rupees” shall be substituted.

[*Vide* West Bengal Act 14 of 1995, s. 3.]

West Bengal

In Sub-section (I) of section 127 of the principal Act, the proviso shall be omitted.

[*Vide* West Bengal Act 33 of 2001, s. 4.]

128. Enforcement of order of maintenance.—A copy of the order of²[maintenance or interim maintenance and expenses of proceedings, as the case may be,] shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to³[whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be,] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the⁴[allowance, or as the case may be, expenses, due].

CHAPTER X

MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY

A.—*Unlawful assemblies*

129. Dispersal of assembly by use of civil force.—(1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in

1. Subs. by Act 50 of 2001, s. 3, for “monthly allowance in pursuance of” (w.e.f. 24-9-2001).

2. Subs. by s. 4, *ibid.*, for “maintenance” (w.e.f. 24-9-2001).

3. Subs. by s. 4, *ibid.*, for “whom the allowance” (w.e.f. 24-9-2001).

4. Subs. by s. 4, *ibid.*, for “allowance due” (w.e.f. 24-9-2001).

order to disperse such assembly or that they may be punished according to law.

130. Use of armed forces to disperse assembly.—(1) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.

(2) Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(3) Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. Power of certain armed force officers to disperse assembly.—When the public security is manifestly endangered by any such assembly and no Executive Magistrate can be communicated with, any commissioned or gazetted officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with an Executive Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate, as to whether he shall or shall not continue such action.

132. Protection against prosecution for acts done under preceding sections.—(1) No prosecution against any person for any act purporting to be done under section 129, section 130 or section 131 shall be instituted in any Criminal Court except—

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

(b) with the sanction of the State Government in any other case.

(2) (a) No Executive Magistrate or police officer acting under any of the said sections in good faith;

(b) no person doing any act in good faith in compliance with a requisition under section 129 or section 130;

(c) no officer of the armed forces acting under section 131 in good faith;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

(3) In this section and in the preceding sections of this Chapter,—

(a) the expression “armed forces” means the military, naval and air forces, operating as land forces and includes any other armed forces of the Union so operating;

(b) “officer”, in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer, a non-commissioned officer and a non-gazetted officer;

(c) “member”, in relation to the armed forces, means a person in the armed forces other than an officer.

B.—Public nuisances

133. Conditional order for removal of nuisance.—(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

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

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

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

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order,

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

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

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

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

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

135. Person to whom order is addressed to obey or show cause.—The person against whom such order is made shall—

- (a) perform, within the time and in the manner specified in the order, the act directed thereby; or
- (b) appear in accordance with such order and show cause against the same.

136. Consequences of his failing to do so.—If such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code (45 of 1860), and the order shall be made absolute.

137. Procedure where existence of public right is denied.—(1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 138.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.

138. Procedure where he appears to show cause.—(1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

139. Power of Magistrate to direct local investigation and examination of an expert.—The Magistrate may, for the purposes of an inquiry under section 137 or section 138—

- (a) direct a local investigation to be made by such person as he thinks fit; or
- (b) summon and examine an expert.

140. Power of Magistrate to furnish written instructions, etc.—(1) Where the Magistrate directs a local investigation by any person under section 139, the Magistrate may—

- (a) furnish such person with such written instructions as may seem necessary for his guidance;
- (b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid.

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

(3) Where the Magistrate summons and examines an expert under section 139, the Magistrate may direct by whom the costs of such summoning and examination shall be paid.

141. Procedure on order being made absolute and consequences of disobedience.—(1) When an order has been made absolute under section 136 or section 138, the Magistrate shall give notice of the same to the person

against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code (45 of 1860).

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without such Magistrate's local jurisdiction, and if such other property is without such jurisdiction, the order shall authorise its attachment and sale when endorsed by the Magistrate within whose local jurisdiction the property to be attached is found.

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

142. Injunction pending inquiry.—(1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

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

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

143. Magistrate may prohibit repetition or continuance of public nuisance.—A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860), or any special or local law.

C.—Urgent cases of nuisance or apprehended danger

144. Power to issue order in urgent cases of nuisance or apprehended danger.—(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray.

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

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

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind

or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

¹[144A. Power to prohibit carrying arms in procession or mass drill or mass training with arms.]—(1) The District Magistrate may, whenever he considers it necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by public notice or by order, prohibit in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organising or holding of, or taking part in, any mass drill or mass training with arms in any public place.

(2) A public notice issued or an order made under this section may be directed to a particular person or to persons belonging to any community, party or organisation.

(3) No public notice issued or an order made under this section shall remain in force for more than three months from the date on which it is issued or made.

(4) The State Government may, if it considers necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by notification, direct that a public notice issued or order made by the District Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which such public notice or order was issued or made by the District Magistrate would have, but for such direction, expired, as it may specify in the said notification.

(5) The State Government may, subject to such control and directions as it may deem fit to impose, by general or special order, delegate its powers under sub-section (4) to the District Magistrate.

*Explanation.—*The word “arms” shall have the meaning assigned to it in section 153AA of the Indian Penal Code (45 of 1860).]

D.—Disputes as to immovable property

145. Procedure where dispute concerning land or water is likely to cause breach of peace.—

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

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

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

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, pursue the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other

1. Ins. by Act 25 of 2005, s. 16 (date yet to be notified, see appendix)

information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

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

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

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

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

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

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

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

146. Power to attach subject of dispute and to appoint receiver.—(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate—

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.

147. Dispute concerning right of use of land or water.—(1) Whenever an Executive Magistrate is

satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

Explanation.—The expression “land or water” has the meaning given to it in sub-section (2) of section 145.

(2) The Magistrate shall then pursue the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub-section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1),

and when in any proceedings commenced under sub-section (1) the magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145.

148. Local inquiry.—(1) Whenever a local inquiry is necessary for the purposes of section 145, section 146 or section 147, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

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

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

CHAPTER XI

PREVENTIVE ACTION OF THE POLICE

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

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

151. Arrest to prevent the commission of cognizable offences.—(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

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

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

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

CHAPTER XII

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

154. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

¹[Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, ²[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, ¹[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.]

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

1. Ins. by Act 13 of 2013, s. 13 (w.e.f. 3-2-2013).

2. Subs. by Act 22 of 2018, s. 11, for "section 376A, section 376B, section 376C, section 376D" (w.e.f. 21-4-2019).

STATE AMENDMENT

Chhattisgarh

In first proviso to sub-section (1) of section 154 of the Code of Criminal Procedure (here-in-after referred to as the Code) for the words and figure “or section 509” the words, figures, letters and punctuations, “ section 509, section 509A or section 509B” shall be substituted.

[*Vide Chhattisgarh Act 25 of 2015, s. 7.*]

155. Information as to non-cognizable cases and investigation of such cases.—(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

156. Police officer's power to investigate cognizable case.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

STATE AMENDMENT

Maharashtra

Amendment of section 156.—In section 156 of the Code of Criminal Procedure, 1973, (2 of 1974) in its application to the State of Maharashtra (Hereinafter referred to as “the said Code”), after sub-section (3), the following provisos shall be added, namely:—

“Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) or under any law for the time being in force:

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority.”.

[*Vide Maharashtra Act 33 of 2016, s. 2.*]

157. Procedure for investigation.—(1) If, from information received or otherwise, an officer in charge of a

police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

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

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

¹[Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

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

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

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

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

160. Police officer's power to require attendance of witnesses.—(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person ²[under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

161. Examination of witnesses by police.—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

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

1. Ins. by Act 5 of 2009, s.11 (w.e.f. 31-12-2009).

2. Subs. by Act 13 of 2013, s. 14, for “under the age of fifteen years or woman” (w.e.f. 3-2-2013).

or forfeiture.

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

¹[Provided that statement made under this sub-section may also be recorded by audio-video electronic means:]

²[Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, ³[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.]

STATE AMENDMENT

Chhattisgarh

The second proviso to sub-section (3) of section 161 of the Code, shall be substituted with the following proviso, namely: —

Provided further that statement of the woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 354E, section 376, section 376A, section 376B, section 376C, section 376D, section 376E, section 509, section 509A or section 509B of the Indian Penal Code, is alleged to have been committed or attempted, shall be recorded, as far as possible, by woman police officer and shall also be recorded by audio-video means, as far as possible, and it shall be the duty of such police officer to take all such steps as are necessary to protect the identity of the woman.

[*Vide Chhattisgarh Act 25 of 2015, s. 8]*

162. Statements to police not to be signed: Use of statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

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

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

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

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

1. Ins. by Act 5 of 2009, s. 12 (w.e.f. 31-12-2009).

2. Ins. by Act 13 of 2013, s. 15 (w.e.f. 3-2-2013).

3. Subs. by Act 22 of 2018, s. 12, for “section 376A section 376B, section 376C, section 376D” (w.e.f. 22-4-2018).

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 164.

164. Recording of confessions and statements.—(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

¹[Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.]

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

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

*(Signed) A. B.
Magistrate.”*

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

²[(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, ³[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,] section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.]

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by

1. Subs. by Act 5 of 2009, s.13 (w.e.f. 31-12-2009).

2. Ins. by Act 13 of 2013, s. 16 (w.e.f. 13-3-2013).

3. Subs. by Act 22 of 2018, s. 13, for “section 376A, section 376B, section 376C, section 376D” (w.e.f. 22-4-2018).

whom the case is to be inquired into or tried.

STATE AMENDMENT

Chhattisgarh

In clause (a) of sub-section (5A) of Section 164 of the Code, for the words and figures “or section 509” the punctuation, words and figures, “section 376F, section 509, section 509A or section 509B” shall be substituted.

[*Vide Chhattisgarh Act 25 of 2015, s. 9*]

Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep

After sub-section (1) of section 164, the following sub-section shall be inserted, namely: —“(1A) Where; in any island, there is no Judicial Magistrate for the time being, and the State Government is of opinion that it is necessary and expedient so to do, that Government may, after consulting the High Court, specially empower any Executive Magistrate (not being a police officer), to exercise the powers conferred by sub-section (1) on a Judicial Magistrate, and thereupon references in section 164 to a Judicial Magistrate shall be construed as references to the Executive Magistrate so empowered.”;

[*Vide The Code of Criminal Procedure (Amendment) Regulation, 1974 Act (1 of 1974), s. 5.*]

¹**[164A. Medical examination of the victim of rape.]**—(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:—

- (i) the name and address of the woman and of the person by whom she was brought;
- (ii) the age of the woman;
- (iii) the description of material taken from the person of the woman for DNA profiling;
- (iv) marks of injury, if any, on the person of the woman;
- (v) general mental condition of the woman; and
- (vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of

1. Ins. by Act 25 of 2005, s. 17 (w.e.f. 23-6-2006).

sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

*Explanation.—*For the purposes of this section, “examination” and “registered medical practitioner” shall have the same meanings as in section 53.]

STATE AMENDMENT

Chhattisgarh

In Section 164A, except explanation clause, of the Code, for the words “registered medical practitioner”, where it occurs for the first time, the words “female registered medical practitioner” shall be substituted.

[*Vide Chhattisgarh Act 25 of 2015 s. 10.]*

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

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

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

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

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

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

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

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165.

(5) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of

any record sent to the Magistrate under sub-section (4).

¹[166A. Letter of request to competent authority for investigation in a country or place outside India.]

(1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.

166B. Letter of request from a country or place outside India to a Court or an authority for investigation in India.—(1) Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit—

(i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced; or

(ii) send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner,

as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.]

167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

²[(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

1. Ins. by Act 10 of 1990, s. 2 (w.e.f. 19-12-1990).

2. Subs. by Act 45 of 1978, s. 13, for paragraph (a) (w.e.f. 18-12-1978).

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

¹[(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

²[Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]

³[Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.]

⁴[Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]

⁵[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.]

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

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the

1. Subs. by Act 5 of 2009, s. 14, for cl. (b) (w.e.f. 31-12-2009)

2. Ins. by Act 45 of 1978, s. 13 (w.e.f. 18-12-1978).

3. Subs. by Act 5 of 2009, s.14, for *Explanation II* (w.e.f. 31-12-2009).

4. Ins. by s.14, *ibid.*, (w.e.f. 31-12-2009).

5. Ins. by Act 45 of 1978, s.13 (w.e.f. 18-12-1978).

Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

STATE AMENDMENTS

Gujarat

In the proviso to sub-Section (2) of section 167 of the Code of Criminal Procedure, 1973, in its application to the State of Gujarat,—

(i) for paragraph (a), the following paragraph shall be substituted, namely: —

(a) the Magistrate may authorise detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding—

(i) one hundred and twenty days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years,

(ii) sixty days, where the investigation relates to any offence;

and, on the expiry of the said period of one hundred and twenty days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail; and every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(ii) in paragraph (b), for the words “no Magistrate shall” the words “no Magistrate shall, except for reason to be recorded in writing” shall be substituted;

(iii) the Explanation shall be numbered as Explanation II, and before Explanation II as so numbered, the following Explanation shall be inserted, namely: —

Explanation I. —For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused person shall be detained in custody so long as he does not furnish bail.

Amendment to apply to pending investigation.—The provisions of section 167 of the Code of Criminal Procedure, 1973, as amended by this Act, shall apply to every investigation pending immediately before the commencement of this Act, if the period of detention of the accused person, otherwise than in the custody of the police, authorised under that section, had not, at such commencement, exceeded sixty days.]

[*Vide* Gujarat Act 21 of 1976, s. 2 & 3]

Gujarat

In Section 167, in sub-section (2) :—

(I) in the proviso, for paragraph (b), the following paragraph shall be substituted, namely: —

“(b) no Magistrate shall authorise further detention in any custody under this section unless—

(i) where the accused is in the custody of police, he is produced in person before the Magistrate, and

(ii) where the accused is otherwise than in the custody of the police, he is produced before the Magistrate either in person or through the medium of electronic video linkage, in accordance with the direction of the Magistrate.”;

(2) in *Explanation II*, after the words “ whether an accused person was produced before the Magistrate”, the words “in person or, as the case may be, through the medium of electronic video linkage” shall be inserted.

[*Vide* Gujarat Act 31 of 2003, s. 2.]

Chhattisgarh

(1) In clause (b) of Sub-Section (2) of Section 167 of the principal Act, for the word “any” the word “police” shall be substituted.

(2) After clause (b) of sub-section (2) of Section 167 of the Principal Act, the following new sub-clause (bb) shall be added, namely:—

“(bb) No magistrate shall authorise detention of the accused person other than in the custody of the police under this section unless the accused is produced before him either in person or through the medium of electronic video linkage and represented by his pleader in the Court.”

(3) In explanation II, after words “was produced” the word “from police custody” shall be added.

(4) After explanation II, the following new explanation shall be added:-

“III. If any question arises whether an accused person was produced from otherwise than in the custody of the police in person or (as the case may be) through medium of electronic video linkage before the Magistrate as required under paragraph (bb), the production of the accused person may be proved by his or his pleader’s signature on the order authorising detention.”

[*Vide* Chhattisgarh Act 13 of 2006, sec. 3]

Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep

In section 167,—

(i) in sub-section (1) after the words “nearest Judicial Magistrate” the words “or, if there is no Judicial Magistrate in an island, to an Executive Magistrate functioning in that island” shall be inserted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where a copy of the entries in diary is transmitted to an Executive Magistrate, reference in section 167 to a Magistrate shall be construed as references to such Executive Magistrate;”

(iii) to sub-section (3), the following proviso shall be added, namely:—

“Provided that no Executive Magistrate other than the District Magistrate or Sub-divisional Magistrate, shall unless he is specially empowered in this behalf by the State Government, authorise detention in the custody of the police.”

(iv) to sub-section (4), the following proviso shall be added, namely:—

“Provided that, where such order is made by an Executive Magistrate, the Magistrate making the order shall forward a copy of the order, with his reasons for making it, to the Executive Magistrate to whom he is immediately subordinate.”

[*Vide* The Code of Criminal Procedure (Amendment) Regulation, 1974 Act (1 of 1974), s. 5.]

Maharashtra

Amendment of section 167. — In Section 167 of the Code of Criminal Procedure, 1973, (2 of 1974) in its application to the State of Maharashtra,—

(a) in sub-section (2) in the proviso, for paragraph (b), the following paragraph shall be substituted, namely:—

(b) no Magistrate shall authorise detention in any custody, of the accused person under this section unless, the accused person is produced before him in person, and for any extension of custody otherwise than the extension in the police custody, the accused person may be produced either in person or through the medium of electronic video linkage.”;

(b) in *Explanation II*, for the words “an accused person was produced”, the words “an accused person was produced in person or as the case may be, through the medium of electronic video linkage” shall be substituted.

[*Vide* Maharashtra Act 8 of 2005, s. 2]

Madhya Pradesh

Amendment of Section 167. — In sub-section (2) of section 167 of the principal Act,— (i) in the proviso, for paragraph (b), the following paragraph shall be substituted, namely:—

“(b) no magistrate shall authorise detention in any custody under this section unless the accused is produced before him in person for the first time and subsequently every time till such time the accused remains in the custody of police, but the Magistrate may extend further detention in judicial custody on production of accused either in person or through the medium of electronic video linkage;”;

(ii) for Explanation II, the following Explanation shall be substituted, namely:—

“Explanation II. — If any question arise whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his

signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.”.

[*Vide* Madhya Pradesh Act 2 of 2008, s. 3.]

West Bengal

In section 167 of the principal Act,—

(a) In Section 167 of sub-section (5), the following sub-section shall be substituted:—

“(5) If, in respect of—

(i) any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months, or

(ii) any case exclusively triable by a Court of Session or a case under Chapter XVIII of the Indian Penal Code (45 of 1860), the investigation is not concluded within a period of three years, or

(iii) any case other than those mentioned in clauses (i) and (ii), the investigation is not concluded within a period of two years, from the date on which the accused was arrested or made his appearance, the Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary.”;

(b) in sub-section (6), after the “words any order stopping further investigation into an offence has been made” the words “and the accused has been discharged” shall be inserted.

[*Vide* West Bengal Act 24 of 1988, s. 4.]

West Bengal

Amendment of section 167.- In the proviso to sub-section (2) of section 167 of the principal Act, for clause (b), the following clause shall be substituted:—

“(b) no Magistrate shall authorize detention under this section—

(i) in the police custody, unless the accused is produced before him in person every time till the accused is in police custody;

(ii) in the judicial custody, unless the accused is produced before him either in person or through the medium of electronic video linkage.”.

[*Vide* West Bengal Act 20 of 2004, s. 3.]

Assam

In Section 167 of the Code:—

(a) in sub-section (i) the reference to “Judicial Magistrate” shall be construed as reference also to executive Magistrate;

(b) in sub-section (2):—

(i) for the word “Magistrate” at the first two places where that word is preceded by the definite article, the words “Judicial Magistrate or the Executive Magistrate, as the case may be,” shall be substituted;

(ii) for the word “Magistrate”, at the place where that word is preceded by the indefinite article “a”, the words and brackets “Magistrate (whether Judicial or Executive)” shall be substituted;

(iii) paragraph (c) of the proviso shall be omitted;

(c) Sub-section (2A) shall be omitted;

(d) in sub-section (4), for the words “to the Chief Judicial Magistrate,” the words “where such Magistrate is a Judicial Magistrate, to the Chief Judicial Magistrate and where such Magistrate is an Executive Magistrate to the Session Judge” shall be substituted.

[*Vide* Assam Act 3 of 1984, s. 3(3) and the Schedule.]

Delhi

In its application to the State of Delhi, in section 167, in sub-section (2):—

(i) for clause (b), substitute the following clause, namely:—

“(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him either in person or through the medium of electronic video linkage:

Provided that if the accused is in police custody, no Magistrate shall authorise his detention in any custody unless the accused is produced before him in person;”

(ii) for the *Explanation II* thereunder, substitute the following *Explanation*, namely:—

“*Explanation II.*- If any question arises whether an accused person was produced in person or, as the case may be, through the medium of electronic video linkage before the magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising his detention or by video recording of the proceedings, as the case may be.”.

[Vide Delhi Act 4 of 2004, s. 2 (w.e.f. 16-8-2004).]

Orissa

Amendment of section 167.—In the proviso to sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974),—

(i) for paragraph (b), the following paragraph shall be substituted, namely:—

“(b) no Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in Judicial custody on production of the accused either in person or through the medium of electronic video linkage;”, and

(ii) for Explanation II, the following Explanation shall be substituted, namely:—

“Explanation II— If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.”.

[Vide Orissa Act 16 of 2009, s. 2]

Amendment of section 167.— In section 167 of the Code of Criminal Procedure, 1973, in paragraph (a) of the proviso to sub-section (2),—

(i) For the words “under this paragraph” the words “under this section” shall be substituted; and

(ii) For the words “ninety days” wherever they occur, the words “ one hundred and twenty days” shall be substituted.

[Vide Orissa Act 11 of 1997, s. 2]

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

169. Release of accused when evidence deficient.—If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

170. Cases to be sent to Magistrate, when evidence is sufficient.—(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and

the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

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

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

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

171. Complainant and witnesses not to be required to accompany police officer and not to be subjected to restraint.—No complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

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

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

¹[(IA) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(IB) The diary referred to in sub-section (I) shall be a volume and duly paginated.]

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

173. Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.

²[(IA) The investigation in relation to ³[an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E] from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

1. Ins. by Act 5 of 2009, s. 15 (w.e.f. 31-12-2009).

2. Ins. by s. 16, *ibid.*, (w.e.f. 31-12-2009).

3. Subs. by Act 22 of 2018, s. 14, for “rape of a child may be completed within three months” (w.e.f. 21-4-2018).

- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

¹[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under ²[sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860).]

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

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

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

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

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

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

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

174. Police to enquire and report on suicide, etc.—(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District

1. Ins. by Act 5 of 2009, s. 16 (w.e.f. 31-12-2009).

2. Subs. by Act 22 of 2018, s. 14, for “section 376, 376A, 376B, 376C, 387D” (w.e.f. 21-4-2018).

or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

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

(3)¹[When—

- (i) the case involves suicide by a woman within seven years of her marriage; or
- (ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or
- (iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or
- (iv) there is any doubt regarding the cause of death; or
- (v) the police officer for any other reason considers it expedient so to do,

he shall], subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

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

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

176. Inquiry by Magistrate into cause of death.—(1)²[³*** when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174], the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

1. Subs. by Act 46 of 1983, s. 3, for certain words (w.e.f. 25-12-1983).

2. Subs. by, s. 4, *ibid.*, for certain words (w.e.f. 25-12-1983).

3. Certain words omitted by Act 25 of 2005, s. 18 (w.e.f. 23-6-2006).

¹[(IA) Where,—

- (a) any person dies or disappears, or
- (b) rape is alleged to have been committed on any woman,

while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.]

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

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

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

³[(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical person appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.]

Explanation.—In this section, the expression “relative” means parents, children, brothers, sisters and spouse.

CHAPTER XIII

JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

177. Ordinary place of inquiry and trial.—Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.—(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.—When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

180. Place of trial where act is an offence by reason of relation to other offence.—When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were

1. Ins. by Act 25 of 2005, s. 18 (w.e.f. 23-6-2006).

capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

181. Place of trial in case of certain offences.—(1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

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

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

182. Offences committed by letters, etc.—(1) Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage ¹[, or the wife by the first marriage has taken up permanent residence after the commission of the offence].

183. Offence committed on journey or voyage.—When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

184. Place of trial for offences triable together.—Where—

(a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or

(b) the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of the provisions of section 223,

the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

185. Power to order cases to be tried in different sessions divisions.—Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force.

1. Ins. by Act 45 of 1978, s. 15 (w.e.f. 18.12.1978).

186. High Court to decide, in case of doubt, district where inquiry or trial shall take place.—Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided—

- (a) if the Courts are subordinate to the same High Court, by that High Court;
- (b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced,

and thereupon all other proceedings in respect of that offence shall be discontinued.

187. Power to issue summons or warrant for offence committed beyond local jurisdiction.—(1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under some law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond with or without sureties for his appearance before the Magistrate having such jurisdiction.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

188. Offence committed outside India.—When an offence is committed outside India—

- (a) by a citizen of India, whether on the high seas or elsewhere; or
- (b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

189. Receipt of evidence relating to offences committed outside India.—When any offence alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 188, the Central Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before a Judicial officer in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

CHAPTER XIV CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS

190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

STATE AMENDMENTS

Maharashtra

Amendment of section 190.- In section 190 of the said Code, in sub-section (1), after clause (c), following provisos shall be added, namely:—

“Provided that, no Magistrate shall take cognizance of any offence alleged to have been committed by any person who is or was a public servant as defined under any other law for the time being in force, while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) or under any law for the time being in force:

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority.”.

[*Vide* Maharashtra Act 33 of 2016, s. 3.]

Assam

In Section 190 of the Code, in sub-section (1), after the words “any Magistrate of the first class” the words “any Executive Magistrate” shall be inserted;

[*Vide* Assam Act 3 of 1984, s. 3(3) and the Schedule.]

191. Transfer on application of the accused.—When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

STATE AMENDMENT

Assam

In Section 191 of the Code, the reference to “Chief Judicial Magistrate” Shall, in relation to an offence taken cognizance of by an Executive Magistrate, be construed as a reference to the District Magistrate.

[*Vide* Assam Act 3 of 1984, s. 3(3) and the Schedule.]

192. Making over of cases to Magistrates.—(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

STATE AMENDMENT

Assam

In Section 192 of the Code:—

(i) in sub-section (1), after the word “Any” the words “District Magistrate” shall be inserted;

(ii) sub-section (2) shall be substituted as follows:—

(2) Any Sub-divisional Magistrate or Magistrate of the first class empowered in this behalf by District

Magistrate or Chief Judicial Magistrate, as the case may be, may, after taking cognizance of an offence, make over the case for enquiry or trial to such other competent Magistrate as the District Magistrate or Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the enquiry or trial.

[*Vide Assam Act 3 of 1984, s. 3(3) and the Schedule.*]

193. Cognizance of offences by Courts of Session.—Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

194. Additional and Assistant Sessions Judges to try cases made over to them.—As Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

¹[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term “Court” means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court

1. Subs. by Act 2 of 2006, s. 3, for certain words (w.e.f. 16-4-2006).

to which such Court shall be deemed to be subordinate;

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

¹[**195A. Procedure for witnesses in case of threatening, etc.**—A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code (45 of 1860).]

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—(1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under section 153A, ²[section 295A or sub-section (I) of section 505] of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860),

except with the previous sanction of the Central Government or of the State Government.

³[(IA) No Court shall take cognizance of—

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence,

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit ⁴[an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction ⁵[under sub-section (I) or sub-section (IA) and the District Magistrate may, before according sanction under sub-section (IA)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

197. Prosecution of Judges and public servants.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction ⁶[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

1. Ins. by Act 5 of 2009, s.17 (w.e.f. 31-12-2009).

2. Subs. by Act 63 of 1980, s. 3, for “section 153B, section 295A or section 505” (w.e.f. 23-9-1980).

3. Ins. by s. 3, *ibid.* (w.e.f. 23-9-1980).

4. Subs. by Act 45 of 1978, s. 16, for “a cognizable offence” (w.e.f. 18-12-1978).

5. Subs. by Act 63 of 1980, s. 3, for “under sub-section (I)” (w.e.f. 23-9-1980).

6. Ins. by Act 1 of 2014, s. 58 and the Schedule (w.e.f. 16-1-2014).

¹[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (I) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.]

²[*Explanation.*—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, ³[section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression “Central Government” occurring therein, the expression “State Government” were substituted.

⁴[(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (I) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (I) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

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

STATE AMENDMENT

Tripura.—

Insertion of a new Section 197(IA).—In the Code of Criminal Procedure, 1973, in section 197 after sub-section (I) the following sub-section shall be inserted, only for application in the State of Tripura, namely:—

“(IA) When as per provision of any relevant law for the time being in force a public servant referred to in Sub-Section (I) (b) is directly appointed, transferred or posted by the State Government in any local or other authorities including a Government Company, Corporation or Public Sector Undertaking, he shall be deemed to be employed in connection with the affairs of the State and no Court shall take cognizance of any offence as referred to in Sub-Section (I) without previous sanction of the State Government.

[*Vide* Tripura Act 6 of 2003, s. 2]

1. Added by Act 43 of 1991, s. 2 (w.e.f. 2-5-1991).

2. *Explanation* ins. by Act 13 of 2013, s. 18 (w.e.f. 3-2-2013).

3. Subs. by Act 22 of 2018, s. 15, for “section 376A, section 376C, section 376D” (w.e.f. 21-4-2018).

4. Ins. by Act 43 of 1991, s. 2 (w.e.f. 2-5-1991).

Assam.—

In Section 197 of the Code.—

(a) in sub-section (1), for the words “in the discharge of” the words “in or in connection with the discharge of” shall be substituted;

(b) in sub-section (2), for the words “in the discharge of” the words “in or in connection with the discharge of” shall be substituted;

(c) after sub-section (4), the following subsections shall be inserted, namely:—

(5) Notwithstanding anything contained in this Code,—

(a) where a complaint is made to a Court against a public servant belonging to any class or category specified under sub-section (3) alleging that he has committed an offence, the Court shall postpone the issue of process against the accused and make a reference to the State Government; or

(b) where an accused, either by himself or through a pleader, claims before a Court that he belongs to any class or category specified under sub-section (3) and that the offence alleged to have been committed by him arose out of any action taken by him while acting or purporting to act in or in connection with the discharge of his official duty, the Court shall forthwith stay further proceedings and make a reference to the State Government.

(6) (i) Where a reference is received from a Court under sub-section (5), the State Government shall issue a certificate to the Court that the accused person was or was not acting or purporting to act in, or in connection with the discharge of his official duty.

(ii) If the State Government certifies that the accused was acting or purporting to act in or in connection with the discharge of his official duty, the Court shall dismiss the complaint or discharge the accused:

Provided that the complainant may, within sixty days from the date of the issue of such certificate prefer an appeal to the High Court against the Certificate:

Provided further that the High Court may entertain the appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period.

(iii) If the State Government certifies that the accused was not acting or purporting to act in or in connection with, the discharge of his official duty, the Court may proceed further with the complaint in accordance with the provisions of this Code.

(7) The provisions of sub-sections (5) and (6) shall apply to all proceedings pending on the date of commencement of this Act in respect of which a Court had taken cognizance of an offence in accordance with the provisions of this Code.

[*Vide Assam Act 3 of 1984, s. 4.*]

198. Prosecution for offences against marriage.—(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that—

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under ¹[section 494 or section 495] of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister ²[, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption].

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual intercourse by a man with his own wife, the wife being under ³[eighteen years of age], if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

⁴[198A. Prosecution of offences under section 498A of the Indian Penal Code.]—No Court shall take cognizance of an offence punishable under section 498A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.]

⁵[198B. Cognizance of offence.]—No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code (45 of 1860) where the persons are in a marital relationship, except upon *prima facie* satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband.]

199. Prosecution for defamation.—(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs

1. Subs. by Act 45 of 1978, s. 17, for "section 494" (w.e.f. 18-12-1978).

2. Ins. by s. 17, *ibid.* (w.e.f. 18-12-1978).

3. Subs. by Act 5 of 2009, s. 18, for "fifteen years of age" (w.e.f. 31-12-2009)

4. Ins. by Act 46 of 1983, s. 5 (w.e.f. 25-12-1983).

5. Ins. by Act 13 of 2013, s. 19 (w.e.f. 3-2-2013).

and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

CHAPTER XV

COMPLAINTS TO MAGISTRATES

200. Examination of complainant.—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

201. Procedure by Magistrate not competent to take cognizance of the case.—If the complaint is

made to a Magistrate who is not competent to take cognizance of the offence, he shall,—

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit,¹ [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

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

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.—If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

CHAPTER XVI

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

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

1. Ins. by Act 25 of 2005, s. 19 (w.e.f. 23-6-2006).

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

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

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

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

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

206. Special summons in cases of petty offence.—(1) If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260¹[or section 261], the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader:

Provided that the amount of the fine specified in such summons shall not exceed ²[one thousand rupees].

(2) For the purposes of this section, “petty offence” means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939 (4 of 1939)³, or under any other law which provides for convicting the accused person in his absence on a plea of guilty.

⁴[(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.]

207. Supply to the accused of copy of police report and other documents.—In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of

1. Ins. by Act 25 of 2005, s. 20 (w.e.f. 23-6-2006).

2. Subs. by, s. 20, *ibid.*, for “one hundred rupees” (w.e.f. 23-6-2006).

3. Now the Motor Vehicles Act, 1988 (59 of 1988).

4. Ins. by Act 45 of 1978, s. 18 (w.e.f. 18-12-1978).

section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.—Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

- (i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;
- (ii) the statements and confessions, if any, recorded under section 161 or section 164;
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

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

[¹(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;]

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

STATE AMENDMENT

Gujarat

In section 209 of the Code of Criminal Procedure, 1973, in its application to the State of Gujarat, for clause (a), the following clause shall be substituted, namely:—

“(a) Commit the case, after complying with the provisions of section 207 or section 208, as the case may be, to the Court of Session and, subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made”.

[Vide Gujarat Act 30 of 1976, s. 2]

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report

1. Subs. by Act 45 of 1978, s. 19, for clause (a) (w.e.f. 18-12-1978).

cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

CHAPTER XVII

THE CHARGE

A.—*Form of charges*

211. Contents of charge.—(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(b) A is charged under section 326 of the Indian Penal Code (45 of 1860), with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the said Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions, of those crimes contained in the Indian Penal Code (45 of 1860); but the sections under which the offence is punishable must, in each instance be referred to in the charge.

(d) A is charged under section 184 of the Indian Penal Code (45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

212. Particulars as to time, place and person.—(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in

respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year.

213. When manner of committing offence must be stated.—When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

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

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

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

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

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

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

214. Words in charge taken in sense of law under which offence is punishable.—In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

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

Illustrations

(a) A is charged under section 242 of the Indian Penal Code (45 of 1860), with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

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

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many

transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

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

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

216. Court may alter charge.—(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

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

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

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

217. Recall of witnesses when charge altered.—Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.

B.—Joinder of charges

218. Separate charges for distinct offences.—(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Illustration

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

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

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

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

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

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

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

Illustrations to sub-section (1)

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code (45 of 1860).

(b) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code (45 of 1860).

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code (45 of 1860).

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code (45 of 1860). A may be separately

charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code (45 of 1860).

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code (45 of 1860).

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code (45 of 1860).

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code (45 of 1860).

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

Illustrations to sub-section (3)

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code (45 of 1860).

(j) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code (45 of 1860).

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code (45 of 1860).

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code (45 of 1860). A may be separately charged with, and convicted of, offences under sections 471 (read with section 466) and 196 of that Code.

Illustration to sub-section (4)

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code (45 of 1860).

221. Where it is doubtful what offence has been committed.—(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

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

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or

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

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

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

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

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

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations

(a) A is charged, under section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.

(b) A is charged, under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

223. What persons may be charged jointly.—The following persons may be charged and tried together, namely:—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the ¹[Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and ²[if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

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

CHAPTER XVIII

TRIAL BEFORE A COURT OF SESSION

225. Trial to be conducted by Public Prosecutor.—In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

226. Opening case for prosecution.—When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, ³[or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of

1. Subs. by Act 25 of 2005, s. 21, for "Magistrate" (w.e.f. 23-6-2006).

2. Subs. by s. 21, *ibid.*, for certain words (w.e.f. 23-6-2006).

3. Subs. by s. 22, *ibid.*, for certain words (w.e.f. 23-6-2006).

warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

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

STATE AMENDMENT

Chhattisgarh

In sub-section (2) of section 228 of the Principal Act, after the word “to the accused” the following shall be added, namely: —

“present in person or through the medium of electronic video linkage and being represented by his pleader in the Court.”

[*Vide* Chhattisgarh Act 13 of 2006, s. 4.]

Karnataka

Amendment of section 228.—In section 228 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in sub-section (1), in clause (a), for the words “to the Chief Judicial Magistrate and thereupon the Chief Judicial Magistrate” the words “to the Chief Judicial Magistrate or to any Judicial Magistrate competent to try the case and thereupon the Chief Judicial Magistrate or such other Judicial magistrate to whom the case may have been transferred” shall be substituted.

[*Vide* Karnataka Act 22 of 1994, s. 2.]

West Bengal

In section 228 of the said Code, in clause (a) of sub-section (1) of section 228, for the words “to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate” the words “to the Chief Judicial Magistrate or to any Judicial Magistrate competent to try the case, and thereupon the Chief Judicial Magistrate or such other Judicial Magistrate to whom the case may have been transferred” shall be substituted.

[*Vide* West Bengal Act 63 of 1978, s. 3.]

229. Conviction on plea of guilty.—If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

230. Date for prosecution evidence.—If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

231. Evidence for prosecution.—(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

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

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

233. Entering upon defence.—(1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

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

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

234. Arguments.—When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply:

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

235. Judgment of acquittal or conviction.—(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the questions of sentence, and then pass sentence on him according to law.

236. Previous conviction.—In a case where a previous conviction is charged under the provisions of sub-section (7) of section 211, and the accused does not admit that he has been previously convicted as alleged in the charge, the Judge may, after he has convicted the said accused under section 229 or section 235, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 229 or section 235.

237. Procedure in cases instituted under section 199(2).—(1) A Court of Session taking cognizance of an offence under sub-section (2) of section 199 shall try the case in accordance with the procedure for the trial of warrant-cases instituted otherwise than on a police report before a Court of Magistrate:

Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

(2) Every trial under this section shall be held *in camera* if either party thereto so desires or if the Court thinks fit so to do.

(3) If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor of a State or the Administrator of a Union territory) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(4) The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(5) Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate.

(6) No person who has been directed to pay compensation under sub-section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section:

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

(7) The person who has been ordered under sub-section (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court.

(8) When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

CHAPTER XIX

TRIAL OF WARRANT-CASES BY MAGISTRATES

A.—*Cases instituted on a police report*

238. Compliance with section 207.—When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.

239. When accused shall be discharged.—If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.—(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

STATE AMENDMENT

Chhattisgarh

In sub-section (2) of section 240 of the Principal Act, after the word “to the accused” the following shall be added:—

“present either in person or through the medium of electronic video linkage in the presence of his pleader in the Court.”

[Vide Chhattisgarh Act 13 of 2006, s. 5.]

241. Conviction on plea of guilty.—If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

242. Evidence for prosecution.—(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses:

¹[Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.]

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

243. Evidence for defence.—(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness

1. Ins. by Act 5 of 2009, s.19 (w.e.f. 31-12-2009).

before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

B.—Cases instituted otherwise than on police report

244. Evidence for prosecution.—(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245. When accused shall be discharged.—(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebuted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

STATE AMENDMENT

West Bengal

In section 245 of the principal Act, after sub-section (2), the following sub-section shall be inserted:—

“(3) If all the evidence referred to in section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused.”.

[*Vide West Bengal Act 24 of 1988, s. 5.*]

246. Procedure where accused is not discharged.—(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

247. Evidence for defence.—The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply to the case.

C.—*Conclusion of trial*

248. Acquittal or conviction.—(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

249. Absence of complainant.—When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

250. Compensation for accusation without reasonable cause.—(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

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

(4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

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

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

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant

had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant-cases.

CHAPTER XX

TRIAL OF SUMMONS-CASES BY MAGISTRATES

251. Substance of accusation to be stated.—When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

STATE AMENDMENT

Chhattisgarh

In Section 251 of the Principal Act, after the word “brought before the Magistrate” the following shall be added :—

“Or appears through the medium of electronic video linkage in the presence of his pleader in the Court”.

[*Vide Chhattisgarh Act 13 of 2006, s. 6]*

252. Conviction on plea of guilty.—If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.

253. Conviction on plea of guilty in absence of accused in petty cases.—(1) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

(2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.

254. Procedure when not convicted.—(1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

255. Acquittal or conviction.—(1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

256. Non-appearance or death of complainant.—(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

257. Withdrawal of complaint.—If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

258. Power to stop proceedings in certain cases.—In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

259. Power of Court to convert summons-cases into warrant-cases.—When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may re-call any witness who may have been examined.

CHAPTER XXI

SUMMARY TRIALS

260. Power to try summarily.—(1) Notwithstanding anything contained in this Code—

(a) any Chief Judicial Magistrate;

(b) any Metropolitan Magistrate;

(c) any Magistrate of the first class specially empowered in this behalf by the High Court,

may, if he thinks fit, try in a summary way all or any of the following offences:—

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed ¹[two thousand rupees];

(iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where

1. Subs. by Act 25 of 2005, s. 23, for “two hundred rupees” (w.e.f. 23-6-2006).

the value of the property does not exceed ¹[two thousand rupees];

(iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed ¹[two thousand rupees];

(v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

(vi) insult with intent to provoke a breach of the peace, under section 504, and ¹[criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both], under section 506 of the Indian Penal Code (45 of 1860);

(vii) abetment of any of the foregoing offences;

(viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871).

(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by this Code.

261. Summary trial by Magistrate of the second class.—The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power 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.

262. Procedure for summary trials.—(1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

263. Record in summary trials.—In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:—

(a) the serial number of the case;

(b) the date of the commission of the offence;

(c) the date of the report or complaint;

(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;

(g) the plea of the accused and his examination (if any);

(h) the finding;

(i) the sentence or other final order;

(j) the date on which proceedings terminated.

264. Judgment in cases tried summarily.—In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the

1. Subs. by Act 25 of 2005, s. 23, for “criminal intimidation” (w.e.f. 23-6-2006).

reasons for the finding.

265. Language of record and judgment.—(1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

¹[CHAPTER XXIA

PLEA BARGAINING

265A. Application of the Chapter.—(1) This Chapter shall apply in respect of an accused against whom—

(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204,

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

265B. Application for plea bargaining.—(1) A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused *in camera*, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where—

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in

1. Ins. by Act 2 of 2006, s. 4 (w.e.f. 5-7-2006).

accordance with the provisions of this Code from the stage such application has been filed under sub-section (1).

265C. Guidelines for mutually satisfactory disposition.—In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265B, the Court shall follow the following procedure, namely:—

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused, if he so desires, participate in such meeting with his pleader, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.

265D. Report of the mutually satisfactory disposition to be submitted before the Court.—Where in a meeting under section 265C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265B has been filed in such case.

265E. Disposal of the case.—Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely:—

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

265F. Judgment of the Court.—The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

265G. Finality of the judgment.—The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

265H. Power of the Court in plea bargaining.—A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.

265-I. Period of detention undergone by the accused to be set off against the sentence of imprisonment.—The provisions of section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

265J. Savings.—The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation.—For the purposes of this Chapter, the expression “Public Prosecutor” has the meaning assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25.

265K. Statements of accused not to be used.—Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

265L. Non-application of the Chapter.—Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).]

CHAPTER XXII

ATTENDANCE OF PERSONS CONFINED OR DETAINED IN PRISONS

266. Definitions.—In this Chapter,—

(a) “detained” includes detained under any law providing for preventive detention;

(b) “prison” includes,—

(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;

(ii) any reformatory, Borstal institution or institution of a like nature.

267. Power to require attendance of prisoners.—(1) Whenever, in the course of an inquiry, trial or proceeding under this Code, it appears to a Criminal Court,—

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer in charge of the prison to produce such person before the Court answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom

it is submitted may, after considering such statement, decline to countersign the order.

268. Power of State Government to exclude certain persons from operation of section 267.—(1) The State Government may, at any time, having regard to the matters specified in sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-section (1), the State Government shall have regard to the following matters, namely:—

- (a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;
- (b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;
- (c) the public interest, generally.

269. Officer in charge of prison to abstain from carrying out order in certain contingencies.—Where the person in respect of whom an order is made under section 267—

- (a) is by reason of sickness or infirmity unfit to be removed from the prison; or
- (b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or
- (c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or
- (d) is a person to whom an order made by the State Government under section 268 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

270. Prisoner to be brought to Court in custody.—Subject to the provisions of section 269, the officer in charge of the prison shall, upon delivery of an order made under sub-section (1) of section 267 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained.

271. Power to issue commission for examination of witness in prison.—The provisions of this Chapter shall be without prejudice to the power of the Court to issue, under section 284, a commission for the examination, as a witness, of any person confined or detained in a prison; and the provisions of Part B of Chapter XXIII shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person.

CHAPTER XXIII

EVIDENCE IN INQUIRIES AND TRIALS

A.—*Mode of taking and recording evidence*

272. Language of Courts.—The State Government may determine what shall be, for purposes of this Code, the language of each Court within the State other than the High Court.

273. Evidence to be taken in presence of accused.—Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:

¹[Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.]

Explanation.—In this section, “accused” includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

STATE AMENDMENT

Gujarat

In the Code of Criminal Procedure, 1973 (hereinafter referred to as “the principal Act”), in section 273, after the words “in the presence of his pleader”, the words “or, as the case may be, through the medium of Electronic Video Linkage when the court on its own motion or on an application so directs in the interests of justice” shall be added.

[*Vide* Gujarat Act 31 of 2017, sec. 2.]

274. Record in summons-cases and inquiries.—(1) In all summons-cases tried before a Magistrate, in all inquiries under sections 145 to 148 (both inclusive), and in all proceedings under section 446 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court:

Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

275. Record in warrant-cases.—(1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf:

²[Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.]

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative; but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

276. Record in trial before Court of Session.—(1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open Court, or under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

³[(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of question and answer.]

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record.

1. Proviso ins. by Act 13 of 2013, s. 20 (w.e.f. 3-2-2013).

2. Ins. by Act 5 of 2009, s. 20 (w.e.f. 31-12-2009)

3. Subs. by Act 45 of 1978, s. 20, for sub-section (2) (w.e.f. 18-12-1978).

277. Language of record of evidence.—In every case where evidence is taken down under section 275 or 276,—

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

278. Procedure in regard to such evidence when completed.—(1) As the evidence of each witness taken under section 275 or section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

STATE AMENDMENT

Gujarat

In the principal Act, in section 278, after sub-section (3), the following sub-sections shall be added, namely:—

“(4) Nothing contained in sub-sections (1) to (3) shall apply when the evidence under section 273 is taken through the medium of Electronic Video Linkage.

(5) The evidence taken through the medium of Electronic Video Linkage in electronic from shall be the electronic record within the meaning of clause (t) of section 2 if the Information Technology Act, 2000 (21 of 2000)”

[*Vide* Gujarat Act 31 of 2017, sec. 3.]

279. Interpretation of evidence to accused or his pleader.—(1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

280. Remarks respecting demeanour of witness.—When a presiding Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

281. Record of examination of accused.—(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the

record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

(3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court.

(4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

STATE AMENDMENT

Gujarat

In the principal Act, in section 281, in sub-section (6), after the words “the examination of an accused person”, the words “either through the medium of Electronic Video Linkage or” shall be inserted.

[*Vide* Gujarat Act 31 of 2017, sec. 4.]

282. Interpreter to be bound to interpret truthfully.—When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

283. Record in High Court.—Every High Court may, by general rule, prescribe the manner in which the evidence of witnesses and the examination of the accused shall be taken down in cases coming before it, and such evidence and examination shall be taken down in accordance with such rule.

B.—*Commissions for the examination of witnesses*

284. When attendance of witness may be dispensed with and commission issued.—(1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court or Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter:

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union territory as a witness is necessary for the ends of Justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution, direct that such amount as the Court considers reasonable to meet the expenses of the accused, including the pleader's fees, be paid by the prosecution.

285. Commission to whom to be issued.—(1) If the witness is within the territories to which this Code extends, the commission shall be directed to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission as the Central Government may, by notification, prescribed in this behalf.

286. Execution of commissions.—Upon receipt of the commission, the Chief Metropolitan Magistrate, or Chief Judicial Magistrate or such Metropolitan or Judicial Magistrate as he may appoint in this behalf, shall summon the witness before him or proceed to the place where the witness is, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials or warrant-cases under this Code.

287. Parties may examine witnesses.—(1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or officer to whom the commission, is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate, Court or Officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

288. Return of commission.—(1) After any commission issued under section 284 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court or Magistrate issuing the commission; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872 (1 of 1872), may also be received in evidence at any subsequent stage of the case before another Court.

289. Adjournment of proceeding.—In every case in which a commission is issued under section 284, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

290. Execution of foreign commissions.—(1) The provisions of section 286 and so much of section 287 and section 288 as relate to the execution of a commission and its return shall apply in respect of commissions issued by any of the Courts, Judges or Magistrates hereinafter mentioned as they apply to commissions issued under section 284.

(2) The Courts, Judges and Magistrates referred to in sub-section (1) are—

(a) any such Court, Judge or Magistrate exercising jurisdiction within an area in India to which this Code does not extend, as the Central Government may, by notification, specify in this behalf;

(b) any Court, Judge or Magistrate exercising jurisdiction in any such country or place outside India, as the Central Government may, by notification, specify in this behalf, and having authority, under the law in force in that country or place, to issue commissions for the examination of witnesses in relation to criminal matters.

291. Deposition of medical witness.—(1) The deposition of civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter, may be given in

evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject-matter of his deposition.

STATE AMENDMENT

Gujarat

In the principal Act, in section 291, in sub-section (1), after the words “in the presence of accused”, the words “or, as the case may be through the medium of Electronic Video Linkage” shall be inserted.

[*Vide* Gujarat Act 31 of 2017, sec. 5.]

¹[291A. Identification report of Magistrate.]—(1) Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Code, although such Magistrate is not called as a witness:

Provided that where such report contains a statement of any suspect or witness to which the provisions of section 21, section 32, section 33, section 155 or section 157, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), apply, such statement shall not be used under this sub-section except in accordance with the provisions of those sections.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject-matter of the said report.]

292. Evidence of officers of the Mint.—(1) Any document purporting to be a report under the hand of any such ²[officer of any Mint or of any Note Printing Press or of any Security Printing Press (including the officer of the Controller of Stamps and Stationery) or of any Forensic Department or Division of Forensic Science Laboratory or any Government Examiner of Questioned Documents or any State Examiner of Questioned Documents, as the case may be,] as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine any such officer as to the subject-matter of his report:

Provided that no such officer shall be summoned to produce any records on which the report is based.

(3) Without prejudice to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), no such officer shall, ²[except with the permission of the General Manager or any officer in charge of any Mint or of any Note Printing Press or of any Security Printing Press or of any Forensic Department or any officer in charge of the Forensic Science Laboratory or of the Government Examiner of Questioned Documents Organisation or of the State Examiner of Questioned Documents Organisation, as the case may be,] be permitted—

(a) to give any evidence derived from any unpublished official records on which the report is based; or

(b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

293. Reports of certain Government scientific experts.—(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

1. Ins. by Act 25 of 2005, s. 24 (w.e.f. 23-6-2006).

2. Subs. by Act 2 of 2006, s. 5, for certain words (w.e.f. 16-4-2006).

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:—

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

¹[(b) the Chief Controller of Explosives;]

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director ²[(b), Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government;

³[(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose.]

294. No formal proof of certain documents.—(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

295. Affidavit in proof of conduct of public servants.—When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

296. Evidence of formal character on affidavit.—(1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

297. Authorities before whom affidavits may be sworn.—(1) Affidavits to be used before any Court under this Code may be sworn or affirmed before—

⁴[(a) any Judge or Judicial or Executive Magistrate, or]

(b) any Commissioner of Oaths appointed by a High Court or Court of Session, or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his

1. Subs. by Act 25 of 2005, s. 26, for cl. (b) (w.e.f. 23-6-2006).

2. Ins. by Act 45 of 1978, s. 21 (w.e.f. 18-12-1978).

3. Ins. by Act 25 of 2005, s. 26 (w.e.f. 23-6-2006).

4. Subs. by Act 45 of 1978, s. 22, for cl. (a) (w.e.f. 18-12-1978).

own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

298. Previous conviction or acquittal how proved.—In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was held, to be a copy of the sentence or order, or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the Jail in which the punishment or any part thereof was undergone, or by production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

299. Record of evidence in absence of accused.—(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try ^{1[}, or commit for trial,] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

CHAPTER XXIV

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he

1. Ins. by Act 45 of 1978, s. 23 (w.e.f. 18-12-1978).

may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within sub-section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

(f) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

301. Appearance by Public Prosecutors.—(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

STATE AMENDMENT

West Bengal

For sub-section (1) of section 301 of the principal Act, the following sub-sections shall be substituted:—

“(I) (a) The Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(b) The Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry or trial.”.

[*Vide* West Bengal Act 26 of 1990, s. 4.]

302. Permission to conduct prosecution.—(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor,

shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

303. Right of person against whom proceedings are instituted to be defended.—Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

304. Legal aid to accused at State expense in certain cases.—(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting pleaders for defence under sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

305. Procedure when corporation or registered society is an accused.—(1) In this section, “corporation” means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

306. Tender of pardon to accomplice.—(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial

Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made,

and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

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

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

307. Power to direct tender of pardon.—At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

308. Trial of person not complying with conditions of pardon.—(1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall—

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

309. Power to postpone or adjourn proceedings.—¹[(I) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, ²[section 376A, section 376AB, , section 376B, section 376C, section 376D, section 376DA or section DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall] be completed within a period of two months from the date of filing of the charge sheet.]

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

³[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

⁴[Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond

1. Subs. by Act 13 of 2013, s. 21, for sub-section (I) (w.e.f. 3-2-2013).

2. Subs. by Act 22 of 2018, s. 16, for “section 376A, section 376B, section 376C, section 376D” (w.e.f. 21-4-2018).

3. Ins. by Act 45 of 1978, s. 24 (w.e.f. 18-12-1978).

4. Ins. by Act 5 of 2009, s. 21 (w.e.f. 1-11-2010).

the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

STATE AMENDMENT

Chhattisgarh

In proviso to sub-section (1) of Section 309 of the Code, for the words, figures and letters “section 376, section 376A, section 376B, section 376C or section 376D”, the words, figures and letters “section 354, section 354A, section 354B, section 354C, section 354D, section 354E, section 376, section 376A, section 376B, section 376C, section 376D, section 376E, section 376F, section 509, section 509A or section 509B” shall be substituted.

[*Vide* Chhattisgarh Act 25 of 2015, s. 11.]

Maharashtra

In section 309 of the Code of Criminal Procedure, 1973 (2 of 1974), in its application to the State of Maharashtra (hereinafter, in this Chapter, referred to as “the Code of Criminal Procedure”), after the existing proviso, the following proviso shall be added, namely:—

“Provided further that, when the enquiry or trial relates to an offence under section 332 or 353 (45 of 1860) of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of six months from the date of filing of the charge sheet”.

[*Vide* Maharashtra Act, 40 of 2018, s. 4.]

310. Local inspection.—(1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place in which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost.

311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

¹[**311A. Power of Magistrate to order person to give specimen signatures or handwriting.**—If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.]

312. Expenses of complainants and witnesses.—Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of the Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

313. Power to examine the accused.—(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

²[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]

314. Oral arguments and memorandum of arguments.—(1) Any party to a proceeding may, as soon as may be, after the close of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.

(2) A copy of every such memorandum shall be simultaneously furnished to the opposite party.

(3) No adjournment of the proceedings shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(4) The Court may, if it is of opinion that the oral arguments are not concise or relevant, regulate such arguments.

315. Accused person to be competent witness.—(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except on his own request in writing;

1. Ins. by Act 25 of 2005, s. 27 (w.e.f. 23-6-2006).

2. Ins. by Act 5 of 2009, s. 22 (w.e.f. 31-12-2009).

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him that the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107 or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109, or section 110, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.

316. No influence to be used to induce disclosure.—Except as provided in sections 306 and 307, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

317. Provision for inquiries and trial being held in the absence of accused in certain cases.—(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

STATE AMENDMENT

Gujarat

In the principal Act, to section 317, the following Explanation shall be added, namely: —

“Explanation: —For the purpose of this section “Personal attendance of the accused” shall include his attendance through the medium of Electronic Video Linkage as provided in section 273.”.

[*Vide* Gujarat Act 31 of 2017, s. 6.]

318. Procedure where accused does not understand proceedings.—If the accused, though not of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

319. Power to proceed against other persons appearing to be guilty of offence.—(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

320. Compounding of offences.—(1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:—

¹[TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Voluntarily causing hurt.	323	The person to whom the hurt is caused.
Voluntarily causing hurt on provocation.	334	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Wrongfully confining a person for three days or more	343	The person confined.
Wrongfully confining a person for ten days or more.	344	Ditto.
Wrongfully confining a person in secret.	346	The person confined.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Theft.	379	The owner of the property stolen.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust by a carrier, wharfinger, etc.	407	The owner of the property in respect of which the breach of trust has been committed.
Dishonestly receiving stolen property knowing it to be stolen.	411	The owner of the property stolen.

1. Subs. by Act 5 of 2009, s. 23, for the TABLE (w.e.f. 31-12-2009).

1	2	3
Assisting in the concealment or disposal of stolen property, knowing it to be stolen.	414	Ditto.
Cheating.	417	The person cheated.
Cheating by personation.	419	Ditto.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Mischief by killing or maiming animal.	428	The owner of the animal.
Mischief by killing or maiming cattle, etc.	429	The owner of the cattle or animal.
Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person.	430	The person to whom the loss or damage is caused.

1	2	3
Criminal trespass.	447	The person in possession of the property trespassed upon.
House-trespass.	448	Ditto.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	Ditto.
Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark.	486	Ditto.
Criminal breach of contract of service.	491	The person with whom the offender has contracted.
Adultery.	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	The husband of the woman and the woman
Defamation, except such cases as are specified against section 500 of the Indian Penal Code (45 of 1860) in column 1 of the Table under sub-section (2).	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	Ditto.
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	Ditto.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation.	506	The person intimidated.
Inducing person to believe himself an object of divine displeasure.	508	The person induced.]

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:—

¹[TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Causing miscarriage.	312	The woman to whom miscarriage is caused .
Voluntarily causing grievous hurt.	325	The person to whom hurt is caused.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Theft, by clerk or servant of property in possession of master.	381	The owner of the property stolen.
Criminal breach of trust	406	The owner of property in respect of which breach of trust has been committed.
Criminal breach of trust by a clerk or servant.	408	The owner of the property in respect of which the breach of trust has been committed.
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	418	The person cheated.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	The person cheated.
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.

1. Subs. by Act 5 of 2009, s. 23, for TABLE (w.e.f. 31-12-2009).

1	2	3
Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the Public Prosecutor.	500	The person defamed.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon.]

¹[(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under section 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.]

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

STATE AMENDMENT

Madhya Pradesh

Amendment of Section 320.—In the table below sub-section (2) of Section 320 of the principal Act,-

1. Subs. by Act 5 of 2009, s. 23, for sub-section (3) (w.e.f. 31-12-2009).

(i) in column first, second and third, before section 324 and entries relating thereto, the following sections and entries relating thereto shall be inserted, namely:—

“(1)	(2)	(3)
Rioting	147	The person against whom the force or violence is used at the time of committing an offence:
		Provided that the accused is not charged with other offence which is not compoundable.
Rioting armed with deadly weapon	148	The person against whom the force or violence is used at the time of committing an offence:
		Provided that the accused is not charged with other offence which is not compoundable.
Obscene acts or use of obscene words	294	The person against whom obscene acts were done or obscene words were used.”.

(ii) in column first, second and third, after section 500 and entries relating thereto, the following section and entries relating thereto shall be inserted, namely:—

“(1)	(2)	(3)
Criminal intimidation if threat to be caused death or grievous hurt, etc.	Part II of Section 506	The person against whom the offence of Criminal Intimidation was committed.”.

[Vide Madhya Pradesh 17 of 1999, s. 3.]

321. Withdrawal from prosecution.—The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,—

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:

Provided that where such offence—

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the

prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

322. Procedure in cases which Magistrate cannot dispose of.—(1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption—

(a) that he has no jurisdiction to try the case or commit it for trial, or

(b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or

(c) that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.—If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained¹ [and thereupon the provisions of Chapter XVIII shall apply to the commitment so made].

324. Trial of persons previously convicted of offences against coinage, stamp-law or property.— (1) Where a person, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code (45 of 1860), with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, and the Magistrate before whom the case is pending is satisfied that there is ground for presuming that such person has committed the offence, he shall be sent for trial to the Chief Judicial Magistrate or committed to the Court of Session, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

(2) When any person is sent for trial to the Chief Judicial Magistrate or committed to the Court of Session under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly sent or committed, unless the Magistrate discharges such other person under section 239 or section 245, as the case may be.

325. Procedure when Magistrate cannot pass sentence sufficiently severe.—(1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

1. Ins. by Act 45 of 1978, s. 26 (w.e.f. 18-12-1978).

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence and shall pass such judgment, sentence or order in the case as he thinks fit, and is according to law.

326. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.—(1) Whenever any ¹[Judge or Magistrate], after having heard and recorded the whole or any part of the evidence in any enquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another ¹[Judge or Magistrate] who has and who exercises such jurisdiction, the ¹[Judge or Magistrate] so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding ¹[Judge or Magistrate] is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of Justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code ²[from one judge to another Judge or from one Magistrate to another Magistrate], the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325.

327. Court to be open.—³[(1)] The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

⁴[(2) Notwithstanding anything contained in sub- section (1), the inquiry into and trial of rape or an offence under section 376, ⁵[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] section 376E of the Indian Penal Code (45 of 1860)] shall be conducted *in camera* :

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court:

⁶[Provided further that *in camera* trial shall be conducted as far as practicable by a woman Judge or Magistrate.]

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings except with the previous permission of the Court:]

⁶[Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.]

1. Subs. by Act 45 of 1978, s. 27, for "Magistrate" (w.e.f. 18-12-1978).

2. Subs. by s. 27, *ibid.*, for "from one Magistrate to another Magistrate"(w.e.f. 18-12-1978).

3. S. 327 renumbered as sub-section (1) thereof by Act 43 of 1983, s. 4 (w.e.f. 25-12-1983).

4. Ins. by Act 43 of 1983, s. 4 (w.e.f. 25-12-1978).

5. Subs. by Act 22 of 2018, s. 17, for "section 376A, section 376B, section 376C section 376D" (w.e.f. 21-4-2018).

6. Ins. by Act 5 of 2009, s. 24 (w.e.f. 31-12-2009).

STATE AMENDMENT

Chhattisgarh

In sub-section (2) of the section 327 of the Code, for the words, figures and letters “or an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code”, the words, figures, letters and punctuations “sexual harassment, outraging modesty of woman or an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 354E, section 376, section 376A, section 376B, section 376C, section 376D, section 376E, section 376F, section 509, section 509A or section 509B of the Indian Penal Code” shall be substituted.

[*Vide* Chhattisgarh Act 25 of 2015, s. 12.]

CHAPTER XXV

PROVISIONS AS TO ACCUSED PERSONS OF UNSOUND MIND

328. Procedure in case of accused being lunatic.—(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

¹[(IA) If the civil surgeon finds the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

- (a) head of psychiatry unit in the nearest government hospital; and
- (b) a faculty member in psychiatry in the nearest medical college.]

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

²[(3) If such Magistrate is informed that the person referred to in sub-section (IA) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no *prima facie* case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate finds that a *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 330.

(4) If such Magistrate is informed that the person referred to in sub-section (IA) is a person with mental

1. Ins. by Act 5 of 2009, s. 25, (w.e.f. 31-12-2009).

2. Subs. by s. 25, *ibid.*, for sub-section (3) (w.e.f. 31-12-2009).

retardation, the Magistrate shall further determine whether the mental retardation renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 330.]

329. Procedure in case of person of unsound mind tried before Court.—(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

¹[(IA) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

(a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.]

²[(2) If such Magistrate or Court is informed that the person referred to in sub-section (IA) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no *prima facie* case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate or Court finds that a *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a *prima facie* case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330.]

3[330. Release of person of unsound mind pending investigation or trial.—(1) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987 (14 of 1987).

(3) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

1. Ins. by Act 5 of 2009, s. 26 (w.e.f. 31-12-2009)

2. Subs. by s. 26, *ibid.*, for sub-section (2), (w.e.f. 31-12-2009).

3. Subs. by s. 27, *ibid.*, for section 330 (w.e.f. 31-12-2009).

Provided that—

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 328 or section 329, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training.]

331. Resumption of inquiry or trial.—(1) Whenever an inquiry or a trial is postponed under section 328 or section 329, the Magistrate or Court, as the case may be, may at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

332. Procedure on accused appearing before Magistrate or Court.—(1) If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall act according to the provisions of section 328 or section 329, as the case may be, and if the accused is found to be of unsound mind and consequently incapable making his defence, shall deal with such accused in accordance with the provisions of section 330.

333. When accused appears to have been of sound mind.—When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act, which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be tried by the Court of Session, commit him for trial before the Court of Session.

334. Judgment of acquittal on ground of unsoundness of mind.—Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

335. Person acquitted on such ground to be detained in safe custody.—(1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence,—

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1).

336. Power of State Government to empower officer-in-charge to discharge.—The State Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 330 or section 335 to discharge all or any of the functions of the Inspector-General of Prisons under section 337 or section 338.

337. Procedure where lunatic prisoner is reported capable of making his defence.—If such person is detained under the provisions of sub-section (2) of section 330, and in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained a lunatic asylum, the visitors of such asylum, or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 332; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

338. Procedure where lunatic detained is declared fit to be released.—(1) If such person is detained under the provisions of sub-section (2) of section 330, or section 335, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the State Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a Judicial and two medical officers.

(2) Such Commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or detention as it thinks fit.

339. Delivery of lunatic to care of relative or friend.—(1) Whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct;

(c) in the case of a person detained under sub-section (2) of section 330, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production the Magistrate or Court shall proceed in accordance with the provisions of section 332, and the certificate of the inspecting office shall be receivable as evidence.

CHAPTER XXVI

PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

340. Procedure in cases mentioned in section 195.—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence

in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

¹[(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.]

(4) In this section, “Court” has the same meaning as in section 195.

341. Appeal.—(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and, if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

342. Power to order costs.—Any Court dealing with an application made to it for filing a complaint under section 340 or an appeal under section 341, shall have power to make such order as to costs as may be just.

343. Procedure of Magistrate taking cognizance.—(1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

344. Summary procedure for trial for giving false evidence.—(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the

1. Subs. by Act 2 of 2006, s. 6, for clause (b) (w.e.f. 16-4-2006).

offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

345. Procedure in certain cases of contempt.—(1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender to be detained in custody, and may, at any time before the rising of the Court or the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the fact constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

346. Procedure where Court considers that case should not be dealt with under section 345.—(1) If the Court in any case considers that a person accused of any of the offences referred to in section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 345, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

347. When Registrar or Sub-Registrar to be deemed a Civil Court.—When the State Government so directs, any Registrar or any Sub-Registrar appointed under the ^{1***} Registration Act, 1908 (16 of 1908), shall be deemed to be a Civil Court within the meaning of sections 345 and 346.

348. Discharge of offender on submission of apology.—When any Court has under section 345 adjudged an offender to punishment, or has under section 346 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

349. Imprisonment or committal of person refusing to answer or produce document.—If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and

1. The word "Indian" omitted by Act 56 of 1974, s. 3 and the Second Schedule (w.e.f. 20-12-1974).

does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

350. Summary procedure for punishment for non-attendance by a witness in obedience to summons.—(1)

If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interest of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

351. Appeals from convictions under sections 344, 345, 349 and 350.—(1) Any person sentenced by any Court other than a High Court under section 344, section 345, section 349, or section 350 may, notwithstanding anything contained in this Code appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXIX shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any Registrar or Sub-Registrar deemed to be a Civil Court by virtue of a direction issued under section 347 shall lie to the Court of Session for the sessions division within which the office of such Registrar or Sub-Registrar is situate.

352. Certain Judges and Magistrates not to try certain offences when committed before themselves.—

Except as provided in sections 344, 345, 349 and 350, no Judge of a Criminal Court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

CHAPTER XXVII

THE JUDGMENT

353. Judgment.—(1) The judgment in every trial in any Criminal Court or original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465.

354. Language and contents of judgment.—(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,—

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted, and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

355. Metropolitan Magistrate's judgment.—Instead of recording a judgment in the manner hereinbefore provided, a Metropolitan Magistrate shall record the following particulars, namely:—

- (a) the serial number of the case;
- (b) the date of the commission of the offence;
- (c) the name of the complainant (if any);
- (d) the name of the accused person, and his parentage and residence;
- (e) the offence complained of or proved;
- (f) the plea of the accused and his examination (if any);
- (g) the final order;
- (h) the date of such order;
- (i) in all cases in which an appeal lies from the final order either under section 373 or under sub-section (3) of section 374, a brief statement of the reasons for the decision.

356. Order for notifying address of previously convicted offender.—(1) When any person, having been convicted by a Court in India of an offence punishable under section 215, section 489A, section 489B, section 489C or section 489D¹ [or section 506 (in so far as it relates to criminal intimidation punishable with imprisonment for a term which may extend to seven years, or with fine, or with both)] of the Indian Penal Code (45 of 1860), or of any offence punishable under Chapter XII¹ [or Chapter XVI] or Chapter XVII of that Code, with imprisonment for a term of three years, or upwards, is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by any Court other than that of a Magistrate of the second class, such Court may, if it thinks fit, at the time of passing a sentence of imprisonment on such person, also order that his residence and any change of, or absence from, such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

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

(3) If such conviction is set aside on appeal or otherwise, such order shall become void.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) The State Government may, by notification, make rules to carry out the provisions of this section relating to the notification of residence or change of, or absence from, residence by released convicts.

(6) Such rules may provide for punishment for the breach thereof and any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

357. Order to pay compensation.—(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

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

1. Ins. by Act 25 of 2005, s. 29 (w.e.f. 23-6-2006).

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

STATE AMENDMENTS

Karnataka

Amendments of section 357. —

In section 357 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974).—

(1) In section 357, in sub-section (1), after the words “the Court may” the brackets, figures and words “and where the person against whom an offence is committed belongs to a Scheduled Caste or a Scheduled Tribe as defined in clauses (24) and (25) of Article 366 of the Constitution and the accused person doesn’t belong to a Scheduled Caste or a Scheduled Tribe the Court shall”, shall be inserted:

(2) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) When a Court imposes a sentence of which the fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to a Scheduled Caste or a Scheduled Tribe as defined in clauses (24) and (25) of article 366 of the Constitution and the accused person does not belong to a Scheduled Caste or a Scheduled Tribe, the Court shall, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced”.

[*Vide* Karnataka Act 27 of 1987, s. 2].

Madhya Pradesh

Amendment of section 357.—In section 357 of the Principal Act, —

(i) In sub-section (1), for the brackets, figure and words “(1) When a Court imposes a sentence of fine

or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied” the brackets, figure and words “(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in clauses (24) and (25) and of Article 366 of the Constitution except when both the accused person and the person against whom an offence is committed belong either to such Castes or Tribes, the Court shall, when passing judgment, order the whole or any part of the fine recovered to be applied—”shall be substituted; and

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) When Court imposes a sentence, of which fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in clauses (24) and (25) of Article 366 of the Constitution, the Court shall when passing judgment order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced:

“Provided that the Court may not order the accused person to pay by way of compensation any amount if both the accused person and the person against whom an offence is committed belong either to the Scheduled Castes or the Scheduled Tribes.”

[*Vide* Madhya Pradesh Act 29 of 1978, s. 3.]

West Bengal

In section 357 of the principal Act,—

(a) In sub-section (1), for the words and brackets “When a Court imposes a sentence of fine or a sentence including a (sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—”, the words and brackets “When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, and where the person against whom an offence has been committed belongs to Scheduled Castes or Scheduled Tribes, except when both the accused person and the person against whom an offence has been committed belong either to Scheduled Castes or to Scheduled Tribes shall, when passing judgment, order the whole or any part of the fine recovered to be applied—” shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, and where the person against whom an offence has been committed belongs to Scheduled Castes or Scheduled Tribes, shall, when passing judgment order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced:

Provided that the Court may not order the accused person to pay by way of compensation, any amount if both the accused person and the person against whom an offence has been committed belong either to Scheduled Castes or to Scheduled Tribes.”;

(c) after sub-section (5), the following Explanation shall be inserted:—

‘Explanation.—For the purposes of the section the expression “Scheduled Castes” and “Scheduled Tribes” shall have the meaning respectively assigned to them in clauses (24) and (25) of Article 366 of the Constitution of India.’.

[*Vide* West Bengal Act 33 of 1985, s. 3.]

¹[**357A. Victim compensation scheme.**—(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.]

²[**357B. Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.**—The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim ³[under section 326A, section 376AB, section 376D, section 376DA and section 376DB of the Indian Penal Code (45 of 1860)].

357C. Treatment of victims.—All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, ⁴[376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.]

358. Compensation to persons groundlessly arrested.—(1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding ⁵[one thousand rupees], to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding ⁵[one thousand rupees], as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

359. Order to pay costs in non-cognizable cases.—(1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-fees, witnesses and pleader's fees which the Court may consider reasonable.

(2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

360. Order to release on probation of good conduct or after admonition.—(1) When any person not under

1. Ins. by Act 5 of 2009, s. 28 (w.e.f. 31-12-2009).

2. Ins. by Act 13 of 2013, s. 23 (w.e.f. 3-2-2013).

3. Subs. by Act 22 of 2018, s. 18, for “under section 326A or section 376D of the Indian Penal Code (45 of 1860)” (w.e.f. 21-4-2018).

4. Subs. by s. 19, *ibid.*, for “376A, 376B, 376C, 376D” (w.e.f. 21-4-2018).

5. Subs. by Act 25 of 2005, s. 30, for “one hundred rupees” (w.e.f. 23-6-2006).

twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years, imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

361. Special reasons to be recorded in certain cases.—Where in any case the Court could have dealt with,—

(a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958); or

(b) a youthful offender under the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders,

but has not done so, it shall record in its judgment the special reasons for not having done so.

362. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

363. Copy of judgment to be given to the accused and other persons.—(1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

(2) On the application of the accused, a certified copy of the judgment, or when he so desires, a translation in his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall, in every case where the judgment is appealable by the accused, be given free of cost:

Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

(3) The provisions of sub-section (2) shall apply in relation to an order under section 117 as they apply in relation to a judgment which is appealable by the accused.

(4) When the accused is sentenced to death by any Court and an appeal lies from such judgment as of right, the Court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

(5) Save as otherwise provided in sub-section (2), any person affected by a judgment or order passed by a Criminal Court shall, on an application made in this behalf and on payment of the prescribed charges, be given a copy of such judgment or order or of any deposition or other part of the record:

Provided that the Court may, if it thinks fit for some special reason, give it to him free of cost.

(6) The High Court may, by rules, provide for the grant of copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order, on payment, by such person, of such fees, and subject to such conditions, as the High Court may, by such rules, provide.

STATE AMENDMENT

Karnataka

Amendment of section 363.- In section 363 of the Code of Criminal Procedure, 1973 (Central Act of 1974), after the proviso to sub-section (5), the following proviso shall be inserted, namely:—

“Provided further that the State shall, on an application made in this behalf by the Prosecuting Officer be given, free of cost, a certified copy of such judgement, order, deposition or record with the prescribed endorsement”.

[*Vide* Karnataka Act 19 of 1985, s. 2.]

364. Judgment when to be translated.—The original judgment shall be filed with the record of the proceedings and where the original is recorded in a language different from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

365. Court of Session to send copy of finding and sentence to District Magistrate.—In cases tried by the Court

of Session or a Chief Judicial Magistrate, the Court or such Magistrate, as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.

CHAPTER XXVIII

SUBMISSION OF DEATH SENTENCES FOR CONFIRMATION

366. Sentence of death to be submitted by Court of Session for confirmation.—(1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

367. Power to direct further inquiry to be made or additional evidence to be taken.—(1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.

368. Power of High Court to confirm sentence or annul conviction.—In any case submitted under section 366, the High Court—

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

369. Confirmation or new sentence to be signed by two Judges.—In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

370. Procedure in case of difference of opinion.—Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by section 392.

371. Procedure in cases submitted to High Court for confirmation.—In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session.

CHAPTER XXIX

APPEALS

372. No appeal to lie unless otherwise provided.—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

¹[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

373. Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour.—Any person,—

- (i) who has been ordered under section 117 to give security for keeping the peace or for good behaviour, or
- (ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 121,

may appeal against such order to the Court of Session:

Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (4) of section 122.

374. Appeals from convictions.—(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years ²[has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

- (a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or
- (b) sentenced under section 325, or
- (c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

³[(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.]

STATE AMENDMENT

Assam

In Section 374 of the Code, in clause (a) of sub-section (3), for the words “Magistrate of the first class, or of the second class,” the words “Magistrate of the first class, Executive Magistrate or a Magistrate of the second class,” shall be substituted.

[*Vide Assam Act 3 of 1984, s. 3(3) and the Schedule.*]

375. No appeal in certain cases when accused pleads guilty.—Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,—

- (a) if the conviction is by a High Court; or
- (b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

1. Ins. by Act 5 of 2009, s. 29 (w.e.f. 31-12-2009).

2. Subs. by Act 45 of 1978, s. 28, for “has been passed” (w.e.f. 18-12-1978).

3. Ins. by Act 22 of 2018, s. 20 (w.e.f. 21-4-2018).

376. No appeal in petty cases.—Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

- (a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;
- (b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;
- (c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or
- (d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

- (i) that the person convicted is ordered to furnish security to keep the peace; or
- (ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or
- (iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

377. Appeal by the State Government against sentence.—(1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present ¹[an appeal against the sentence on the ground of its inadequacy]—

- (a) to the Court of Session, if the sentence is passed by the Magistrate; and
- (b) to the High Court, if the sentence is passed by any other Court.]

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, ²[the Central Government may also direct] the Public Prosecutor to present ¹[an appeal against the sentence on the ground of its inadequacy]—

- (a) to the Court of Session, if the sentence is passed by the Magistrate; and
- (b) to the High Court, if the sentence is passed by any other Court].

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, ³[the Court of Session or, as the case may be, the High Court] shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

⁴[(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

378. Appeal in case of acquittal.—⁵[(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

- (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of

1. Subs. by Act 25 of 2005, s. 31, for certain words (w.e.f. 23-6-2006).

2. Subs. by Act 45 of 1978, s. 29, for certain words (w.e.f. 18-12-1978).

3. Subs. by s. 31, *ibid.*, for “the High Court” (w.e.f. 23-6-2006).

4. Subs. by Act 22 of 2018, s. 21 (w.e.f. 21-4-2018).

5. Subs. by Act 25 of 2005, s. 32, for sub-section (1) (w.e.f. 23-6-2006).

Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code,¹ [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision].

(3) ²[No appeal to the High Court] under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

379. Appeal against conviction by High Court in certain cases.—Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

380. Special right of appeal in certain cases.—Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

381. Appeal to Court of Session how heard.—(1) Subject to the provisions of sub-section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an appeal against a conviction on a trial held by a Magistrate of the second class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate.

(2) An Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear.

382. Petition of appeal.—Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

1. Subs. by Act 25 of 2005, s. 32, for certain words (w.e.f. 23-6-2006).

2. Subs. by s. 32, *ibid.*, for "No appeal" (w.e.f. 23-6-2006).

STATE AMENDMENT

Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep

Section 382 shall be re-numbered as sub-section (1) of that section, and sub-section (1) as so re-numbered, the following provisos and *Explanation* shall be added, namely:—

“Provided that where it is not practicable to file the petition of appeal to the proper Appellate Court, the petition of appeal may be presented to the Administrator or to an Executive Magistrate, not below the rank of Sub-Divisional Magistrate, who shall forward the same to the proper Appellate Court; and, when any such appeal is presented to the Administrator or to an Executive Magistrate, he shall record thereon the date of its date of presentation and, if he is satisfied that, by reason of the weather, transport or other difficulties, it is not possible for the appellant to obtain, from the proper Appellate Court, orders for the suspension of sentence or for bail, he may, in respect of such appeal, or an appeal forwarded to him under section 383, exercise all or any of the powers of the proper Appellate Court and sub-section (1) of section 389 with regard to suspension of sentence or release of a convicted person on bail:

Provided further that the order so made by Administrator or the Executive Magistrate shall have effect until it is reversed or modified by the proper Appellate Court.

Explanation:—For the purposes of the provisos to this section, and section 383, ‘Administrator’, in relation to a Union territory means the Administrator appointed by the President under article 239 of the Constitution, for that Union territory.”;

In section 382 after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) For purposes of computation of the period of limitation, and for all other purposes, an appeal presented to an Administrator or an Executive Magistrate under sub-section (1) or as the case may be, under section 383, shall be deemed to be an appeal presented to the proper Appellate Court.”;

[*Vide* The Code of Criminal Procedure (Amendment) Regulation, 1974 Act (1 of 1974) s. 5.]

383. Procedure when appellant in jail.—If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

STATE AMENDMENT

Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep

In section 383, the following words shall be inserted at the end, namely:—

“or if, by reason of the weather, transport or other difficulties, it is not possible to forward them to the proper Appellate Court they shall be forwarded to the Administrator or an Executive Magistrate, not below the rank of a Sub-Divisional Magistrate, who shall, on receipt of such petition of appeal and copies, record thereon the date of receipt thereof and thereafter forward the same to the proper Appellate Court.”.

[*Vide* The Code of Criminal Procedure (Amendment) Regulation, 1974 Act (1 of 1974), s. 5.]

384. Summary dismissal of appeal.—(1) If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that—

(a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law.

385. Procedure for hearing appeals not dismissed summarily.—(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given—

(i) to the appellant or his pleader;

(ii) to such officer as the State Government may appoint in this behalf;

(iii) if the appeal is from a judgment of conviction in a case instituted upon complaint, to the complainant;

(iv) if the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that Court, and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground.

386. Powers of the Appellate Court.—After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same—

(c) in an appeal for enhancement of sentence—

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

387. Judgments of Subordinate Appellate Court.—The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

388. Order of High Court on appeal to be certified to lower Court.—(1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed and if such Court is that of a Judicial Magistrate other than the Chief Judicial Magistrate, the High Court's judgment or order shall be sent through the Chief Judicial Magistrate, and if such Court is that of an Executive Magistrate, the High Court's judgment or order shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and if necessary, the record shall be amended in accordance therewith.

389. Suspension of sentence pending the appeal; release of appellant on bail.—(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

¹[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]

(2) The power conferred by this section on a Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

1. Ins. by Act 25 of 2005, s. 33 (w.e.f. 23-6-2006).

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,
order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

390. Arrest of accused in appeal from acquittal.—When an appeal is presented under section 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any Subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

391. Appellate Court may take further evidence or direct it to be taken.—(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

392. Procedure where Judges of Court of Appeal are equally divided.—When an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion:

Provided that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, so requires, the appeal shall be re-heard and decided by a larger Bench of Judges.

393. Finality of judgments and orders on appeal.—Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the cases provided for in section 377, section 378, sub-section (4) of section 384 or Chapter XXX:

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits,—

- (a) an appeal against acquittal under section 378, arising out of the same case, or
- (b) an appeal for the enhancement of sentence under section 377, arising out of the same case.

394. Abatement of appeals.—(1) Every other appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation.—In this section, “near relative” means a parent, spouse, lineal descendant, brother or sister.

CHAPTER XXX

REFERENCE AND REVISION

395. Reference to High Court.—(1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is Subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.—In this section, “Regulation” means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

396. Disposal of case according to decision of High Court.—(1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.

(2) The High Court may direct by whom the costs of such reference shall be paid.

397. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

398. Power to order inquiry.—On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

399. Sessions Judge's powers of revision.—(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High

Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

400. Power of Additional Sessions Judge.—An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

401. High Court's powers of revision.—(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

402. Power of High Court to withdraw or transfer revision cases.—(1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the questions involved, which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the applications for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge.

(2) Whenever any application for revision is transferred to the High Court, that Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge, that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Sessions Judge.

403. Option of Court to hear parties.—Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

404. Statement by Metropolitan Magistrate of grounds of his decision to be considered by High Court.—When the record of any trial held by a Metropolitan Magistrate is called for by the High Court or Court of Session under section 397, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue, and that Court shall consider such statement before overruling or setting aside the said decision or order.

405. High Court's order to be certified to lower Court.—When a case is revised under this Chapter by the High Court or a Sessions Judge, it or he shall, in the manner provided by section 388, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

CHAPTER XXXI

TRANSFER OF CRIMINAL CASES

406. Power of Supreme Court to transfer cases and appeals.—(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.

407. Power of High Court to transfer cases and appeals.—(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to

another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the applications unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any Subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interest of Justice, order that, pending the disposal of the application the proceedings in the Subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the Subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.

408. Power of Sessions Judge to transfer cases and appeals.—(1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words "one thousand rupees" occurring therein, the words "two hundred and fifty rupees" were substituted.

STATE AMENDMENT

Kerala

Amendment of section 408.—In section 408 of the principal Act, for the words "any other Magistrate", the words "other Magistrate of the first class", and for the words "any Magistrate" the words "a Magistrate of the first class", shall be substituted.

[*Vide* Kerala Act 5 of 1957, s. 3.]

409. Withdrawal of cases and appeals by Session Judge.—(1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(3) Where a Sessions Judge withdraws or recalls case or appeal under sub-section (1) or sub-section (2), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.

STATE AMENDMENT

Kerala

Substitution of new section for section 409.—For section 409 of the principal Act, the following section shall be substituted, namely:—

409. Appeals to Court of Section how heard.—An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an Additional Sessions Judge shall hear only such appeals as the State Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

[*Vide* Kerala Act 5 of 1957, s. 4.]

410. Withdrawal of cases by Judicial Magistrate.—(1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 192 to any other Magistrate and may inquire into or try such cases himself.

411. Making over or withdrawal of cases by Executive Magistrates.—Any District Magistrate or Sub- Divisional Magistrate may—

(a) make over, for disposal, any proceeding which has been started before him, to any Magistrate subordinate to him;

(b) withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and dispose of such proceeding himself or refer it for disposal to any other Magistrate.

412. Reasons to be recorded.—A Sessions Judge or Magistrate making an order under section 408, section 409, section 410 or section 411 shall record his reasons for making it.

CHAPTER XXXII

EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES

A.—*Death Sentences*

413. Execution of order passed under section 368.—When in a case submitted to the High Court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

414. Execution of sentence of death passed by High Court.—When a sentence of death is passed by the High

Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant.

415. Postponement of execution of sentence of death in case of appeal to Supreme Court.—(1) Where a person is sentenced to death by the High Court and an appeal from its judgment lies to the Supreme Court under sub-clause (a) or sub-clause (b) of clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until the period allowed for preferring such appeal has expired, or if, an appeal is preferred within that period, until such appeal is disposed of.

(2) Where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of a certificate under article 132 or under sub-clause (c) of clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until such application is disposed of by the High Court, or if a certificate is granted on such application, until the period allowed for preferring an appeal to the Supreme Court on such certificate has expired.

(3) Where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of special leave to appeal under article 136 of the Constitution, the High Court shall order the execution of the sentence to be postponed for such period as it considers sufficient to enable him to present such petition.

416. Postponement of capital sentence on pregnant woman.—If a woman sentenced to death is found to be pregnant, the High Court shall¹[****], commute the sentence to imprisonment for life.

B.—*Imprisonment*

417. Power to appoint place of imprisonment.—(1) Except when otherwise provided by any law for the time being in force, the State Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub-section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been released from the civil jail under section 58 of the Code of Civil Procedure, 1908 (5 of 1908), or section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be released under section 58 of the Code of Civil Procedure, 1908 (5 of 1908), or under section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be.

418. Execution of sentence of imprisonment.—(1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:

Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct.

(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other

1. Certain words omitted by Act 5 of 2009, s. 30 (w.e.f. 31-12-2009).

place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.

419. Direction of warrant for execution.—Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

420. Warrant with whom to be lodged.—When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

C.—*Levy of fine*

421. Warrant for levy of fine.—(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

422. Effect of such warrant.—A warrant issued under clause (a) of sub-section (1) of section 421 by any Court may be executed within the local jurisdiction of such Court, and it shall authorise the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local jurisdiction such property is found.

423. Warrant for levy of fine issued by a Court in any territory to which this Code does not extend.—Notwithstanding anything contained in this Code or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in any territory to which this Code does not extend and the Court passing the sentence issues a warrant to the Collector of a district in the territories to which this Code extends, authorising him to realise the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under clause (b) of sub-section (1) of section 421 by a Court in the territories to which this Code extends, and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.

424. Suspension of execution of sentence of imprisonment.—(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be,

is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

D.—*General provisions regarding execution*

425. Who may issue warrant.—Every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-office.

426. Sentence on escaped convict when to take effect.—(1) When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict,—

(a) if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

(3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment.

427. Sentence on offender already sentenced for another offence.—(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.—Where an accused person has, on conviction, been sentenced to imprisonment for a term, ¹[, not being imprisonment in default of payment of fine], the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him:

²[Provided that in cases referred to in section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section.]

1. Ins. by Act 45 of 1978, s. 31 (w.e.f.18-12-1978).

2. Ins. by Act 25 of 2005, s. 34 (w.e.f. 23-6-2006).

429. Saving.—(1) Nothing in section 426 or section 427 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

430. Return of warrant on execution of sentence.—When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it is issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

431. Money ordered to be paid recoverable as a fine.—Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures “under section 357”, the words and figures “or an order for payment of costs under section 359” had been inserted.

E.—*Suspension, remission and commutation of sentences*

432. Power to suspend or remit sentences.—(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government" means,—

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

433. Power to commute sentence.—The appropriate Government may, without the consent of the person sentenced, commute—

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

¹[**433A. Restriction on powers of remission or commutation in certain cases.**—Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.]

434. Concurrent power of Central Government in case of death sentences.—The powers conferred by sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government.

435. State Government to act after consultation with Central Government in certain cases.—(1) The powers conferred by sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence—

(a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

1. Ins. by Act 45 of 1978, s. 32 (w.e.f.18-12-1978).

CHAPTER XXXIII

PROVISIONS AS TO BAIL AND BONDS

436. In what cases bail to be taken.—(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, ¹[may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

²[Explanation.—Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso:]

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 ³[or section 446A].

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

⁴[436A. Maximum period for which an undertrial prisoner can be detained.]—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]

437. When bail may be taken in case of non-bailable offence.—⁵(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more,

1. Subs. by Act 25 of 2005, s. 35, for certain words (w.e.f. 23-6-2006).

2. Ins. by Act 25 of 2005, s. 35, (w.e.f. 23-6-2006).

3. Ins. by Act 63 of 1980, s. 4 (w.e.f. 23-9-1980).

4. Ins. by Act 25 of 2005, s. 36 (w.e.f. 23-6-2006).

5. Subs. by Act 63 of 1980, s. 5, for sub-section (1) (w.e.f. 23-9-1980).

or he had been previously convicted on two or more occasions of ¹[a cognizable offence punishable with imprisonment for three years or more but not less than seven years:]

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:]

²[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, ³[the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), ⁴[the Court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary.]

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its ⁵[reasons or special reasons] for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

1. Subs. by Act 25 of 2005, s. 37, for “a non-bailable and cognizable offence” (w.e.f. 23-6-2006).

2. Ins. by Act 25 of 2005, s. 37 (w.e.f. 23-6-2006).

3. Subs. by Act 63 of 1980, s. 5, for certain words (w.e.f. 23-9-1980).

4. Subs. by Act 25 of 2005, s. 37, for certain words (w.e.f. 23-6-2006).

5. Subs. by Act 63 of 1980, s. 5, for “reasons” (w.e.f. 23-9-1980).

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

¹[**437A. Bail to require accused to appear before next appellate Court.**—(1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply.]

438. Direction for grant of bail to person apprehending arrest.—(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

²[(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).]

STATE AMENDMENTS

West Bengal.—

To sub-section (1) of section 438 of the principal Act, the following proviso shall be added:—

“Provided that where the apprehended accusation relates to an offence punishable with death, imprisonment for

1. Ins. by Act 5 of 2009, s. 31 (w.e.f. 31-12-2009)

1. Ins. by Act 22 of 2018, s. 22 (w.e.f. 21-4-2018).

life or imprisonment for a term of not less than seven years, no final order shall be made on such application without giving the State not less than seven days' notice to present its case.

[*Vide* West Bengal Act 47 of 1981, s. 3.]

West Bengal.—

For sub-section (1) of section 438, of the principal Act the following sub-sections shall be substituted, namely:—

“(I) (a) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail:

Provided that the mere fact that a person has applied to the High Court or the Court of Session for a direction under this section shall not, in the absence of any order by that Court, be a bar to the apprehension of such person, or the detention of such person in custody, by an officer-in-charge of a police station.

(b) The High Court or the Court of Session, as the case may be, shall dispose of an application for a direction under this sub-section within thirty days of the date of such application:

Provided that where the apprehended accusation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, no final order shall be made on such application without giving the State not less than seven days notice to present its case.

(c) If any person is arrested and detained in custody by an officer-in-charge of a police station before the disposal of the application of such person for a direction under this sub-section, the release of such person on bail by a Court having jurisdiction, pending such disposal, shall be subject to the provisions of section 437.

(IA) The provisions of sub-section (1) shall have effect notwithstanding anything to the contrary contained elsewhere in this Act or in any judgment, decree or order of any Court, tribunal or other authority.”.

[*Vide* West Bengal Act 25 of 1990, s. 3.]

STATE AMENDMENT

Orissa

Amendment of section 438.—In section 438 of the Code of Criminal Procedure, 1973 (2 of 1974), to sub-section (1), the following proviso shall be added, namely:—

“Provided that where the apprehended accusation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, no final order shall be made on such application without giving the State notice to present its case.”:

[*Vide* Orissa Act 11 of 1988, s. 2]

439. Special powers of High Court or Court of Session regarding bail.—(I) A High Court or Court of Session may direct,—

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with

imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

¹[Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.]

¹[(IA) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section DB of the Indian Penal Code (45 of 1860).]

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

STATE AMENDMENT

Assam.—

439-A. Power to grant bail.—(1) Notwithstanding anything contained in this Code, no person—

(a) who, being accused or suspected of committing an offence under any of the following Sections, namely, —Sections 120B, 121, 121A, 122, 123, 124A, 153A, 302, 303, 304, 307, 326, 333, 363, 364, 365, 367, 368, 392, 394, 395, 396, 399, 412, 431, 436, 449 and 450 of the Indian Penal Code, 1860, Sections 3, 4, 5 and 6 of the Indian Explosive Substances Act, 1908, and Sections 25, 26, 27, 28, 29, 30 and 31 of the Arms Act, 1959, is arrested or appears or is brought before a court; or

(b) who, having any reason to believe that he may be arrested on an accusation of committing an offence as specified in clause (a), has applied to the High Court or the Court of Sessions for a direction for his release on bail in the event of his arrest, shall be released on bail or as the case may be, directed to be released on bail, except on one or more of the following grounds, namely: —

(i) that the Court including the High Court or the Court of Session for reasons to be recorded in writing is satisfied that there are reasonable grounds for believing that such person is not guilty of any offence specified in clause (a);

(ii) that such person is under the age of sixteen years or a woman or a sick or an infirm person;

(iii) that the court including the High Court or the Court of Sessions for reasons to be recorded in writing is satisfied that there are exceptional and sufficient grounds to release or direct the release of the accused on bail.”

[*Vide Assam Act 3 of 1984, s. 5.*]

440. Amount of bond and reduction thereof.—(1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

1. Ins. by Act 22 of 2018, s. 23 (w.e.f. 21-4-2018).

(2) The High Court or the Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

441. Bond of accused and sureties.—(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

STATE AMENDMENT

Andhra Pradesh

Amendment of Section 441 Central Act 2 of 1974.—In the Code of Criminal Procedure, 1973 (hereinafter referred to as the Principal Act) in section 441, in sub-section (1), the following words shall be added at the end, namely. —

“and for imposition of a fine not exceeding the amount prescribed in the surety bond, in case the surety fails to produce the accused on the date fixed by the court in grave/serious offences.”

[*Vide Andhra Pradesh Act 17 of 2019, s. 2]*

¹**[441A. Declaration by sureties.]**—Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.]

442. Discharge from custody.—(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 436 or section 437, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

443. Power to order sufficient bail when that first taken is insufficient.—If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

444. Discharge of sureties.—(1) All or any sureties for the attendance and appearance of a person released on

1. Ins. by Act 25 of 2005, s. 39 (w.e.f. 23-6-2006).

bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

STATE AMENDMENT

West Bengal

In section 444 of the Principal Act,—

(1) in sub-section (1) after the words “at any time”, the words, “on showing sufficient cause,” shall be inserted;

(2) after sub-section (1), the following sub-section shall be inserted:—

“(1A) On such application being made, the Magistrate may either hold an inquiry himself, or cause an inquiry to be made by a Magistrate subordinate to him, on the correctness of the reason shown, in the application to discharge the bond as stated in sub-section (1);”

(3) for sub-section (2), the following sub-section shall be substituted:—

“(2) If the Magistrate is satisfied, on enquiry made under sub-section (1A), that all or any of the sureties applying for discharge may be discharged, he shall issue warrant of arrest directing that the person so released be brought before him.”

[*Vide* West Bengal Act 24 of 2003, s. 3.]

445. Deposit instead of recognizance.—When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

STATE AMENDMENT

West Bengal

In section 445 of the principal Act,—

(a) the words “with or without sureties” shall be omitted; and

(b) for the word “permit”, the word “direct” shall be substituted.

[*Vide* West Bengal Act 24 of 2003, s. 4.]

446. Procedure when bond has been forfeited.—(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,

or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.—A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any

Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

¹[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, ²[after recording its reasons for doing so], remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

³**446A. Cancellation of bond and bail bond.**—Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition,—

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provisions of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.]

447. Procedure in case of insolvency of death of surety or when a bond is forfeited.—When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 446, the Court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh securities in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

448. Bond required from minor.—When the person required by any Court, or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

449. Appeal from orders under section 446.—All orders passed under section 446 shall be appealable,—

(i) in the case of an order made by a Magistrate, to the Sessions Judge;

(ii) in the case of an order made by a Court of Session, to the Court to which an appeal lies from an order made by such Court.

450. Power to direct levy of amount due on certain recognizances.—The High Court or Court of Sessions may direct any Magistrate to levy the amount due on a bond for appearance or attendance at such High Court or

1. Added by Act 63 of 1980, s. 6 (w.e.f. 23-9-1980).

2. Subs. by Act 25 of 2005, s. 40, for “at its discretion” (w.e.f. 23-6-2006).

3. Ins. by Act 63 of 1980, s. 7 (w.e.f. 23-9-1980).

Court of Session.

CHAPTER XXXIV

DISPOSAL OF PROPERTY

451. Order for custody and disposal of property pending trial in certain cases.—When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, “property” includes—

- (a) property of any kind or document which is produced before the Court or which is in its custody;
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

452. Order for disposal of property at conclusion of trial.—(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without securities, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

453. Payment to innocent purchaser of money found on accused.—When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

454. Appeal against orders under section 452 or section 453.—(1) Any person aggrieved by an order made by a Court under section 452 or section 453, may appeal against it to the Court to which appeals ordinarily lie from convictions by the former Court.

(2) On such appeal, the Appellate Court may direct the order to be stayed pending disposal of the appeal, or may modify, alter or annul the order and make any further orders that may be just.

(3) The powers referred to in sub-section (2) may also be exercised by a Court of appeal, confirmation or revision while dealing with the case in which the order referred to in sub-section (1) was made.

455. Destruction of libellous and other matter.—(1) On a conviction under section 292, section 293, section 501 or section 502 of the Indian Penal Code (45 of 1860), the Court may order the destruction of all the copies of the

thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under section 272, section 273, section 274 or section 275 of the Indian Penal Code (45 of 1860), order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed.

456. Power to restore possession of immovable property.—(1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Where the Court trying the offence has not made an order under sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

(3) Where an order has been made under sub-section (1), the provisions of section 454 shall apply in relation thereto as they apply in relation to an order under section 453.

(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

457. Procedure by police upon seizure of property.—(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

458. Procedure where no claimant appears within six months.—(1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed.

(2) An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate.

459. Power to sell perishable property.—If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is ¹[less than five hundred rupees], the Magistrate may at any time direct it to be sold; and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

CHAPTER XXXV

IRREGULAR PROCEEDINGS

460. Irregularities which do not vitiate proceedings.—If any Magistrate not empowered by law to do any of the following things, namely:—

1. Subs. by Act 25 of 2005, s. 41, for “less than ten rupees” (w.e.f. 23-6-2006).

- (a) to issue a search-warrant under section 94;
- (b) to order, under section 155, the police to investigate an offence;
- (c) to hold an inquest under section 176;
- (d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
- (e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;
- (f) to make over a case under sub-section (2) of section 192;
- (g) to tender a pardon under section 306;
- (h) to recall a case and try it himself under section 410; or
- (i) to sell property under section 458 or section 459,

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

461. Irregularities which vitiate proceedings.—If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

- (a) attaches and sells property under section 83;
- (b) issues a search-warrant for a document, parcel or other things in the custody of a postal or telegraph authority;
- (c) demands security to keep the peace;
- (d) demands security for good behaviour;
- (e) discharges a person lawfully bound to be of good behaviour;
- (f) cancels a bond to keep the peace;
- (g) makes an order for maintenance;
- (h) makes an order under section 133 as to a local nuisance;
- (i) prohibits, under section 143, the repetition or continuance of a public nuisance;
- (j) makes an order under Part C or Part D of Chapter X;
- (k) takes cognizance of an offence under clause (c) of sub-section (1) of section 190;
- (l) tries an offender;
- (m) tries an offender summarily;
- (n) passes a sentence, under section 325, on proceedings recorded by another Magistrate;
- (o) decides an appeal;
- (p) calls, under section 397, for proceedings; or
- (q) revises an order passed under section 446,

his proceedings shall be void.

462. Proceedings in wrong place.—No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

463. Non-compliance with provisions of section 164 or section 281.—(1) If any Court before which a

confession or other statement of an accused person recorded, or purporting to be recorded under section 164 or section 281, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.

464. Effect of omission to frame, or absence of, or error in, charge.—(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision, is of opinion that a failure of justice has in fact been occasioned, it may,—

(a) in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

465. Finding or sentence when reversible by reason of error, omission or irregularity.—(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

466. Defect or error not to make attachment unlawful.—No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

CHAPTER XXXVI¹

LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES

467. Definitions.—For the purposes of this Chapter, unless the context otherwise requires, “period of limitation” means the period specified in section 468 for taking cognizance of an offence.

468. Bar to taking cognizance after lapse of the period of limitation.—(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

1. Provisions of this Chapter shall not apply to certain economic offences, *see* the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 and Sch.

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

¹[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

469. Commencement of the period of limitation.—(1) The period of limitation, in relation to an offender, shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

470. Exclusion of time in certain cases.—(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender—

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself,

shall be excluded.

471. Exclusion of date on which Court is closed.—Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.

1. Ins. by Act 45 of 1978, s. 33 (w.e.f. 18.12.1978).

Explanation.—A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

472. Continuing offence.—In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

473. Extension of period of limitation in certain cases.—Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

CHAPTER XXXVII

MISCELLANEOUS

474. Trials before High Courts.—When an offence is tried by the High Court otherwise than under section 407, it shall, in the trial of the offence, observe the same procedure as a Court of Sessions would observe if it were trying the case.

475. Delivery to commanding officers of persons liable to be tried by Court-martial.—(1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air-force law, or such other law, shall be tried by a Court to which this Code applies, or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for the purpose of being tried by a Court-martial.

Explanation.—In this section—

(a) “Unit” includes a regiment, corps, ship, detachment, group, battalion or Company,

(b) “Court-martial” includes any Tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situate within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial.

476. Forms.—Subject to the power conferred by article 227 of the Constitution, the forms set forth in the Second Schedule, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

477. Power of High Court to make rules.—(1) Every High Court may, with the previous approval of the State Government, make rules—

(a) as to the persons who may be permitted to act as petition-writers in the Criminal Courts subordinate to it;

(b) regulating the issue of licences to such persons, the conduct of business by them, and the scale of fees to be charged by them;

(c) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed;

(d) any other matter which is required to be, or may be, prescribed.

(2) All rules made under this section shall be published in the Official Gazette.

¹[**478. Power to alter functions allocated to Executive Magistrate in certain cases.**—If the Legislative Assembly of a State by a resolution so permits, the State Government may, after consultation with the High Court, by notification, direct that references in sections 108, 109, 110, 145 and 147 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class.]

STATE AMENDMENT

Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep

In the Code, as it applies to the Union territories to which this Regulation extends, in sections, 478, the words “if the State Legislature by a resolution so requires.” Shall be omitted.

[*Vide* The Code of Criminal Procedure (Amendment) Regulation, 1974 Act (1 of 1974) s. 6.]

479. Case in which Judge or Magistrate is personally interested.—No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party to, or personally interested in, any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

480. Practising pleader not to sit as Magistrate in certain Courts.—No pleader who practises in the Court of any Magistrate shall sit as a Magistrate in that Court or in any Court within the local jurisdiction of that Court.

STATE AMENDMENT

Karnataka

Insertion of new section 480A.—After section 480 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) the following Section shall be inserted, namely:—

“480A. Other powers of Magistrate.—Any Judicial Magistrate or Executive Magistrate shall be entitled to attest, verify or authenticate any document brought before him for the purpose of attestation, verification or authentication, as the case may be, and to affix seals thereon, as may be prescribed by any law for the time being in force.”.

[*Vide* Karnataka Act 35 of 1984, s. 2]

1. Subs. by Act 63 of 1980, s. 8, for s. 478 (w.e.f. 23-9-1980).

481. Public servant concerned in sale not to purchase or bid for property.—A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

482. Saving of inherent powers of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.—Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

484. Repeal and savings.—(1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as in force immediately before such commencement (hereinafter referred to as the old Code), as if this Code had not come into force:

Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code;

(b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Code and proceedings may be commenced under this Code in pursuance of such sanction or consent;

(d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of article 363 of the Constitution.

(3) Where the period prescribed for an application or other proceeding under the Old Code had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application to be made or proceeding to be commenced under this Code by reason only of the fact that a longer period therefor is prescribed by this Code or provisions are made in this Code for the extension of time.

THE FIRST SCHEDULE

CLASSIFICATION OF OFFENCES

EXPLANATORY NOTES:

(1) In regard to offences under the Indian Penal Code, the entries in the second and third columns against a section the number of which is given in the first column are not intended as the definition of, and the punishment prescribed for, the offence in the Indian Penal Code, but merely as indication of the substance of the section.

(2) In this Schedule, (i) the expression “Magistrate of the first class” and “Any Magistrate” include Metropolitan Magistrates but not Executive Magistrates; (ii) the word “cognizable” stands for “a police officer may arrest without warrant”; and (iii) the word “non-cognizable” stands for “a police officer shall not arrest without warrant”.

I.—OFFENCES UNDER THE INDIAN PENAL CODE

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or Non-bailable	By what Court triable
1	2	3	4	5	6

CHAPTER V.—ABETMENT

109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	Same as for offence abetted.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto	Ditto	Ditto.
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Same as for offence intended to be abetted.	Ditto	Ditto	Ditto.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Same as for offence committed.	Ditto	Ditto	Ditto.
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto	Ditto	Ditto	Ditto.
115	Abetment of an offence, punishable with death or imprisonment for life, if the offence be not committed in consequence of the abetment. If an act which causes harm be done in consequence of the abetment.	Imprisonment for 7 years and fine. Imprisonment for 14 years and fine.	Ditto	Non-bailable	Ditto.
116	Abetment of any offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment. If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Imprisonment extending to a quarter part of the longest term provided for the offence, or fine, or both. Imprisonment extending to half of the longest term provided for the offence, or fine, or both.	Ditto	According as offence abetted is bailable or non-bailable.	Ditto.

1	2	3	4	5	6
117	Abetting the commission of an offence by the public or by more than ten persons.	Imprisonment for 3 years, or fine, or both.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
118	Concealing a design to commit an offence punishable with death or imprisonment for life, if the offence be committed. If the offence be not committed	Imprisonment for 7 years and fine. Imprisonment for 3 years and fine.	Ditto Ditto	Non-bailable. Bailable.	Ditto. Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed. If the offence be punishable with death or imprisonment for life. If the offence be not committed.	Imprisonment extending to half of the longest term provided for the offence, or fine, or both. Imprisonment for 10 years. Imprisonment extending to a quarter part of the longest term provided for the offence, or fine, or both.	Ditto Ditto	According as offence abetted is bailable or non-bailable. Non-bailable. Bailable.	Ditto. Ditto. Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if offence be committed. If the offence be not committed.	Ditto Imprisonment extending to one-eighth part of the longest term provided for the offence, or fine, or both.	Ditto Ditto	According as offence abetted is bailable or non-bailable. Bailable.	Ditto. Ditto.

CHAPTER VA.—CRIMINAL CONSPIRACY

120B	Criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of 2 years or upwards. Any other criminal conspiracy.	Same as for abetment of the offence which is the object of the conspiracy. Imprisonment for 6 months, or fine, or both.	According as the offence which is the object of conspiracy is cognizable or non-cognizable.	According as offence which is object of conspiracy is bailable or non-bailable.	Court by which abetment of the offence which is the object of conspiracy is triable. Magistrate of the first class.
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CHAPTER VI.—OFFENCES AGAINST THE STATE

121	Waging or attempting to wage war, or abetting the waging of war, against the Government of India.	Death, or imprisonment for life and fine.	Cognizable.	Non-bailable.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
122	Collecting arms, etc., with the intention of waging war against the Government of India.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
124	Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.

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124A	Sedition	Imprisonment for life and fine, or imprisonment for 3 years and fine, or fine.	Cognizable	Non-bailable	Court of Session.
125	Waging war against any Asiatic power in alliance or at peace with the Government of India, or abetting the waging of such war.	Imprisonment for life and fine, or imprisonment for 7 years and fine, or fine.	Ditto	Ditto	Ditto.
126	Committing depredation on the territories of any power in alliance or at peace with the Government of India.	Imprisonment for 7 years and fine, and forfeiture of certain property.	Ditto	Ditto.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto.	Ditto	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or war in his custody to escape.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
129	Public servant negligently suffering prisoner of State of war in his custody to escape.	Simple imprisonment for 3 years and fine.	Ditto	Bailable	Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

131	Abetting mutiny, or attempting to seduce an officer, soldier, sailor or airman from his allegiance or duty.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Death, or imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
133	Abetment of an assault by an officer, soldier, sailor or airman on his superior officer, when in the execution of his office.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
135	Abetment of the desertion of an officer, soldier, sailor or airman.	Imprisonment for 2 years, or fine, or both.	Ditto	Bailable	Any Magistrate.
136	Harbouring such an officer, soldier, sailor or airman who has deserted.	Ditto	Ditto	Ditto	Ditto.
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Fine of 500 rupees.	Non-cognizable	Ditto.	Ditto.
138	Abetment of act of insubordination by an officer, soldier, sailor or airman, if the offence be committed in consequence.	Imprisonment for 6 months, or fine, or both.	Cognizable	Ditto.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, sailor or airman with intent that it may be believed that he is such a soldier, sailor or airman.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.	Ditto	Ditto

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY

143	Being member of an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable	Bailable	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Imprisonment for 2 years, or fine, or both.	Ditto	Bailable	Ditto
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto	Ditto	Ditto	Ditto.
147	Rioting.	Ditto	Ditto	Ditto	Ditto.

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148	Rioting, armed with a deadly weapon.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	The same as for the offence.	According as offence is cognizable or non-cognizable	According as offence is bailable or non-bailable	The Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Cognizable	Ditto	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Imprisonment for 6 months, or fine or both.	Ditto	Bailable	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, etc.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Any Magistrate.
	If not committed.	Imprisonment for 6 months, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
153A	Promoting enmity between classes.	Imprisonment for 3 years, or fine, or both.	Ditto	Non-bailable	Ditto
	Promoting enmity between classes in place of worship, etc.	Imprisonment for 5 years, and fine.	Ditto	Ditto	Ditto
¹ [153A A]	Knowingly carrying arms in any procession or organising or holding or taking part in any mass drill or mass training with arms.	Imprisonment for 6 months and fine of 2,000 rupees	Ditto	Ditto	Any Magistrate.]
153B	Imputations, assertions prejudicial to national integration.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	² [Magistrate of the first-class.] Ditto
	If committed in a place of public worship, etc.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto
154	Owner or occupier of land not giving information of riot, etc.	Fine of 1,000 rupees.	Non-cognizable	Bailable	Any Magistrate.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Fine	Ditto	Ditto	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	Ditto	Ditto	Ditto
157	Harbouring persons hired for an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable	Ditto	Ditto
158	Being hired to take part in an unlawful assembly or riot.	Ditto	Ditto	Ditto	Ditto
	Or to go armed.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
160	Committing affray	Imprisonment for one month, or fine of 100 rupees or both.	Ditto	Ditto	Ditto.

1. Ins. by Act 25 of 2005, s. 42 (date yet to be notified, see appendix)

2. Subs. by s. 42, for "Ditto", *ibid.* (date yet to be notified, see appendix)

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CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS					
161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Imprisonment for 3 years, or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Ditto	Ditto	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Simple imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Ditto.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	Ditto	Ditto	Ditto.
165A	Punishment for abetment of offences punishable under section 161 or section 165.	Ditto	Ditto	Ditto	Ditto.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Simple imprisonment for 1 year, or fine, or both.	Non-cognizable	Bailable	Ditto.
'[166A]	Public servant disobeying direction under law	Imprisonment for minimum 6 months which may extend to 2 years and fine.	Cognizable	Bailable	Magistrate of the first class
166B	Non-treatment of victim by hospital	Imprisonment for 1 year or fine or both.	Non-cognizable	Bailable	Magistrate of the first class.]
167	Public servant framing an incorrect document with intent to cause injury.	Imprisonment for 3 years, or fine, or both.	Cognizable	Ditto.	Ditto.
168	Public servant unlawfully engaging in trade.	Simple imprisonment for 1 year, or fine, or both.	Non-cognizable	Ditto	Ditto.
169	Public servant unlawfully buying or bidding for property.	Simple imprisonment for 2 years, or fine, or both and confiscation of property, if purchased.	Ditto.	Ditto.	Ditto.
170	Personating a public servant.	Imprisonment for 2 years or fine, or both.	Cognizable	Non-bailable	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Imprisonment for 3 months, or fine of 200 rupees, or both.	Ditto	Bailable	Ditto.
CHAPTER IXA.—OFFENCES RELATING TO ELECTIONS					
171E	Bribery.	Imprisonment for 1 year or fine, or both, or if treating only, fine only.	Non-cognizable	Ditto	Magistrate of the first class.
171F	Undue influence at an election.	Imprisonment for one year, or fine, or both.	Ditto	Ditto	Ditto.
	Personation at an election	Ditto	Cognizable	Ditto	Ditto.
171G	False statement in connection with an election.	Fine	Non-cognizable	Ditto	Ditto.
171H	Illegal payments in connection with elections.	Fine of 500 rupees.	Ditto.	Ditto.	Ditto.
171-I	Failure to keep election accounts.	Ditto	Ditto	Ditto	Ditto.

1. Ins. by Act 13 of 2013, s. 24 (w.e.f. 3-2-2013).

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CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS					
172	Absconding to avoid service of summons or other proceeding from a public servant.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Non-cognizable	Bailable	Any Magistrate.
	If summons or notice require attendance in person, etc., in a Court of Justice.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both	Ditto	Ditto	Ditto.
173	Preventing the service or the affixing of any summons of notice, or the removal of it when it has been affixed, or preventing a proclamation.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto.
	If summons, etc., require attendance in person, etc., in a Court of Justice.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both	Ditto	Ditto	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing there from without authority.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto.
	If the order requires personal attendance, etc., in a Court of Justice.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.
'[174A]	Failure to appear at specified place and specified time as required by a proclamation published under sub-section (1) of section 82 of this Code	Imprisonment for 3 years, or with fine, or with both	Cognizable	Non-bailable	Magistrate of the first class.
	In a case where declaration has been made under sub-section (4) of section 82 of this Code pronouncing a person as proclaimed offender	Imprisonment for 7 years and fine	Ditto	Ditto	Ditto].
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	² [Non-cognizable]	² [Bailable]	The Court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed, in a court, any Magistrate.
	If the document is required to be produced in or delivered to a Court of Justice.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.	Ditto.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto.	Ditto.	Any Magistrate.
	If the notice or information required respects the commission of an offence, etc.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.	Ditto.	Ditto.
	If the notice or information is required by an order passed under sub-section (1) of section 356 of this Code.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto	Ditto	Ditto	Ditto.
	If the information required respects the commission of an offence, etc.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto.

1. Ins. by Act 25 of 2005, s. 42 (w.e.f. 23-6-2006).

2. Subs. by s. 42, *ibid.*, for the word "Ditto", for the respective entries in column 4 and 5 relating to s.175 (w.e.f. 23-6-2006).

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178	Refusing oath when duly required to take oath by a public servant.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non-cognizable	Bailable	The Court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed in a Court, any Magistrate.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto	Ditto	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Any Magistrate..
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	Ditto	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto.
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale, or bidding without intending to perform the obligations incurred thereby.	Imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto	Ditto	Ditto.
186	Obstructing public servant in discharge of his public functions.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto	Ditto	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Cognizable	Ditto	Ditto.
	If such disobedience causes danger to human life, health or safety, etc.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.
189	Threatening a public servant with injury to him or one in whom he is interested, to induce him to do or forbear to do any official act.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Ditto	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Ditto.

1	2	3	4	5	6
CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE					
193	Giving or fabricating false evidence in a judicial proceeding.	Imprisonment for 7 years and fine.	Non-cognizable	Bailable	Magistrate of the first class.
	Giving or fabricating false evidence in any other case	Imprisonment for 3 years and fine.	Ditto	Ditto	Any Magistrate.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of capital offence.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of session.
	If innocent person be thereby convicted and executed.	Death, or as above.	Ditto	Ditto	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or with imprisonment for 7 years, or upwards.	The same as for the offence.	Ditto	Ditto	Ditto.
¹ [195A]	Threatening any person to give false evidence.	Imprisonment for 7 years, or fine, or both.	Cognizable	Ditto	Court by which offence of giving false evidence is triable.
	If innocent person is convicted and sentenced in consequence of false evidence with death, or imprisonment for more than seven years.	The same as for the offence.	Ditto	Ditto	Ditto]
196	Using in a judicial proceeding evidence known to be false or fabricated.	The same as for giving or fabricating false evidence.	² [Non-cognizable]	According as offence of giving such evidence is bailable or non-bailable.	Court by which offence of giving or fabricating false evidence is triable.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	Ditto	Bailable	Court by which offence of giving false evidence is triable.
198	Using as a true certificate one known to be false in a material point.	Ditto	Ditto	Ditto	Ditto.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto	Ditto	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto	Ditto	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Imprisonment for 7 years and fine.	According as the offence in relation to which disappearance of evidence is caused is cognizable or non-cognizable.	Ditto	Court of Session.
	If punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 3 years and fine.	Non-cognizable	Ditto	Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Imprisonment for a quarter of the longest term provided for the offence, or fine, or both.	Ditto	Ditto	Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Imprisonment for 6 months, or fine, or both.	Ditto	Ditto	Any Magistrate.
203	Giving false information respecting an offence committed.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto.

1. Ins. by Act 2 of 2006, s. 7 (w.e.f. 16-4-2006).

2. Subs. by s. 7, *ibid.* for the word "Ditto", occurring in column 4 relating to s.196 (w.e.f. 16-4-2006).

1	2	3	4	5	6
204	Secreting or destroying any document to prevent its production as evidence.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
206	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture or in satisfaction of a fine under sentence, or in execution of a decree.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
207	Claiming property without right, or practicing deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	Ditto	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto	Ditto	Ditto	Magistrate of the first class.
209	False claim in a Court of Justice.	Imprisonment for 2 years and fine.	Ditto	Ditto	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto.
211	False charge of offence made with intent to injure. If offence charged be punishable with imprisonment for 7 years or upwards.	Ditto Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
	If offence charged be capital or punishable with imprisonment for life.	Ditto	Ditto	Ditto	Court of Session.
212	Harbouring an offender, if the offence be capital. If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 5 years and fine. Imprisonment for 3 years and fine.	Cognizable Ditto	Ditto	Magistrate of the first class. Ditto.
	If punishable with imprisonment for 1 year and not for 10 years.	Imprisonment for a quarter of the longest term, and of the descriptions, provided for the offence, or fine, or both.	Ditto	Ditto	Ditto.
213	Taking gift, etc., to screen an offender from punishment if the offence be capital. If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 7 years and fine. Imprisonment for 3 years and fine.	Ditto Ditto	Ditto	Ditto.
	If punishable with imprisonment for less than 10 years.	Imprisonment for a quarter of the longest term provided for the offence, or fine, or both.	Ditto	Ditto	Ditto.
214	Offering gift or restoration of property in consideration of screening offender if the offence be capital. If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 7 years and fine. Imprisonment for 3 years and fine.	Non-cognizable Ditto	Ditto	Ditto.
	If punishable with imprisonment for less than 10 years.	Imprisonment for a quarter of the longest term, provided for the offence, or fine, or both.	Ditto	Ditto	Ditto.
215	Taking gift to help to recover movable property of which a person has been deprived by an offence without causing apprehension of offender.	Imprisonment for 2 years, or fine, or both.	Cognizable	Ditto	Ditto.

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216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital. If punishable with imprisonment for life or with imprisonment for 10 years. If punishable with imprisonment for 1 year and not for 10 years.	Imprisonment for 7 years and fine. Imprisonment for 3 years, with or without fine. Imprisonment for a quarter of the longest term provided for the offence, or fine, or both.	Cognizable Ditto Ditto	Bailable Ditto Ditto	Magistrate of the first class. Ditto. Ditto.
216A	Harbouring robbers or dacoits.	Rigorous imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Ditto	Any Magistrate.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Imprisonment for 3 years, or fine, or both.	Cognizable	Ditto	Magistrate of the first class.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Imprisonment for 7 years, or fine, or both.	Non- cognizable	Ditto	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	Ditto	Ditto	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital. If punishable with imprisonment for life or imprisonment for 10 years. If punishable with imprisonment for less than 10 years.	Imprisonment for 7 years, with or without fine. Imprisonment for 3 years, with or without fine. Imprisonment for 2 years, with or without fine.	According as the offence in relation to which such omission has been made is cognizable or non-cognizable. Cognizable Ditto	Ditto Ditto	Ditto. Ditto.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice if under sentence of death. If under sentence of imprisonment for life or imprisonment for 10 years, or upwards. If under sentence of imprisonment for less than 10 years or lawfully committed to custody.	Imprisonment for life, or imprisonment for 14 years, with or without fine. Imprisonment for 7 years, with or without fine. Imprisonment for 3 years, or fine, or both.	Ditto Ditto	Non-bailable Ditto Bailable	Court of Session. Magistrate of the first class. Ditto.
223	Escape from confinement negligently suffered by a public servant.	Simple imprisonment for 2 years, or fine, or both.	Non-cognizable	Ditto	Any Magistrate.
224	Resistance or obstruction by a person to his lawful apprehension.	Imprisonment for 2 years, or fine, or both.	Cognizable	Ditto	Ditto.
225	Resistance or obstruction to the lawful apprehension of any person, or rescuing him from lawful custody. If charged with an offence punishable with imprisonment for life or imprisonment for 10 years.	Ditto Imprisonment for 3 years and fine.	Ditto	Ditto Non-bailable	Ditto. Magistrate of the first class.
	If charged with a capital offence.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.

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	If the person is sentenced to imprisonment for life, or imprisonment for 10 years, or upwards.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
	If under sentence of death	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
225A	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for:— (a) in case of intentional omission or sufferance; (b) in case of negligent omission or sufferance.	Imprisonment for 3 years, or fine, or both. Simple imprisonment for 2 years, or fine, or both.	Non-cognizable Ditto	Bailable Ditto	Magistrate of the first class. Any Magistrate.
225B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	Imprisonment for 6 months, or fine, or both.	Cognizable	Ditto	Ditto.
227	Violation of condition of remission of punishment.	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	Ditto	Non-bailable	The Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non-cognizable	Bailable	The Court in which the offence is committed subject to the provisions of Chapter XXVI.
¹ [228A]	Disclosure of identity of the victim of certain offences, etc. Printing or publication of a proceeding without prior permission of court.	Imprisonment for two years and fine. Ditto	Cognizable Ditto	Ditto	Any Magistrate. Ditto.]
229	Personation of a juror or assessor.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Ditto	Magistrate of the first class.
² [229A]	Failure by person released on bail or bond to appear in Court	Imprisonment for 1 year, or fine, or both	Cognizable	Non-bailable	Any Magistrate.]

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
232	Counterfeiting, or performing any part of the process of counterfeiting, Indian coin.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting Indian coin.	Imprisonment for 7 years and fine.	Ditto	Ditto	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin. If Indian coin.	Imprisonment for 3 years and fine. Imprisonment for 10 years and fine.	Ditto	Ditto	Magistrate of the first class. Court of Session.

1. Ins. by Act 43 of 1983, s. 5 (w.e.f. 25.12.1983).

2. Ins. by Act 25 of 2005, s. 42 (w.e.f. 23-6-2006).

1	2	3	4	5	6
236	Abetting, in India, the counterfeiting, out of India, of coin.	The punishment provided for abetting the counterfeiting of such coin within India.	Cognizable	Non-bailable	Court of Session.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
238	Import or export of counterfeit of Indian coin, knowing the same to be counterfeit.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, etc., the same to any person.	Imprisonment for 5 years and fine.	Ditto	Ditto	Magistrate of the first class.
240	Same with respect to Indian coin.	Imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
241	Knowingly delivering to another any counterfeit coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.	Imprisonment for 2 years, or fine, or 10 times the value of the coin counterfeited, or both.	Ditto	Ditto	Any Magistrate.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
243	Possession of Indian coin by a person who knew it to be counterfeit when he became possessed thereof.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto	Ditto	Ditto	Ditto.
245	Unlawfully taking from a Mint any coining instrument.	Ditto	Ditto	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of Indian coin.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto.
247	Fraudulently diminishing the weight or altering the composition of Indian coin.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto.
249	Altering appearance of Indian coin with intent that it shall pass as a coin of a different description.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto.
251	Delivery of Indian coin possessed with the knowledge that it is altered.	Imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
253	Possession of Indian coin by a person who knew it to be altered when he became possessed thereof.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Imprisonment for 2 years or fine, or 10 times the value of the coin.	Ditto	Ditto	Any Magistrate.
255	Counterfeiting a Government stamp.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Imprisonment for 7 years and fine.	Ditto	Ditto	Magistrate of the first class.

1	2	3	4	5	6
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
258	Sale of counterfeit Government stamp.	Ditto	Ditto	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto	Ditto	Bailable	Ditto.
260	Using as genuine a Government stamp known to be counterfeit.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, removing from a document a stamp used for it, with intent to cause a loss to Government.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
262	Using a Government stamp known to have been before used.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
263	Erasure of mark denoting that stamps have been used.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
263A	Fictitious stamps	Fine of 200 rupees	Ditto	Ditto	Any Magistrate.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES

264	Fraudulent use of false instrument for weighing.	Imprisonment for 1 year, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
265	Fraudulent use of false weight or measure.	Ditto	Ditto	Ditto	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto	Ditto	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto.	Cognizable	Non-bailable	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	Imprisonment for 6 months, or fine, or both.	Cognizable	Bailable	Any Magistrate.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto.
271	Knowingly disobeying any quarantine rule.	Imprisonment for 6 months, or fine, or both.	Non-cognizable	Ditto	Ditto.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.
273	Selling any food or drink as food and drink, knowing the same to be noxious.	Ditto.	Ditto.	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto	Ditto	¹ [Non-bailable]	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto	Ditto	² [Bailable]	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	Ditto	Ditto	Ditto.

1. Subs. by Act 25 of 2005, s. 42(f)(i), for the word “Ditto”, occurring in column 5 relating to s. 274 (w.e.f. 23-6-2006).

2 . Subs. by s. 42 (f) (ii), *ibid.*, for the word “Ditto”, occurring in column 5 relating to s. 275 (w.e.f. 23-6-2006).

1	2	3	4	5	6
277	Defiling the water of a public spring or reservoir.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Cognizable	Bailable	Any Magistrate.
278	Making atmosphere noxious to health.	Fine of 500 rupees	Non-cognizable	Ditto	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Cognizable	Ditto	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	Ditto	Ditto	Ditto	Ditto.
281	Exhibition of a false light, mark or buoy.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Any Magistrate.
283	Causing danger, obstruction or, injury in any public way or line of navigation.	Fine of 200 rupees.	Ditto	Ditto	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, etc.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, etc.	Ditto	Ditto	Ditto	Ditto.
286	So dealing with any explosive substance.	Ditto	Ditto	Ditto	Ditto.
287	So dealing with any machinery.	Ditto	Non-cognizable	Ditto	Ditto.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto	Ditto	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	Ditto	Cognizable	Ditto	Ditto.
290	Committing a public nuisance.	Fine of 200 rupees	Non-cognizable	Ditto	Ditto.
291	Continuance of nuisance after injunction to discontinue.	Simple imprisonment for 6 months, or fine, or both.	Cognizable	Ditto	Ditto.
292	Sale, etc., of obscene books, etc.	On first conviction, with imprisonment for 2 years, and with fine of 2,000 rupees, and, in the event of second or subsequent conviction, with imprisonment for five years, and with fine of 5,000 rupees.	Ditto	Ditto	Ditto.
293	Sale, etc., of obscene objects to young persons.	On first conviction, with imprisonment for 3 years, and with fine of 2,000 rupees, and in the event of second or subsequent conviction, with imprisonment for 7 years, and with fine of 5,000 rupees.	Ditto	Ditto	Ditto.
294	Obscene songs	Imprisonment for 3 months, or fine or both.	Ditto	Ditto	Ditto.
294A	Keeping a lottery office	Imprisonment for 6 months, or fine, or both.	Non-cognizable	Ditto	Ditto.
	Publishing proposals relating to lotteries.	Fine of 1,000 rupees	Ditto	Ditto	Ditto.

1	2	3	4	5	6
CHAPTER XV.—OFFENCES RELATING TO RELIGION					
295	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	Imprisonment for 2 years, or fine or both.	Cognizable	Non-Bailable	Any Magistrate.
295A	Maliciously insulting the religion or the religious beliefs of any class.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
296	Causing a disturbance to an assembly engaged in religious worship.	Imprisonment for 1 year, or fine, or both.	Ditto	Bailable	Any Magistrate.
297	Trespassing in place of worship or sepulcher, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto	Ditto	Ditto	Ditto.
298	Uttering any word or making any sound in the hearing or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feeling.	Ditto	Non-cognizable	Ditto	Ditto.
CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY					
302	Murder	Death, or imprisonment for life, and fine.	Cognizable	Non-bailable	Court of Session.
303	Murder by a person under sentence of imprisonment for life.	Death	Ditto	Ditto	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc. If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Imprisonment for life, or imprisonment for 10 years and fine. Imprisonment for 10 years, or fine, or both.	Ditto	Ditto	Ditto.
304A	Causing death by rash or negligent act.	Imprisonment for 2 years, or fine, or both.	Ditto	Bailable	Magistrate of the first class.
¹ [304B]	Dowry death.	Imprisonment of not less than seven years but which may extend to imprisonment for life.	Ditto	Non-bailable	Court of Session.]
305	Abetment of suicide committed by child, or insane or delirious person or an idiot, or a person intoxicated.	Death, or imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
306	Abetting the commission of suicide.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
307	Attempt to murder If such act causes hurt to any person.	Ditto Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
	Attempt by life-convict to murder, if hurt is caused.	Death, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
308	Attempt to commit culpable homicide If such act causes hurt to any person	Imprisonment for 3 years, or fine, or both. Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Ditto.

1. Ins. by Act 43 of 1986, s. 11 (w.e.f. 19.11.1986).

1	2	3	4	5	6
309	Attempt to commit suicide.	Simple imprisonment for 1 year, or fine, or both.	Cognizable	Bailable	Any Magistrate.
311	Being a thug.	Imprisonment for life and fine.	Ditto	Non-bailable	Court of Session.
312	Causing miscarriage. If the woman be quick with child.	Imprisonment for 3 years, or fine, or both. Imprisonment for 7 years and fine.	Non-cognizable Ditto	Bailable Ditto	Magistrate of the first class. Ditto.
313	Causing miscarriage without women's consent.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
314	Death caused by an act done with intent to cause miscarriage. If act done without women's consent.	Imprisonment for 10 years and fine. Imprisonment for life, or as above.	Ditto Ditto	Ditto Ditto	Ditto. Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Imprisonment for 10 years, or fine, or both.	Ditto	Ditto	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	Imprisonment for 7 years, or fine, or both.	Ditto	Bailable	Magistrate of the first class.
318	Concealment of birth by secret disposal of dead body.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto.
323	Voluntarily causing hurt.	Imprisonment for 1 year or fine of 1,000 rupees, or both.	Non-cognizable	Ditto	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	Imprisonment for 3 years, or fine, or both.	Cognizable	Ditto	Ditto.
325	Voluntarily causing grievous hurt.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Non-bailable	Magistrate of the first class.
326A	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment for not less than 10 years but which may extend to imprisonment for life and fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session
326B	Voluntarily throwing or attempting to throw acid.	Imprisonment for 5 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session.]
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
328	Administering stupefying drug with intent to cause hurt, etc.	Ditto	Ditto	Ditto	Court of Session.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Imprisonment for 7 years and fine.	Ditto	Bailable	Magistrate of the first class.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc.	Imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of Session.
332	Voluntarily causing hurt to deter public servant from his duty.	Imprisonment for 3 years or fine or both.	Ditto	² [Ditto]	Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Imprisonment for 10 years and fine.	Ditto	³ [Ditto]	Court of Session.

1. Ins. by Act 13 of 2013, s. 24 (w.e.f. 3-2-2013).

2. Subs. by Act 25 of 2005, s. 42(f)(v), occurring in column 5, relating to s. 332, for "Bailable" (w.e.f. 23-6-2006).

3. Subs. by s. 42(f)(vi), *ibid.*, occurring in column 5, relating to s. 333, for "Non-bailable", (w.e.f. 23-6-2006).

1	2	3	4	5	6
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 1 month, or fine of 500 rupees, or both.	Non-cognizable	Bailable	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 4 years, or fine of 2,000 rupees, or both.	Cognizable	Ditto	Magistrate of the first class.
336	Doing any act which endangers human life or the personal safety of others.	Imprisonment for 3 months, or fine of 250 rupees, or both.	Ditto	Ditto	Any Magistrate.
337	Causing hurt by an act which endangers human life, etc.	Imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto.
338	Causing grievous hurt by an act which endangers human life, etc.	Imprisonment for 2 years, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.
341	Wrongfully restraining any person.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto.
342	Wrongfully confining any person.	Imprisonment for 1 year, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.
343	Wrongfully confining for three or more days.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto.
344	Wrongfully confining for 10 or more days.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Imprisonment for 2 years, in addition to imprisonment under any other section.	Ditto	Ditto	Magistrate of the first class.
346	Wrongful confinement in secret.	Ditto	Ditto	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, etc.	Imprisonment for 3 years and fine.	Ditto	Ditto	Any Magistrate.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc.	Ditto	Ditto	Ditto	Ditto.
352	Assault or use of criminal force otherwise than on grave provocation.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Non-cognizable	Ditto	Ditto.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	Imprisonment for 2 years, or fine, or both.	Cognizable	¹ [Non-bailable]	Ditto.
² [354]	Assault or use of criminal force to woman with intent to outrage her modesty.	Imprisonment of 1 year which may extend to 5 years, and with fine.	Cognizable	Non-bailable	Any Magistrate
354A	Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours, showing pornography.	Imprisonment which may extend to 3 years or with fine or with both.	Cognizable	Bailable	Any Magistrate
	Sexual harassment of the nature of making sexually coloured remark.	Imprisonment which may extend to 1 year or with fine or with both.	Cognizable	Bailable	Any Magistrate.
354B	Assault or use of criminal force to woman with intent to disrobe.	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Any Magistrate.
354C	Voyeurism.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate.
		Imprisonment of not less than 3 years but which may extend 7 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate
354D	Stalking.	Imprisonment up to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate.
		Imprisonment up to 5 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate.]
355	Assault or criminal force with intent to dishonor a person, otherwise than on grave and sudden provocation.	Ditto	Non-cognizable	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	Ditto	Cognizable	Ditto	Ditto.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Imprisonment for 1 year, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Simple imprisonment for one month, or fine of 200 rupees, or both.	Non-cognizable	Ditto	Ditto.
363	Kidnapping	Imprisonment for 7 years and fine.	Cognizable	Ditto	Magistrate of the first class.

1. Subs. by Act 25 of 2005, s. 42 (f) (vii), occurring in column 5, relating to s. 353, for "Ditto" (w.e.f. 23-6-2006).
 2. Subs. by Act 13 of 2013, s. 24, for entry relating to s. 354 (w.e.f. 3-2-2013).

1	2	3	4	5	6
363A	Kidnapping or obtaining the custody of a minor in order that such minor may be employed or used for purposes of begging. Maiming a minor in order that such minor may be employed or used for purposes of begging.	Imprisonment for 10 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Imprisonment for life and fine. Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto Ditto	Ditto Ditto	Court of Session. Ditto.
¹ [364A]	Kidnapping for ransom, etc.	Death, or imprisonment for life and fine.	Ditto	Ditto	Ditto.]
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Imprisonment for 7 years and fine.	Ditto	Ditto	Magistrate of the first class.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	Imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
366A	Procurement of a minor girl.	Ditto	Ditto	Ditto	Ditto.
366B	Importation of a girl from foreign country.	Ditto	Ditto	Ditto	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Ditto	Ditto	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Punishment for kidnapping or abduction.	Ditto	Ditto	Court by which the kidnapping or abduction is triable.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Imprisonment for 7 years and fine.	Ditto	Ditto	Magistrate of the first class.
² [370]	Trafficking of person. Trafficking of more than one person. Trafficking of a minor. Trafficking of more than one minor. Person convicted of offence of trafficking of minor on more than one occasion. Public servant or a police officer involved in trafficking of minor.	Imprisonment of not less than 7 years but which may extend to 10 years and with fine. Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine. Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine. Imprisonment of not less than 14 years but which may extend to imprisonment for life and with fine. Imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable Cognizable Cognizable Cognizable Cognizable	Non-bailable Non-bailable Non-bailable Non-bailable Non-bailable	Court of Session. Court of Session. Court of Session. Court of Session. Court of Session.
370A	Exploitation of a trafficked child. Exploitation of a trafficked person.	Imprisonment of not less than 5 years but which may extend to 7 years and with fine. Imprisonment of not less than 3 years but which may extend to 5 years and with fine.	Cognizable Cognizable	Non-bailable Non-bailable	Court of Session. Court of Session.]

1. Ins. by Act 42 of 1993, s. 4, (w.e.f. 22-5-1993).

2. Subs. by Act 13 of 2013, s. 24, for entries relating to s. 370 (w.e.f. 3-2-2013).

1	2	3	4	5	6
371	Habitual dealing in slaves.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
372	Selling or letting to hire a minor for purposes of prostitution, etc.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto	Ditto	Ditto	Ditto.
374	Unlawful compulsory labour.	Imprisonment for 1 year, or fine, or both.	Ditto	Bailable	Any Magistrate.
¹ [²]376	Rape.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	Rape by a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.
	Persons committing offence of rape on a woman under sixteen years of age.	Rigorous imprisonment for a term which shall not be less than 20 years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.]
376A	Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state.	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.
³ [376AB]	Person committing an offence of rape on a woman under twelve years of age.	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for that person's natural life and with fine or with death.	Cognizable	Non-bailable	Court of Session.]

1. Subs. by Act 13 of 2013, s. 24, for entries relating to ss. 376, 376A, 376B, 376C and 376D (w.e.f. 3-2-2013).

2. Subs. by Act 22 of 2018, s. 24, for entry 376 (w.e.f. 21-4-2018).

3. Ins. by s. 24, *ibid.* (w.e.f. 21-4-2018).

1	2	3	4	5	6
376B	Sexual intercourse by husband upon his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and with fine.	Cognizable	Bailable	Court of Session.
376C	Sexual intercourse by a person in authority.	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
376D	Gang rape	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session.
¹ [376DA	Gang rape on a woman under sixteen years of age.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.
376DB	Gang rape on woman under twelve years of age.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or with death.	Cognizable	Non-bailable	Court of Session.]
376E	Repeat offenders.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.]
² [377	Unnatural offences	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.]

CHAPTER XVII.—OFFENCES AGAINST PROPERTY

379	Theft	Imprisonment for 3 years, or fine, or both.	Cognizable	Non-bailable	Any Magistrate.
380	Theft in a building, tent or vessel	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto	Ditto	Ditto	Ditto.
382	Theft, after preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it.	Rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Magistrate of the first class.

1. Ins. by Act 22 of 2018, s. 24 (w.e.f. 21-4-2018).

2. Subs. by Act 30 of 2001, s. 3 and the Second Sch., for the entries relating to s. 377 (w.e.f. 3-9-2001).

1	2	3	4	5	6
384	Extortion	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Imprisonment for 2 years, or fine, or both.	Ditto	Bailable	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Imprisonment for 10 years and fine.	Ditto	Non-bailable	Magistrate of the first class.
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years.	Imprisonment for 10 years and fine.	Ditto	Bailable	Ditto.
	If the offence threatened be an unnatural offence.	Imprisonment for life	Ditto	Ditto	Ditto.
389	Putting a person in fear of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years in order to commit extortion.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
	If the offence be an unnatural offence.	Imprisonment for life.	Ditto	Ditto	Ditto.
392	Robbery	Rigorous imprisonment for 10 years and fine.	Ditto	Non-bailable	Ditto.
	If committed on the highway between sunset and sunrise.	Rigorous imprisonment for 14 years and fine.	Ditto	Ditto	Ditto.
393	Attempt to commit robbery.	Rigorous imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
395	Dacoity	Ditto	Ditto	Ditto	Court of Session.
396	Murder in dacoity	Death, imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Rigorous imprisonment for not less than 7 years.	Ditto	Ditto	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto	Ditto	Ditto	Ditto.
399	Making preparation to commit dacoity.	Rigorous imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Rigorous imprisonment for 7 years and fine.	Ditto	Ditto	Magistrate of the first class.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto	Ditto	Ditto	Court of Session.

1	2	3	4	5	6
403	Dishonest misappropriation of movable property, or converting it to one's own use.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it. If by clerk or person employed by deceased	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class..
406	Criminal breach of trust	Imprisonment for 3 years, or fine, or both.	Cognizable	Non-bailable	Ditto.
407	Criminal breach of trust by a carrier, wharfinger, etc.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto	Ditto	Ditto
409	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
411	Dishonestly receiving stolen property knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
413	Habitually dealing in stolen property.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
417	Cheating	Imprisonment for 1 year, or fine, or both.	Non-cognizable	Bailable	Ditto.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto.
419	Cheating by personation .	Ditto	Cognizable	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Imprisonment for 7 years and fine.	Ditto	Non-bailable	Magistrate of the first class.
421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto	Ditto	Ditto	Ditto.
424	Fraudulent removal or concealment of property, of himself or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto	Ditto	Ditto	Ditto.

1	2	3	4	5	6
426	Mischief	Imprisonment for 3 months or fine, or both.	Ditto	Ditto	Ditto.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	Ditto	Cognizable	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Imprisonment for 5 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
430	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Ditto	Ditto	Ditto	Ditto.
431	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Ditto	Ditto	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto	Ditto	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Ditto.
434	Mischief by destroying or moving, etc., a landmark fixed by public authority.	Imprisonment for 1 year, or fine, or both.	Non-cognizable	Ditto	Any Magistrate.
435	Mischief by fire or explosive substance with intent to cause damage to an amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	Imprisonment for 7 years and fine.	Cognizable	Ditto	Magistrate of the first class.
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of Session.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tonnes burden.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
439	Running vessel ashore with intent to commit theft, etc.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
440	Mischief committed after preparation made for causing death, or hurt, etc.	Imprisonment for 5 years and fine.	Ditto	Bailable	Magistrate of the first class.
447	Criminal trespass	Imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto	Ditto	Any Magistrate.
448	House-trespass	Imprisonment for 1 year, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto.

1	2	3	4	5	6
449	House-trespass in order to the commission of an offence punishable with death.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
450	House-trespass in order to the commission of an offence punishable with imprisonment for life.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment. If the offence is theft	Imprisonment for 2 years and fine. Imprisonment for 7 years and fine.	Ditto Ditto	Bailable Non-bailable	Any Magistrate. Ditto.
452	House-trespass, having made preparation for causing hurt, assault, etc.	Ditto	Ditto	Ditto	Ditto.
453	Lurking house-trespass or house-breaking.	Imprisonment for 2 years and fine.	Ditto	Ditto	Ditto.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment. If the offence be theft	Imprisonment for 3 years and fine. Imprisonment for 10 years and fine.	Ditto Ditto	Ditto	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	Ditto	Ditto	Ditto	Ditto.
456	Lurking house-trespass or house-breaking by night.	Imprisonment for 3 years and fine.	Ditto	Ditto	Any Magistrate.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment. If the offence is theft	Imprisonment for 5 years and fine. Imprisonment for 14 years and fine.	Ditto Ditto	Ditto	Magistrate of the first class.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, etc.	Ditto	Ditto	Ditto	Ditto.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	Ditto	Ditto	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Imprisonment for 2 years or fine, or both.	Ditto	Ditto	Any Magistrate.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Imprisonment for 3 years or fine, or both.	Ditto	Bailable	Ditto

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

465	Forgery	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class.
466	Forgery of a record of a Court of Justice or of a Registrar of Births, etc., kept by a public servant.	Imprisonment for 7 years and fine	Ditto	Non-bailable	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, etc. When the valuable security is a promissory note of the Central Government.	Imprisonment for life, or imprisonment for 10 years and fine. Ditto	Ditto	Ditto	Ditto.
			Cognizable	Ditto	Ditto.

1	2	3	4	5	6
468	Forgery for the purpose of cheating.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
469	Forgery for the purpose of harming the reputation of any person or knowing that it is likely to be used for that purpose.	Imprisonment for 3 years and fine.	Ditto	Bailable	Ditto.
471	Using as genuine a forged document which is known to be forged. When the forged document is a promissory note of the Central Government.	Punishment for forgery of such document. Ditto	Ditto	Ditto	Ditto.
472	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Imprisonment for life, or imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
473	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code. If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto. Imprisonment for life, or imprisonment for 7 years and fine.	Ditto.	Ditto	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Imprisonment for 7 years and fine.	Ditto	Non-bailable	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc.	Imprisonment for life, or imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
477A	Falsification of accounts.	Imprisonment for 7 years or fine, or both.	Ditto	Bailable	Ditto.
482	Using a false property mark with intent to deceive or injure any person.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Any Magistrate.
483	Counterfeiting a property mark used by another, with intent to cause damage or injury.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto.
484	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property mark.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.

1	2	3	4	5	6
486	Knowingly selling goods marked with a counterfeit property mark.	Imprisonment for 1 year, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods, which it does not contain, etc.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto.
488	Making use of any such false mark.	Ditto	Ditto	Ditto	Ditto.
489	Removing, destroying or defacing property mark with intent to cause injury.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Ditto.
489A	Counterfeiting currency-notes or bank-notes.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
489B	Using as genuine forged or counterfeit currency-notes or bank-notes.	Ditto	Ditto	Ditto	Ditto.
489C	Possession of forged or counterfeit currency-notes or bank-notes.	Imprisonment for 7 years, or fine, or both.	Ditto	Bailable	Ditto.
489D	Making or possessing machinery, instrument or material for forging or counterfeiting currency-notes or bank-notes.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Non-bailable	Ditto.
489E	Making or using documents resembling currency-notes or bank-notes.	Fine of 100 rupees.	Non-cognizable	Bailable	Any Magistrate.
	On refusal to disclose the name and address of the printer.	Fine of 200 rupees.	Ditto	Ditto	Ditto.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE

491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Imprisonment for 3 months, or fine of 200 rupees, or both.	Non-cognizable	Bailable	Any Magistrate.
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CHAPTER XX.—OFFENCES RELATING TO MARRIAGE

493	A man by deceit causing a woman not lawfully married to him to believe, that she is lawfully married to him and to cohabit with him in that belief.	Imprisonment for 10 years and fine.	Non-cognizable	Non-bailable	Magistrate of the first class.
494	Marrying again during the life time of a husband or wife.	Imprisonment for 7 years and fine.	Ditto	Bailable	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto.
497	Adultery	Imprisonment for 5 years, or fine, or both.	Ditto	Ditto	Ditto.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.

1	2	3	4	5	6
¹ [CHAPTER XXA.—OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND]					
498A	Punishment for subjecting a married woman to cruelty.	Imprisonment for three years and fine.	Cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf.	Non-bailable	Magistrate of the first class.]
CHAPTER XXI.—DEFAMATION					
500	Defamation against the President or the Vice-President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Simple imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Court of Session.
	Defamation in any other case	Ditto	Ditto	Ditto	Magistrate of the first class.
501(a)	Printing or engraving matter knowing it to be defamatory against the President or the Vice-President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Ditto	Ditto	Ditto	Court of Session.
(b)	Printing or engraving matter knowing it to be defamatory, in any other case.	Ditto	Ditto	Ditto	Magistrate of the first class.
502(a)	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President or the Vice-President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Ditto	Ditto	Ditto	Court of Session.
(b)	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter in any other case.	Ditto	Ditto	Ditto	Magistrate of the first class.

1. Ins. by Act 46 of 1983, s. 6 (w.e.f. 25-12-1983).

1	2	3	4	5	6
CHAPTER XXII.—CRIMINAL INTIMIDATIONS, INSULT AND ANNOYANCE					
504	Insult intended to provoke breach of the peace.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
505	False statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace.	Imprisonment for 3 years, or fine, or both.	Ditto	Non-bailable	Ditto.
	False statement, rumour, etc., with intent to create enmity, hatred or ill-will between different classes.	Ditto	Cognizable	Ditto	Ditto.
	False statement, rumour, etc., made in place of worship, etc., with intent to create enmity, hatred or ill-will.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto.
506	Criminal intimidation.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Ditto.
	If threat be to cause death or grievous hurt, etc.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Imprisonment for 2 years, in addition to the punishment under above section.	Ditto	Ditto	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Any Magistrate.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	[Simple imprisonment for 3 years and with fine.]	Cognizable	Ditto	Ditto.
510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Non-cognizable	Ditto	Ditto.

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES

511	Attempting to commit offences punishable with imprisonment for life, or imprisonment, and in such attempt doing any act towards the commission of the offence.	Imprisonment for life, or imprisonment not exceeding half of the longest term, provided for the offence, or fine, or both	According as the offence is cognizable or non-cognizable.	According as the offence attempted by the offender is bailable or not.	The court by which the offence attempted is triable.
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II.—CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years	Ditto	Ditto	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate.

1. Subs. by Act 13 of 2013, s. 24, for the word “Simple imprisonment for 1 year, or fine, or both,” occurring made in column 3, relating to s. 509 (w.e.f. 3-2-2013).

STATE AMENDMENTS

Chhattisgarh

In First Schedule to the Code, under the heading “1. —OFFENCES UNDER THE INDIAN PENAL CODE, 1860”

(a) In the entries relating to Section 211, the following entries shall be added, namely: —

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
(1)	(2)	(3)	(4)	(5)	(6)
...	If offence charged be punishable under Ss. 354, 354A, 354B, 354C, 354D, 354E, 376B, 376C, 376F, 509, 509A or 509B.	Imprisonment not less than 3 years but which may extend to 5 years and fine.	Non-Cognizable	Bailable	Magistrate of the first class.

(b) In the entries relating to Section 354, the following entries shall be added, namely: —

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
(1)	(2)	(3)	(4)	(5)	(6)
...	If committed by relative of the woman.	Imprisonment not less than 2 years but which may extend to 7 years and fine.	Cognizable	Non-Bailable	Magistrate of the first class.

(C) After the entries relating to Section 354D, the following shall be inserted, namely: —

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
(1)	(2)	(3)	(4)	(5)	(6)
354E	Liability of person present who fails to prevent the commission of offence under Ss. 354, 354A, 354B, 354C or 354D.	Imprisonment upto 3 years or fine or both.	Cognizable	Bailable	Any Magistrate.

(d) After the entries relating of Section 376E, the following shall be inserted, namely: —

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
(1)	(2)	(3)	(4)	(5)	(6)
376F	Liability of person in-charge of any work	Imprisonment upto 3	Cognizable	Non-	Magistrate of

place and others to give information about offence.	years and fine.	Bailable	first class.
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(e) After the entries relating to Section 509, the following shall be inserted, namely: —

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
(1)	(2)	(3)	(4)	(5)	(6)
509A	Sexual harassment by relative.	Rigorous imprisonment not less than 1 year but which may extend upto 5 years and fine.	Cognizable	Non-Bailable	Magistrate of first class.
509B	Sexual harassment by electronic modes.	Rigorous imprisonment not less than 6 months but which may extend upto 2 years and fine.	Cognizable	Non-Bailable	Magistrate of first class.]

[Vide Chhattisgarh Act 25 of 2015, s. 13]

Gujarat

In the Code of Criminal Procedure, 1973, in the First Schedule, in the table, under the heading “Chapter XVII-Offences against Property”, after section 379, the following shall be inserted, namely: —

Section	Offence	Punishment	Cognizable or Non-cognizable	Bailable or Non-bailable	By what court triable
(1)	(2)	(3)	(4)	(5)	(6)
“379A	Attempt to commit snatching	Rigorous imprisonment of not less than five years but which may extend to ten years, and fine of 25,000 rupees.	Cognizable	Non-bailable	Court of Session
	Committing snatching	Rigorous imprisonment of not less than seven years but which may extend to ten years, and fine of 25,000 rupees.	Ditto	Ditto	Ditto.
	Causing hurt or wrongful restraint or fear of hurt, in order to effect escape after attempting to commit or after committing snatching	Rigorous imprisonment which may extend to three years, in addition to punishment under other sub-sections.	Ditto	Ditto	Ditto.

379B	Snatching, after preparation having been made for causing death, or hurt, or restraint, in order to the committing of such snatching, or to retaining property taken by it.	Rigorous imprisonment if not less than seven years but which may extend to ten years, and fine of 25,000 rupees.	Ditto	Ditto	Ditto.”.
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[Vide Gujarat Act 6 of 2019, s. 3.]

Madhya Pradesh

Amendment of First Schedule.- In the First Schedule to the principal Act, under the heading “I-OFFENCES UNDER THE INDIAN PENAL CODE”, after the entries relating to section 354, the following entries shall be inserted, namely:-

Section	Offence	Punishment	Cognizable or Non-cognizable	Bailable or Non-bailable	By what court triable
(1)	(2)	(3)	(4)	(5)	(6)
“354-A	Assault or use of Criminal force to woman with intent to disrobe her.	Imprisonment of not less than one year but which may extend to ten years and fine.	Cognizable	Non-bailable	Court of Session”

[Vide Madhya Pradesh Act 15 of 2004, s. 5.]

Madhya Pradesh

Amendment of the First Schedule.—In the First Schedule to the principal Act, under the heading “I-Offences under the Indian Penal Code”, in column 6 against section 317, 318, 326, 363, 363A, 365, 377, 392, 393, 394, 409, 435, 466, 467, 468, 471, 472, 473, 474, 475, 476, 477 and 477A, for the words, “Magistrate of the first class”, wherever they occur, the words “Court of Session” shall be substituted.

[Vide Madhya Pradesh Act 2 of 2008, s. 4.]

Maharashtra

In the First Schedule to the Code of Criminal Procedure, under heading “I,- OFFENCES UNDER THE INDIAN PENAL CODE”,-

(i) for the entry relating to section 332, the following entry shall be substituted, namely:—

Section	Offence	Punishment	Cognizable or Non-cognizable	Bailable or Non-bailable	By what court triable
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(1)	(2)	(3)	(4)	(5)	(6)
“332	Voluntarily causing hurt to deter public servant from his duty.	Imprisonment for 5 years or fine, or both.	Cognizable	Non- bailable	Court of Session.”;

(ii) for the entry relating to section 353, the following entry shall be substituted, namely:—

Section	Offence	Punishment	Cognizable or Non-cognizable	Bailable or Non-bailable	By what court triable
(1)	(2)	(3)	(4)	(5)	(6)
“353	Assault or use of criminal force to deter a public servant from discharge of his duty.	Imprisonment for five years, or fine, or both.	Cognizable	Non-bailable	Court of Session.”.

[Vide Maharashtra Act 40 of 2018, s. 5.]

Haryana

1. This Act may be called the Code of Criminal Procedure (Haryana Amendment) Act, 2014. Short title

2. In the Code of Criminal Procedure, 1973 in its application to the State of Haryana, in the First Schedule, in the table, after section 379, the following entries shall be inserted, namely:— Amendment of First Schedule to Central Act 2 of 1974

1	2	3	4	5	6
	“379-A	Snatching	Rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and fine of Rs. 25,000/-	Cognizable	Non-bailable Court of Session
	379-B	Snatching with hurt or wrongful restraint or fear of hurt.	Rigorous imprisonment for a term which shall not be less than ten years and which may extend to fourteen years, and	Ditto	Ditto”.

fine of Rs.
25,000/-

[*Vide* Notification No. GSR929(E) dated 16th December, 2019.]

Himachal Pradesh

Amendment of Central Act No. 2 of 1974.—In the First Schedule to the Code of Criminal Procedure, 1973, under the heading “I. OFFENCES UNDER THE INDIAN PENAL CODE” after the entries relating to section 304-A, the following entries shall be inserted, namely:—

1	2	3	4	5	6
“304-AA	Causing death or injury by driving a public service vehicle while in a state of intoxication	Imprisonment for life, or imprisonment for seven years and fine	Ditto	Non-bailable	Court of Session”

[*Vide* Himachal Pradesh 19 of 1997, s. 3.]

Himachal Pradesh

Amendment of Central Act No. 2 of 1974.— In the First Schedule to the Code of Criminal Procedure, 1973, under the heading “I, OFFENCES UNDER THE INDIAN PENAL CODE”, after the entries relating to section 289, the following entries shall be inserted, namely:—

1	2	3	4	5	6
“289-A	Whoever throws eatables in public place, other than those notified by the State Government in the Official Gazette, and thereby entice monkeys to assemble at such place for taking eatables which result in causing danger to human life or to be likely to cause injury or annoyance to the public or to the people in general or to cause hindrance in smooth running of vehicular traffic.	Imprisonment for one month or fine of Rs. 1000/- or both	Ditto	Ditto	Ditto.

[*Vide* Himachal Pradesh Act 15 of 2006, s. 3.]

Himachal Pradesh

Amendment of Central Act No. 2 of 1947.—In the First Schedule to the Code of Criminal Procedure, 1973, under the heading “ OFFENCES UNDER THE INDIAN PENAL CODE”, in its application to the State of Himachal Pradesh, against the entries relating to section 304-AA, under column 2, for the words “a public service vehicle”, the words “any vehicle” shall be substituted.

[*Vide* Himachal Pradesh Act 7 of 2012, s. 3.]

STATE AMENDMENTS

Jammu and Kashmir and Ladakh (UTs).—

1	2	3	4	5	
354E	Sextortion	Imprisonment of not less than 3 years but which may extend to five years and with fine.	Cognizable	Non-bailable	Magistrate of the First Class

[*vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020).*]

Orissa

Amendment of First Schedule.—In the First Schedule to the said Code, in the entry under column 5 relating to section 354 of the Indian Penal Code, 1860 (45 of 1860) for the word “Bailable” the word “non-bailable” shall be substituted.

[*Vide* Orissa Act 6 of 1995, s. 3]

Amendment of First Schedule.— In the first Schedule to the principal Act, for the existing entries relating to sections 272, 273, 274, 275 and 276, the following entries shall respectively be substituted , namely:—

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable non-bailable or	By what Court triable
(1)	(2)	(3)	(4)	(5)	(6)
272.	Adulterating food or drink intended For sale, or as to make the same noxious.	Imprisonment for life and fine.	Cognizable	Non-bailable	Court of Session.
273.	Selling any food or drink as food and drink, knowing the same to be noxious.	Ditto	Ditto	Ditto	Ditto
274.	Adulterating any drug or medical Preparation intended for sale so as to Lessen its efficacy, or to change its Operation, or to make it noxious.	Ditto	Ditto	Ditto	Ditto

275.	Offering for sale or issuing from a dispensary and drug or medical preparation known to have been adulterated.	Imprisonment for life and fine	Cognizable	Non-bailable	Court for session.
276.	knowingly selling or issuing from A dispensary and drug or medical Preparation as a different drug or medical preparation.	Ditto	Ditto	Ditto	Ditto

[Vide Orissa Act 6 of 2004, s. 3]

THE SECOND SCHEDULE

(See section 476)

FORM No. 1

SUMMONS TO AN ACCUSED PERSON

(See section 61)

To (name of accused) of (address)

WHEREAS your attendance is necessary to answer to a charge of (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of , on the day . Herein fail not.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 2

WARRANT OF ARREST

(See section 70)

To (name and designation of the person or persons who is or are to execute the warrant).

WHEREAS (name of accused) of (address) stands charged with the offence of (state the offence), you are hereby directed to arrest the said , and to produce him before me. Herein fail not.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

(See section 71)

This warrant may be endorsed as follows:—

If the said shall give bail himself in the sum of rupees with one surety in the sum of rupees (or two sureties each in the sum of rupees) to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 3
BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT
(See section 81)

I, (name), of , being brought before the District Magistrate of (or as the case may be) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next, to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit, to Government, the sum of rupees

Dated, this day of , 19 .

(Signature)

I do hereby declare myself surety for the above-named of that he shall attend before in the Court of on the day of next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I bind myself to forfeit, to Government, the sum of rupees

Dated, this day of , 19 .

(Signature)

FORM No. 4
PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED
(See section 82)

WHEREAS a complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found, and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warranty);

Proclamation is hereby made that the said of is required to appear at (place) before this Court (or before me) to answer the said complaint on the day of

Dated, this day of , 19 .

(Seal of the Court) (Signature)

FORM No. 5

PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS

(See sections 82, 87 and 90)

WHEREAS complaint has been made before me that *(name, description and address)* has committed (*or is suspected to have committed*) the offence of *(mention the offence concisely)* and a warrant has been issued to compel the attendance of *(name, description and address of the witness)* before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said *(name of witness)* cannot be served, and it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*);

Proclamation is hereby made that the said *(name)* is required to appear at *(place)* before the Court on the day of *next at* *o'clock* to be examined touching the offence complained of.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 6

ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS

(See section 83)

To the officer in charge of the police station at

WHEREAS a warrant has been duly issued to compel the attendance of *(name, description and address)* to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*); and thereupon a Proclamation has been or is being duly issued and published requiring the said *(name)* to appear and give evidence at the time and place mentioned therein;

This is to authorise and require you to attach by seizure the movable property belonging to the said *(name)* to the value of rupees *(amount)* which you may find within the District *(name)* of *(name)* and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 7

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED (See section 83)

To

(name and designation of the person or persons who is or are to execute the warrant).

WHEREAS complaint has been made before me that *(name, description and address)* has committed (*or* is suspected to have committed) the offence of *(name)* punishable under section *(name)* of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said *(name)* cannot be found; and whereas it has been shown to my satisfaction that the said *(name)* has absconded (*or* is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said *(name)* to appear to answer the said charge within *(name)* days; and whereas the said *(name)* is possessed of the following property, other than land paying revenue to Government, in the village (*or town*), of *(name)*, in the District of *(name)*, *viz.*, *(name)*, and an order has been made for the attachment thereof;

You are hereby required to attach the said property in the manner specified in clause (a), or clause (c), or both*, of sub-section (2) of section 83, and to hold the same under attachment pending further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this _____ day of _____, 19____.

(Seal of the Court)

(Signature)

* Strike out the one which is not applicable, depending on the nature of the property to be attached.

FORM No. 8

ORDER AUTHORISING AN ATTACHMENT BY THE DISTRICT MAGISTRATE OR COLLECTOR (See section 83)

To the District Magistrate/Collector of the District of

WHEREAS complaint has been made before me that *(name, description and address)* has committed (*or* is suspected to have committed) the offence of *(name)*, punishable under section *(name)* of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said *(name)* cannot be found; and whereas it has been shown to my satisfaction that the said *(name)* has absconded (*or* is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said *(name)* to appear to answer the said charge within *(name)* days; and whereas the said *(name)* is possessed of certain land paying revenue to Government in the village (*or town*) of *(name)*, in the District of *(name)*;

You are hereby authorised and requested to cause the said land to be attached, in the manner specified in clause (a), or clause (c), or both*, of sub-section (4) of section 83, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated, this _____ day of _____, 19____.

(Seal of the Court)

(Signature)

* Strike out the one which is not desired.

FORM No. 9

WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS

(See section 87)

To

(name and designation of the police officer or other person or persons who is or are to execute the warrant).

WHEREAS complaint has been made before me that (name and description of accused) of (address) has (or is suspected to have) committed the offence of (mention the offence concisely), and it appears likely that (name and description of witness) can give evidence concerning the said complaint, and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorise and require you to arrest the said (name of witness), and on the day of to bring him before this Court, to be examined touching the offence complained of.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 10

WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE

(See section 93)

To

(name and designation of the police officer or other person or persons who is or are to execute the warrant).

WHEREAS information has been laid (or complaint has been made) before me of the commission (or suspected commission) of the offence of (mention the offence concisely), and it has been made to appear to me that the production of (specify the thing clearly) is essential to the inquiry now being made (or about to be made) into the said offence (or suspected offence);

This is to authorise and require you to search for the said (the thing specified) in the (describe the house or place or part thereof to which the search is to be confined), and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 11
WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT
(See section 94)

To

(name and designation of the police officer above the rank of a constable).

WHEREAS information has been laid before me, and on due inquiry thereupon had, I have been led to believe that the *(describe the house or other place)* is used as a place for the deposit (or sale) of stolen property (*or if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorise and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or if the search is to be confined to a part, specify the part clearly*), and to seize and take possession of any property (*or documents, or stamps, or seals, or coins, or obscene objects, as the case may be*) (*add, when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps, *or* false seals, *or* counterfeit coins *or* counterfeit currency notes (*as the case may be*), and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this _____ day of _____, 19____.

(Seal of the Court)

(Signature)

FORM No. 12
BOND TO KEEP THE PEACE
(See sections 106 and 107)

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

Dated, this _____ day of _____, 19____.

(Signature)

FORM No. 13
BOND FOR GOOD BEHAVIOUR
(See sections 108, 109 and 110)

WHEREAS I, (name), inhabitant of (place), have been called upon to enter into a bond to be of good behaviour to Government and all the citizens of India for the term of (state the period) or until the completion of the inquiry in the matter of now pending in the Court of , I hereby bind myself to be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry; and, in case of my making default therein, I hereby bind myself to forfeit to Government the sum of rupees

Dated, this day of , 19 .

(Signature)

(Where a bond with sureties is to be executed, add)

We do hereby declare ourselves sureties for the above-named that he will be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Government the sum of rupees

Dated, this day of , 19 .

(Signature)

FORM No. 14
SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE
(See section 113)

To of

WHEREAS it has been made to appear to me by credible information that (state the substance of the information), and that you are likely to commit a breach of the peace (or by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (or by a duly authorised agent) at the office of the Magistrate of on the day of 19 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [when sureties are required, add, and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees (each if more than one)], that you will keep the peace for the term of

Dated, this day of , 19 .

(Seal of the Court) (Signature)

FORM No. 15

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE
(See section 122)

To the Officer in charge of the Jail at

WHEREAS (name and address) appeared before me in person (or by his authorised agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (or a bond with two sureties each in rupees), that he, the said (name) would keep the peace for the period of months; and whereas an order was then made requiring the said (name) to enter into and find such security (state the security ordered when it differs from that mentioned in the summons), and he has failed to comply with the said order;

This is to authorise and require you to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment) unless he shall in the meantime be lawfully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this day of ,19 .

(Seal of the Court) (Signature)

FORM No. 16

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR
(See section 122)

To the Officer in charge of the Jail at

WHEREAS it has been made to appear to me that (name and description) has been concealing his presence within the district of and that there is reason to believe that he is doing so with a view to committing a cognizable offence;

or

WHEREAS evidence of the general character of (name and description) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house-breaker, etc., as the case may be);

AND WHEREAS an order has been recorded stating the same and requiring the said (name) to furnish security for his good behaviour for the term of (state the period) by entering into a bond with one surety (or two or more sureties, as the case may be), himself for rupees , and the said surety (or each of the said sureties) rupees , and the said (name) has failed to comply with the said order and for such default has been adjudged imprisonment for (state the term) unless the said security be sooner furnished;

This is to authorise and require you receive the said (name) into your custody, together with this warrant and him safely to keep in the Jail, or if he is already in prison, be detained therein, for the said period of (term of imprisonment) unless he shall in the meantime be lawfully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this day of ,19 .

(Seal of the Court) (Signature)

FORM No. 17

WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See sections 122 and 123)

To the Officer in charge of the Jail at

(or other officer in whose custody the person is).

WHEREAS (name and description of prisoner) was committed to your custody under warrant of the Court, dated the day of 19 ; and has since duly given security under section of the Code of Criminal Procedure, 1973.

or

WHEREAS (name and description of prisoner) was committed to your custody under warrant of the Court, dated the day of 19 ; and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorise and require you forthwith to discharge the said (name) from your custody unless he is liable to be detained for some other cause.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 18

WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE

(See section 125)

To the Officer in charge of the Jail at

WHEREAS (name, description and address) has been proved before me to be possessed of sufficient means to maintain his wife (name) [or his child (name) or his father or mother (name)], who is by reason of (state the reason) unable to maintain herself (or himself) and to have neglected (or refused) to do so, and an order has been duly made requiring the said (name) to allow to his said wife (or child or father or mother) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (name) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (or months) of ;

And thereupon an order was made adjudging him to undergo imprisonment in the said Jail for the period of ;

This is to authorise and require you receive the said (name) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 19

WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY ATTACHMENT AND SALE

(See section 125)

To

(name and designation of the police officer or other person to execute the warrant).

WHEREAS an order has been duly made requiring (name) to allow to his said wife (or child or father or mother) for maintenance the monthly sum of rupees , and whereas the said (name) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (or months) of

This is to authorise and require you to attach any movable property belonging to the said (name) which may be found within the district of , and if within (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 20

ORDER FOR THE REMOVAL OF NUISANCES

(See section 133)

To (name, description and address).

WHEREAS it has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public roadway (or other public place) which, etc., (describe the road or public place) by, etc., (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists;

or

WHEREAS it has been made to appear to me that you are carrying on, as owner, or manager, the trade or occupation of (state the particular trade or occupation and the place where it is carried on), and that the same is injurious to the public health (or comfort) by reason (state briefly in what manner the injurious effects are caused), and should be suppressed or removed to different place;

or

WHEREAS it has been made to appear to me that you are the owner (or are in possession of or have the control over) a certain tank (or well or excavation) adjacent to the public way (describe the thoroughfare), and that the safety of the public is endangered by reason of the said tank (or well or excavation) being without a fence or insecurely fenced);

or

WHEREAS, etc., etc., (as the case may be);

I do hereby direct and require you within
what is required to be done to abate the nuisance)
at in the Court of on the day of next,
and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease
carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove
the said trade from the place where it is now carried on, or to appear, etc.;

or

I do hereby direct and require you within (*state the time allowed*) to
put up a sufficient fence (*state the kind of offence and the part to be fenced*); or to appear, etc.;

or

I do hereby direct and require you, etc., etc. (*as the case may be*).

Dated, this day of , 19 .

(*Seal of the Court*)

(*Signature*)

FORM No. 21

MAGISTRATE'S NOTICE AND PEREMPTORY ORDER

(*See section 141*)

To (*name, description and address*).

I HEREBY give you notice that it has been found that the order issued on the day
of requiring you (*state substantially the requisition in the order*) is reasonable and
proper. Such order has been made absolute, and I hereby direct and require you to obey the said order
within (*state the time allowed*), on peril of the penalty provided by the Indian Penal Code for
disobedience thereto.

Dated, this day of , 19 .

(*Seal of the Court*)

(*Signature*)

FORM No. 22

INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY

(*See section 142*)

To (*name, description and address*).

WHEREAS the inquiry into the conditional order issued by me on the day of , 19 , is
pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended
with such imminent danger or injury of a serious kind to the public as to render necessary immediate
measures to prevent such danger or injury, I do hereby, under the provisions of section 142 of the Code of
Criminal Procedure, 1973, direct and enjoin you forthwith to (*state plainly what is required to be done as
a temporary safeguard*), pending the result of the inquiry.

Dated, this day of , 19 .

(*Seal of the Court*)

(*Signature*)

FORM No. 23

MAGISTRATE'S ORDER PROHIBITING THE REPETITION, ETC., OF A NUISANCE

(See section 143)

To (name, description and address).

WHEREAS it has been made to appear to me that, etc. (*state the proper recital, guided by Form No. 20 or Form No. 24, as the case may be*);

I do hereby strictly order and enjoin you not to repeat or continue, the said nuisance.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 24

MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC.

(See section 144)

To (name, description and address).

WHEREAS it has been made to appear to me that you are in possession (*or have the management*) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug-up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a procession along the public street, etc., (*as the case may be*) and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, etc., etc., (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from land on any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 25

MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, ETC., IN DISPUTE
(See section 145)

It appears to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (describe the parties by name and residence or residence only if the dispute be between bodies of villagers) concerning certain (state concisely the subject of dispute), situate within my local jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (the subject of dispute), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (name or names or description) is true; I do decide and declare that he is (or they are) in possession of the said (the subject of dispute) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (or their) possession in the meantime.

Dated, this day of ,19 .

(Seal of the Court) (Signature)

FORM No. 26

WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, ETC.

(See section 146)

To the officer in charge of the police station at

(or, To the Collector of).

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace, existed between (describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers) concerning certain (state concisely the subject of dispute) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (the subject of dispute), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (the subject of dispute) (or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid);

This is to authorise and require you to attach the said (the subject of dispute) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this day of ,19 .

(Seal of the Court) (Signature)

FORM No. 27

MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER

(See section 147)

A dispute having arisen concerning the right of use of *(state concisely the subject of dispute)* situate within my local jurisdiction, the possession of which land (*or water*) is claimed exclusively by *(describe the person or persons)*, and it appears to me, on due inquiry into the same, that the said land (*or water*) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*) and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at a particular season, say, "during the last of the seasons at which the same is capable of being enjoyed"*);

I do order that the said *(the claimant or claimants of possession)* or any one in their interest, shall not take (*or retain*) possession of the said land (*or water*) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or they*) shall obtain the decree or order of a competent Court adjudging him (*or them*) to be entitled to exclusive possession.

Dated, this _____ day of _____, 19 ____.

(Seal of the Court)

(Signature)

FORM No. 28

BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE OFFICER

(See section 169)

I, *(name), of* _____, being charged with the offence of _____, and after inquiry required to appear before the Magistrate of _____

or

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at _____, in the Court of _____, on the _____ day of _____ next (*or on such day as I may hereafter be required to attend*) to answer further to the said charge, and in case of my making default herein. I bind myself to forfeit to Government, the sum of rupees _____

Dated, this _____ day of _____, 19 ____.

(Signature)

I hereby declare myself (*or we jointly and severally declare ourselves and each of us*) surety (*or sureties*) for the above said *(name)* that he shall attend at _____ in the Court of _____, on the _____ day of _____ next (*or on such day as he may hereafter be required to attend*), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or we hereby bind ourselves*) to forfeit to Government the sum of rupees _____

Dated, this _____ day of _____, 19 ____.

(Signature)

FORM No. 29
BOND TO PROSECUTE OR GIVE EVIDENCE
(See section 170)

I, (name) of (place), do hereby bind myself to attend at in the Court of at o'clock on the day of next and then and there to prosecute (or to prosecute and give evidence) (or to give evidence) in the matter of a charge of against one A.B., and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees

Dated, this day of , 19 .

(Signature)

FORM No. 30
SPECIAL SUMMONS TO A PERSON ACCUSED OF A PETTY OFFENCE
(See section 206)

To,

(Name of the accused)

of (address)

WHEREAS your attendance is necessary to answer a charge of a petty offence (*state shortly the offence charged*), you are hereby required to appear in person (or by pleader) before (Magistrate) of on the day of 19 , or if you desire to plead guilty to the charge without appearing before the Magistrate, to transmit before the aforesaid date the plea of guilty in writing and the sum of rupees as fine, or if you desire to appear by pleader and to plead guilty through such pleader, to authorise such pleader in writing to make such a plea of guilty on your behalf and to pay the fine through such pleader. Herein fail not.

Dated, this day of , 19 .

(Seal of the Court) (Signature)

(Note.-The amount of fine specified in this summons shall not exceed on hundred rupees.)

FORM No. 31
NOTICE OF COMMITMENT BY MAGISTRATE TO PUBLIC PROSECUTOR
(See section 209)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Public Prosecutor to conduct the prosecution of the said case.

The charge against the accused is that, etc. (*state the offence as in the charge*)

Dated, this day of , 19 .

(Seal of the Court) (Signature)

FORM No. 32

CHARGES

(See sections 211,212 and 213)

I. CHARGES WITH ONE-HEAD

(1) (a) I, *(name and office of Magistrate, etc.)*,
hereby charge you *(name of accused person)* as follows:—

(b) **On section 121**—That you, on or about the day of , at , waged war against the Government of India and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of this Court.

(c) And I hereby direct that you be tried by this Court on the said charge.

(Signature and seal of the Magistrate)

[To be substituted for (b)]:—

(2) **On section 124**—That you, on or about the day of , at , with the intention of inducing the President of India [or, as the case may be, the Governor of *(name of State)*] to refrain from exercising a lawful power as such President (or, as the case may be, the Government) assaulted President (or, as the case may be, the Governor), and thereby committed an offence punishable under section 124 of the India Penal Code, and within the cognizance of this Court.

(3) **On section 161**—That you, being a public servant in the Department, directly accepted from *(state the name)* for another party *(state the name)* gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of this Court.

(4) **On section 166**—That you, on or about the day of , at , did *(or omitted to do, as the case may be)* , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of this Court.

(5) **On section 193**—That you, on or about the day of , at , in the course of the trial of before , stated in evidence that “ ” which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of this Court.

(6) **On section 304**—That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of this Court.

(7) **On section 306**—That you, on or about the day of , at , abetted the commission of suicide by A.B., a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of this Court.

(8) **On section 325**—That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of this Court.

(9) **On section 392**—That you, on or about the day of , at , robbed *(state the name)*, and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of this Court.

(10) **On section 395**—That you, on or about the _____ day of _____, at _____, committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of this Court.

II. CHARGES WITH TWO OR MORE HEADS

(1) (a) I, *(name and office of Magistrate, etc.)*, hereby charge you *(name of accused person)* as follows:—

(b) **On section 241—First**—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name, A.B., as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly—That you, on or about the day of , at , knowing a coin to be counterfeit attempted to induce another person, by name, A.B., to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

(c) And I hereby direct that you be tried by the said Court on the said charge.

(Signature and seal of the Magistrate)

[To be substituted for (b)]:—

(2) **On sections 302 and 304**—*First*—That you, on or about the _____ day of _____, at _____, committed murder by causing the death of _____, and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

(3) **On sections 379 and 382**—*First*—That you, on or about the _____ day of _____, at _____, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Thirdly—That you, on or about the _____ day of _____, at _____, committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Fourthly—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the restraining of property taken by such theft and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session

(4) **Alternative charge on section 193**—That you, on or about the day of , at , in the course of the inquiry into , before , stated in evidence that “ ”, and that you, on or about the day of , at , in the course of the trial of , before , stated in the evidence that “ ”, one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session.

(In cases tried by Magistrates substitute “within my cognizance” for “within the cognizance of the Court of Session”.)

III. CHARGES FOR THEFT AFTER PREVIOUS CONVICTION

I,
hereby charge you (name and office of Magistrate, etc.)
(name of accused person) as follows: —

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session (or Magistrate, as the case may be). And you, the said (name of accused), stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (state Court by which conviction was had) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (describe the offence in the words used in the section under which the accused was convicted), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, etc.

FORM No. 33

SUMMONS TO WITNESS (See sections 61 and 244)

To of

WHEREAS complaint has been made before me that (name of the accused) of (address) has (or is suspected to have) committed the offence of (state the offence concisely with time and place), and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to produce such document or thing or to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Dated, this day of , 19 .
(Seal of the Court)

(Signature)

FORM No. 34

WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A ¹[COURT] ²[(See sections 235, 248 and 255)]

To the Officer in charge of Jail at

WHEREAS on the day of , (name of the prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. of the Calendar for 19 , was convicted before me (name and official designation) of the offence of (mention the offence or offences concisely) under section (or sections) of the Indian Penal Code (or of Act), and was sentenced to (state the punishment fully and distinctly);

This is to authorise and require you to receive the said (prisoner's name) into your custody in the said Jail, together with this warrant, and thereby carry the aforesaid sentence into execution according to law.

Dated, this day of , 19 .
(Seal of the Court)

(Signature)

1. Subs. by Act 45 of 1978, s. 35, for "MAGISTRATE".

2. Subs. by s. 35, *ibid*, for "(See sections 248 and 355)" (w.e.f. 18-12-1978).

FORM No. 35

WARRANT OF IMPRISONMENT ON FAILURE TO PAY COMPENSATION

(See section 250)

To the Officer in charge of Jail at

WHEREAS (name and description) has brought against (name and description of the accused person) the complaint that (mention it concisely) and the same has been dismissed on the ground that there was no reasonable ground for making the accusation against the said (name) and the order of dismissal awards payment by the said (name of complainant) of the sum of rupees as compensation; and whereas the said sum has not been paid and an order has been made for his simple imprisonment in Jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorise and require you to receive the said *(name)*
into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of
(term of imprisonment), subject to the provisions of section 69 of the Indian Penal Code, unless the said
sum be sooner paid, and on the receipt thereof, forthwith to set him at liberty, returning this warrant with
an endorsement certifying the manner of its execution.

Dated, this _____ day of _____, 19____.

(Seal of the Court) (Signature)

FORM No. 36

**ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR ANSWERING TO CHARGE OF
OFFENCE**

(See section 267)

To the Officer in charge of Jail at

WHEREAS the attendance of *(name of prisoner)* at present confined/detained in the above-mentioned prison, is required in this Court to answer to a charge of *(state shortly the offence charged)* or for the purpose of a proceeding *(state shortly the particulars of the proceeding);*

You are hereby required to produce the said [REDACTED] under safe and sure conduct before this Court at [REDACTED] on the [REDACTED] day of [REDACTED], 19[REDACTED], by [REDACTED] A.M. there to answer to the said charge, or for the purpose of the said proceeding, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

And you are further required to inform the said
deliver to him the attached copy thereof. of the contents of this order and

Dated, this _____ day of _____, 19____.

(Seal of the Court) _____ (Signature)

Countersigned.

(Seal)

(Signature)

FORM No. 37

ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR GIVING EVIDENCE
(See section 267)

To the Officer in charge of the Jail at

WHEREAS complaint has been made before this Court that *(name of the accused)* of has committed the offence of *(state offence concisely with time and place)* and it appears that *(name of prisoner)* at present confined/detained in the above-mentioned prison, is likely to give material evidence for the prosecution/defence;

You are hereby required to produce the said under safe and sure conduct before this Court at _____ on the _____ day of _____, 19_____, by _____ A.M. there to give evidence in the matter now pending before this Court, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison;

And you are further required to inform the said _____ of the contents of this order and deliver to him the attached copy thereof.

Dated, this _____ day of _____, 19_____. .

(Seal of the Court) *(Signature)*

Countersigned.

(Seal) *(Signature)*

FORM No. 38

WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED
(See section 345)

To the Officer in charge of the Jail at

WHEREAS at a Court held before me on this day *(name and description of the offender)* in the presence (or view) of the Court committed wilful contempt;

And whereas for such contempt the said *(name of the offender)* has been adjudged by the Court to pay a fine of rupees _____, or in default to suffer simple imprisonment for the period of _____ (state the number of months or days);

This is to authorise and require you to receive the said *(name of the offender)* into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of *(term of imprisonment)*, unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this _____ day of _____, 19_____. .

(Seal of the Court) *(Signature)*

FORM No. 39

MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER OR TO PRODUCE DOCUMENT

(See section 349)

To

(name and designation of officer of Court)

WHEREAS (name and description), being summoned (or brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (or certain questions) put to him touching the said alleged offence, and duly recorded, or having been called upon to produce any document has refused to produce such document, without alleging any just excuse for such refusal, and for his refusal has been ordered to be detained in custody for (term of detention adjudged);

This is to authorise and require you to take the said (name) into custody, and him safely to keep in your custody for the period of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, or to produce the document called for from him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 40

WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH

(See section 366)

To the Officer in charge of the Jail at

WHEREAS at the Session held before me on the day of , 19 , (name of prisoner), the (1st, 2nd, 3rd, as the case may be), prisoner in case No. of the Calendar for 19 at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to death, subject to the confirmation of the said sentence by the Court of ;

This is to authorise and require you to receive the said (prisoner's name) into your custody in the said Jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 41
WARRANT AFTER A COMMUTATION OF A SENTENCE
¹[(See sections 386, 413 and 416)]

To the Officer in charge of the Jail at

WHEREAS at a Session held on the day of , 19 , (name of the prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. Calendar for 19 at the said Session, was convicted of the offence of under section of the Indian Penal Code, and sentenced to , punishable , and was thereupon committed to your custody; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of imprisonment for life;

This is to authorise and require you safely to keep the said (prisoner's name) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of imprisonment for life under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said Jail", "and there to carry into execution the punishment of imprisonment under the said order according to law".

Dated, this day of , 19 .

(Seal of the Court) (Signature)

FORM No. 42
WARRANT OF EXECUTION OF A SENTENCE OF DEATH
²[(See sections 413 and 414)]

To the Officer in charge of the Jail at

WHEREAS (name of the prisoner), the (1st, 2nd, 3rd, as the case may be) Prisoner in case No. of the Calendar for 19 at the Session held before me on the day of , 19 , has been by a warrant of the Court, dated the day of , committed to your custody under sentence of death; and whereas the order of the High Court at confirming the said sentence has been received by this Court;

This is to authorise and require you to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Dated, this day of , 19 .

(Seal of the Court) (Signature)

1. Subs. by Act 45 of 1978, s. 35 for "(See section 386)" (w.e.f. 18-12-1978).
2. Subs. by s. 35, *ibid.*, for "(See section 414)" (w.e.f. 18-12-1978).

FORM No. 43
WARRANT TO LEVY A FINE BY ATTACHMENT AND SALE
(See section 421)

To

(name and designation of the police officer or other person or persons who is or are to execute the warrant).

WHEREAS (name and description of the offender) was on the day of , 19 , convicted before me of the offence of (mention the offence concisely), and sentenced to pay a fine of rupees ; and whereas the said (name), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to attach any movable property belonging to the said (name), which may be found within the district of ; and, if within (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this day of , 19 .

(Seal of the Court) (Signature)

FORM No. 44
WARRANT FOR RECOVERY OF FINE
(See section 421)

To the Collector of the district of

WHEREAS (name, address and description of the offender) was on the day of , 19 , convicted before me of the offence of (mention the offence concisely), and sentenced to pay a fine of rupees ; and

WHEREAS the said (name), although required to pay the said fine, has not paid the same or any part of thereof;

You are hereby authorised and requested to realise the amount of the said fine as arrears of land revenue from the movable or immovable property, or both, of the said (name) and to certify without delay what you have done in pursuance of this order.

Dated, this day of , 19 .

(Seal of the Court) (Signature)

¹[FORM No. 44A

BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING REALISATION OF FINE
[See section 424 (I) (b)]

WHEREAS I, (name) inhabitant of (place), have been sentenced to pay a fine of rupees and in default of payment thereof to undergo imprisonment for ; and whereas the Court has been pleased to order my release on condition of my executing a bond for my appearance on the following date (or dates), namely:—

I hereby bind myself to appear before the Court of at o'clock on the following date (or dates), namely:— and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees.

Dated, this day of , 19 .

(Signature)

WHERE A BOND WITH SURETIES IS TO BE EXECUTED, ADD—

We do hereby declare ourselves sureties for the above-named that he will appear before the Court of on the following date (or dates), namely:—

And, in case of his making default therein, we bind ourselves jointly and severally to forfeit to Government the sum of rupees.

(Signature).]

FORM No. 45

BOND AND BAIL-BOND FOR ATTENDANCE BEFORE OFFICER IN CHARGE OF POLICE STATION OR COURT

[See sections 436, ²[436A,] 437, ³[437A,] 438 (3) and 441]

I, (name), of (place), having been arrested or detained without warrant by the Officer in charge of police station (or having been brought before the Court of), charged with the offence of , and required to give security for my attendance before such Officer of Court on condition that I shall attend such Officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees.

Dated, this day of , 19 .

(Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the above said (name) that he shall attend the Officer in charge of police station or the Court of on every day on which any investigation into the charge is made or any trial on such charge is held, that he shall be, and appear, before such Officer or Court for the purpose of such investigation or to answer the charge against him (as the case may be), and, in case of his making default herein, I hereby bind myself (or we, hereby bind ourselves) to forfeit to Government the sum of rupees.

Dated, this day of , 19 .

(Signature)

1. Ins. by Act 45 of 1978, s. 35 (w.e.f. 18-12-1978).

2. Ins. by Act 25 of 2005, s. 43 (w.e.f. 23-6-2006).

3. Ins. by Act 5 of 2009, s. 32 (w.e.f. 31-12-2009).

FORM No. 46

WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See section 442)

To the Officer in charge of the Jail at

(or other officer in whose custody the person is)

WHEREAS (name and description of prisoner) was committed to your custody under warrant of this Court, dated the _____ day of _____, and has since with his surety (or sureties) duly executed a bond under section 441 of the Code of Criminal Procedure;

This is to authorise and require you forthwith to discharge the said (name) from your custody, unless he is liable to be detained for some other matter.

Dated, this _____ day of _____, 19 ____.

(Seal of the Court)

(Signature)

¹[FORM No. 47

WARRANT OF ATTACHMENT TO ENFORCE A BOND

(See section 446)

To the Police Officer in charge of the police station at

WHEREAS (name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance, and has by default forfeited to Government the sum of rupees (the penalty in the bond); and whereas the said (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorise and require you to attach any movable property of the said (name) that you may find within the district of _____, by seizure and detention, and, if the said amount be not paid within _____, days to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this _____ day of _____, 19 ____.

(Seal of the Court)

(Signature)]

1. Ins. by Act 45 of 1978, s. 35 (w.e.f. 18-12-1978).

FORM No. 48
NOTICE TO SURETY ON BREACH OF A BOND
(See section 446)

To _____ of _____

You are hereby required to pay the said penalty or show cause, within _____ days from this date, why payment of the said sum should not be enforced against you.

Dated, this _____ day of _____, 19____.

(Seal of the Court) (Signature)

FORM No. 49
NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR
(See section 446)

To of

WHEREAS on the day of , 19 , you became surety by a bond for (*name*)
of (*place*) that he would be of good behaviour for the period of and bound
yourself in default thereof to forfeit the sum of rupees to Government; and whereas
the said (*name*) has been convicted of the
offence of (*mention the offence concisely*) committed since you became such surety,
whereby your security bond has become forfeited;

You are hereby required to pay the said penalty of rupees or to show cause
within days why it should not be paid.

Dated, this _____ day of _____, 19_____.
(Handwritten signature)

(Seal of the Court) (Signature)

FORM No. 50

WARRANT OF ATTACHMENT AGAINST A SURETY

(See section 446)

To of

WHEREAS (name, description and address) has bound himself
as surety for the appearance of (mention the condition of the bond) and
the said (name) has made default, and thereby forfeited to Government
the sum of rupees (the penalty in the bond);

This is to authorise and require you to attach any movable property of the said (name)
which you may find within the district of , by seizure and detention; and, if the
said amount be not paid within days, to sell the property so attached, or so much of it
as may be sufficient to realise the amount aforesaid, and make return of what you have done under this
warrant immediately upon its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 51

WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL

(See section 446)

To the Superintendent (or Keeper) of the Civil Jail at

WHEREAS (name and description of surety) has bound
himself as a surety for the appearance of (state the condition of the bond)
and the said (name) has therein made default whereby the penalty mentioned in the
said bond has been forfeited to Government; and whereas the said (name of surety) has,
on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be
enforced against him, and the same cannot be recovered by attachment and sale of his movable property,
and an order has been made for his imprisonment in the Civil Jail for (Specify the period);

This is to authorise and require you, the said Superintendent (or Keeper) to
receive the said (name) into your custody with the warrant and to keep him safely
in the said Jail for the said (term of imprisonment), and to return this warrant with an
endorsement certifying the manner of its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature)

FORM No. 52

NOTICE TO THE PRINCIPAL OF FORFEITURE OF BOND TO KEEP THE PEACE
(See section 446)

To (*name, description and address*)

WHEREAS on the day of , 19 , you entered into a bond not to commit, etc., (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees or to show cause before me within days why payment of the same should not be enforced against you.

Dated, this day of , 19 .

(*Seal of the Court*)

(*Signature*)

FORM No. 53

WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE
(See section 446)

To (*name and designation of police officer*), at the police station of

WHEREAS (*name and description*) did, on the day of , 19 , enter into a bond for the sum of rupees binding himself not to commit a breach of the peace, etc., (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said (*name*) to the value of rupees , which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Dated, this day of , 19 .

(*Seal of the Court*)

(*Signature*)

FORM No. 54

WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE

(See section 446)

To the Superintendent (or Keeper) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that (name and description) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Government the sum of rupees ; and whereas the said (name) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail of the period of (term of imprisonment);

This is to authorise and require you, the said Superintendent (or Keeper) of the said Civil Jail to receive the said (name) into your custody, together with this warrant, and to keep his safely in the said Jail for the said period of (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this _____ day of _____, 19_____.
(Handwritten signature)

(Seal of the Court) (Signature)

FORM No. 55

WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 446)

To the Police Officer in charge of the police station at

This is to authorise and require you to attach by seizure movable property belonging to the said (name) to the value of rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this _____ day of _____, 19_____.
(Handwritten signature)

(Seal of the Court) (Signature)

FORM No. 56

WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR
(See section 446)

To the Superintendent (or Keeper) of the Civil Jail at

This is to authorise and require you, the Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and to keep him safely in the said Jail for the said period of (term of imprisonment), returning this warrant with an endorsement certifying the manner of its execution.

Dated, this _____ day of _____, 19____.

(*Seal of the Court*)

(Signature)

STATE AMENDMENT

Andhra Pradesh

Amendment of Form No. 45 in the Second Schedule. — In the Principal Act, in the Second Schedule, in Form No. 45, in paragraph 2, after the words, “to forfeit to Government the sum of rupees” the following words shall be added namely:—

“and I shall pay the fine imposed by the court in case I fail to produce the accused on the date fixed by the court.”

[*Vide Andhra Pradesh Act 17 of 2019 s. 3]*

APPENDIX

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2005

No. 25 OF 2005

[23rd June, 2005.]

An Act further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2005.

(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint ¹[; and different dates* may be appointed for different provisions of this Act.]

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16. Insertion of new section 144A.—In Chapter X of the principal Act, under sub-heading “C.—*Urgent cases of nuisance or apprehended danger*”, after section 144, the following section shall be inserted, namely:—

‘144A. Power to prohibit carrying arms in procession or mass drill or mass training with arms.—(1) The District Magistrate may, whenever he considers it necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by public notice or by order, prohibit in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organising or holding of, or taking part in, any mass drill or mass training with arms in any public place.

(2) A public notice issued or an order made under this section may be directed to a particular person or to persons belonging to any community, party or organisation.

(3) No public notice issued or an order made under this section shall remain in force for more than three months from the date on which it is issued or made.

(4) The State Government may, if it considers necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by notification, direct that a public notice issued or order made by the District Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which such public notice or order was issued or made by the District Magistrate would have, but for such direction, expired, as it may specify in the said notification.

(5) The State Government may, subject to such control and directions as it may deem fit to impose, by general or special order, delegate its powers under sub-section (4) to the District Magistrate.

1. Ins. by Act 25 of 2006, s. 2 (w.e.f. 2-6-2006).

* 23-6-2006, *vide* Notification No.S.O. 923(E) dated 21-6-2006 [Except the Provisions of Section 16, 25, 28(a), 28(b), 38, 42(a), 42(b), 42(f)(iii) and (iv) and 44(a)].

Explanation.—The word “arms” shall have the meaning assigned to it in section 153AA of the Indian Penal Code (45 of 1860).’.

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¹* * * * *

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28. Amendment of section 320.—In section 320 of the principal Act, in the Table under sub-section (2),—

- (a) the words “Voluntarily causing hurt by dangerous weapons or means” in column 1 and the entries relating thereto in columns 2 and 3 shall be omitted;
- (b) in column 3, for the word “Ditto”, against the entry relating to section 325, the words “The person to whom the hurt is caused” shall be substituted.

* * * * *

38. Amendment of section 438.—In section 438 of the principal Act, for sub-section (I), the following sub-sections shall be substituted, namely:—

“(I) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, *inter alia*, the following factors, namely:—

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(IA) Where the Court grants an interim order under sub-section (I), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

1. S. 25 omitted by Act 2 of 2006, s. 8 (w.e.f. 16-4-2006).

(IB) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.”.

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42. Amendment of the First Schedule.—In the First Schedule to the principal Act, under the heading “I.—OFFENCES UNDER THE INDIAN PENAL CODE”,—

(a) after the entries relating to section 153A, the following entries shall be inserted, namely:—

1	2	3	4	5	6
“153AA	Knowingly carrying arms in any procession or organising or holding or taking part in any mass drill or mass training with arms	Imprisonment for 6 months and fine of 2,000 rupees	Ditto	Ditto	Any Magistrate.”;

(b) in the 6th column, in the entries relating to section 153B, for the word “Ditto”, the words “Magistrate of the first class” shall be substituted:

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(f) in the 5th column, in the entries relating to—

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(iii) section 324, for the word “Ditto”, the word “Non-bailable” shall be substituted;

(iv) section 325, for the word “Ditto”, the word “Bailable” shall be substituted.

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44. Amendment of Act 45 of 1860.—In the Indian Penal Code,—

(a) after section 153A, the following section shall be inserted, namely:—

‘153AA. Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.—Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under section 144A of the Code of Criminal Procedure, 1973 (2 of 1974) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

Explanation.—”Arms” means articles of any description designed or adapted as weapons for offence or defence and includes fire arms, sharp edged weapons, lathis, *dandas* and sticks.’.

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Hindu Marriage Dissolution And Property Dispute : An Analysis Of The Role Of Courts

*Jivitesh Sisodia, Amity Law School, Patna.**

Abstract

This article, titled "***Hindu Marriage Dissolution and Property Dispute: Analyzing the Role of the Court***", delves into the complexities of resolving property disputes in Hindu marriage dissolution cases. The ***Hindu Marriage Act of 1955*** governs the legal framework for these cases in India, and disputes can arise when a couple divorces or a family member passes away. Property disputes can be particularly challenging in Hindu dissolution cases due to the emotional and financial implications involved. The court plays a crucial role in determining how property should be divided in these cases. The court considers various factors, such as the financial and personal circumstances of the parties involved, their contributions to the acquisition of the property, and the needs of any children involved. However, there are also challenges associated with court involvement in property disputes. Delays and increased costs are common, and the court's decisions may not always be satisfactory to both parties. As a result, ***alternative dispute resolution methods*** such as ***mediation or arbitration*** may offer potential benefits. These methods can be less costly and time-consuming, and they can give parties more control over their disputes' outcomes. The article concludes by highlighting the importance of identifying best practices for resolving property disputes in Hindu marriage dissolution cases. Seeking legal advice and support can help parties navigate these complex issues and reach a fair and satisfactory resolution. Further research on this topic can also help identify effective strategies for resolving property disputes

* The author is a third-year B.A. LL.B student pursuing from Amity University, Patna.

I. Introduction:

Marriage dissolution is a challenging process for any couple, but it can be particularly difficult for Hindus due to their cultural and religious traditions. Hindu marriages are often seen as sacred and lifelong, but in modern times, divorce has become more common, leading to complex legal issues surrounding property and asset division. These disputes can arise when a couple seeks a divorce, or in cases of inheritance, where family members are contesting for ownership of assets. In both situations, the court's role is critical in determining how property should be divided. The Hindu Marriage Act of 1955 is the main legislation that governs the legal framework for Hindu marriage dissolution cases in India. It provides the rules and procedures for resolving property disputes that arise during a divorce or in cases of the family inheritance (Sharma & Ahuja, 2020)¹. The act also addresses the division of property between spouses in cases of divorce or separation (Mukherjee, 2016)². This legal framework aims to protect the interests of both parties and ensure a fair and just outcome.

However, property disputes can be emotionally charged and can escalate into lengthy legal battles, leading to increased costs and delays (Mukherjee, 2016). The role of the court in guiding these decisions is crucial, as it provides an impartial third party to interpret and apply the law to determine the rightful owner of assets. The court considers various factors when making these decisions, such as the financial and personal circumstances of the parties involved, the contributions each party made to the acquisition of the property, and the needs of any children involved (Sharma & Ahuja, 2020). While the court's involvement in resolving property disputes can be helpful, it can also have drawbacks. Alternative dispute resolution methods, such as mediation or arbitration, offer potential benefits over court involvement. These methods can be less costly and time-consuming, and they can give parties more control over their disputes' outcome (Sharma & Ahuja, 2020).

¹ Sharma, N., & Ahuja, A. (2020). Property Division in Hindu Divorce: Analysis of Court Decisions. SSRN Electronic Journal. doi: 10.2139/ssrn.3576427.

² Mukherjee, S. (2016). The Hindu Marriage Act, 1955: A Critical Analysis. International Journal of Humanities and Social Science Research, 6(3), 20-27.

In fact, the use of alternative dispute resolution methods has been encouraged by the courts in India, as they can help to reduce the burden on the judiciary and lead to more efficient and effective resolution of disputes³ (Nigam & Nigam, 2014). The Hindu Marriage Act of 1955 governs the legal framework for resolving property disputes in Hindu dissolution cases in India, with the court playing a crucial role in guiding these decisions. This article will examine the intricacies of resolving property disputes in Hindu dissolution cases and analyze the role of the court in guiding these decisions. It will also explore the potential benefits of alternative dispute resolution methods, such as mediation or arbitration (Sharma & Ahuja, 2020; Mukherjee, 2016; Nigam & Nigam, 2014).

II. Importance Of Property Disputes In These Cases

In Hindu dissolution cases, property disputes are a critical component of legal proceedings. This is because property ownership is often tied to family structures in Hindu culture, and the resolution of these disputes can have significant implications for the parties involved. According to a study conducted by researchers at the National Law School of India University, property disputes are the most common issue in Hindu dissolution cases, with 67% of cases involving property disputes⁴ (Shah, 2015). The study further highlights that property disputes can prolong legal proceedings, adding to the emotional and financial burden on the parties involved. Property disputes can be particularly contentious in Hindu dissolution cases due to the cultural significance of property ownership in Hindu families. As noted by the Supreme Court of India in the case of S.V. Satyanarayana v. S.V. Seshagiri Rao⁵, "Hindu society is based on the principle of joint family ownership, and property disputes can have a severe impact on the stability and continuity of the family unit" (1995). Moreover, property disputes in Hindu dissolution cases can be further complicated by the lack of clear documentation regarding property ownership. According to a report by the Law Commission of India, "the absence of proper documentation regarding property ownership can lead to property disputes that can take years to resolve" (2018)⁶.

³ Nigam, S., & Nigam, S. (2014). Mediation: An effective alternative for resolving disputes. International Journal of Management, IT and Engineering, 4(4), 337-348.

⁴ Shah, V. (2015). Mediation in Family Law Disputes. Journal of the Indian Law Institute, 57(1), 64-86.

⁵ S.V. Satyanarayana v. S.V. Seshagiri Rao, AIR 1965 SC 1117.

⁶ Law Commission of India. (2018). Report No. 266: Joint Hindu Family and Its Coparcenary Property. Retrieved from <http://www.lawcommissionofindia.nic.in/reports/report266.pdf>

III. Purpose Of the Article

The purpose of this article is to analyze the role of the court in resolving property disputes in Hindu dissolution cases and explore alternative dispute resolution methods that may offer benefits over court involvement. This article seeks to provide insight into best practices for resolving property disputes in Hindu dissolution cases and offer guidance to parties and legal professionals involved in these cases. One of the key authorities on alternative dispute resolution is the Arbitration and Conciliation Act of 1996, which provides a legal framework for resolving disputes outside of the court system. Mediation, a form of alternative dispute resolution, is often used in divorce cases to help parties reach a mutually beneficial agreement. As noted by Mukherjee, "mediation is an effective method for resolving property disputes in divorce cases as it allows parties to have control over the outcome and reach an agreement that is tailored to their unique circumstances" (2016). In addition, the Supreme Court of India has emphasized the importance of alternative dispute resolution methods in resolving property disputes, stating that "it is time for parties to explore alternative methods of dispute resolution such as mediation or arbitration" (S.V. Satyanarayana v.S.V. Seshagiri Rao, 2013). This highlights the growing recognition of the benefits of alternative dispute resolution methods in resolving property disputes in Hindu dissolution cases.

The purpose of this article is not only to highlight the benefits of alternative dispute resolution but also to provide insight into the role of the court in guiding decisions related to property disputes in Hindu dissolution cases. As noted by Sharma & Ahuja, "the court plays a crucial role in ensuring a fair and just outcome in property disputes in divorce cases, particularly in cases where there are complex legal and financial issues involved" (2020). The purpose of this article is to provide guidance on resolving property disputes in Hindu dissolution cases by analyzing the role of the court and exploring alternative dispute resolution methods. By doing so, this article aims to offer insights and best practices that can be helpful to parties and legal professionals involved in these cases.

IV. Legal Framework for Hindu Dissolution Cases

A. Overview of the Hindu Marriage Act of 1955

The Hindu Marriage Act of 1955 is the primary legislation governing Hindu marriage dissolution cases in India. It sets out the rules and procedures for divorce or separation and property division between spouses. The Act provides for the establishment of family courts to deal with matters related to family law, including marriage dissolution cases (The Hindu Marriage Act, 1955). Under the Act, a Hindu marriage can be dissolved by either party by presenting a petition to the district court. The Act provides several grounds for divorce, including cruelty, adultery, desertion, conversion to another religion, unsoundness of mind, and incurable diseases. The Act also recognizes mutual consent as a valid ground for divorce (The Hindu Marriage Act, 1955). In cases of divorce or separation, the Act provides for the division of property between the parties involved. The court can order the sale of property, and the proceeds can be divided between the parties. The court can also order the transfer of property from one party to the other, depending on the circumstances of the case⁷ (The Hindu Marriage Act, 1955). Overall, the Hindu Marriage Act of 1955 aims to protect the interests of both parties and ensure a fair and just outcome in marriage dissolution cases. The Act provides a comprehensive legal framework for resolving these cases and addressing property disputes that may arise.

B. Types Of Property Disputes That Can Arise In Hindu Dissolution Cases

In Hindu dissolution cases, property disputes can arise in various forms. One common type of property dispute is the disagreement over the ownership of the marital home. In such cases, the court must determine whether the property is jointly owned or solely owned by one of the parties. The court considers various factors, such as who purchased the property, who made mortgage payments, and who paid for any improvements or repairs (Sharma & Ahuja, 2020).

⁷ Sharma, V. K., & Ahuja, A. (2020). A critical analysis of matrimonial property laws in India. Indian Journal of Public Administration, 66(4), 1075-1087.

Another type of property dispute that can arise in Hindu dissolution cases is related to inherited property. Disputes may arise when a spouse inherits property from their family, and the other spouse claims a share in it. According to the Hindu Succession Act, 1956, a wife has an equal right to inherit her husband's property, and a husband has an equal right to inherit his wife's property (Mukherjee, 2016). In such cases, the court must determine whether the property was indeed inherited and the rights of the parties to it. Moreover, property disputes can also arise due to the couple's joint ownership of a business or other assets. In such cases, the court may need to determine the value of the business or asset and the contributions of each party to its acquisition and operation. The court may also need to decide whether to liquidate the business or asset and divide the proceeds between the parties (Nigam & Nigam, 2014). Property disputes can arise in various forms in Hindu dissolution cases. These disputes can involve disagreements over the marital home, inherited property, or joint ownership of a business or asset. The court's role in these cases is to interpret and apply the law to determine the rightful owner of the disputed property, taking into account various factors such as financial and personal circumstances, contributions, and needs of the parties involved⁸.

- In Hindu dissolution cases, property disputes can arise in various forms, such as:
 - ***Division of matrimonial property:*** When a Hindu marriage is dissolved, the property acquired during the marriage is generally divided equally between the spouses. However, disputes can arise when it comes to determining which assets are considered matrimonial property and which are personal property⁹.
 - ***Inheritance disputes:*** In Hindu families, the property is often passed down through inheritance. Disputes can arise over the inheritance of ancestral property, such as who has the right to inherit and how the property should be divided among the heirs.
 - ***Maintenance disputes:*** In cases where one spouse is financially dependent on the other, disputes can arise over the amount and duration of maintenance payments.¹⁰
 - ***Trust property disputes:*** Hindu families often create trusts to manage their property. Disputes can arise over the management of trust.

⁸ Mukherjee, M. (2016). Understanding Property Rights Under Hindu Law. Retrieved from <https://www.indialawjournal.org/understanding-property-rights-under-hindu-law.html>

⁹ Kusum, A., & Garg, R. K. (2015). Property rights of women in India: An overview. Journal of Humanities and Social Science, 20(5), 57-64.

¹⁰ Sangal, R. (2017). The Hindu Succession (Amendment) Act, 2005: A critique. Journal of the Indian Law Institute, 59(3), 341-356.

V. Role of the Court in Resolving Property Disputes

Importance Of Court Involvement In Resolving Conflicts

In Hindu marriage dissolution cases, the role of the court in resolving property disputes cannot be understated. As noted by the Supreme Court of India in the case of Nivedita Sharma v. Niharika Sharma (2019), "the primary function of the court in matrimonial matters is to see that the rights of both parties are protected and that justice is done to both of them.

" The court is responsible for determining the rights and obligations of the parties involved, and for ensuring that any disputes are resolved fairly and justly. One important way in which the court can assist in resolving property disputes is by providing guidance on the legal framework for property ownership and division. As noted by the High Court of Delhi in the case of Archana v. Pawan Kumar (2015)¹¹, "the court is required to examine the legal position with regard to the rights of the parties in the property and the manner in which it should be divided between them." In this way, the court can help to clarify any ambiguities or uncertainties regarding property ownership and can ensure that the property is divided in a manner that is consistent with the law.

In addition to providing guidance on the legal framework for property division, the court can also play an active role in facilitating negotiations and settlements between the parties involved. As noted by the Supreme Court of India in the case of Parveen Mehta v. Inderjit Mehta (2002)¹², "the court should encourage the parties to reach an amicable settlement of their disputes, and should assist them in reaching a mutually acceptable solution." By facilitating negotiations and encouraging compromise, the court can help to reduce the time, expense, and emotional strain involved in resolving property disputes through litigation¹³.

¹¹ Archana v. Pawan Kumar, RFA No. 511/2014 (High Court of Delhi, 2015).

¹² Parveen Mehta v. Inderjit Mehta, (2002) 5 SCC 706 (Supreme Court of India).

¹³ Nivedita Sharma v. Niharika Sharma, Civil Appeal No. 11305 of 2018 (Supreme Court of India, 2019).

Overall, the role of the court in resolving property disputes in Hindu dissolution cases is critical. Through its guidance on the legal framework for property ownership and division and its facilitation of negotiations and settlements, the court can help to ensure that any disputes are resolved fairly and justly and that the rights and obligations of all parties involved are protected. The role of the court in resolving property disputes in Hindu dissolution cases. When property disputes arise between spouses in a Hindu marriage dissolution case, they can become emotionally charged and difficult to resolve without legal intervention. This is where the court plays a crucial role in resolving conflicts and ensuring that both parties receive a fair outcome.

One of the main benefits of involving the court in resolving property disputes is that it provides an impartial third party to oversee the process. The court can evaluate the evidence presented by both parties and make a decision based on the law and the facts of the case. This can help prevent one party from taking advantage of the other or using their power to influence the outcome. Additionally, the court has the power to enforce its decisions. If one party refuses to comply with the court's ruling, the court can take further action, such as imposing fines or even ordering imprisonment. This provides a strong incentive for both parties to comply with the court's decision and can help prevent future disputes.

Furthermore, court involvement can also speed up the resolution of property disputes. When left to the parties themselves, property disputes can drag on for years, causing emotional stress and financial burden. However, when the court is involved, it can set deadlines and timelines to ensure that the case is resolved in a timely manner.

VI. Legal Principles That Guide Court Decisions In Property Disputes

In resolving property disputes in Hindu dissolution cases, the court is guided by certain legal principles. The main principle is that the court must ensure a fair and equitable division of the property between the parties involved. This principle is based on the notion of joint ownership and equal rights of spouses in marriage. In addition, the court is guided by various provisions of the Hindu Marriage Act of 1955 and other relevant laws. One of the key principles that guide the court is the principle of self-acquired and ancestral property. Self-acquired property refers to property that is acquired by an individual through their own effort or resources, such as income from work or investments. Ancestral property, on the other hand, refers to property that has been passed down through generations of a family. The court recognizes the importance of ancestral property in Hindu families and follows certain rules when it comes to inheritance and division of such property. Another important principle that guides the court is the principle of equity and fairness. The court is tasked with ensuring that the division of property is fair and equitable to both parties involved, considering factors such as the financial contributions of each spouse, the length of the marriage, and the needs and responsibilities of each party.

The court also considers the concept of joint family property, which refers to property that is held jointly by members of a Hindu joint family. In such cases, the court will consider the rights of all the members of the family and ensure that the division of property is in accordance with their respective rights and interests. The Supreme Court of India has also laid down certain legal principles that guide the court in resolving property disputes. In the case of Prakash v. Phulavati¹⁴ the court held that the daughters of a coparcener (a person who shares equally in an ancestral property) have equal rights as sons in such property, even if the coparcener died before the Hindu Succession (Amendment) Act, 2005 came into effect. This decision has had a significant impact on the rights of women in Hindu families and has paved the way for more equitable distribution of ancestral property. Overall, the court is guided by a range of legal principles when it comes to resolving property disputes in Hindu dissolution cases. These principles are designed to ensure that the division of property is fair, equitable, and in accordance with the rights and interests of all parties involved.

¹⁴ Prakash v. Phulavati, (2016) 2 SCC 36.

In Hindu dissolution cases, the court is often tasked with making difficult decisions regarding the division of property. These decisions can have far-reaching consequences for both parties involved. One such example is the case of Anil Kumar Jain v. Maya Jain¹⁵(2009), where the husband claimed that the property in question was acquired by him before the marriage and therefore should be considered his personal property. However, the court found that the property was acquired during the marriage and was therefore matrimonial property subject to division. In another case, Smt. Rita Devi v. State of Haryana¹⁶ (2010), the court had to decide on the inheritance of ancestral property.

The court held that the property in question was ancestral property and therefore the heirs were entitled to an equal share, regardless of their gender. Similarly, in the case of Jai Bhagwan v. Radha Devi¹⁷ (2013), the court had to decide on the maintenance payments to be made to the wife after the dissolution of the marriage. The husband argued that he did not have the financial resources to make the payments, but the court found that he had intentionally concealed his income and ordered him to pay a higher amount. These cases illustrate the complex nature of property disputes in Hindu dissolution cases and the difficult decisions that the court must make in order to ensure a fair outcome for all parties involved.

Challenges of Court Involvement in Property Disputes

Delays and increased costs associated with court involvement

The delays and increased costs associated with court involvement in property disputes are significant challenges in the Indian legal system. In many cases, the court process can take years to resolve, resulting in significant emotional and financial strain for the parties involved. Additionally, the cost of legal representation and court fees can be prohibitively high, particularly for those who are economically disadvantaged.

¹⁵ Anil Kumar Jain v. Maya Jain, AIR 2009 SC 1042

¹⁶ Smt. Rita Devi v. State of Haryana, AIR 2010 SC 1362

¹⁷ Jai Bhagwan v. Radha Devi, (2013) 4 SCC 193

A study conducted by the Centre for Social Justice in 2016 found that the cost of pursuing a property dispute in India can range from Rs. 20,000 to Rs. 10,00,000, depending on the complexity of the case and the length of the legal proceedings (Centre for Social Justice, 2016)¹⁸. For many individuals, these costs are simply unaffordable, which can result in the denial of justice and a perpetuation of the existing power dynamics. Moreover, the overburdened judicial system in India is notorious for its backlog of cases, with millions of cases pending in courts across the country (National Judicial Data Grid, 2021). The delays in the judicial process not only cause frustration and stress for the litigants but also weaken their confidence in the judicial system. Several judicial decisions have highlighted the issue of court delays and emphasized the need for efficient and timely resolution of property disputes.

In the case of State of Bihar v. Bishwanath Prasad Singh¹⁹ (2012), the Supreme Court observed that the "delay in the disposal of the property disputes undermines the faith in the justice delivery system, apart from causing immense hardship to the parties involved." To address the issue of delays and high costs, the Indian legal system has introduced several reforms, including the use of alternative dispute resolution mechanisms such as mediation and arbitration. These mechanisms can provide a more cost-effective and timely resolution to property disputes, particularly in cases where the parties are willing to negotiate and compromise while court involvement is necessary to resolve property disputes, the delays and increased costs associated with the legal process pose significant challenges for litigants. The need for efficient and timely resolution of disputes has been recognized by the judiciary, and efforts are being made to address the issue through reforms and the promotion of alternative dispute resolution mechanisms.

¹⁸ Centre for Social Justice. (2016). Burden of Property Disputes in India. Retrieved from <http://www.centreforsocialjustice.net/wp-content/uploads/2017/06/Property-Report.pdf>

¹⁹ State of Bihar v. Bishwanath Prasad Singh, AIR 1962 SC 955.

Unsatisfactory outcomes for both parties

Unsatisfactory outcomes for both parties in property disputes can often arise due to the rigid and formulaic approach of the court. The court may be bound by legal principles and precedents, which can limit its ability to reach a decision that takes into account the unique circumstances of the case and the needs and interests of both parties.

- One example of an unsatisfactory outcome is when the court orders the sale of the property to divide the proceeds equally between the parties. This may not be an ideal solution, particularly if one party has a strong emotional attachment to the property or if the property has sentimental value.
- Another example is when the court orders the division of property in a way that is not practical or workable. For instance, the court may order that the property be divided equally, but the property may not be physically divisible or may not have an equal value.

Furthermore, the adversarial nature of court proceedings can further exacerbate the unsatisfactory outcomes for both parties. The adversarial process often pits the parties against each other, and the focus can shift from resolving the dispute to winning the case. This can lead to bitterness, hostility, and a breakdown in relationships. In the case of State of Bihar v. Bishwanath Prasad Singh²⁰, the court recognized the limitations of a rigid and formulaic approach in property disputes. The court observed that property disputes should be resolved in a manner that is just, equitable, and fair, and that the court should take into account the unique circumstances of each case. The court emphasized the importance of a pragmatic approach that balances the interests of both parties.

Benefits of alternative dispute resolution methods

Alternative dispute resolution (ADR) methods offer several benefits over traditional court proceedings for resolving property disputes. These methods can be faster, more cost-effective, and less adversarial, allowing for more creative and mutually satisfactory solutions²¹. One commonly used ADR method is mediation, in which a neutral third party helps the disputing parties come to a mutually acceptable resolution.

²⁰ State of Bihar v. Bishwanath Prasad Singh, AIR 1962 SC 955.

²¹ Mediation and Conciliation Project Committee. (2005). Report on the Need for Legislation to Encourage the Use of Mediation in India. Retrieved from <https://www.lawcommissionofindia.nic.in/reports/report222.pdf>

Mediation can be particularly useful in property disputes involving family members, as it allows the parties to preserve their relationships and reach a solution that works for everyone. Another ADR method is arbitration, in which a neutral third party makes a binding decision on the dispute. Arbitration can be faster and more flexible than court proceedings, and it allows the parties to choose an arbitrator with expertise in the relevant area of law. A study conducted by the Law Commission of India found that ADR methods have several advantages over traditional court proceedings, including reduced costs, greater efficiency, and increased satisfaction with the outcome (Law Commission of India, 2009)²²

In the case of Raffiq and Anr. v. Munshilal and Ors.²³, the parties were able to successfully resolve their property dispute through mediation, reaching a mutually satisfactory agreement that divided the disputed property in a way that satisfied both parties (Raffiq and Anr. v. Munshilal and Ors., 2010). Overall, ADR methods offer a viable alternative to traditional court proceedings for resolving property disputes, and they can provide more satisfactory outcomes for all parties involved.

²² Centre for Social Justice. (2016). The Cost of Access to Justice. Retrieved from <http://www.centreforsocialjustice.org.uk/library/the-cost-of-access-to-justice>

²³ Raffiq and Anr. v. Munshilal and Ors, (2016) 3 SCC 383.

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- Hindu Succession Act, 1956, § 14.
- Hindu Succession Act, 1956, § 15.

VII. Conclusion

In conclusion, property disputes in Hindu dissolution cases can be complex and time-consuming. The court plays a crucial role in resolving these disputes, but delays and high costs associated with court involvement can be a challenge. However, alternative dispute resolution methods such as mediation and arbitration can provide a more efficient and cost-effective way of resolving disputes. It is important for parties to understand their legal rights and seek legal advice to ensure a fair and just resolution of property disputes. With the implementation of effective dispute resolution mechanisms, parties can avoid lengthy legal battles and achieve a satisfactory outcome.

- Given the challenges and limitations of court involvement in property disputes, parties involved in such cases may benefit from considering alternative dispute resolution methods. Mediation, arbitration, and negotiation can often lead to more efficient and cost-effective resolutions, while also preserving relationships and reducing the emotional toll of litigation.
- In order to improve the court system's handling of property disputes, there may be a need for reforms and modernization. This could involve increasing the number of judges and courts, providing better training and resources for court staff, and implementing technology to streamline procedures and reduce delays.
- It is also important for individuals and families to take steps to prevent property disputes from arising in the first place. This could include creating clear and comprehensive documentation of property ownership, making use of trusts and wills, and having open and honest communication about property matters within the family.
- Ultimately, the resolution of property disputes requires a balance of legal expertise, cultural sensitivity, and practical considerations. By working collaboratively and creatively, parties and courts can achieve outcomes that are fair, just, and sustainable.

As stated by the Law Commission of India in its 245th report, "there is a need for a legal framework that provides for speedy and effective resolution of property disputes in family matters" (2014). The use of alternative dispute resolution methods should be encouraged and promoted in such cases. The courts should also be encouraged to make use of technology to streamline legal procedures and reduce delays. By adopting these measures, property disputes in Hindu dissolution cases can be resolved more efficiently, providing a just and fair outcome for all parties involved.

PAPER PRESENTATION ON THE TOPIC OF

ADVERSE POSSESSION

VERSUS

RIGHT TO PROPERTY

BY

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ADVERSE POSSESSION Versus THE RIGHT TO PROPERTY

(I). INTRODUCTION :

(A). ORIGIN :

The doctrine of adverse possession that was recognized at the earliest point of time dates back to about 2000 BC in the Code of Hammurabi which explained that if a man left his house, garden or field and another person possessed and used it for three years the new comer retained the land.

In early England the King generally owned all the land but when disputes between private individuals began to arise, actual possession of land was often treated as the best evidence of ownership. Thus the doctrine of adverse possession served to clear the title to real property.

Much of Indian law has its roots in English law and the doctrine of Adverse Possession is no exemption. For the first time the limitations for these type of Suits was prescribed in English laws as Twenty (20) years with the passage of time, where under the Indian law which incorporated the doctrine of Adverse Possession the period of limitation for the same is also prescribed by the Limitation Act, 1963.

(B). Concept of Doctrine of Adverse Possession Vis- a- Vis Indian Law :

In India the concept of Adverse Possession mean that a trespasser or a stranger who comes into possession of the land must be in exclusive and continuous possession and without interruption for a certain period of time typically 12 to 30 consecutive years depending upon the classification of ownership (i.e, Private or Government) of the land. That the statute of Limitations is intended to give true owners ample time to check on and protect their property from another's adverse claim. If the true owners fail to do that for a protracted period, he is bound to loose the land.

The law of Adverse Possession is contained in the Article 65 Sch-I of the Limitation Act, 1963 which prescribes a limitation of 12 years for a suit for possession of an immovable property or any interest therein based on title.

(C). Provisions governing under the Limitation Act, 1963 :

The Limitation Act 1963 is a key piece of legislation elaborating on adverse possession. Under Section 3 of the Limitation Act, 1963 no cognizance can be taken by the Court if the suit is barred by limitation whether defence taken by the defendant or not, however, it is to be noted that the said provision bars only the remedy of the person filing the suit and not his right as available to him under law. However there is an exception regarding extinguishment of right under the Limitation Act, 1963 as provided under Section 27 which provides that in case the person has not taken any action for recovery of possession during the period of limitation then his rights get extinguished.

So in a situation where a person does not take any action for recovery of possession of land within a period of twelve years as provided under Article 65 in Schedule I of the Limitation Act, 1963 his rights get extinguished and therefore the land is left in abeyance. But the law of adverse possession is based upon the principle that a land cannot be left in abeyance for a long time as already stated above. Hence someone has to be the owner of the land when the rightful owner has lost his rights once failed to take action as provided Section 27 of the Limitation Act. So, in the said situation the person is adverse possession of the land becomes the rightful and absolute owner of the land as per Article 65. It also has to be kept in mind that limitation period of twelve years starts only when the possession has become adverse to the true owner and not otherwise.

CASE LAW:

The concept of adverse possession has been well settled by the judicial committee of the Privy Council in 1907 in **Perry v Clissold (1907) AC 73, at 79** wherein it was held :

"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title. "

The decisions of the Privy Council though not binding on the Supreme Court but still the said decision was upheld by three judges of the Hon'ble Supreme Court in the case of **Nair Service Society v K.C. Alexander** reported in AIR 1968 SC 1165. Thus it can be said that till date it is a good law, that if a person in hostile possession of the land though not being the true owner, becomes the absolute owner if the rightful owner of the said land does not come forward within the statutory period of twelve years as provided under the Limitation Act, 1963.

(II). WHAT ARE THE ESSENTIALS FOR CLAIMING ADVERSE POSSESSION ?:

(A). To constitute the adverse possession, the stranger or trespasser who is in such possession has to establish or fulfill the following conditions:

(1). Actual possession of the property:

Adverse possession consists of actual occupation of the land with the intent to keep it solely for oneself. Merely claiming the land or paying taxes on it, without actually possessing it, is insufficient. Entry on the land, whether legal or not, is essential. A trespass may commence adverse possession, but there must be more than temporary use of the property by a trespasser for adverse possession to be established. Physical acts must show that the possessor is exercising the dominion over the land that an average

owner of similar property would exercise. Ordinary use of the property—for example, planting and harvesting crops or cutting and selling timber—indicates actual possession. In some States acts that constitute actual possession are found in statute.

(2). Such possession should be open and notorious to the use of the property:

An adverse possessor must possess land openly for the entire world to see, as a true owner would. Secretly occupying another's lands does not give the occupant any legal rights. Clearing, fencing, cultivating, or improving the land demonstrates open and notorious possession, while actual residence on the land is the most open and notorious possession of all. The owner must have actual knowledge of the adverse use, or the claimant's possession must be so notorious that it is generally known by the public or the people in the neighborhood. The notoriety of the possession puts the owner on notice that the land will be lost unless he or she seeks to recover possession of it within a certain time.

(3). Exclusive possession and use of the property:

Adverse possession will not ripen into title unless the claimant has had exclusive possession of the land. Exclusive possession means sole physical occupancy. The claimant must hold the property as his or her own, in opposition to the claims of all others. Physical improvement of the land, as by the construction of fences or houses, is evidence of exclusive possession.

(4). Such possession should be hostile or adverse to the true owner :

Possession must be hostile, sometimes called adverse, if title is to mature from adverse possession. Hostile possession means that the claimant must occupy the land in opposition to the true owner's rights. One type of hostile possession occurs when the claimant enters and remains on land under color of title. Color of title is the appearance of title as a result of a deed that seems by its language to give the claimant

valid title but, in fact, does not because some aspect of it is defective. If a person, for example, was suffering from a legal disability at the time he or she executed a deed, the grantee-claimant does not receive actual title. But the grantee-claimant does have color of title because it would appear to anyone reading the deed that good title had been conveyed. If a claimant possesses the land in the manner required by law for the full statutory period, his or her color of title will become actual title as a result of adverse possession.

(5). Such possession should be a continuous one without any interruption:

All elements of adverse possession must be met at all times through the statutory period in order for a claim to be successful. The statutory period, or “statute of limitation”, is the amount of time the claimant must hold the land in order to successfully claim “adverse possession”. Mere long possession of defendant for a period of more than 12 years without intention to possess the suit land adversely to the title of the plaintiff and to latter's knowledge cannot result in acquisition of title by the defendant to the encroached suit land. A possession is adverse only if in fact one holds possession by denying title of the lessor or by showing hostility by act or words or in cases of trespassers as the case may be as against lessor or other owner of the property in question.

(B). The possession above stated should be understood to mean dispossession of the true owner:

(i) Dispossession of the true owner :

In reference to this point the term dispossession and discontinuance of possession are relevant. In dispossession a person comes in, and drives out another from possession. In discontinuance of possession, the person in possession goes out and is followed into possession by others. To constitute discontinuance of possession, there must be dereliction by the person who has right and actual possession by another, whether adverse or not.

(ii). Possession of another essential for dispossession :

“Dispossession” implies the coming in of a person and driving out of another person from possession. “Dispossession” implies ouster and the essence of ouster is that the person ousting is in actual possession of the property. The mere finding that the persons are not in possession of the disputed property does not decide the question, whether there was dispossession. Dispossession occurs only when a person comes in and drives out another from possession.

(III). What acts do not amount to dispossession ?:

(1). To constitute dispossession, the other side must take and keep possession with the intention to acquire the property for himself. Acts between neighbours, occasional acts of interference which are naturally explained by the desire of the person doing them to protect their own property do not amount to dispossession.

(2). Permissive possession does not amount to dispossession :

A true owner is neither dispossessed nor does he discontinued his possession, if a third person takes possession with his permission. It is however true that, if the person in permissive possession changes his animus and continues to hold with an open and continuous assertion of a hostile title, his possession becomes adverse to the owner. A person put into the occupation of property, or person put into permissive possession of that property, does not occupy it as of right. In such cases, the owner of the property is properly considered to be in possession. An owner who accommodates a poor relation in his premises, does not necessarily part with the possession of his property occupies by such poor relation. The possession of such poor relation is the constructive possession of the owner and the later may retain and continue to exercise his proprietary and possessory rights so as to rebut the presumption that he has parted with the possession of the property and prevent the operation of the statute of limitation. If an owner allows

his gardener, or servant, or work man employed upon his estate, to live in a cottage thereon, rent-free, their possession is his possession, however long it may be continued. If an owner, for motives of kindness or charity, allows a relative or friend to occupy a cottage and land upon his estate, and the owner, during such occupation, continues to exercise acts of ownership over the land so occupied, e.g., he repairs the building, or cuts down plants, trees, or causes drains to be made through the land or quarries away stone, all such acts of dominion do not show that he had ever parted with the possession of his property, although he had allowed another person to occupy it.

(3). Mere non-user by the owner is not dispossession :

The meaning of the word “dispossession” is well settled. A man may cease to use his land because he cannot use it, since it is under water. He does not, thereby, discontinue his possession. Constructively his possession continues, until he is dispossessed and upon the cessation of the dispossession before the lapse of the statutory period, constructively it revives. Dispossession must be actual and the person dispossessing must have physical control and exercise acts of ownership, which would mark him as occupier. He must possess the desire to possess. Acts of dispossession must be such as are inconsistent to the character of the property possessed and the purpose for which it is used by the owner. Only slight acts of user on the part of the owner may, in certain circumstances be sufficient to preserve his possession unless such acts are inconsistent with the positive acts of exclusive ownership exercised by the trespasser. There is no dispossession until someone else takes possession.

If one satisfies the above ingredients then only a claim can be made for Adverse Possession.

(IV). PLEADINGS AND BURDEN AND PROOF:

To claim title though adverse possession it is necessary to take into consideration what is actually required to be pleaded and what not.

The Hon'ble Supreme Court in *Karnataka Waqf Board* reported in 2004 (10) SCC 779 regarding the pleadings to be made by a person while claiming title over an immovable property on the basis of adverse possession held as follows :

“Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show :

- (a) on what date he came into possession,
- (b) what was the nature of his possession
- (c) whether the factum of possession was known to the other party,
- (d) how long his possession has continued, and
- (e) his possession was open and undisturbed.

A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession”.

The Court further held that whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property therefore, the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

In *Dagadabai (Dead) By Lrs v Abbas @ Gulab Rustum Pinjari* reported in (2017) 13 SCC 705 held that a person first admit the ownership of the true owner over the property before claiming ownership on the strength of adverse possession.

Inconsistent plea cannot be taken by a party when claiming title by way of adverse possession i.e. a party cannot claim his ownership over a property on the basis of title and by way of adverse possession

simultaneously as both such pleas are mutually inconsistent. Interestingly one such plea, however, alternative and not inconsistent was allowed by the Hon'ble Supreme Court in L.N. Aswathama And Anr v P. Prakash reported in 2009 (13) SCC 229. In this case a person 'A' was tenant under 'B' and 'A' subsequently purchased the property from 'B' and became its owner. Another person 'C' who claims to be the true owner filed a suit or title and possession against 'B' stating therein that he was the true owner and not 'B'. The person 'A' denied the title of 'C' over the suit property by stating that he became the owner of the property by purchasing it from 'B' but in case 'B' did not have title and consequently his claim based on title was rejected, then having regard to the fact that he had been in possession by setting up title in 'B' and later in himself, his possession was hostile to the true owner i.e. 'C'; and if he was able to make out such hostile possession continued for more than 12 years, he could claim to have perfected his title by adverse possession.

The burden of proof in respect to adverse possession is on the person who claims title by way of adverse possession. As per Article 142 and 144 respectively of the Limitation Act, 1908 in a suit, the plaintiff (that time only plea of adverse possession could be taken only by defendant) had to prove that he had the title and had been in the physical possession of the property since last 12 years. But under the present Limitation Act, 1963 the burden has now shifted. Now true owner just have to prove ownership and the onus shifts on the person claiming title by way of adverse possession.

(V). RELEVANT CASE LAWS:

The Hon'ble Supreme Court of India has dealt with the concept of Adverse Possession in various cases and some of the leading case laws are as follows:

1. As stated above, the person claiming Adverse Possession must be in continuous possession without any interruption. Possession does not become adverse when the intention to hold adversely is wanting. Person holding property by way of adverse possession must publish his intention to deny right of the real owner. His intention of adverse possession must be within notice, knowledge of the real owner. If there

are circumstances showing open and notorious act of taking possession, knowledge may be presumed. Where the assertion of right is secret and not open, the possession cannot be held to be adverse. In the case of Bhimrao Dnyanoba Patil Vs State of Maharashtra, 2003 (1) Bom. L.R. 322; 2003(1) All MR 565 ; 2003 (2) LJSoft 131, it has been held that, unless enjoyment of the property is accompanied by adverse animus, mere possession for a long period even over a statutory period, would not be sufficient to mature the title to the property by adverse possession.

2. Adverse possession was defined by the Supreme Court in *Amarendra Pratap Singh v Tej Bahadur Prajapati* as: “A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter’s title.”

3. In *SM Karim v Mst. Bibi Sakina* following the equitable principle of nec vi nec clam nec precario (without force, without secrecy, without permission), it was held that adverse possession must be adequate in continuity, in publicity and extent, and a plea is required, to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.

4. The Limitation Act, 1963, lays down a limitation period of 12 years for suit of possession of immovable property or any interest based on the title. The period for limitation for the government, however, is 30 years by virtue of article 112. The law of adverse possession was judicially summed up by the Judicial Committee of the Privy Council in *Perry v Clissold*, where it was observed that if a rightful owner does not claim his right against a possessor within a given time, his ownership right stands extinguished and the same was approved by in *Nair Service Society Limited v KC Alexander*.

5. It was further clarified in *Karnataka Wakf Board v Government of India* that the question of adverse possession is a mixed question of fact and law as the trespasser needs to prove a continued possession of more than 12 years with *animus possidendi* (intention to possess) against the original owner. Further, the starting point of limitation commences when the defendants’ possession becomes adverse (*Vasantiben Nayak v Somnath Muljibai and Others.*).

6. However, the understanding of adverse possession has evolved in recent times and the Supreme Court has reiterated the need to take a fresh look. The Supreme Court, in *PT Munichikkanna Reddy and Ors v Revamma*, was guided by the Judgment of the European Court of Human Rights (ECHR) in *JA Pye (Oxford) Ltd v United Kingdom*, which had

critiqued the law of adverse possession and urged re-examination in light of changes in the law.

7. The Supreme Court in *Hemaji Waghaji v Bhikhhabhai Khengarbai* criticized the law and stated that it was irrational, illogical and wholly disproportionate. The court directed the Ministry of Law to take a fresh look at the law of adverse possession. The then government tasked the Law Commission with preparing a consultation paper. While noting that the ECHR judgment was overturned, it stated that there was a need to strike a balance between the pros and cons of the law.

8. The Hon'ble Supreme Court had further narrowed the scope for establishing a claim of adverse possession in *Dagadabai v Abbas@Gulab Rustum Pinjari* by ruling that the possessor must necessarily first admit the ownership of the true owner over the property and the true owner has to be made a party to the suit.

9. It was restricted further in *Mallikarjunaiah v Nanjaiah* where the Hon'ble Court observed, "Mere continuous possession, howsoever long it may have been qua its true owner is not enough to sustain the plea of adverse possession unless it is further proved that such possession was open, hostile, exclusive and with the assertion of ownership right over the property to the knowledge of its true owner."

10. However, in the recent Judgment of *Ravinder Kaur Grewal and others v Manjit Kaur and others* reported in AIR 2019 SC 3827, the Hon'ble Supreme Court held a contrary position that a plaintiff can file a suit for perfection of title by adverse possession.

The question for consideration before the Court was "Whether Article 65 of the Limitation Act, 1963 only enables the person to set up a plea of adverse possession as a shield and such a plea cannot be used as a sword by a Plaintiff to protect the possession of the immovable property or recover it in a case of dispossession ?".

The Hon'ble Supreme Court in Para 59 of the Judgment held as follows "...In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the Plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected his title by way of adverse possession, can file a Suit for restoration of possession in case of dispossession....". The Hon'ble Supreme Court overruled the decision in *Gurudwara Sahab Vs. Gram Panchayat Village Sirthala* as well as the subsequent judgments of the Supreme Court which relied on it.

(VI). CONCLUSION :

Whether any relook required in the present law ?

There is a need to revamp this archaic law because it goes against equity. Due to the law of adverse possession sometimes there arise situations when true owners of immovable property are dispossessed just because of their non-deliberate inactions, poverty or some other reasons due to which those true owners are unable to approach the Court to avail the remedies to them under the law.

The Hon'ble Supreme Court in *Hemaji Waghaji Jat v Bhikhhabhai Khengarbhai Harijan & Others* reported in 2009 (16) SCC 517 observed that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The Court while asking the Government of India to reconsider the law of adverse possession further held, the law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

In *State Of Haryana v Mukesh Kumar & Others* reported in 2011 (10) SCC 404, the Hon'ble Supreme Court gave certain suggestions that in case the law of adverse is not abolished then the Parliament might simply require adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere 12 years. Such an extension would help to ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotected owners lose title. The Hon'ble Supreme Court vide this Judgment recommended the Union of India to consider either to make necessary amendments concerning the law of adverse possession or abolish it for good.

Keeping in view of the above mentioned judgments passed by the Hon'ble Supreme Court, the Law Commission of India prepared a

consultation paper cum questionnaire having 11 questions related to adverse possession of immovable property which are as follows:

Questionnaire on Adverse Possession :

1. Do you think that the law of adverse possession under which the legal owner and title holder of immovable property is precluded from bringing an action to recover the possession from a person in occupation of the property for a continuous period of twelve years openly, peacefully and in a manner hostile to the interest of legal owner should be retained in the statute book or the time has come to repeal it? Are there good social reasons or considerations of public policy for retaining the legal acquisition of title through adverse possession?.
2. Do you think that having regard to the conditions in our country such as lack of reliable record of rights, title registration, the problem of identity of property and the difficulties of even genuine occupants to back up their possession with formal title deeds, the law of adverse possession should remain or should it be scrapped?.
3. (a) Do you think that certain exceptions and qualifications should be carved out by law so as to ensure that the plea of adverse possession should not be made available to those who dishonestly enter the land with full consciousness that they were trespassing into another's land?
 (b) In other words, whether it is just and proper to make the plea of adverse possession available to a naked trespasser entering the land without good faith?.
 (c) In any case, whether the bona fide purchasers from a trespasser should be allowed to plead adverse possession. ?.
4. If the benefit of acquisition of title by adverse possession is to be denied to a rank trespasser, should he be paid compensation for the improvements made or other expenditure incurred for preservation of land?.
5. Do you think that the real owner who did not evince any interest in the land should at any distance of time be permitted to claim back the land irrespective of a string of changes in land occupation and improvements made thereto ?.
6. If adverse possession is allowed to remain, do you think that the real owner should be compensated in terms of market value as per the rate prevailing on the date when the person claiming adverse possession started possessing the land? Or, could there be any other principle of working out compensation or indemnification without hassles?.
7. If adverse possession is retained, is there a case for enlarging the present period of limitation of 12 years and 30 years (in the case of Govt. land) ? If so, to what extent?
8. As far as the property of the State is concerned, the Limitation Act prescribes thirty year period for filing a suit against a person in adverse possession. Is there a case for abolition of adverse possession in relation to Government property? Should it be left to the Government to claim possession

of its land at any time irrespective of the long chain of events that might have occurred and inaction on the part of Government?

9. Whether the law which extinguishes the right to property vested with the true owner by reason of the lapse of prescribed period of adverse possession of another can be tested by the standards laid down in Article of the 1st Protocol²¹ to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms and be faulted on the ground of being 'irrational' and 'disproportionate'?

10. (a) In what way the NRIs would be more handicapped than resident Indians by reason of application of the law of adverse possession?.

(b) What safeguards and remedies if any should be provided to the N.R.I.s to check illegal encroachment of their immovable properties? Should there be longer period of limitation in respect of the property owned by N.R.I.s. ?.

11. Do you think that the principles governing adverse possession and its proof should be provided explicitly in a Statute?.

As stated above, the questions put in the questionnaire were - Whether the law of adverse possession should remain in the statutes or is it time to repeal them, should the trespasser be compensated by the true owner for the improvements done by him to the land, etc. However, there are no further developments whether to continue with this law after having certain changes or abolish it completely.

Till the time any changes are brought by the legislatures the current provisions of law and precedents would have to be followed in the country.

E-notes on Law of Crimes-II
Unit-III
Offences against Property
(Prof. R. K. Verma, FoL, L.U.)

Relevant Sections - 378 to 462

Prescribed Topics –

- Theft (Sec. 378)
- Extortion (Sec. 383)
- Robbery (Sec. 390)
- Dacoity (Sec. 391)
- Criminal Misappropriation of Property (Sec. 403)
- Criminal Breach of Trust (Sec. 405)
- Cheating (Secs. 415-420)
- Mischief (Sec. 425)
- Criminal Trespass (Secs. 441-462)

Theft -

Section 378 Indian Penal Code (Hereinafter referred as IPC)

Statutory Definition- Whoever, intending to take dishonestly any movable property out of the possession of any person without that persons consent, moves that property in order to such taking is said to commit theft.

- This section defines the offense of theft.
- It is clear from the definition that to constitute the offence of theft, the following elements must be satisfied-
 - (1) The intention of the offender must be to take the property dishonestly.
 - (2) The property must be movable.
 - (3) The property must be in the possession of some person.
 - (4) The property must be taken without the consent of its possessor.
 - (5) The property must be moved in order to such taking.

- **Apart from these-**

There are **five explanations** attached to this section to clarify the specific words used in section.

- The **first of which** states that what is movable property for the purpose of this section. It states that anything attached to the earth is not movable property and is therefore, not the subject of theft;
But as soon as it is severed from the earth, it becomes capable of being the subject of theft.
- The **second explanation** says that a moving effected by the same act which effects the severance may be theft.
- The **third explanation** clarifies that a person is said to cause a thing to move who either actually moves it, or who moves it by removing an obstacle which prevented it from moving, or who moves it by separating it from any other thing.
- The **fourth explanation** states that a person who causes an animal to move by any means is said to move that animal and to move everything which, in consequence of the motion so caused, is moved by that animal.
- The **fifth explanation** clarifies that the consent may be express or implied. The possessor of the property may himself give it; or any other person who has express or implied authority for that purposes, may also give it.
- **Besides these explanations,** 16 **illustrations** are also attached for conceptual clarity about the offence of theft.

Element wise Analysis -

- (1) **Intending to take dishonestly/ the intention of the offender must be to take the property dishonestly** – The dishonest intention is the determining

element of the offence of theft. The intention **on the part of the offender** must be to take the property dishonestly.

- The expression "**dishonestly**" has been defined under **section 24** of the Indian Penal Code.
- According to **section 24**, whoever does anything with the intention of causing **wrongful gain to one person or wrongful loss** to another person, is said to do that thing '**dishonestly**'.
- **Wrongful gain and wrongful loss** have been defined under **section 23** of the Code, which states that -
 - '**wrongful gain**' is **gain by unlawful means of property** to which the person gaining **is not legally entitled**, whereas;
 - '**wrongful loss**' is **the loss by unlawful means of property** to which the person losing it, **is legally entitled**.
- The same section further clarifies that a person **is said to gain wrongfully** when such person **retains wrongfully**, as well as such person **acquires wrongfully**.
- A person **is said to lose wrongfully** when such person **is wrongfully kept out of property**, as well as when such person **is wrongfully deprived of property**.
- **As a crux**, it is not necessary for the offence of theft that **wrongful gain or wrongful loss must result in each and every case**.
- Either of one is sufficient to constitute the offence, because;
- The **ultimate intention** must be to cause wrongful gain or wrongful loss.
- **For example** - if 'A' takes the property of 'B' wrongfully-
 - he causes wrongful loss to 'B', and if -
 - he keeps that property with himself,
 - he causes wrongful gain to himself also, if-

- he gives that property unlawfully to 'C',
- he causes wrongful gain to 'C', if-
- he destroys that property,
- he causes wrongful loss to 'B'

but

- no wrongful gain to anyone.
- **Therefore**, what is material for the offence of theft is that **there must be intention to cause** wrongful gain or wrongful loss; and
- **not actual** wrongful gain or wrongful loss.

Some remarkable aspects of intending to take dishonestly -

- i. **Time**- The intention to take the property dishonestly **must exist at the time of moving the property**. It can be justified/supported from **illustration (h)**.
- Such an intention exists when the taker of the property intends to cause wrongful gain to one person or wrongful loss to another person.
- ii. **Personal Benefits**- It would be not defence to plead that the **accused did not intend to procure personal benefits**.

For example -Where the accused took complaints three cows against her will and distributed them among her creditors, he was guilty of theft.

- **Likewise**, the accused a Hindu, who arrived at the scene later on, carried away the calf without the consent of its Mohammedan owner with a view to save it from any chance of its sacrifice. It was held that the accused was guilty of theft as the removal of the calf by him was dishonest.

- iii. **Taking need not be permanent** -Taking of property need not be permanent or with an intention to appropriate the thing taken. (Illustration-(l) of the section 378)
- Theft may be committed **without an intention to deprive the owner of his/her property permanently**.

For example - Where 'A' snatched away some books from 'B' and told him that they would be returned, when he will come to his house. 'A' would be guilty of theft.

- iv. **Taking in assertion of a bona fide dispute-** Removal of a property under a bona fide claim of right cannot amount to theft because dishonest intention would be absent even if the claim is unfounded.

For example- Where a bona fide dispute existed between two parties over possession of a piece of land and one of them forcibly harvested the crop, it could not amount to theft if the party harvesting genuinely, even though mistakenly, believed that they had a right to the crop.

- **But,** this defence will not be available in cases of mere colourable pretence to obtain or keep possession of property.

- v. **Stealing one's own property -** A person can be held guilty of theft of his own property.

- **Illustrations (j) & (k) in section 378** show that an offender can commit theft of his own property also. These illustrations however show that the property was in the possession of another person.
- These illustrations clarify that a person can be convicted of stealing his own property, **if he takes it dishonestly from another.**

For example - Where a person removes his cattle after attachment from the person to whom they have been entrusted without recourse to the court under whose order the attachment has been made, he will be guilty of theft.

- **Presence or absence of dishonest intention has been prominently shown in illustrations (i), (j), (k), (l), (n), (o) and (p) in section 378.**

- vi. **Mistake-** Where a person takes another's property believing under a mistake of fact and in ignorance that he has a right to take it, he is not guilty of theft

because there is no dishonest intention even though he may cause wrongful loss.

For example - 'A' in good faith believing the property of 'B' to be his own property takes that property out of 'B's' possession. 'A' will not be liable for theft because he does not take dishonestly.

- **Likewise,** where the accused went into a Police Station to register a complaint and finding the constable on duty asleep, he picked up a handcuff from there and took up with him. He could not be convicted of theft because he did not intend to cause wrongful loss to the police department nor wrongful gain to anyone.
- Where a respectable man pinched away another person's cycle, because his own was missing at the time and brought it back. In the absence of dishonest intention he could not be convicted of theft.
- **Similar law** would apply where someone takes the cycle of another without even informing him with a view to report to the Police Station about a crime having been committed or with a view to follow a criminal who had just then committed a crime and had run away. There would not be any liability in such cases because there is no dishonest intention on his part.

vii. **Theft by husband and wife** - As far as Hindu Law is concerned, husband and wife do not constitute one single entity for the purpose of criminal law.

- **Therefore,** a wife may be guilty of theft, if she moves/gives any property to other person belonging to her husband with dishonest intention without husband's consent.
- **Similarly,** if a husband dishonestly takes his wife's separate property like her '**Stridhana**' without her consent, he commits theft.
- Also, a Mohammedan wife may be guilty of stealing her husband's property and the husband may also similarly be held guilty.

See also the leading English case of *R. v. Hands*, (1887) 16 Cox 188.

- (2) **Any Movable Property** - The next element of the offence of theft is concerned with the nature of the property. The subject of theft must be a movable property as per the definition under section 378 because the theft of immovable property is not possible.
- The expression '**movable property**' has the same meaning as given by **section 22** of the Code.
 - This definition is inclusive which says that this expression is intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.
 - The **first explanation** shows that once an immovable property is converted into a movable property, it becomes a subject of theft;
 - **whereas, second explanation** makes it clear that severance from the earth may make any property attached to land movable and that the act of severance may of itself be theft.
 - **Illustration (a) under section 378** clarifies that conversion from immovable to movable and moving of the property both can be done by a single act only.
 - **But, whether a movable property is subject of theft or not must be judged in the light of section 95 of IPC** according to which nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.
 - **Value of property** - It is not necessary that the thing stolen must have some appreciable value.

Kinds of movable properties which can be subject of theft-

- (A) **Crops** - Where a disputed land is in possession of the complainant and he grows crops on it, the other party to the dispute has no right to harvest it, and if he does harvest it, he may be guilty of theft.
- In such cases, the first thing which a court generally does is, to find out who grew the crop. But that is not decisive.
 - The title of the land and the evidence of past possession also deserve to be looked into along with other allied matters.
- (B) **Water** - Water is movable property as per the definition of movable property in **section 22**.
- **Therefore, theft of water is punishable** where water is reduced into possession of someone.
 - **But**, sea and river being not in the possession of anyone, taking such water would not amount to theft.
- (C) **Electricity** - Electricity running in electric wire is not movable property and therefore dishonest abstraction of electricity does not amount to an offence vide section 22 of the Code.
- **But**, theft of electricity has been made an offence under Electricity Act which also says that the same will be deemed to be an offence under the IPC and thus punishable under section 379 of the Code (*Avtar Singh v. State*)
- (D) **Gas** - Cooking gas has been held to be movable property by English Courts and as such theft of gas has been punished as larceny.
- For Example** - Where the accused, in order to avoid paying for the total gas consumed by him, introduced another pipe at the entry point of the gas which allowed the gas to move without going into the meter. It is theft/larceny. (*R. v. White*).

- (E) **Human Bodies** - Human bodies whether **living or dead, is not a movable property** within the meaning of **section 22** of the Code. So, stealing of a dead body thus does not make the accused guilty of theft.
- **But**, where a human body has been preserved as a mummy, or where any part of it has been preserved with some purposes, like for research, teaching etc., or where a human body or skeleton is being used as an article, stealing the same would amount to theft.
- (F) **Animals** - Animals have been divided into two categories - animals *mansuetae naturae* or tame, pet or domesticated animals; and
- animals *ferae naturae* or ferocious, wild, dangerous or non-domesticated animals.
 - **The tame animals have been held to be movable property.**
 - **Thus**, theft of dog, cow, goat, bullock, cat etc., is possible and punishable.
 - **Fish**, in their free state are regarded as *ferae naturae*.
 - **But**, a fish in fishery under the possession of a person who has exclusive right to catch it from there, taken dishonestly would amount to theft.
- (3) **Out of the possession of any person** – The next requirement of the offence of the theft is that the property must be in the possession of any person (other than the accused).
- **Whether**, he is the owner of it or is in possession of it in some other manner
 - **Even though**, the expression '**possession**' **has not been defined** in the Indian Penal Code;
 - **But, section 27** of the Code says that when property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code; and

- The **explanation attached to section 27** clarifies that a person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk, is a clerk or servant within the meaning of this section.
- The **requirements of possession has been highlighted by illustrations (d), (e), (f) and (g)** in section 378.
- Illustration (g) demonstrates that where property dishonestly taken belonged in nobody's possession or where it is lost property without any apparent possessor, is not the offence of theft but criminal misappropriation.
- A movable property is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons and when the circumstance are such that he may be presumed to intend to do so in case of need.
- It would be sufficient **if the property is taken against his wishes** from the custody of a person who has an apparent title.
- **Mere physical control** of the prosecutor over the thing taken **is quite sufficient.**
- Even owner of the property may be guilty of committing theft of his own property. (Illustrations (j) and (k)).

For Example- The removal of crops standing on land attached and taken possession of by the court under section 145 of the Criminal Procedure Code amounts to theft.

See the case of *H. J. Ransom v. Triloki Nath* also.

- (4) **Without that person's consent** - In order to constitute theft the property must have been taken without the consent of the possessor.
- **Explanation 5 and illustrations (m) & (n)** explain that the consent may be express or implied and can be given either by the person in possession or any authorized person on his behalf.

- **Section 90** of the Code **defines consent** and states that consent given **under fear of injury or under misconception of fact** is not a valid consent; and
- if a person taking the consent knows or has reason to believe that the consent was given under such circumstances.
- It also states that consent **under unsoundness of mind** or **under intoxication** is also not valid if the gives of the consent does not understand because of such state of mind, the nature and consequences of that to which he gives his consent.
- It also states that unless the contrary appears from the context, consent of a person **under twelve years of age** is not valid.

For example - Where the wood was removed from a forest without payment of fees, even though with the consent of the Forest Inspector could amount to theft because Inspector was a Government Servant and possession of the wood by him was possession of Government itself and as such his consent was unauthorized and fraudulent.

- **Likewise**, 'A' sought 'B's' aid in committing theft of 'B's' master's property. 'B' told everything to his master and then assisted in the theft to procure 'A's' punishment.
- It was held that 'A' would be liable for abetment of theft only and not for theft because in theft the property must be taken without the consent of the possessor whereas in this case 'B's' master knew about 'A's' plan so that he and 'B' together could catch 'A' committing theft. (*T. N. Choudhury v. Emp.*, (1878) 4 Cal. 366.
- **However**, under English law in similar circumstances, 'A' would be guilty of larceny because **consent is a two-way affair**, the giver of the consent

knowing as to what he is consenting and the taker of the consent knowing what for is he seeking consent.

- **But** in the present case while 'B's' master knew about 'A's' plan, 'A' did not know as to what 'B's' master's mind and therefore, this was not a valid consent, and thus the property was taken without the possessor's consent. (*R. v. Bannen*, (1844) 1 C & K 295).
- **In a similar case**, 'A' suggested 'B' a servant of 'C' a plan for the commission of robbery at the 'C's' shop. B the servant pretending to agree to his suggestion gave the keys of the shop to 'A' who got duplicate keys made on a day arranged with 'B' the accused 'A' unlocked the shop with that key and entered the shop.
- 'A' was arrested. 'B' the servant had already informed C, the prosecutrix beforehand about 'A's' plan to enter the shop on the appointed day.
- The accused was held guilty of having broken and entered the shop with intent to steal therein. His conviction was justified in spite of the fact that C knew that the accused (appellant) had been supplied with means of breaking the lock and entering the room by her own servant. (*Chandler*, (1913) 1K.B.125).

(5) Moves that property in order to such taking - The offences of theft gets completed only when the movable property which is the subject of theft is dishonestly moved in order to such taking.

- Moving of the property is a must, and **the moving must be in order to such taking and not for anything else**.
- The least removal of the thing taken from the place where it was before amounts to taking though it may not be carried off.

- It is not necessary that the property should be removed out of its owner's reach or carried away from the place in which it was found.
- **Explanations 3 & 4 show how moving could be effected** in certain cases; and **illustrations (b) & (c) elucidate the meaning of explanation 4.**
- **Illustrations (a), (b), (c) and (h)** in this section **illustrate the aspects of moving of the property.**

For example - Where a guest took bed-sheets from the room with an intention to steal them and carried them to the hall but was apprehended before he could get out of the house, he was held guilty of theft.

- **Likewise**, where the accused, an employee in the Post Office, while assisting in sorting letters took out two letters with the intention of handing them over to the delivery peon and sharing with him certain money payable upon them. He was held guilty of theft and also of attempted criminal misappropriation of property (*Venkatasami v. Emp.*, (1890)14 Mad. 229).
- **Similarly**, the accused cut the string which fastened a neck ornament to the complainant's neck and forced the ends of the ornament slightly apart in order to remove the same from her neck with the result that in ensuing struggle between the accused and the complainant, the ornament fell from her neck and was found on the bed later on. The accused was held guilty of theft as there has been in eyes of law sufficient moving of the ornament to constitute theft. (*Bisakhi's case*).
- **Likewise**, pulling wool from the bodies of live sheep and lamb amounts to theft under this section. (*R. v. Martin*,(1777)1Leach 171).
- Ultimately, the unique feature of the offence of theft that it cannot be justified in any necessity. It is governed by the maxim "***Necessitas inducit privilegium quo ad jura privata***" which means that no amount of necessity can justify an act of theft.