

191. Subs. by Act 8 of 1882, section 2, for "In every case in which an offender is sentenced to a fine".

192. Ins. by Act 10 of 1886, section 21(2).

193. *Shahejadjkhan Mahebubkhan Pathan v State of Gujarat*, 2012 (10) Scale 21 [LNIND 2012 SC 630] : (2013) 1 SCC 570 [LNIND 2012 SC 630] : JT 2012 (10) SC 8 [LNIND 2012 SC 630] : *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 : (2008) 1 SCC (Cr) 1.

194. *C Ganga v Lakshmi Ammal*, 2008 Cr LJ 3359 (Ker).

195. *P Balaraman v State of TN*, 1991 Cr LJ 166 Mad at pp 176-177.

196. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, (2007) 6 SCC 528 [LNIND 2007 SC 451] : 2007 Cr LJ 2417 : 2007 (4) SCR1122 : (2007) 3 SCC (Cr) 209.

197. *Donatus Tony Ikwanusi v The Investigating Officer, NCB* 2013 Cr LJ 1938 (Mad FB) : 2013 (2) CTC1. See also *Sukumaran v State*, 1993 Cr LJ 3228 (Ker) ; *Madappen Muhassin v State of Kerala*, 2016Cr LJ 4792 (Ker).

198. *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : (2008) 1 SCC Cri 1 [LNIND 2007 SC 1171] .

199. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, (2007) 6 SCC 528 [LNIND 2007 SC 451] : 2007 Cr LJ 2417 : 2007 (4) SCR1122 : (2007) 3 SCC (Cr) 209.

200. *Kuna Maharana v State*, 1996 Cr LJ 170 (Ori).

201. AIR 1988 SC 2127 [LNIND 1988 SC 411] : (1988) 4 SCC 551 [LNIND 1988 SC 411] .

202. *Sugnathi Suresh Kumar v Jagdeeshan*, AIR 2002 SC 681 [LNIND 2002 SC 1622] : (2002) 2 SCC 420 [LNIND 2002 SC 1622] .

203. *Vijayan v Sadanandan*, (2009) 6 SCC 652 [LNIND 2009 SC 1119] : 2009 Cr LJ 2957 : (2009) 3 SCC (Cr) 296; *C Ganga v Lakshmi Ammal*, 2008 Cr LJ 3359 (Ker).

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CHAPTER III OF PUNISHMENTS

[s 65] Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

COMMENT—

This section applies to all cases where the offence is 'punishable with imprisonment as well as fine', i.e., cases where fine and imprisonment can be awarded, and also those where the punishment may be either fine or imprisonment, but not both. The only cases that it does not apply to are those dealt with in section 67 where fine only can be awarded.²⁰⁴ Section 33 (now 30) of the [Cr PC, 1973](#) acts as a corollary to this section. Thus under [section 65, IPC, 1860](#) the imprisonment in default of fine cannot exceed one-fourth of the maximum term of imprisonment that can be awarded for the offence. Thus, where the High Court altered the conviction of the appellant to one under [section 419](#) read with [section 109 IPC](#), from a conviction recorded by the trial Court under sections 420/511, 467, 468 and 471 read with [section 120B IPC](#), and awarded a sentence of two years' rigorous imprisonment while maintaining the fine of Rs. 3,000 and by implication the default imprisonment of two years as awarded by the trial Court, it was held that, though the trial Court's order regarding two years' imprisonment in default of payment of fine was quite in order in view of the fact that the five offences for which the trial Court recorded a conviction were each punishable with seven years' imprisonment and the fine of Rs. 3,000 was only a part of the cumulative sentence for the commission of those five offences, yet the sentence of three years' imprisonment in default of payment of fine became illegal the moment the High Court altered the conviction to one under [section 419](#) read with [section 109 IPC](#), as under these sections the accused could be sentenced to a maximum of three years' imprisonment and, therefore, the default imprisonment could under no circumstance exceed nine months, that is, one-fourth of the maximum sentence of three years that could be awarded under [section 419, IPC](#).²⁰⁵ While a Magistrate's powers are specifically limited by [section 33\(old\) Cr PC](#) they must also be exercised so as not to contravene [section 65 IPC](#).²⁰⁶ [Section 326, IPC](#) is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. However, because of [section 29\(2\), Cr PC](#) the learned Magistrate, First Class, cannot impose the maximum amount of imprisonment prescribed by this section; he also cannot, by resorting to [section 65, IPC](#), award a period of imprisonment, in default of payment of fine, on the erroneous assumption that he has the power to award the maximum sentence prescribed by [section 326, IPC](#).²⁰⁷ [Section 65 IPC](#) that puts a limit of imprisonment for default sentence upto one-fourth of the term of imprisonment, the grievance against higher default sentence, if any, can be only by the accused and not by the State.²⁰⁸

204. *Yakoob Sahib v State*, (1898) 22 Mad 238.

205. *Ram Jas v State of UP*, [1974 Cr LJ 1261](#) : [AIR 1974 SC 1811](#) [[LNIND 1970 SC 363](#)] ; see also *Partap Kumar*, [1976 Cr LJ 818](#) (P&H).

206. *Chhajulal v State of Rajasthan*, [AIR 1972 SC 1809](#) [[LNIND 1972 SC 179](#)] : (1972) 3 SCC 411 [[LNIND 1972 SC 179](#)] . See *Shantilal v State of MP*, (2007) 11 SCC 243 [[LNIND 2007 SC 1171](#)] : [2008 Cr LJ 386](#) : (2008) 1 SCC (Cr) 1 in which the period of three years imprisonment for default of fine was reduced to six months.

207. *Bidhan Bisoi v State of Orissa*, [1989 Cr LJ 1038](#) (Ori).

208. *Association of Victims of Uphaar Tragedy v Sushil Ansal*, [AIR 2017 SC 976](#) .

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CHAPTER III OF PUNISHMENTS

[s 66] Description of imprisonment for non-payment of fine.

The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

COMMENT—

The imprisonment in default of payment of a fine may be either rigorous or simple.

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CHAPTER III OF PUNISHMENTS

[s 67] Imprisonment for non-payment of fine when offence punishable with fine only.

If the offence be punishable with fine only,²⁰⁹ [the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

COMMENT—

This section refers solely to cases in which the offence is punishable with fine only and has no application to an offence punishable either with imprisonment or with fine, but not with both. Such offences are governed by section 65. For a consideration under this section of the [Narcotic Drugs and Psychotropic Substances Act](#) (61 of 1985), section 21 of which imposes a fine and imprisonment in default, see *Daulat Raghunath Derale v State of Maharashtra*.²¹⁰

[s 67.1] Default sentence on non-payment of Maintenance.—

The sentence is imposed under [section 125\(3\) of Cr PC, 1973](#) only as a mode of enforcement of the direction to pay the amount of maintenance and not as a punishment. The Supreme Court was considering the question whether the default sentence, if undergone shall wipe off the liability.²¹¹ It is impermissible to impose a sentence of rigorous imprisonment on a defaulter under [section 125\(3\) Cr PC, 1973](#). Only a sentence of simple imprisonment can be imposed under [section 125\(3\) of Cr PC, 1973](#).²¹²

²⁰⁹ Ins. by Act 8 of 1882, section 3.

²¹⁰ *Daulat Raghunath Derale v State of Maharashtra*, 1991 Cr LJ 817 .

²¹¹ *Kuldip Kaur v Surinder Singh*, ([AIR 1989 SC 232 \[LNIND 1988 SC 987\]](#)) : [1989 Cr LJ 794](#) . It was held that the purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears.

²¹² *Moideenkutty Kunhankutty Haji v State of Kerala*, [2008 Cr LJ 3402](#) (Ker).

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CHAPTER III OF PUNISHMENTS

[s 68] Imprisonment to terminate on payment of fine.

The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

COMMENT—

The person sentenced to pay a fine must deposit the fine forthwith, but may be, permitted to deposit it after some time in the discretion of the Court. Even in that event he must deposit the amount before the period specifically fixed by the Court and if he does not do so, he immediately incurs the liability of being sent to prison. It would be the duty of the Court to arrest him and confine him into the prison. Only when such confinement in the prison has commenced that the accused can have a legal right to deposit the amount whereupon [section 68 IPC, 1860](#) would come into operation and his imprisonment would terminate.²¹³ The time given by the High Court or the Sessions Judges in appeal or revision for payment of fine merely means that the realisation is deferred till the time granted. However, this cannot take away the rights of the convicts as provided under [section 68](#) and [section 69](#) of the [IPC, 1860](#). If the convict offers to deposit the fine imposed on him beyond the period provided, the Courts cannot refuse to accept the same. It must apply the provisions of [section 68](#) and [section 69](#) of the [IPC, 1860](#).²¹⁴ The period to deposit the amount of fine cannot be extended by the High Court under [section 482 Cr PC, 1973](#) and the petitioners can avail the remedy of provisions of [section 68 of IPC, 1860](#).²¹⁵

²¹³. *Ram Lakhan v State*, [1986 Cr LJ 617](#) (All); *Usman v State of UP*, [2007 Cr LJ 3868](#) (All).

²¹⁴. *State of Assam v Bir Bahadur Singh*, [2005 Cr LJ 4345](#) (Gau).

²¹⁵. *Prahalad Singh v State of MP*, [2009 Cr LJ 3161](#) (MP); *Ram Lakhan v State*, [1986 Cr LJ 617](#) (All).

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CHAPTER III OF PUNISHMENTS

[s 69] Termination of imprisonment on payment of proportional part of fine.

If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

ILLUSTRATION

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

COMMENT—

If the fine imposed on an accused is paid or levied while he is imprisoned for default of payment, his imprisonment will immediately terminate: and if a proportion of the fine be paid during the imprisonment, a proportional abatement of the imprisonment will take place. The Court has, however, no power to refund fine. If the time limit had been set by the Court for payment of fine and the fine amount is not paid within the time so fixed, then it goes without saying that the petitioner-accused has to either surrender before the Court or the prosecuting agency will be in a position to arrest him and produce before Court for his detention in prison for undergoing the default sentence.²¹⁶ In case of default in payment of fine accused not obeying specific directions as to making payment and postponing payment without surrendering into Court. Accused is guilty of abuse of process of Court.²¹⁷

²¹⁶. *Prahalad Singh v State of M P*, 2009 Cr LJ 3161 (MP).

²¹⁷. *Ram Lakhan v The State*, 1986 Cr LJ 617 (All).

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CHAPTER III OF PUNISHMENTS

[s 70] Fine leviable within six years, or during imprisonment. Death not to discharge property from liability.

The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

COMMENT—

Imprisonment in default of fine does not liberate the offender from his liability to pay the full amount of fine imposed on him. Such imprisonment is not a discharge or satisfaction of the fine but is imposed as a punishment for non-payment or contempt or resistance to the due execution of the sentence. The offender cannot be permitted to choose whether he will suffer in his person or his property. His person will cease to be answerable for the fine. Nevertheless, his property will for a time continue to do so. The bar of six years may save the property of the accused but not his personal arrest. The liability for any sentence of imprisonment awarded in default of payment of fine continues after the expiration of six years.²¹⁸ Any proceeding taken after six years to recover the fine by sale of immoveable property of the offender is time-barred.²¹⁹ The limitation starts from the date of passing of the sentence of conviction by the trial Court and not the date of dismissal of the appeal or revision preferred by the accused.²²⁰ The property of the accused is liable for the payment of fine even if he has undergone imprisonment in default of fine and as such even on death of the offender does not discharge any property which would after his death, be legally liable for his debts due from him (including liability) to discharge the fine.²²¹

The expression "levy" in this section means "to seize" for the purpose of collecting the fine or to enforce execution for a certain sum and not actual realisation.²²² Any stay or suspension obtained from the higher Court has to be excluded in computing the period of six years' limitation under [section 70 IPC](#).²²³ Section 70 says that State shall levy fine within six years from the date of sentence. What is contemplated is that the State shall commence recovery proceedings within six years; and, need not be completed it within six years of the sentence. Therefore, once a distress warrant is issued within six years of the sentence, the plea of limitation is out of bounds for the sentence.²²⁴

²¹⁸. *Ganu Sakharam*, (1884) Unrep. Cr C 207.

²¹⁹. *Collector of Broach v Ochhavlal Bhiklal*, (1940) 43 Bom LR 122, (1941) Bom 147. *State v Krishna Pillai Madhavan Pillai*, 1953 Cr LJ 1265

220. *Palakdhari Singh*, [AIR 1962 SC 1145](#) [[LNIND 1962 SC 17](#)] : (1962) 2 Cr LJ 256 .
221. *P R Anjanappa v Yurej Agencies Pvt Ltd*, [2004 Cr LJ 2565](#) (Kar).
222. *Ramaswamy*, [\(1962\) 64 Bom LR 440](#) : 1963 (1) Cr LJ 152
223. *Mahtab Singh v State of UP*, [1979 Cr LJ 1077](#) : [AIR 1979 SC 1263](#) [[LNIND 1978 SC 186](#)] .
224. *Mahtab Singh*, *Supra*; see also *Brahameshwar Prasad Sinha*, [1983 Cr LJ 8](#) (Pat).