RULES AND ORDERS

OF THE

LAHORE HIGH COURT, LAHORE

VOLUME III

INSTRUCTIONS
TO
CRIMINAL COURTS

CONTRIBUTIONS

PATRONAGE AND SUPERVISION

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Rules and Orders of the Lahore High Court Lahore

VOLUME III. – Instructions to Criminal Courts

CHAPTER 1

Practice in the trial of Criminal Cases

PART A -- GENERAL

*[1. **Court hours and place of sitting.--** All trials held at the headquarters of a district or sub-division shall be conducted during Court hours as may be fixed by the High Court from time to time, at Court houses only. When it becomes necessary to take up a case on tour, due notice of the place and hour fixed for attendance shall be given to the parties:

Provided that nothing in this paragraph shall apply to the Courts set up to try offences at the spot under the Minor Acts, such as traffic offences, cattle trespass and forests offences, etc.]

2. **[Institution of ordinary petitions.]-- (a) A petition box shall be placed in the verandah of the Court house at about one hour before the Court sits, an official being specially made to attend early for this purpose. It shall be opened in the presence of the Magistrate at about 15 minutes after the Court opens when all petitions shall be presented and initialled by him. The Magistrate shall pass proper orders forthwith or inform the petitioner when orders will be ready after the necessary Kaifiyats have been put up. The box shall be replaced in the verandah and opened again shortly before the Court rises for luncheon in the presence of the Magistrate and the same procedure followed. It shall then be replaced once more in the verandah and opened for the last time 15 minutes before the time fixed for the rising of the Court and the procedure prescribed above followed. After the Magistrate has risen, the box will be brought back to the Court room and no further petitions will be accepted. A list of all

miscellaneous petitions, etc., on which orders cannot be passed forthwith, should be prepared and exhibited outside the Court room specifying the date fixed for the disposal of each petition.

(b) [**]**[Urgent petitions.]--** In urgent cases, however, the Magistrate may exercise his discretion and personally receive [*][petitions] presented to him direct at any time.

(c) The members of the ministerial establishment are strictly forbidden to receive complaints, petitions or other documents direct from lawyers and their clerks or from litigants except when the Magistrate is on leave and no other Magistrate is in charge of his current duties. District Magistrates should, however, invariably make arrangements for the reception of complaints, petitions, etc., by another Magistrate when a Magistrate is temporarily absent on leave, tour or otherwise. Where there is a single Magistrate at a station such as a Moffassil or outlying Court, District Magistrates should issue such orders as may be necessary in the peculiar circumstances of each case to ensure the convenience of the general public.

[*][(d) Application put in by counsel for the inspection of records may be presented to the Magistrate personally.]

3. Court house in an open Court.-- Section 352 of the Code of Criminal Procedure lays down that the place where a Criminal Court is held, "shall be deemed an open Court to which the public generally may have access so far as the same can conveniently contain them," but the discretion to exclude the public from the ordinary Court room rests with the presiding Magistrate. When, however, the presiding Magistrate, for any reason, excludes the public by holding his Court in a building such as a jail, to which the public is not admitted (and he is not entitled to do so without permission of the Department concerned) he should obtain the sanction of Government thereto, through the District Magistrate, and should inform the High Court that sanction has been accorded.

[*][4. **Speedy disposal of cases.**- Magistrates shall give priority to criminal cases when an accused person is in custody. A criminal case shall be proceeded with from day to day as far as practicable and disposed of quickly. Witnesses, who are present, should be examined promptly and shall not be

detained longer than may be absolutely necessary. Adjournments, when necessary, shall be as short as the circumstances permit.

4-A. It is not a reasonable cause of postponement under section 344 of the Code of Criminal Procedure, 1898, except for a short period, that there are other accused in the case for whose arrest it is considered by the Court desirable to wait in order that all the accused may be put on their trial together. Every accused has a right to have the evidence against him recorded at as early a period as possible.]

5 & 6 [***][Omitted]

[*][**7. Closing hour of Court.--** The hearing of a case taken up before closing hour of the court may, if necessary, be continued for a short time after that hour; but no new case should be taken up after the hour when the court is timed to rise.]

8. Adjournments caused by holidays, etc.-- On the occurrence of an unexpected holiday or the unexpected absence of an officer, the Presiding Officer, before his departure or before finishing the work on the day preceding the holiday, should himself fix fresh dates of hearing in the peshi register for the cases fixed for the day in question. The register should then be made over to the reader of the court, or in the case of a holiday to a selected reader, who should be made responsible for informing all parties and witnesses of the adjournments given on their coming to attend the closed court or courts. On holidays the duty Magistrate at headquarters should check and supervise the work of the selected reader for the Criminal Courts at least once in the course of the morning.

9. Daily progress reports.-- The forms prescribed for reporting the daily progress of cases (see Volume VI-B, Part III, form No. 176) should be used by Magistrates without fail and a copy should be sent daily to the District Magistrate or Sub-Divisional Officer as the case may be.

10. Explanation of delay in quarterly statements.-- Magistrate shall furnish in quarterly criminal statement No. II explanations of delay in the disposal of cases pending over 4 months. In this connection also see paragraph 6 of Chapter 23-C, Volume IV.

11. History sheets.-- Magistrate shall submit history sheets containing abstract of orders passed on different dates in all cases pending over one year provided they are not stayed. When delay is said to be due to a transfer application pending in a higher court, it is the duty of the higher court concerned to look into and remark on the causes of delay and to expedite disposal of the transfer application.

PART B -- INITIATION OF PROCEEDINGS

1. [***][Omitted]

[*]**[2. Right of accused for transfer of a case taken up by a Magistrate on information or knowledge.** - In most cases Magistrates take cognizance of an offence on a complaint under clause (a), or on the report of a Police Officer under clause (b) of sub-section (1) of section 190 of the Code of Criminal Procedure 1898.

A Magistrate taking cognizance of an offence under clause (c) of sub-section (1) must, before any evidence is taken, inform the accused person that he is entitled to have the case tried by another Court, and if the accused objects to being tried by such Magistrate, the case must be sent in the case of a Judicial Magistrate to the Sessions Judge and in the case of an Executive Magistrate to the District Magistrate for being transferred to another Magistrate (section 191 Cr. P.C)]

3. Complaints how to be dealt with.-- Complaints of offences made in writing should be received during office hours on all days other than public holidays. Upon the institution of a complaint, the date of presentation should be immediately endorsed thereon, together with the name of the Magistrate to whom the case is to be sent for inquiry or trial under section 192 of the Code, and the complainant directed to appear before him either the same day or one of the following days for examination. Similarly if the complaint has not been made in writing, the Magistrate should direct the complainant to the proper court.

[*]**[4. Complaints how to be dealt with. Oral examination of complainant and preliminary enquiry.** - The first duty of a Magistrate taking cognizance of an offence on complaint is to examine the complainant upon oath, except when the complaint is made in writing and (a) by a Court or by a public servant acting or purporting to act in the discharge of his official duties, or (b) when a Judicial or Executive Magistrate empowered under sub-section (2) or (3) of section 192 of the Code decides to transfer the complaint to a Judicial or Executive Magistrate, as the case may be or (c) when the offence is triable exclusively by a Court of Session.]

5. [***]**[Omitted**.]

6. Importance of examination of complainant before issue of process.-- The examination of complainants prescribed by the Code of Criminal Procedure is not a mere formality, as the result of this examination enables the Magistrate to determine whether he will put the machinery of the Criminal Court in motion by issuing a summons or warrant to cause the attendance of the accused before him. Section 203 lays down that if, in the judgment of the Magistrate, there is no sufficient ground for proceeding, he shall dismiss the complaint. The preliminary examination, therefore, if properly made, will frequently result in the summary dismissal of a complaint and save an innocent person from the trouble and annoyance of appearing at the bar of a Criminal Court. In the interests of the public, therefore, as well as with a view to the rapid despatch of work, a careful observance of the law in this particular is incumbent upon Magistrates.

*[7. **No preliminary examination of complainant necessary in police challans. -** The power to hold a preliminary Magisterial inquiry into cases reported by the Police, conferred by section 159 of the Code, should not be lost sight of. For the duties of Magistrates in ordering remands to Police custody, Chapter 2 of this Volume should be consulted. After completion of the investigation, the Police present a report under section 173 of the Code of Criminal Procedure (usually called "Challan"), and upon such a report a Magistrate can take cognizance under clause (b) of sub-section (1) of section 190. In such cases no preliminary examination of the complaint is necessary as in cases instituted on complaint under clause (a) of sub-section (1) of section 190.]

8. Inquiry into nature of offence and other preliminaries in order to see whether court has jurisdiction.-- The question of jurisdiction requires careful attention at the initial stage. Schedule II of the Code of Criminal Procedure shows the classes of Courts by which different offences are triable. In determining the nature of the offence, the facts ascertained by the examination of the complainant and the preliminary inquiry (if any) should be taken into consideration and importance should not be attached to the particular section specified or the offence alleged in the complaint, as complaints are often drafted by men ignorant of law, and there is also a tendency to exaggerate the nature of the offence. It should be also remembered that certain offences cannot

be taken cognizance of at all except upon the complaints of certain persons or Courts or with the previous sanction of the Government (vide Section *[195 to 198-A of the Code of Criminal Procedure)].

9. Jurisdiction also depends on the place of commission of offence.-- The question of jurisdiction arises also with reference to the place of inquiry or trial. The general rule prescribed by section 177 is that an offence shall be ordinarily inquired into and tried by a Court within the local limits of whose jurisdiction it was committed, but the subsequent sections create various exceptions to this rule.

10. Cases where place of commission of offence is uncertain.-- When, for instance, it is uncertain in which of several local areas an offence was committed; or where an offence is committed partly in one local area and partly in an other; or where the offence is a continuing one and continues to be committed in more local areas than one; or where the offence 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. The same rule applies to offences committed on a journey, which may be inquired into or tried at any place through which the offender or property affected passed in the course of such journey.

***[11. Procedure where Magistrate thinks that he has no jurisdiction or cannot impose proper sentence. --** If a Magistrate finds that the offence disclosed is not triable by him, he should report the case, in the case of a Judicial Magistrate, to the Sessions Judge and in the case of an Executive Magistrate to the District Magistrate, for its transfer to a competent Court. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106 of the Code, he may record his opinion and submit the proceedings, and forward the accused to a Magistrate of the first class specially empowered in this behalf by the Provincial Government.]

PART C -- (i) ATTENDANCE OF ACCUSED PERSONS

1. When summons or warrants should issue.-- When a Magistrate taking cognizance of an offence is of opinion that there is sufficient ground for proceeding, he must decide whether a summons or a warrant should issue in the first instance for the attendance of the accused. The fourth column of the second Schedule of the Code shows, in regard to offences, whether a summons or a warrant should ordinarily issue.

2. Discretion of Magistrate to issue summons or warrants.-- Even where the law provides for the issue of a warrant in the first instance, a Magistrate may, in his discretion, issue a summons. On the other hand, a Magistrate may, after recording his reasons for so doing, issue a warrant instead of summons in a case in which the law provides for the issue in the first instance of a summons. Section 90 and 204 of the Code should be referred to on this subject. The former section authorises the issue of a warrant instead of a summons (1) where the Court has reason to believe that the accused has absconded or will not obey the summons, or (2) if, after service of a summons, the accused fails to appear and offers no reasonable excuse for non-attendance.[***][...]

3. Warrant should not issue unless absolutely necessary.-- Great care should be taken not to issue a warrant when a summons would be sufficient for the ends of justice. Magistrates should remember that the issue of a warrant involves interference with the personal liberty of a person and should take care to see that no greater hardship is caused than is necessary. Under section 76 of the Code, a Court has the discretion to make the warrant bailable and this discretion should be exercised with due regard to the nature of the offence, the position of the accused person and the circumstances of the case.

4. Bail.-- When the accused person appears before the Court the question of bail arises. In the case of a bailable offence, an accused person must be allowed to remain at liberty if he can furnish bail for his appearance during the course of the trial. A Magistrate has the discretion to allow bail even in the case of non-bailable offences in certain circumstances. (For detailed instructions on the subject, vide Chapter 10, Bail and Recognizance).

5. When attendance of accused may be dispensed with.-- A criminal trial must be conducted in the presence of the accused but section 205 and 540-A of the Code give a limited discretion to the court to dispense with his attendance in certain circumstances.

6. Service of process.-- Detailed instructions as to the mode of issuing and serving processes of the Criminal Courts are contained in Volume IV, Chapter 8, "Processes". The provisions of the law relating to the service of processes on persons employed in the public service require special attention.

PART C-- (ii) ATTENDANCE OF PRISONERS IN CRIMINAL COURTS

Attendance of prisoners in Criminal Courts.-- The attendance of a prisoner in a criminal court is required either-

(a) to give evidence, or

(b) to answer a charge.

In the case of (a) above, if the prisoner is within the local limits of the appellate jurisdiction of the *[Lahore High Court] any criminal court in the ***[...] Punjab may issue a warrant for his production in the prescribed form as given in Schedule I to the *[Prisoners' Act, 1900 (III of 1900)], without the intervention of the High Court. Such a warrant may be forwarded direct to the officer in charge of the prison if it is situated within the district in which his presence is required. In all other cases, it should be forwarded through the District Magistrate or Sub-Divisional Magistrate within the local limits of whose jurisdiction the prisoner is confined. This is, however, subject to the condition that the warrant issued by a Court inferior to that of the Magistrate of the Ist class should be countersigned by the District Magistrate of the district. If, however, the prisoner is more than 160 kilometers distant from the court where his attendance is required or beyond the local limits of the appellate jurisdiction of the High Court, the matter should be referred to the Registrar of that Court for action under section 39 or 40 of the aforesaid Act, as the case may be.

*[All warrants for the production of prisoners should be issued well in advance of the date fixed for the hearing of the case. In the case of references made to the High Court for the production of prisoners, the date should be fixed with due regard to the distance involved and due notice should be given to this

Court. When the production of the prisoner is required under the orders of the High Court, the warrant is prepared and signed by an officer of that court.]

When the evidence of a convict under sentence of death is required, the court shall proceed to the Jail for the purpose, and shall not require the convict's attendance under Part IX of the *[Prisoners' Act, 1900(III of 1900)]:

Provided that if the presence of a convict under sentence of death is required by a Court of Session or High Court for the purpose of taking additional evidence in the case under section 428 of the Code of Criminal Procedure, 1898, the convict's attendance may be required under Part IX of the Prisoners' Act, 1900 (III of 1900).

PART D -- PROCEDURE IN INQUIRIES AND TRIALS BY MAGISTRATES

*[1. **Charge to be framed.--** After the provisions of section 241 and 241-A have been complied with and the accused appears or is brought before the Magistrate, a formal charge shall be framed relating to the offence of which he is accused. The charge shall be read out and explained to the accused and he shall be asked whether he admits that he has committed the offence with which he is charged (S. 242 Cr.P.C.).

The provisions of Chapter XIX of the Code deal with the framing of the charge. Sections 221 to 223 show the form in which a charge must be framed and the particulars which must be entered therein; and sections 233 to 239 show how charges may be joined, when they should be in the alternative form, and what persons may be charged jointly. Special care is required in the matter of joinder of charges, for mis-joinder of charges against the express provisions of law may vitiate the trial. Section 235 is also important and should be read with section 71 of the Pakistan Penal Code.

Sub-section (7) of section 221 of the Code of Criminal Procedure, 1898, requires that in all cases in which it is intended to prove previous conviction for the purpose of effecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction should be set out in the charge. The accused should then be asked whether he admits the previous conviction and his reply should be recorded. If he denies then the conviction must be proved in the manner prescribed in section 511 of the Code after the accused has been convicted of the offence with which he is charged (S.245-A Cr.P.C.).

2. Conviction on admission of truth of accusation. - If the accused admits that he has committed the offence with which he is charged, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly (S. 243 Cr.P.C.).

It should be remembered that a plea of guilty can only be recorded when the accused persons raises no defence at all. If, for example, he admits material facts, but denies guilty knowledge or intention, the plea cannot be regarded as

one of "guilty". If the accused refuses to plead or pleads "not guilty" he should be called upon to enter upon his defence after the prosecution case is closed. If the accused puts in a written statement it must be placed on record. To avoid objections of the accused in appeal or revision that no proper opportunity was given to call witnesses to rebut the evidence for the prosecution the Court should, as a matter of precaution, at the conclusion of the case for the prosecution, ascertain from the accused whether he has any witnesses, and in any case in which no witnesses are produced in defence, the court should record either that the accused does not wish to call witnesses or that for reasons stated he has been afforded a further opportunity of doing so.

3. Statement made under section 164. - Under section 244-A of the Code of Criminal Procedure, 1898, the statement of a witness duly recorded under section 164 of the said Code, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Qanun-e-Shahadat 1984.]

PART E -- RECORD OF EVIDENCE IN CRIMINAL CASES

1. Only relevant evidence should be recorded.--In recording evidence, Magistrates should take care to see that it is relevant and admissible under the provisions of the [Qanun-e-Shahadat, 1984]. If any objection is raised as to the admissibility of any evidence, the Magistrate should endeavour to decide it forthwith and the particular piece of evidence objected to, the objection and the decision thereon should be clearly recorded.

2. Duty of Court to elucidate facts.--Magistrates should endeavour to elucidate the facts and record the evidence in a clear and intelligible manner. As pointed out in 23 P.R. 1917, a Judge in a Criminal trial is not merely a disinterested auditor of the contest between the prosecution and the defence, but it is his duty to elucidate points left in obscurity by either side, intentionally or unintentionally, to come to a clear understanding of the actual events that occurred and to remove obscurities as far as possible. The wide powers given to the court by *[Article 161 of the Qanun-e-Shahadat, 1984] ***[...] should be judiciously utilised for this purpose when necessary.

3. Mode of recording evidence.-- *[...] In cases falling under section 355 **[of the Code of Criminal Procedure, 1898] the presiding officer is required only to record a memorandum of the substance of the evidence, while in those falling under section 356 **[of the said Code], the evidence must be recorded in full. But in the latter class of cases the presiding officer may, instead of recording the evidence himself, have it recorded in his presence and hearing and under his supervision, provided he makes a memorandum of the substance of the evidence side by side in his own handwriting as the examination of each witness proceeds. On the other hand, in cases falling under section 355, 356 **[of the said Code] also the Magistrate may record the evidence in full if he thinks it fit to do so (e.g., when the evidence is very important or when there is possibility of the witness being prosecuted for perjury, etc.), vide section 358. Where the presiding officer is unable to record a memorandum of the substance of the evidence as required by section 355 or 356 **[of the said Code], he must record the reasons of his inability to do so, and, in cases falling under section 355, must have the memorandum recorded by dictation in open Court.

4. Comparison of memorandum with vernacular statement.--An omission to record the memorandum referred to above cannot be justified except under circumstances which render it impossible for the Magistrate to record it. Want of time cannot be accepted as a valid excuse. In these cases the Magistrate should be careful to follow the deposition of each witness, when it is read over to him in the vernacular in accordance with section 360 of the Code of Criminal Procedure, and observe whether his memorandum is in conformity therewith. Any apparent discrepancy between the vernacular statement and the English memorandum should be explained in a note by the Magistrate under the memorandum. [***][...]

[*]**[5. Memorandum in English.--**The Sessions Judges and Judicial Magistrates exercising powers under section 30 of the Code of Criminal Procedure, 1898, shall keep a memorandum of the evidence in English, which should be as full as possible.]

6. [***][Omitted].

7. Statement of a witness to be read over.--The statement of a witness must be read over to him in the presence of the accused and corrected, if necessary, according to the provisions of section 360 of the Criminal Procedure Code. [***][...]

8. Evidence and judgment in summary trials.--In all summary trials in which the order of the Magistrate is final, no evidence need be recorded in English or Urdu; but the Magistrate should enter the particulars mentioned in section 263 of the Code in a register to be kept for the purpose.

[*]**[9. Particulars of witnesses or parties to be noted.-** Care should be taken to record the parentage, age, place of residence and caste of parties and witnesses. When a person is known by two names, or his precise name is doubtful, both should be given or doubt cleared up. It should also be noted whether a witness is called by the prosecution, or by the defence, or by the Court.

Where age of a witness in view of the facts deposed to by him in his statement, becomes relevant the presiding officer should ensure that he states it as a fact after he has been summoned as a witness, so that it forms part of his

testimony. It is not enough that he has stated his age when giving his particulars].

*[**10. Examination-in-Chief.-** Cross-examination and re-examination to be distinguished by a note in the margin.- Examination-in-chief, cross examination and re-examination of witnesses should be distinguished by a note in the margin. If a witness is not cross-examined the record should show that the opportunity was given but was not availed of.]

11. Illegible record.--The memorandum of evidence, the depositions or statements should be carefully written in a legible manner **[or typed]. In cases forwarded to the High Court, in which from any cause the memorandum or depositions in question, or the final judgments have been indistinctly or illegibly recorded, copies of such memoranda, depositions and judgments should be submitted with the record of the case.

12. Documents on record should be duly proved.--Care should be taken to see that all documents placed on the record, e.g., the first information report, plan of the spot, medical certificates etc., are duly proved, As regards special rules of evidence relating to Chemical Examiner's reports, please see Chapter XLI of the Code of Criminal Procedure.

13. Demeanour of witnesses.-- *[Courts] should not omit to make a note about the demeanour of a witness when such demeanour is noteworthy and affects their estimates of the value of the evidence given by the witness.

14. Record to contain a brief note of all material orders passed.--Each record or memorandum of evidence should be dated and the record of a case made by a Magistrate or Sessions Judge should not only contain depositions or memoranda of evidence, according as the evidence is or is not recorded by him in full, but also, in its proper place, a short note of every material order made during the inquiry or trial, with the date on which such order was made. Every order of adjournment must be entered, and the date on which the inquiry was resumed should be apparent.

Notes:-Orders to be written by the Magistrate in his own hand.--All notes and orders recorded by Presiding Officer (e.g., orders of adjournment, notes regarding the presence of witnesses) other than depositions, orders

deciding any matter in dispute and the final judgment, should be written by the Presiding Officer in his own handwriting **[or dictated] by him and be dated and appended to the record. Each "order" or "note" should be clearly marked as such.

Notification re, Court language.--Under the provisions of section 558, of the Code of Criminal Procedure, 1898 (V of 1898), the Provincial Government has declared that Urdu shall be deemed to be the language of the Criminal Courts in the Punjab.

PART F -- DISMISSAL OF CASES IN DEFAULT

1. [***][Omitted.]

2. Reasons for dismissal in default should be recorded.-- [**][Cases should not be dismissed in default hastily]. Before a case is dismissed by reason of the absence of complainant, the Magistrates should carefully consider---

(a) whether such an order is legal; and

(b) whether it is justified by the circumstances.

Reasons should always be recorded for such a dismissal.

3. Instructions to be observed in re dismissal of complaints, etc., by reason of the absence of the complainant.--In application for revision of orders dismissing complaints or cases instituted on complaint, by reason of the absence of the complainant, it is frequently urged--

(a) that the complainant was not called;

(b) that the case was dismissed very early in the day; or

(c) that the Magistrates being on tour, the complainant had no, or insufficient, notice of the place of sitting.

(ii) The Magistrates' records often furnish no definite information on any of these points. The following instructions are accordingly issued for guidance to subordinate Courts:-

(a) Magistrate should not dismiss complaints or cases instituted on complaint without giving complainants full opportunity for appearance. Ordinarily, if a complainant is absent when his case is first called on, his case should be called on again later, and the time of dismissal should always be noted on the record.

(b) When the Magistrate is on tour, complaints or cases instituted on complaint should not be dismissed unless the complainant has had due notice of the place of hearing.

[*][(c) In carrying out these instructions Magistrates should bear in mind that if the summons has been issued on complaint and the complaint has been dismissed on account of the absence of the complainant, the accused must be acquitted under section 247 of the Code of Criminal Procedure, and that a complaint cannot be dismissed on account of the absence of the complainant when the

offence of which the accused is charged is either cognizable or non-compoundable.]

(d) Section 247 of the Code of Criminal Procedure does not apply when the entire evidence in a case has been concluded and the case has been adjourned only for judgment without the attendance of the complainant having been specially directed.

PART G -- MISCELLANEOUS MATTERS IN CONNECTION WITH INQUIRIES AND TRIALS

1. Age of accused persons, complainants and witnesses to be carefully considered when the point is material.

In criminal cases, in which the age of an accused person, complainant or witnesses, is material to the matter in issue, or is likely to affect the sentence, the Court should record a careful finding as to probable age of such accused person, complainant or witness, and should refer to, and comment on, any discrepancies which there may be in the evidence on the point. In cases of doubt, [**][the birth entry should be obtained], or in its absence, the opinion of a medical officer should be taken. The age of the accused as found or believed by the Court should be invariably stated in the judgment. A careful statement of the probable age of the accused is especially necessary in murder cases in which the person charged is a youth or is very advanced in years. But in every case in which a charge is framed the accused should, at the opening of his examination, be required to state his age; and in all cases in which the age of the accused appears to the Court to be under twenty or over fifty years, or to be material for any special reason, the [*][Court] should add a note expressing his own opinion as to the probable age of the accused.

Note: [***][Omitted]

2. Medical examination of persons for purposes of evidence.

Neither the complainant, nor a witness, nor an accused person can be compelled to submit to medical examination for the purposes of evidence. A criminal Court has by law no power to order any person, whether male or female, to be subjected to medical examination, though, where the consent of the person to be examined (or, in the case of a minor, of his or her lawful guardian) has been obtained, such examination may be authorised. The practice of ordering the medical examination of a woman who has complained of an offence against her virtue is illegal without her consent.

3. [***][Omitted].

4. [***][Omitted].

5. Exhibits.--(i) Sessions Judges and Magistrates should ordinarily pass orders under section 517(1) of the Code of Criminal Procedure for the

disposal of exhibits on the conclusion of the trial. The time at which such an order is to be carried out is governed by subsections (3) and (4) of section 517 of the Code of Criminal Procedure. The order remains in force unless it is modified, altered or annulled under section 520 of the Code of Criminal Procedure. If such orders are made on the conclusion of the trial, the inconvenience of giving directions at a later time, when the matter is no longer fresh in the mind of the Court, and the possibility of a legal difficulty in making orders long after the conclusion of the trial will be avoided.

(ii) [***][...] In respect to magisterial cases, exhibits, other than documentary exhibits, should not be sent to the High Court, unless the High Court calls for them, or unless the Magistrate considers that a particular exhibit will be required in the High Court, in which case he should record a note at the foot of his judgment that the exhibit should be forwarded to the High Court in the event of an appeal or revision to the High Court.]

PART H -- **THE JUDGMENT**

1. Contents of a judgment.-- (i) In all cases a judgment must be drawn up containing (1) the point or points for determination, (2) the decision thereon, and (3) the reasons for the decision. In case of a conviction, the offence, the law applicable, and the punishment awarded, must be entered in the judgment. In case of acquittal, the offence must be specified and (if the accused is in confinement) a direction given that he be set at liberty. When there are more than one accused, the case of each should be dealt with separately.

(ii) **Judgment should be dated, signed and pronounced in the presence of the accused.--** The judgment should be written in the language of the Court or in English; it should be pronounced in open Court, and dated and signed by the presiding officer at the time it is pronounced. Except where the attendance of the accused has been dispensed with during the trial, and the sentence to be passed is one of fine only or when the judgment is one of acquittal, the accused should be in attendance when judgment is pronounced. No Court has power to alter or review a judgment once signed except for the purpose of correcting a clerical error, or for the purpose of revising a sentence of whipping under section [***][...] 395 of the Code.

(iii) **Judgments not written by the Magistrate.--** When the judgment is not written by the presiding officer with his own hand every page of it shall be signed by him.

(iv) [***][Omitted].

(v) [***][Omitted].

(vi) [***][Omitted].

(vii) [***][Omitted].]

2. Criminal powers of the Courts should be noted in the record and final order.-- Every Judicial Officer hearing, conducting or deciding a criminal proceeding, trial or appeal is responsible that the record and the final order in such criminal proceedings, trial or appeal shall disclose the criminal powers which such officer exercised in hearing or deciding such proceeding, trial or appeal.

[*][3. **The Powers of various Criminal Courts --** The powers referred to in the above rule are the following:-

(i) Courts of Session:-

(a) Sessions Judge.

(b) Additional Sessions Judge.

(ii) Judicial Magistrates:-

(a) Magistrates of the first class.
(b) Magistrates of the second class.
(c) Magistrates of the third class.
(d) Special Judicial Magistrates.
(e) Magistrates empowered under section 30 or 260 of the Code of Criminal Procedure.

(iii) Executive Magistrates:-

(a) District Magistrates.
(b) Additional District Magistrates.
(c) Sub-Divisional Magistrates.
(d) Special Executive Magistrates.
(e) Magistrates of the first class.
(f) Magistrates of the second class.
(g) Magistrates of the third class.]

4. Special powers to be noted in the record and final order.-- When an officer exercises powers specially conferred, -- for example, the power to try cases summarily, or the power to pass sentences of whipping in the case of a Magistrate of the second class, the record and final order in any criminal proceeding or trial shall disclose the fact that such officer is specifically empowered in that behalf.

5. Separate Judgments in riot cases.-- In riot cases in which members of opposite factions are separately tried, separate judgments should be recorded. [***][...]

[*]**[6. Criticism on the conduct of Police and other officers.-** It is undesirable for Courts to make remarks censuring the action of Police Officers unless such remarks are strictly relevant to the case. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the Sessions Judge in the case of Judicial Magistrate and to the District Magistrate, in the case of Executive Magistrate who will forward a copy of it to the Registrar, Lahore High Court, Lahore.

Similarly, Sessions Judges shall also send a copy of their judgment containing criticism of the work and conduct of police officers to the D.I.G. concerned. They shall also send a copy of the judgment direct to the High Court.]

Award of Compensation and Costs.

7. Award of costs.-- Certain of the costs incurred by a complainant in a complaint of a non-cognizable offence may be recovered from a convicted accused in the manner provided in section 546-A of the Code. The costs incurred in enforcing an order of a Magistrate for the removal of a nuisance may be recovered from the person against whom the order is made in the event of his disobeying the order. The costs, incurred by any party in the proceedings relating to dispute as to immovable property under Chapter XII of the Code, may be awarded to him against any other party by the Magistrate, and may be realised as if the amount awarded was a fine. The costs incurred in proceedings under sections 87 to 89 of the Code, in dealing with the property of persons absconding to avoid process, may be recovered from such property.

8. Application of fine towards costs and compensation.-- When a fine is imposed by a Criminal Court, the Court may order the whole or any part of the fine recovered to be applied-

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation for any loss or injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit;

(c) in compensating bona fide purchase of stolen property.

Compensation not to be paid until appeal is decided.-- If the fine is imposed in a case which is subject to appeal, the compensation must not be paid away until the period for appeal has elapsed, or, if an appeal is presented, before it is decided. Cases have occurred when the lower court has paid the compensation in ignorance of the fact that an appeal has been lodged and later on when on appeal the amount has been reduced or remitted, it has become impossible to obtain a refund from the complainants. Therefore, the lower courts should not pay compensation to the complainant until they are satisfied by examining the records of the case and making a reference to the appellate court that no appeal or revision has been lodged. Compensation so awarded must be taken into account in any subsequent civil suit relating to the same matter (sections 545 and 546 of the Code).

9. Award of compensation to accused.-- (i) In the case of any offence triable by a Magistrate and instituted upon complaint or upon information given to a Police officer or to a Magistrate if the Court discharges or acquits all or any of the accused and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Court, by its order of discharge or acquittal, (a) if the complainant or informant is present, may call upon him forthwith to show cause why he should not pay compensation to such or each of such accused, or (b) if he is not present, may direct the issue of a summons to him to appear and to show cause.

(ii) After recording and considering any cause, which may be shown, the Magistrate, if satisfied that the accusation was of the character aforesaid, may, for reasons to be recorded, direct the complainant or informant to pay to the accused or to each or any of them compensation not exceeding *[twenty five thousand] rupees or, if the Magistrate is a Magistrate of the third class, not exceeding *[two thousand and five hundred rupees. (See section 250 CrPC)].

*[(iii) The compensation payable under Section 250 is recoverable as arrears of land revenue.]

(iv) An appeal is provided for in cases where the order is by a Magistrate of the second or third class and where any other Magistrate has ordered the payment of compensation exceeding Rs. 50. Where no appeal lies the amount of compensation shall not be paid to the accused person or persons until the expiration of one month from the date of the order. In other cases it shall not be paid until the period allowed for the appeal has elapsed or the appeal has been decided. ***[...]

(v) If this provision of the law is enforced with discretion, it may be expected to largely reduce the number of groundless and frivolous complaints filed. In fixing the amount of compensation awarded, the Court should be careful to consider the position of the accused as well as that of the complainant. Excessive amounts should not be awarded.

Compounding of offences.

10. Acquittal of accused when offence is compounded.-- The compounding of an offence under section 345 of the Code of Criminal Procedure, with or without the permission of the Court, has the effect of an acquittal. In such cases, no judgment on acts is needed, but the statement of all the parties concerned must be recorded and in cases where permission of the Court is necessary for compounding the offence the reasons for granting permission should be stated in the order directing the acquittal of the accused.

11. Compounding cases of grievous hurt should be discouraged.-- There is a growing tendency to allow cases of grievous hurt to be compounded, and from inquiries made it appears that in most districts Magistrates are too prone to allow cases of the kind enumerated in section 345 (2) of the Code of Criminal Procedure to be compounded, when the complainant asks for it. In some instances this may be due to ignorance of the fact that the law allows the Courts discretion to grant or refuse permission to compound, but there are indications that it is sometimes due to the desire of Magistrates to get the cases disposed of as quickly as possible. The effect of this practice must clearly be bad, and in districts where the people are naturally turbulent and addicted to settling their disputes by force, it must encourage crimes of violence.

12. Points to be considered before a compromise is permitted.-- The facts of each case require careful consideration before a compromise is permitted. In particular, the following points should be considered:-

(a) Whether the assault was premeditated.

(b) Whether it was provoked in any way by the complainant.

(c) The nature and extent of the injury inflicted.

(d) The nature of the weapon or means used.

(e) Whether the compromise is the result of a genuine reconciliation, or caused by undue pressure on the complainant.

(f) The relationship, if any, between the parties.

(g) The extent to which violent crime is prevalent in the locality.

In districts where crimes of violence are common, the interests of society demand that permission to compound should ordinarily be refused when serious injury has been caused, and a deterrent sentence of imprisonment should be awarded, except when the assault has been provoked by any act of person injured. In every case in which a Magistrate allows the parties to compromise, his reasons should be recorded in his order.

CHAPTER 2

SUMMARY TRIALS…… ***[Omitted]

CHAPTER 3
SECURITY CASES

1. [***][Omitted].

[*]**[2. Important preliminaries. -** In the first stage of the proceedings in cases under sections 107 and 110 of the Code of Criminal Procedure, and before actual enquiry is made in the presence of the accused, three points need attention, viz:-

(1) the information (sections 107 and 110);

(2) the order thereon, including the substance of the information (section 112); and

(3) communicating the same to the accused (sections 113 and 115).]

3. Preliminary enquiry.-- The information is the foundation of the whole proceeding, and the fact, that the Magistrate is acting upon information, should be recorded. No information should be acted upon unless it comes from a trustworthy source and is sufficient, if substantiated and not rebutted, to justify finding that the person is himself likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may occasion a breach of the peace or disturb public tranquility (section 107) or answers to one or more of the specific descriptions given in 110. In regard to proceedings under section 107, it should be borne in mind that a person in the exercise of a lawful right cannot be bound over merely because other persons object to the exercise of such right and there is likelihood of their causing a breach of peace. [***][...] Applications under section 107, Criminal Procedure Code, are sometimes of a frivolous and vexatious character, intended to bring pressure upon the opposite party to settle which is really a dispute of a civil nature. Care should, therefore, be taken to ascertain by such preliminary enquiry as may be necessary that there is sufficient ground for proceeding under the section.

4. Contents of the order to proceed against.-- If the Magistrate deems it necessary to proceed against the person against whom information has been received, he should record an order setting forth the several matters required by section 112 of the Code of Criminal Procedure. The substance of

the information received should be stated in the order with sufficient fullness to enable the accused person to understand clearly the matter he has to meet in his defence. In recording particulars of the security required, the provisions of the proviso to section 118 of the Code should be borne in mind.

5. Security pending inquiry.-- In proceedings under section 107, Criminal Procedure Code, a Magistrate has the power, in cases of emergency when a breach of the peace is imminent, to order the accused person to furnish security pending the completion of enquiry [*vide section 117* (3), Criminal Procedure Code]. He must in such cases record his reasons in writing.

6. Order to proceed to be communicated to accused.-- The order recorded under section 112 of the Code of Criminal Procedure should be communicated to the accused person, if he is present in Court, by reading the same to him; and, if he so desires, by explaining the substance thereof to him. If the accused person is not present in Court, a copy of the order should be annexed to the process requiring his attendance, and delivered to him by the serving officer with the process.

7. Form of process.-- Section 114 of the Code provides that the process to be issued requiring the appearance of an accused person shall be a summons, unless the person is in custody, in which case a warrant will issue to the person in whose custody he is. If the Magistrate is satisfied that there are reasonable grounds for apprehending a breach of the peace and that it cannot be otherwise prevented, he may issue a warrant for the arrest of a person not in custody. In every such case, the Magistrate should record the grounds which render the issue of a warrant necessary.

*[8. **Procedure for the commencement of the trial.-** After the preliminary proceedings are completed and the accused appears before the Court the enquiry as to the truth of the information upon which the Magistrate has acted shall be made, as nearly as may be practicable, in the manner prescribed in Chapter XX of the Code of Criminal Procedure, for conducting trials and recording evidence, except that no charge need be framed (S.117). Care, however, is necessary that the person complained against shall have a full opportunity of making his defence and of supporting it by witnesses, an adjournment being given, if necessary for that purpose.

9. Proof required and exercise of discretion with caution.- (i) On the conclusion of the enquiry, the Magistrate must consider the order to be passed. The first point to consider is, whether the information against the accused is proved to be true. In cases under section 110, if the accused is proved to be a person falling within any of the descriptions stated in that section, the Magistrate should record a distinct finding of the specific description which he considers proved. The words `by habit' or `habitually' which occur in all the clauses of section 110, imply that the accused person has done the alleged acts repeatedly, or persistently and this should be capable of proof by adducing definite evidence under section 117(4) of the Code of Criminal Procedure. Evidence of general repute is admissible, but mere suspicion of complicity in this or that isolated offence may not be sufficient to satisfy the requirements of section 119.

The Magistrates shall see that section 110 is not abused and is not resorted to merely for securing punishment of persons who are suspected but not proved to have committed an offence and to harass individuals or to take security from persons who have once been accused and convicted of an offence but who have got off on appeal. It cannot be too firmly impressed on all Magistrates acting under Chapter VIII of the Code that when a conviction "fails on appeal", it is no conviction at all.

(ii) The object of the proceedings under section 110 of the Code of Criminal Procedure is to deter and not to punish. A convict just released from jail should not as a rule, be put upon security until there has been a fair opportunity of judging whether the punishment he has already undergone is not in itself a sufficient deterrent against relapse into evil courses. Then, in cases under section 110, proof of habitual misconduct will ordinarily justify the conclusion that security is necessary, but the Magistrate has a discretion in the matter, and he may not, in the circumstances of a case, dispute the proof of habitual misconduct, to make an order of security.]

10. Nature, amount and period of security.-- If the Magistrate decides that security is necessary the next step is to determine--

(1) the amount and nature of security to be given; and

(2) the period for which it is to be given.

In considering these points the Magistrate should be careful to refer to the original order to see that the security and the period therein specified are not exceeded. Further, as to amount of the bonds is to be fixed with due regard to the circumstances of the case and is not to be excessive, it should appear upon the record that the security demanded is not disproportionate to the ability of the accused person to furnish it, having regard to his status in life.

11. Age of accused.-- When the appearance of the *[person complained against] leaves it doubtful whether he is a minor, his age should be ascertained.

12. Action to be taken when security is not necessary.-- If it is not proved that security is necessary, the Magistrate *[shall] act under section 119, according as the person is in custody, for the purpose of the enquiry merely, or is not in custody.

13. Final order should state full particulars about bonds required.-- When the final order is made under section 118, it should state clearly--

(1) the amount of the bond;

(2) whether it is to be with or without sureties, and the number of such sureties;

(3) the period for which security is to be given.

If the proceedings are in English, the order must be translated into *[Urdu] and signed by the Magistrate.

14. Joint trials and period of security.-- It is frequently found that-

(i) several persons are proceeded against jointly, although there is little or no evidence that they are really associated together for the purposes of any of the crimes referred to in section 110 of the Code of Criminal Procedure;

(ii) security is demanded for a period exceeding one year without any reason, such as previous convictions for serious crime, or previous taking of security, being assigned for the step.

The irregularity of the first proceeding has been pointed out in more than one published decisions of the High Court, and, as regards the second point, the Judges are of opinion that the period for which security is demanded should not

in ordinary cases exceed one year, and where special reasons exist for enlarging the period, these should be duly set forth in the order.

15. Bond should be single and no stamp is required.-- It has been noticed that in many Courts the practice is to require the accused person to execute one bond, and the sureties, separate bonds (sometimes for separate amounts). This is not in accordance with law. The person, from whom security is taken, and his sureties should all execute only one joint bond, in the form prescribed in the Code of Criminal Procedure, Schedule V (Form XI).

The bond is exempt from stamp duty, as regards the sureties, under Government of India Notification No. 4650, dated 10th September, 1889, and as regards the principal under section 19, clause (xv) of the Court Fees Act, 1870.

16. Commencement of period of security, suspension of order and Form of warrant when security is not furnished.-- When the person from whom the security is required is not under sentence of imprisonment, or undergoing such a sentence, the period commences to run from the date of order, unless the Magistrate, for sufficient reason, fixes a later date. If the Magistrate has reason to believe that the person required to give security will do so if a short time be allowed for that purpose, the Magistrate should defer execution of his order by suspending it, and thus obviate the necessity for requiring such person to at once suffer imprisonment. If, however, the requisite security is not given on the date fixed, the person from whom the security is required must be committed to prison under section 123, with a warrant in Form XIV of Schedule V of the Code of Criminal Procedure, if the period fixed does not exceed one year. When the period exceeds one year, the form must be varied so as to bring its last clause into conformity with the second clause of section 123; and the proceedings must be laid, as soon as conveniently may be, before the Court of Session.

*[**17. Kind of imprisonment in default of security.--** Imprisonment in default of furnishing security under section 107 or section 108 must be simple, while under section 109 and section 110, it may be simple or rigorous at the discretion of the Magistrate (vide sub-section (5) and (6) of section 123).

Completion of record before consignment.- Before consigning the record to the record-room care must be taken that the record is made complete by filing either the security-bond or a copy of the warrant of commitment.]

18. [***][Omitted]

19. [***][Omitted]

20. [***][Omitted]

21. Restriction order instead of security may be proper in certain cases.-- The provisions of the [*][Restriction of Habitual Offenders (Punjab) Act, 1918(V of 1918)] which permits an order of restriction being passed in lieu of an order under section 110, Criminal Procedure Code, should be utilised in appropriate cases, when there is no chance of security being furnished and an order of restriction would serve the object in view.

22. [***][Omitted].

CHAPTER 4
TRIAL OF RIOT CASES

1. Careful handling required.-- Riots resulting in serious injuries or even death are of frequent occurrence in this Province, and cases relating to such riots require very careful handling. A large number of persons is generally involved and the evidence is often entirely of a partisan character. There is, moreover, great danger of innocent persons being implicated along with the guilty, owing to the tendency of the parties in such cases to try to implicate falsely as many of their enemies as they can.

2. Court's duty to ascertain the true version.-- The parties generally give widely divergent versions of the riot and in such cases the Police usually prosecute members of both the parties and place the divergent versions and the evidence in support thereof before the Court. It is for the Court to ascertain in such cases which of the two versions is correct and the Court cannot shirk this duty on the ground that the Police did not ascertain which of the stories was true. [***][...]

3. Right of self-defence.-- When both parties deliberately engage in a fight no question of the right of self-defence arises. But, otherwise, the question as to which of the parties was the aggressor and which was acting in self-defence becomes of vital importance and the Court must do its best to arrive at a finding thereon for the party acting in self-defence cannot be held to be guilty of any offence unless the right of private defence is exceeded (see sections 96-106, Pakistan Penal Code.)

[*][**4. Separate trials when both parties are prosecuted.-** When both parties to a riot are prosecuted, the two cases must be tried separately and evidence in one case cannot be treated as evidence in the other, even with the consent of the parties. Similarly judgements in such cases should be written separately and the evidence in the one case should not be imported into the judgment in the other. Even when the Court is careful enough not to mix up the evidence, the mere fact of its having written one judgment furnishes the convicts with a ground of appeal.]

5. Case of each accused should be separately sifted.-- In recording evidence in riot cases, care should be taken to bring out distinctly as far as possible the connection of each of the accused with the crime and the actual part played by him. In the judgment the evidence against each of the accused should be discussed separately along with the evidence produced by him in defence (if any), and should be scrutinised with care. The possibility of innocent persons being falsely implicated should be always borne in mind. The mention or omission of the name of an accused person in the First Information Report, when such report is made promptly by an eye-witness, and the presence or absence of injuries on his person are worthy of consideration in this respect, though these are, of course, by no means conclusive.

6. An unlawful assembly, its common object and use of violence must be proved.-- A charge of rioting presupposes the existence of an unlawful assembly with a common object as defined in section 141 of the Pakistan Penal Code. No charge of rioting can be sustained against any person unless it is proved that he was a member of such an unlawful assembly, and that one or more members of the assembly used force or violence in prosecution of its common object. It is, therefore, advisable to refer to the unlawful assembly, its common object, and the use of violence in the charge, so that the essential ingredients of the offence are not lost sight of. [***][...]

[*]**[7. Joint liability of accused.-** Section 149 of the Pakistan Penal Code, makes every member of an unlawful assembly constructively liable for offences committed by other members in prosecution of the common object of the assembly. If the number of offenders is ultimately found to be less than five, this section will not be applicable, but joint liability may still arise by virtue of section 34 of the said Code, if it is found that the act constituting the offence was committed in `furtherance of the common intention of all'. When no joint liability can be established, each accused person can be held responsible for his own acts. (See 61 PR 1887, 52 ILR Cal. 197).

8. Sentences when several offences are committed.- When a number of offences are committed by members of an unlawful assembly in the course of the riot in prosecution of their common object, each member is guilty not only of rioting but of every other offence committed by himself or by the

other members of the unlawful assembly. Under section 35 of the Code of Criminal Procedure he is liable to be punished separately for each of such offences, subject to the provisions of section 71 of the Pakistan Penal Code. Section 35 of the Criminal Procedure code enables the Court to make the sentences for two or more of such offences concurrent. The appropriate sentence in the case of each accused person must, of course, be determined in view of all the circumstances of the crime and the actual part played by him. (See 4 PR 1901).]

CHAPTER 5

CASES UNDER SPECIAL AND LOCAL ACT……***[Omitted.]

CHAPTER 6
TRIAL OF RIOT CASES

PART A – GENERAL

1. Cases against public servants or local bodies should be reported to District Magistrate.- A Magistrate taking cognizance of an alleged offence against a *[Government servant] or a Local Body shall report, without delay, to District Magistrate to whom he is subordinate the commencement of such proceedings together with brief details of the case. The District Magistrate will forward a copy to the local department officer in charge of the Department to which the accused belongs-a further report will be sent in the same way on the termination of the proceedings, stating whether they have terminated in conviction, discharge or acquittal.

In cases of conviction, a copy of the judgment must be forwarded.

2. *[Omitted]**

3. Copies to be supplied free to departmental officers.-- For rules about supply of free copies to departmental officers in such cases see Rule 8-A, Chapter 17-A, High Court Rules and Orders, Volume IV.

PART B – CRIMINAL CASES AGAINST POLICE OFFICERS.

***[1. District Magistrates shall not ordinarily try cases against Police Officers.-** The High Court, with the approval of the Provincial Government, is pleased to direct that all charges against Police Officers, which are triable by ordinary Courts, shall ordinarily be inquired into and tried by Judicial Magistrates of the First Class.]

2. ***[Omitted].

3. Criticism of conduct of Police officers in judgments.-- For judgments criticizing the conduct of Police see Chapter 1-H., paragraph 6.

4. Action to be taken on such criticism.-- Attention is also invited to Police Rule 16.38 (6) which runs as follows;-

"in cases in which strictures are passed on the conduct of the police by a Sessions Court or by a Magistrate's Court and no specific recommendation is made by the Court making such strictures that an enquiry should be made, the District Magistrate will decide whether an investigation into the matter is necessary and if so whether it shall be conducted by the Police officer or by a selected Magistrate having Ist class powers. If he decides that an investigation shall be made, the procedure subsequent to such investigation shall be that laid down in sub-rule (2) above. In cases in which the court passing strictures on the conduct of the police suggests that an enquiry should be made, the District Magistrate will comply with such request in accordance with the procedure prescribed in paragraphs (1) and (2) above.

When strictures on the conduct of the Police are made by the High Court and communicated to the Provincial Government direct in accordance with paragraph (5) above, the instructions of Government as to the action to be taken by the local authorities will be communicated to them through the ordinary channels. In cases in which the High Court suggests that an enquiry should be made, the Provincial Government will give orders accordingly."

PART C – CRIMINAL CASES AGGECTING MILTARY OFFICERS AND SOLDIERS.

1. Cases to be tried only by District and Ist Class Magistrate.-

Criminal cases against military officers and soldiers should only taken up by district Magistrate or Magistrates of the first class, and this direction should be strictly observed.

2. Copy of Judgment to be sent to superior officer of accused.-

In every case in which a military officer or a soldier is sentenced by a Criminal Court to a fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court shall send a copy of its final order proprio motu to the immediate superior of the person convicted.

3. Military rank of accused to be stated in the warrant of committal to prison.—

Whenever a soldier is committed to jail, whether for trial or under sentence, his military rank shall always be stated in the warrant of commitment, in order that due notice may be given to the military authorities of the day on which, and hour at which, the imprisonment of such person will expire.

4. Information of conviction to be sent by Cantonment Magistrate to superior officer.

When a person amenable to Military Law is convicted of any offence by a Cantonment Magistrate, information in the form given below shall be furnished by such Cantonment Magistrate to the superior officer of the person so convicted;-

Form of Information

Name (and Mililtary rank) of person convicted	Offence of	Sentence	Date

5. **Information of conviction of pensioned officers.-** ***[**Whenever a Military Pensioner is convicted and sentenced to imprisonment by a Criminal

Court, a copy of the judgment shall be sent at once to the Deputy Controller of Military Accounts (Pensions), Lahore]

Criminal Courts subordinate to the District Magistrate will send copy of every such judgment to the District Magistrate who will forward all such copies of judgments, of his own or subordinate courts, to the Deputy Controller of Military Accounts (Pensions), Lahore.

The same instructions apply to appellate courts and copies of judgments passed on appeal, if any , shall be forwarded to the officers named above.

6. Information of conviction of Army reservists.-

Whenever a reservist of the Pakistan Army is sentenced by a Criminal Court to imprisonment for any term exceeding three months, the fact shall be reported in the manner prescribed in the last preceding paragraph, without delay to the Officer Commanding of the appropriate Reserve Centre.

7. Rules for retyrial of persons subject to Military, Naval or Air Force Law.-

(1) The Criminal Procedure (Military Offenders) Rules 1970, provide that where a person subject to Military, Naval or Air Force law is brought before a Magistrate, and charged with an offence for which he is liable under the Pakistan Army Act, 1952 (XXXIX of 1952) the Pakistan Navy Ordinance, 1961 (XXXV of 1961) or the Pakistan Air Force Act, 1953 (VI of 1953) to be tried by a Court-Martial, such Magistrate, unless he is moved by the competent Military, Navel or Air Force authority as the case may be to proceed against the accused under the Code, shall before so proceeding, give notice to such authority and, until the expiry of a period of fifteen days from the date of service of such notice shall not-

(a) convict the accused under section 243, acquit him under section 247 or section 248, or hear him in his defence under section 244 of the code, or

(b) frame charge against the accused under section 242 of the Code, or

(c) transfer the case for enquiry or trial under section 192 of the Code.

(2) Where, within the period of fifteen days mentioned in rule 2, or at any time thereafter, before the Magistrate has done any act or issued any

order referred to in that rule, the competent Military, Naval or Air Force authority, as the case may be, gives notice to the Magistrate that the accused should be tried by Court-Martial, the magistrate shall stay proceedings and, if the accused is in his power or under his control, shall deliver him, with the statement prescribed by section 549 of the Code, to the authority specified in the said section.

(3) Where a Magistrate has been moved by the competent Military, Naval or Air Force authority, as the case may be, under sub-paragraph (2), and such an authority subsequently gives notice to such Magistrate that, in the opinion of such authority, the accused should be tried by Court-Martial, such Magistrate, if he has not, before receiving such notice, done any act or issued any order referred to in rule 2, shall stay proceedings, and if the accused is in his power or under his control, shall in like manner deliver him with the statement prescribed in section 549 of the Code to the authority specified in the said section.

(4) Where an accused person, having been delivered by the Magistrate under sub-paragraph (2) or (3) is not tried by a Court-Martial for the offence of which he is accused, or other effectual proceedings are not taken, or ordered to be taken against him, the Magistrate shall report the circumstances to the Provincial Government.

(5) (i) Notwithstanding anything to the contrary contained in sub-paragraphs (2) , (3), or (4), where it comes to the notice of a Magistrate that a person subject to Military, Naval or Air Force law has committed an offence proceedings in respect of which ought to be instituted before him, the Magistrate may by a written notice require the competent Military, Naval or Air Force authority, at the option of such authority, either to deliver such person, if in its custody, to the nearest Magistrate for being proceeded against according to law, or to stay the proceedings against such person before the court-martial, if since instituted, and to make a reference to the Federal Government for determination as to the Court before which proceedings should be instituted.

(ii) The competent Military, Naval or Air Force authority to whom a notice is issued under sub-paragraph (1) shall either deliver the offender in

accordance with the notice or refer the question of the trial to the Federal Government, whose order upon such a reference shall be final.

(6) In these rules, unless there is anything repugnant in the subject or context-

(a) "Code" means the Code of Criminal Procedure, 1898 (V of 1898);

(b) "Competent Military Authority" means an officer having powers not less than those of an independent Brigade or Line of Communication Sub Area Commander under whom, or the Officer Commanding the Station in which the accused person is serving, provided that where death has resulted, the competent authority shall be an officer having powers not less than those of an independent Brigade or Line of Communication Sub Area Commander;

(c) "Competent Naval Authority" means the administrative authority under whose command the accused is serving or is attached or any superior authority, provided that where death has resulted, the competent authority shall be the Commander-in-Chief;

8. Dual jurisdiction of court-martial and Civil Court and the prescribed authority to decide by whom the case to be tried.-

The following procedure shall be observed in a case where there is dual jurisdiction, i.e. of a court-martial as well as a Civil Court, as laid down in the Pakistan Army Act, 1952 (XXXIX of 1952) section 94 and 95; the "prescribed officer" being the General Officer Commanding-in-Chief, district Brigade or Station Commander.

If the offender is in Military/Civil custody the Units Commander/Magistrate will take steps to request the prescribed military authority to decide before which court proceedings shall be instituted; but in those cases falling under section 59 of the Pakistan Army Act, 1952, in which death has resulted, the decision shall rest with the district Commander or General Officer Commanding-in-Chief.

9. Procedure in cases of civil offences.--

Appendix IX to the " Regulations for the Pakistan Army, should be referred to regarding the general procedure to be followed in cases of civil offences committed by persons subject to military law.]

CHAPTER 7

MAINTENANCE CASES.....***[Omitted.]

CHAPTER 8

Cases relating to Offences affecting the Administration of justice and Contempt of Court.

PART A – OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

***[1. Complaint of offences mentioned in section 195 Cr. P.C. cannot be instituted by private individuals.-**

Under section 195 of the Code of Criminal Procedure, no court can take cognizance of the offences mentioned therein except on the complaint of the public servant or Courts specified in the section. The institution of proceedings is thus now left to the public servants or Courts concerned in the interest of justice and not to the discretion of private individuals who might obtain sanction for prosecution for the purpose of extorting blackmail from the person sought to be prosecuted against.

2. Successor of an officer before whom offence was committed can lodge complaint.- Section 476-A of the Code is supplementary to section 195 and it would appear from the wording of these sections that Courts can take cognizance of the offences mentioned therein suo motu or on application. The power is conferred on the court and not on the particular officer who presides over the Court and consequently the successor of a Magistrate or Judge is competent to proceed under the section (See section 559 of the Code).

Under section 476 of the Code, the Court may itself take cognizance of the offence and try it in accordance with the procedure prescribed for summary trials in Chapter XXII of the Code. When it does so, it may, notwithstanding the limitations prescribed in sub-section (2) of section 262 of the Code, pass the sentence in accordance with sub-section(2) of section 476.

When the Court considers that the person accused should not be tried summarily under section 476, it may, after recording the facts constituting the offence and the statement of the accused person, forward the case to a court competent to try the offence and may require security to be given for the appearance of such accused before such court or if sufficient security is not given, shall forward such person in custody to such court.

3. Main point to be considered by courts in initiating proceeding under section 476, Cr. P. C.-

The power conferred y sections 476 and 476-A of the Code is a discretionary power and it is obvious that it should be examined not merely because an interested party wants a man to be proceeded against, but only when it is expedient in the interest of justice to examine it. The power being the power to prosecute and thereby to put a man in peril of conviction and sentence, it is well settled that resort should not be had to it unless a prima facie case is made out and unless there is reasonable chance of conviction. It must be borne in mind this connection that indiscriminate institution of prosecution does not promote that interest of justice as failure of such cases is apt to encourage rather than discourage the offences. Then the mere fact that there is reason to believe that an offence has been committed may not in itself be sufficient to justify the prosecution of a man. As an example, it happens sometimes that a man, who has made a false statement at first, reverts to truth later on. To proceed against such a man for perjury would invariably be not in the interest of justice, as it would deter a man from reverting to truth even when he is inclined to do so.

That there is power in the Court, either to proceed against a person summarily under section 476, or to send his case for trial to another court, under section 476-A, shows that this question requires the application of judicial mind. In proceeding against a person under these provisions, a Court will be presumed to have been actuated by best motives of justice and fair play; yet during the hearing of the matter or examination of the person, something may have happened to leave him with a genuine impression that he will not have a fair trial. To illustrate, the presiding officer may have put too many questions to the person when under examination. Therefore, when the Presiding Officer feels that the summary trial of a person by him would violate the trite saying that justice should not only be done, but should be seen in the doing, he would exercise his discretion in favour of the person accused to be tried by another Court.]

4. Prosecution to be lodged without delay.--

There is nothing in section 476 which requires the Court to take action, if at all, immediately after the conclusion of the case in which the offence is alleged to have been committed or discovered or within any fixed time thereafter. Prompt action is of

course desirable, and abnormal delay will usually be considered to be a good ground for refusing to take action. At the same time, Courts would, as a rule, exercise proper discretion in postponing action in appealable cases, till the decision of appeal, if one is filed. ***[...]

***[5. Gross cases of false evidence should not be left over.-**

The offence of giving or fabricating false evidence (vide sections 191-196 of the Pakistan Penal Code) is unfortunately very common and should not be allowed to pass unnoticed.]

6. Special care to be taken in recording evidence where a witness appears to be giving false evidence. Contradictory statements and liability of being charged.- When a witness appears to be giving false evidence and there is possibility of his being prosecuted, special care should be taken in recording the evidence in a precise and clear manner, reading it over to the witness and bringing it in conformity with what he declares to be the truth. For, ambiguities in the statement often furnish loopholes for plausible explanations and result in failure of justice. It should be noted that when contradictory statements are made before different Courts, and it is difficult to decide which of the two statements was false, the person making such statements can be charged in the alternative [vide section 236, Criminal Procedure Code, illustration (b).

7. ***[Omitted].

8. Complaint can be lodged by the Court or by appellate Court.-

Section 195 provides that when any offence of the kind mentioned therein is committed in or in relation to proceedings in a Court, cognizance of the offence can be taken either on the complaint of that court or some other Court to which such Court is subordinate. It is laid down in subsection (3) of that section that for the purposes of the section a Court is to be deemed to be subordinate to the Court to which appeals ordinarily lies from the appeasable decrees or sentences of such Court and in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court of original jurisdiction. It is further provided that where appeals lie to more than one Court, the appellate Court of inferior jurisdiction is the Court to which the Court making the complaint is to be deemed to be subordinate for the purposes of the section.

As a result a Civil Judge from whose decrees appeals lie to the Senior Civil Judge as well as the District Judge must be deemed to be subordinate to the former for the purposes of section 195. ***[...] Similarly a Magistrate empowered under section 30 of the Code, from whose decisions appeals lie to the Sessions Court as well as the High Court, would be deemed to be subordinate to the Sessions Court.

9. *[Omitted]**

10. *[Omitted]**

***[11. Deterrent sentence in case of perjury.--**

The law against perjury and allied offences should be fully vindicated against all persons who are convicted and the Courts should impose deterrent sentences when convictions are recorded.]

PART B – CONTEMPT OF COURT.

***[1. Court can try the offence itself or send the case to another court. Appeal from conviction --** Contempt of Court is not defined either in the Pakistan Penal Code or in the Code of Criminal Procedure. The acts which constitute the contempt of Court are, however, defined in Article 204 of the Constitution and in the Contempt of Courts Act, 1976, and the High Courts have power to punish persons for the commission of these acts. Section 480 of the Code of Criminal Procedure deals with certain offences under sections 175, 178, 179, 180 and 228 of the Pakistan Penal Code which are in the nature of contempt of Court' when such offences are committed in the view and presence of the Court. The Court has the power to try such offences itself, but the punishment is limited to fine up to two hundred rupees or simple imprisonment in default of payment up to one month. The procedure laid down in section 480 of the Code should be very carefully followed. If the Court considers that the offender should receive a higher penalty, it has discretion to send the case to another Magistrate (vide section 482 Cr. P. C.). An appeal lies in every case of conviction for contempt to the Court to which appeals from the decrees or orders of the convicting Court ordinarily lie. In the case of a conviction by a Court of Small Causes, an appeal lies to the Sessions Court.]

2. Cases tried by Magisterial Court should be sent to Sessions Judge for examination.--Every case, in which a person is punished summarily for contempt of court by an officer exercising less that full magisterial powers should be sent, on the completion of the proceedings in which the contempt occurred, to the *[Sessions Judge] for inspection.*[Sessions Judges] should carefully consider the cases thus submitted to them, and make such comments thereon as appear called for or if necessary, report the case for the consideration of the High Court on the revision side.

3. Contempt by ignorant people.-- it must be distinctly understood that it is not intended to lay down that the power given to Courts by the Code of Criminal Procedure to punish contempts summarily is never to e resorted to. It is the duty of every Court to maintain the order and dignity of its proceedings, and sometimes this can only be effected by the punishment of the offender. In this connection, however, it is pointed out that a distinction may well be drawn between a disrespect committed by an ignorant villager, who hardly understands

the impropriety of his conduct and disrespectful behaviour on the part of a person higher up in the scale of society. In the case of an ignorant rustic, a Court may often be content to pass over without punishment an act which would properly call for punishment if committed by a person of higher education and fuller knowledge of what is due to the dignity of a Court of Justice.

***[4. When High Court may punish for the contempt of subordinate Court.--** Besides the power to punish its own contempt under Article 204 of the Constitution and under the Contempt of Courts Act, 1976, the High Court has and may exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice, in respect of complaints of contempt of the Courts subordinate to it as it has in respect of a contempt of itself, but it cannot take cognizance of a contempt in respect of a Court subordinate to it when such contempt is an offence punishable under the Pakistan Penal Code (see section 3 of the Contempt of Courts Act, 1976).

The subordinate courts must, therefore, ensure before referring a contempt matter to the High Court that the alleged contempt is not an offence punishable under the Pakistan Penal Code.]

CHAPTER 9
WITNESSES --CRIMINAL COURTS.

PART A – EXPENSES.***[Omitted]

PART B-- INSTRUCTIONS FOR THE GUIDANCE OF THE NAZARAT AND PRESIDING OFFICERS IN ORDER TO CHECK FRAUD AND EMBEZZLEMENT WITH RESPECT TO THE DISTRIBUTION OF DIET AND ROAD MONEY OF WITNESSES.

Instructions for prevention of frauds, etc.,in expenses of diet money and road money.-- The following instructions have been issued by the Punjab Government for the guidance of the Nazarat Officers and the Presiding Officers of the Courts with a view to the prevention of frauds and embezzlements in the expenses of diet and road money of witness;-

(1) **Specimen signatures to be kept.--** The Nazarat Officers should be provided with specimen signatures of all Presiding Officers for whose courts he has at any time to pay bills for diet money of witnesses. etc.

(2) **Comparison of specimen signatures**.-- The Nazarat officer will be expected to satisfy himself that the signatures on the bills placed before him conform to the specimen signatures received by him. Should any loss be occasioned by the neglect of this rule.

(3) **Responsibility of Nazir or Naib Qasid not to make payments**.- At the same time the Nazir should be informed that he is responsible for all money transaction entrusted to his charge, and that if the Naib-Nazir or any other of his assistants is utilised for disbursement work, the Nazir will remain responsible for supervising them and their work. On no account should a Naib Qasid or a menial be employed for the payment of any Government moneys.

(4) **Criminal Register XVIII, Part B.-IV, Vol.VI-B**.-- Criminal Register XVII appearing in Part B--IV of rules and Orders, Volume VI--B, showing the amount of diet and road money of witnesses for which memoranda have been issued should be maintained in each Magistrate's court and comparison should be regularly, though not necessarily daily, made with the Nazara Register by the Presiding Officer, who should initial in the column provided for the purpose in token of his having made the comparison.

Outlying Courts.--

This register should also be maintained in the courts of Sessions Judges who should compare it with the register of contingent expenditure at least once a week and put their initials in column 10 in token of their having done so. The diet money and travelling expense of witnesses examined before a Court of Session should be paid in the presence of the SessionsJudge.

The following instructions are laid down in regard to checking of entries in the register maintained by outlying courts;-

(a) When the outlying court (or if there is more than one court, the Naib-nazir appointed at the place) holds an advance from the district nazir.

In case there is only one Court, no comparison of the entries in the register of road and diet money paid to witnesses is necessary. If there are several courts, it is presumed that the payments are made by the Naib-Nazir under the supervision of one presiding officer as is the case at district headquarters. In that case the entries in the register of road and diet money paid to witnesses should be compared with those in the contingent register maintained by the naib-nazir. No further comparison with the district nazir contingent register is necessary.

(b) When the outlying court holds no advance.

The payments are made by district nazir on receipt of the written orders of payment direct from such outlying courts. In such cases, a comparison with the entries in the contingent register of the district nazir is necessary and may be effected by the issue of fortnightly memoranda by the outlying courts to the nazarat officer.

(5) **Security from officials**.--Steps should be taken to see that security is actually taken in all cases where the rules lay down that an official should furnish it.

(6) **Nazirs should not keep money deposits.**--The Nazir should not be allowed to keep in his possession any sum received by him in the form of a deposit, but such money should be deposited in the Treasury without delay.

Inspection by Deputy Commissioners.-- It is hoped that Deputy Commissioners will make occasional inspections of the Nazir's accounts and satisfy themselves that these and other instructions relating to the Nazarat are being properly observed.

PART C**-- COMMISSIONS.***[Omitted].**

PART D-- EXPERT WITNESSES.

1. Evidence of expert witnesses and instructions re the same.-- Much inconvenience is caused to expert witnesses by the reckless manner in which they are often summoned to give evidence by courts. The following instructions should be borne in mind by presiding officers of courts with regard to this class of witness;-

(a) Care should be taken that when an expert is summoned, his evidence is duly taken and, where possible, completed on the day of his appearance.

(b) Where possible, the expert should be previously consulted in regard to the suitability of the date which it is proposed to fix for his evidence.

(c) Courts should always consider the desirability of avoiding causing inconvenience to experts by taking their evidence on commission in cases where the evidence is such as can suitably be so taken.

2. Evidence of the Chief Inspector of Explosives-- The Chief Inspector of Explosives to the Federal Government has drawn attention to the fact that the number of summonses he receives for personal appearance before the courts all over the Pakistan interferes with his legitimate duties and he has suggested that it would be of very great assistance if the issue of summonses on him and his inspectors for appearance in Magistrates' Courts could be restricted to the minimum consistent with the requirements of a case. In bringing this to the notice of Provincial Governments, the Central Government have observed that where it is necessary to have the evidence of the Chief Inspector or his subordinates taken in Magistrates' Court which are at a great distance from their headquarters and the cases are such as would normally be committed to the Courts of Session, a great deal of inconvenience may be avoided by having resort to section 503 or section 506, Criminal Procedure Code as the case may be. The Provincial Gopvernment of the Punjab have accordingly directed that prosecuting officers should press for taking evidence on commission in suitable cases. This should be borne in mind by Criminal Courts.

3. Evidence of Chemical Examiner or his Assistant.- Courts are warned to be careful to see before summoning the Chemical Examiner or his

Assistant that the evidence of another medical witness whose services are more conveniently procurable will not be sufficient.

4. Fire-arms experts.- When an application is made for the summoning of a fire-arms expert in a case, the Magistrate should first ascertain from the party-wishing to call him as a witness on what points his evidence is required, and then write a letter to the expert asking him if he is able to give evidence on those points, and whether he wishes to examine any exhibits before giving an opinion. After these preliminaries, if the reply of the expert shows that he is in a position to give relevant evidence, then and not till then, summons should be issued to him to appear as a witness subject to the instructions given in preceding paragraphs.

5. When it is considered necessary to summon the Government Inspector of Railways as an expert witness, reasonable notice should be given to him since the Government Inspector of Railways is charged with the responsibility of carrying out inspections and holding inquiries into serious accidents on the Railways: as far as possible a notice of one month or more should be given and in case a shorter notice is considered necessary, the same should not be of less than three weeks' duration. in order to obvitate delay in arranging his attendance in the courts summons should be served on the Government Inspector of Railways direct, at his official address viz. Headquarters Office, Pakistan Railway, Lahore.

6. Ballistics Expert.- While giving evidence in Court as Ballistics Expert, the Director, *[Forensic Science Laboratory Punjab], shall give reasons for his conclusions and appears as a witness before the committing Magistrate concerned with all the photographs taken and all the cartidges fired by himself for the purpose of arriving at such conclusions.

The copy or copies of photographs produced by the Ballistics expert, and placed on the record may be inspected by the defence counsel concerned.

CHAPTER 10
Bail and Recognizance

1. Principles governing grant of bail.-- It must be understood that for every bailable offence bail is a right, not a favour. In demanding bail from an accused person, Magistrates should bear in mind the social status of the accused and fix the amount of bail accordingly, care being taken that the amount so fixed is not excessive. The amount of bail and the offence charged, with the section under which it is punishable, should always be stated on the face of an order directing the accused to be detained in the lock-up in default of his furnishing bail. Bail may be tendered and must be accepted at any time before conviction.

Bail may also be tendered and accepted even after conviction in accordance with the provisions of sub-section (2-A) of Section 426 of the Code of Criminal Procedure, when a person sentenced to imprisonment for a bailable offence satisfies the court that he intends to file an appeal.

2. Recognizance.-- When any person other than a person accused of a non-bailable offence is brought before a Criminal Court, the Court may, if it thinks fit, instead of taking bail discharge him on his executing a bond without sureties for his appearance (section 496, Criminal Procedure Code).

3. Bail in non-bailable cases.-- Even in the case of non-bailable offences there are circumstances under which the accused may be admitted to bail. These are described in section 497 of the Code.

4. Cash or Government promissory notes may be accepted in lieu of bail.-- Under section 513 of the Code of Criminal Procedure, a deposit of cash or Government promissory notes may be made in lieu of bail, except in the case of a bond for good behaviour.

*[**5. Bail to be granted promptly.--** It is unlawful to detain parties under trial in prison a minute longer than the law requires; if innocent, they are exposed to the indignity of imprisonment, for which no subsequent order of discharge or acquittal can atone.]

6. Release on bail by superior Courts.-- Under Section 498 of the Code, the Sessions Judge may, whether there be an appeal on conviction or not,

direct that any accused person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced. ***[...] It should also be remembered that, under section 426 of the Code of Criminal Procedure an Appellate Court may, for reasons to be recorded in writing , order that the convicted person be released on bail or on his own bond.

7. Bail applications on holidays.-- Sessions Judges should allow urgent applications for bail to be presented to them at their residence on holidays at a fixed hour, when such applications cannot be presented in Court on a working day owing to unavoidable circumstances.

8. Disposal of bail applications in the absence of Sessions Judge.-- When Sessions Judges are unavoidably absent from the station, they should take action under section 17(4) *[of the Code of Criminal Procedure, 1898] for the hearing of urgent bail applications.

9. Inquiry about sufficiency of bonds.-- Considerable diversity of practice exists in carrying out the provisions of the law in regard to the taking of bonds from accused persons and their sureties, and the result of the diversity is not only to cause Police officers to be employed in needless inquiries, but also to keep the accused person in custody pending the result of the inquiry into the sufficiency or otherwise of the bail offered. The attention of the criminal authorities, is, therefore, directed to section 499 of the Code of Criminal Procedure, which requires the Magistrate simply to take a bond for such a sum of money as he may think sufficient, from the accused and one or more sureties. At the same time, however, it is the duty of Magistrates to satisfy themselves that the sureties are, in point of substance, persons of whom it may reasonably be presumed that they can, if necessary , satisfy the terms of the bail-bond.

10. Forfeiture of bail bonds.-- Section 514 of the Code lays down the procedure to be adopted to compel payment of the penalty mentioned in the bond from the person executing the personal recognizance and from his sureties.

11. Form of bond for appearance before High Court.-- When a person is enlarged on bail by order of the High Court, or when bail is to be taken for his appearance before the High Court, the bonds to be executed by such person and his sureties shall be in the following forms which have been

prescribed by the High Court with the sanction of the Provincial Government under powers conferred by section 544 (2) of the Code of Criminal Procedure:-

FORM OF BOND AND BAIL BOND

I, _____ son of_____Caste_____ appealed resident of_____ having _____ to the Lahore High

petitioned Court, Lahore and being required to give security for my attendance before the Lahore High Court, Lahore or for my surrender before the Court of the District Magistrate of_____ if required, do bind myself to attend at the Lahore High Court, Lahore on every day of the hearing of my appeal/petition by the Lahore High Court, Lahore and on such other day or days as I may be ordered to attend, or, to appear and surrender myself before the District Magistrate of_____ and in case of making default therein, I bind myself to forfeit to the *[Governor of Punjab] the sum of rupees_____.

Dated this _____day of _____19 .

SURETY BOND

WHEREAS _____son of_____ caste_____ resident of_____having appealed/petitioned to the Lahore High Court, Lahore is being required to give security for his attendance before the Lahore High Court, Lahore or for his surrender before the Court of the District Magistrate of _____if required, I, _____son of_____ resident of _____do bind myself to produce at the Lahore High Court, Lahore on every day of hearing of his appeal ----------by the Lahore High Court, Lahore and on such other day or days as I may petition be ordered to produce him, or to produce and surrender him before the District Magistrate of _____and in the case of my making default therein, I bind myself to forfeit to the *[Governor of Punjab] the sum of rupees_____.

Dated this _____day of _____19 .

12. Date of hearing to be communicated to the accused and sureties.-- In cases punishable with death or *[imprisonment] for life the

District Magistrate on accepting the sureties shall inform them that the person released on bail must be present at the hearing in the High Court. He shall also inform the person released on bail to the same effect.

In other cases the person released on bail shall be produced before the District Magistrate by the sureties and/or shall surrender himself before the District Magistrate if and when required. The sureties and the person released on bail shall be informed by the District Magistrate accordingly.

13. Discretion of High Court.-- On the date of hearing in the High Court, the Judge or Judges hearing the appeal may order that-

(a) the bail-bond should be cancelled at once, and the man re-arrested, or

(b) he should appear on a certain day to hear judgment pronounced, or

(c) he should attend daily (excluding holidays) until judgment is pronounced, or

(d) he should be discharged from his bail-bond.

(e) he should appear and surrender himself before the District Magistrate, or

14. Re-arrest on cancellation of bond.-- If the person who has been released on bail is not arrested on the day of hearing, in accordance with *[the immediately preceding paragraph], he will ordinarily be re-arrested in the High Court immediately **[after the] judgment has been pronounced against him.

Note 1:- The foregoing instructions will apply mutatis mutandis to the case of persons enlarged on bail by a Court of Session.

Note 2:- Except in very special cases, the Judges of the High Court decline to entertain applications for bail unless the Sessions Judge or the Court trying the case has already been applied to and has rejected applications. Sessions Judge should conform to this practice.

15. Bail application to be treated as urgent.-- All applications for bail in criminal cases including appeals *[shall be] treated as urgent.

CHAPTER 11

PART A -- INVESTIGATION

Relation between Police and Magistrate.-- Chapter XIV of the Code of Criminal Procedure contains the provisions of the law regarding information to the Police and their powers to investigate; and the relations of the Police to the Magistrate are therein defined.

*[**2. Police can investigate suo motu only cognizable cases.-** The Police have power to investigate suo motu only cognizable offences as defined in section 4(f) of the Code of Criminal Procedure, 1898; but under section 202 of the code, a Court may, for the purpose of ascertaining the truth or falsehood of a complaint of an offence of which it is authorised to take cognizance, direct an inquiry or investigation to be made by a Police Officer or by such other person as it thinks fit. The limitations on this power of reference which are described in the instructions as to the examination of complainants should be strictly observed by Magistrates (vide chapter 1-B, paragraph 4).]

3. Police to record information in non-cognizable cases also.-- Section 154 requires that every information to an officer-in-charge of a Police Station relating to the commission of a cognizable offence shall be reduced to writing, and action taken on it under sections 156 and 157. When the information relates to the commission of a non-cognizable offence, the substance of it shall be entered in a book to be kept for the purpose, and the informant shall be referred to the Magistrate. No police officer may, without the express order of a duly empowered Magistrate, investigate an offence not cognizable by Police [section 155 (2)].

4. Procedure of Police on receipt of information.-- Sections 156 to 158 lay down the procedure to be followed by the Police on receipt of information relating to the commission of a cognizable offence, and provide for the submission of reports of such information to the Magistrate having jurisdiction.

*[**Daily Station Diary. Action to be taken when Station Police Officer decides not to investigate case.-** Rule 22.48 of Chapter XXII of Volume III, of the Punjab Police Rules, 1934 prescribes the maintenance of a Daily Station

Diary in accordance with section 44 of the Police Act, 1861, and lays down that the Daily Station Diary shall be in form 22.48(1) and shall be maintained by means of the carbon copying process. There shall be two copies. One will remain in the Police Station register and the other shall be despatched to the Superintendent of Police or a gazetted officer designated by the former every day at the hour fixed in this behalf. The Superintendent of Police shall fix the hours at which station diaries shall be daily closed.]

Rules 24.4. (1) & (2) of Chapter XXIV of the Punjab Police Rules Volume III, run as follows:-

(1) If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a Police Station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant , if any, the fact that he will not investigate the case or cause it to be investigated.

(2) If the Inspector or other superior officer, on receipt of a copy of the station diary, is of opinion that the case should be investigated, he shall pass an order to that effect and shall, in any case, send on the diary or an extract therefrom to the District Magistrate for his perusal and orders.

*[**5. Distinction between recording of reports under sections 154 and 157, of the Code of Criminal Procedure.-** (i) Whereas every information covered by section 154 of the Code must be reduced to writing as provided in that section, it is only information which raises a reasonable suspicion of the commission of a cognizable offence within the jurisdiction of the Police Officer to whom it is given, which compels action under section 157 of the Code, although, of course, a report would be sent to the Magistrate.

(ii) A Magistrate cannot refuse to take cognizance of a complaint which has been duly made to him, on the ground that it relates to an offence cognizable by the Police, and should, therefore, have been made to the Police and not to himself. Failure to so take cognizance amounts to failure to exercise jurisdiction legally vesting in the Magistrate.

(iii) A Magistrate who has taken cognizance under section 190(1)(a) of the Code, of an offence cognizable by the Police may, after complying with the provisions of section 200 of the Code, and issuing his process (if he sees no reason for doubting the truth of the complaint and otherwise finds sufficient grounds for proceeding), give information of the case to the Police Officer having jurisdiction, with a view to his further investigating its facts and circumstances in the manner laid down in section 157 of the Code. In such a case, as is contemplated, the Police Officer would not have to take measures for the discovery and arrest of the offender, as the supposed offender would be known, and a process would have been issued by the Magistrate to compel his appearance; but in other respects it would rest with him to take steps to secure the case being properly brought before the Court, and he would be responsible that the witnesses named by the complainant to the Magistrate were supplemented by any others who might be necessary to complete the case for the prosecution.]

6. Procedure to be adopted by Magistrate when offender is not known to the complainant.-- The *[remarks contained in the preceding paragraph] proceed on the assumption that the complainant to the Magistrate knows, or thinks he knows, who has injured him. In cases of complaint of a cognizable offence against an unknown offender, the Magistrate would have to record, under section 203, that there were in his judgment no sufficient grounds for proceedings. It would also be open to him to communicate to the police the information supplied to him, or to leave it to the complainant either to apply to the Police or to take such other measures as he thought proper for discovering the offender.

7. Procedure of Police when there is or is not sufficient evidence against the accused.-- Section 169 of the Code of Criminal Procedure provides that if in an investigation under Chapter XIV the Police officer finds that there is not sufficient evidence to justify the forwarding of the accused to a Magistrate, he shall release the accused on bail or recognizance, and shall submit a report through the proper officer (section 173), for the orders of the Magistrate having jurisdiction.

If, on the other hand, the evidence appears sufficient the Police officer must forward the accused under custody, or on bail, if the offence is bailable, to the Magistrate having jurisdiction (section 170).

8. Police cannot detain in custody an accused for more than 24 hours without orders of Magistrate.-- Section 61 of the Code provides that no Police officer shall, under any circumstances, in the absence of a special order of a Magistrate under section 167, detain in custody a person arrested without warrant for a longer period than twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Court.

9. Police remands.-- When it appears that the investigation by the Police cannot be completed within the period of twenty-four hours and there are grounds for believing that the accusation is well founded, the Police Officer must forward the accused to the nearest Magistrate, and also transmit a copy of the entries relating to the case in the diary of the Police Station. The Magistrate before whom the accused is brought may, whether he has or has not jurisdiction, authorise the detention of the accused in such custody as he thinks fit for a period not exceeding fifteen days. If he has not jurisdiction in the case, and considers such further detention unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction. [**][(Section 167 of the Code).]

[*]**[10. Procedure of Magistrate granting remand.-** A Magistrate authorizing the detention of an accused person as above must record his reasons for doing so; and shall forward a copy of his order with his reasons for making it, to the Sessions Judge. (Section 167, sub-section (4) of the Code.)]

11. Arrest by Police to be reported. When Police may discharge persons once arrested.-- Sections 62 and 63 require that Police officers shall report to the Magistrate of the district or, if he so directs to the Magistrate of the sub-division of a district, the cases of all persons apprehended without a warrant within the limits of their respective stations, whether such persons [***][...] have been admitted to bail or otherwise, and that no person who has been apprehended shall be discharged except [*][on his own bond, or on bail] or under the special order of Magistrate.

12. Control of Magistrate over arrests by the Police.-- The object of these sections is that the Magistrate should promptly exercise authority, if

necessary, with regard to all arrests by the Police; and they seem to have been framed with this view that as no person can be released without the order of a Magistrate, except on bail or recognizance, the Magistrate *[and the Police should be responsible if a person is illegally arrested or] remains unnecessarily in custody.

13. Police diary to be kept and sent up regularly.-- Section 172 requires that a Police Officer making an investigation under Chapter XIV shall record his proceedings day by day in a diary. The Magistrate of the district should see that the diary is regularly kept up and that each day's diary has been forwarded to and has regularly reached the Superintendent of Police of the district in course of post, this being the only security against the contents being antedated. ***[...]

14. Duty Magistrates to supervise Police Investigations.-- Magistrates are bound to see that the provisions of the Code are attended to , any departmental practice notwithstanding. The law has provided that the Magistrate should either expressly order (section 202), or receive immediate intimation of (section 157) *[the] criminal investigation that is set on foot in the district, and he is not at liberty to relax the supervision which the law intends that he should exercise.

15. Magistrate must have among his own records the means to supply statistical information.-- From the quarterly statistical returns it sometimes transpires that the Magistrate is not informed of the number of persons arrested by the Police during the month. If the points above alluded to are properly attended to, the Magistrate must have among his own records the means to supply the statistical information; for the reports severally made to him of intimation of the occurrence of an offence (section 157), of there being no sufficient evidence (section 169), of there being sufficient evidence (section 170), must be in writing, and, whatever may be the mode of communication with the Police, must leave a trace in the Magistrate's office sufficient to enable the statistical writer to make out his returns.

16. Police to send to the Magistrate copies of records made under section 165, Cr.P.C.-- Magistrates of districts should also insist on the Police authorities adhering closely to the law laid down in sections 161 to 163 and 165

of the Code of Criminal Procedure. They should see that the Police forthwith sends to the nearest Magistrate, empowered to take cognizance of the offences, copies of any record made under sub-section 165 of the Criminal Procedure Code at the time of making search.

17. Power of Police to summon witnesses and to arrest offenders.-- The issuing of a warrant or summons, properly so called, in criminal cases, is the prerogative of the Magistrate only and no writ from a Police Officer, as such is to bear either of these designation; but, under section 160, any Police officer making an investigation under Chapter XIV may by `order in writing' require the attendance of any person who appears to be acquainted with the circumstances of the case, and such person shall be bound to attend. The arrest of an accused may also be effected by a Police Officer of any rank to whom an order in writing has been issued by the officer-in-charge of the police station; but such processes are never, either officially or in common parlance, to be called `warrants' or `summons'.

PART B -- REMANDS TO POLICE CUSTODY

1. Introductory.-- The following instructions on the subject of remands to Police custody have been issued by the High Court.

2. Distinction between remand to Police custody and remand to judicial lock-up.-- Magistrates should observe the great distinction between a remand to Police custody and an ordinary remand to the Magistrate's lock-up under section 344 on the adjournment of an inquiry or trial owing to the absence of a witness or from any other reasonable cause.

3. Non-completion of Police investigation does not justify detention by Police.-- The non-completion of the enquiry or trial justifies the latter, but the former requires some thing more, as it is expressly provided by section 167 that the non-completion of the investigation shall not, in the absence of a special order of a Magistrate, be deemed to be a sufficient *[cause] for the detention of an accused person by the Police.

4. Remand to be granted in cases of real necessity.-- Ordinarily, when an investigation is incomplete, the proper course is for the accused person to be sent up promptly with such evidence as has been obtained and for the trial to be commenced at once by the Magistrate and proceeded with, as far as possible, and then adjourned for further evidence. ***[...] A remand to Police custody ought only to be granted in cases of real necessity and when it is shown in the application that there is good reason to believe that the accused can point out property or otherwise assist the Police in elucidating the case.

5. Magistrate should discourage tendency of Police to take remand to extort confession.-- The Police are too often desirous of retaining the accused in their custody for the longer period than twenty-four hours merely in the hope of extracting some admission of guilt from him. This is contrary to section 163 and the following section of the Code of Criminal Procedure, and to the spirit of the Code generally; and Magistrates must be careful not to facilitate this object by too great a readiness in granting remands.

6. Remand cannot be granted for more than 15 days. Procedure when accused is brought before a Magistrate to obtain remand.-- Remands to Police custody cannot be granted under the Code of Criminal Procedure, for

a longer period than 15 days altogether, and cannot be granted at all by a Magistrate of the third class, or by a Magistrate of the second class not specially empowered by the Provincial Government. When an accused is brought before a Magistrate in accordance with section 167, Sub-section (1) of the Code of Criminal Procedure, 1898, the Magistrate must adopt one of the following courses:-

(1) If he has jurisdiction to try the case or *[send] it for trial, either:-

(a) discharge the accused at once, on the ground that there is no cause shown for further detention, or

*[(b) remand him to Police custody (if empowered to do so) or to magisterial custody as he may think fit, for a term not exceeding 15 days, which term if less than 15 days, may subsequently be extended upto the limit of 15 days in all and shall forward a copy of his order with his reasons for making it, to the Sessions Judge; or

(c) proceed at once to try the accused himself or send him for trial, or]

(d) if for any reason it sems necessary, forward the accused at once to the **[Sessions Judge or] District or Sub-Divisional Magistrate to whom he is subordinate, or

(e) if himself a District or Sub-Divisional Magistrate, send the accused to a competent subordinate Magistrate for trial or sending up.

(2) If he has not jurisdiction to try the accused or *[send] him for trial, he must either:-

(a) if he thinks there is no ground for further detention, at once send the accused to a Magistrate having jurisdiction, with a view to his trial or discharge, or

(b) if he thinks there is ground for further detention, remand him to police custody (if empowered to do so) or to magisterial custody as he may think fit, for a term not exceeding 15 days, which term, if less than 15 days, may subsequently be extended up to the limit of 15 days in all, **[and forward a copy of his order with his reasons for making it, to the Sessions Judge.]

Note: ***[Omitted]

7. Accused must be produced before the Magistrate who should satisfy himself about necessity for remand.-- Before making an order of

remand to Police custody under section 167 of the Code of Criminal Procedure, the Magistrate should satisfy himself that--

(1) there are grounds for believing that the accusation against the person sent up by the Police is well founded;

(2) there are good and sufficient reasons for remanding the accused to Police custody instead of detaining him in magisterial custody.

In order to form an opinion as to the necessity or otherwise of the remand applied for by the Police, the Magistrate should examine the copies of the diaries submitted under section 167 and ascertain what previous orders (if any) have been made in the case, and the longer the accused person has been in custody the stronger should be the grounds required for a further remand to police custody.

The accused person must always be produced before the Magistrate when a remand is asked for.

8. Principle applying remand cases.-- The following principles are laid down for the guidance of Magistrates in the matter of granting remands, and District Magistrates are required to see that they are carefully applied:-

(i) Under no circumstances should an accused person be remanded to Police custody unless it is made clear that his presence is actually needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted.

(ii) When an accused person is remanded to Police custody the period of the remand should be as short as possible.

(iii) In all ordinary cases in which time is required by the Police to complete the inquiry, the accused person should be detained in magisterial custody.

(iv) Where the object of the remand is merely the verification of the prisoner's statement, he should be remanded to magisterial custody.

(v) An accused person who has made a confession before a Magistrate should be sent to the Judicial lock-up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required and an order obtained from the Magistrate for his delivery to them for the specific purposes

named in the application. If an accused person, who has been produced for the purpose of making a confession, has declined to make a confession or has made a statement which is unsatisfactory from the point of view of the prosecution he should not be remanded to Police custody.

*[**9. Reasons for grant of remand to be recorded and copy sent to Sessions Judge.--** The Magistrate giving remand to Police custody shall record his reasons for so doing and forward copy of his order to the Sessions Judge or the District Magistrate as the case may be. (See section 167(3) & (4) Cr.P.C.]

10. Procedure when a remand for more than 15 days is required for completion of the case.-- If the limit of 15 days has elapsed, and there is still need for further investigation by the Police, the procedure to be adopted is that laid down in section 344, Criminal Procedure Code. The case is brought on to the Magistrate's file and the accused, if detention is necessary, will remain in magisterial custody. The case may be postponed or adjourned from time to time for periods of not more than 15 days each, and as each adjournment expires the accused must be produced before the Magistrate, and the order of adjournment must show good reasons for making the order.

*[**11. Strict supervision to be exercised over the action of Magistrates granting remands.--** The Sessions Judges and the District Magistrates as the case may be should take measures to exercise strict supervision over the action of all Magistrates subordinate to them, in regard to the granting of remand under section 167 of the Code of Criminal Procedure and as they receive the reports made under subsection (4) thereof, they possess the means for exercising the supervision here required of them without any difficulty.]

12. (i) **Instructions issued by the Provincial Government in respect to remands.--** ***[...] **(a)** Before a remand is granted in any case, the Magistrate should inform the accused that he is a Magistrate and that a remand has been applied for, and he should ask the accused whether he has any objection to offer to the remand. The order granting the remand should be written at the time it is announced, in the presence of the accused.

(b) If the accused wishes to be represented by counsel, the Magistrate should allow time for counsel to appear and argue the matter before him. He

may grant a temporary remand in such circumstances until arguments have been heard.

(ii) Right of accused to access to counsel and friends.-- ***[...] An accused person should not be removed to a place which is either inaccessible or unknown to his friends or counsel. Information regarding his place of confinement should at all times be given to his friends on their application, and the prisoner himself should be informed that he is entitled to have the assistance of counsel and to communicate with his relations and friends. **[(See Punjab Government circular letter No. 6091-J-36/39829 (H-Judl) dated the 19th December, 1936).]

PART C -- IDENTIFICATION PARADES

Instructions issued by the Punjab Government regarding identification parades.-- The following instructions have been issued by the Punjab Government for the guidance of Magistrates in their conduct of identification parades (Punjab Government circular letter No. 6091-J-36/39829 (H-Judl.), dated the 19th December, 1936, to all District Magistrates in the Punjab):-

(1) **List of all persons included in the parade should be prepared.--** The Magistrate in charge of an identification parade should prepare a list of all persons, including the accused, who form part of the parade. This list should contain the parentage, address and occupation of each member of the parade.

(2) **Note about identification by witnesses.--** When any witness identifies a member of the parade, the Magistrate should note in what connection he is identified. A note should also be made if the witness identifies a person wrongly; in such a case it is incorrect to note that the witness identified nobody. All persons identified must be mentioned, whether the identification is right or wrong. If a witness, on being called for the purpose, states that he cannot make any identification, a note should be recorded by the Magistrate to this effect.

(3) **Objection or statements by accused or identification witnesses to be recorded and power of Magistrate to decide objections.--** Should the accused make any complaint or statement it should be recorded by the Magistrate. If from his personal knowledge the Magistrate is able to decide beyond doubt that the complaint is false or futile, a note to this effect should be made, but in other cases it is advisable to leave any decision as to the value to be attached to the objection to the court trying the case. The Magistrate should also record any statement made by a witness before making an identification.

(4) **Duty of Magistrate to record precautions taken and to note other points.--** The Magistrate should state-

(a) what precautions he has taken to ensure-

(i) that the witnesses do not see the person to be identified by them before the identification proceedings commence;

(ii) that no communication which would facilitate identification is made to any witness who is awaiting his turn to identify; and

(iii) that after making identification the witnesses do not communicate with other witnesses who have yet to do so;

(b) whether the person to be identified is handcuffed or is wearing fetters; and if so, whether or not other persons taking part in the parade are handcuffed or are wearing fetters, and also whether or not they are inmates of the Jail.

(5) Form of certificate to be appended by the Magistrate.- At the end the Magistrate should append a certificate in the following form:-

IDENTIFICATION PARADE

The State Versus (F.I.R. No. of 19 Police Station ----------)

Parade held on the----------19 in the----------jail by---------- Magistrate----------Class----------district for the identification of----------on the application of----------.

Names of the witness who are expected to identify the prisoner, with their particulars:-

1.

2.

3.

PROCEEDINGS OF THE MAGISTRATE

Certified that the above is a true and correct record of my proceedings.

(Seal) Sd/- (Magistrate) Class.

2. The following further instructions have been issued by the Punjab Government on the subject(Punjab Government circular letter No. 6546-J-43/83844 (H-Judl.) dated the 17th December 1943, to all District Magistrates in the Punjab:-

In cases where the identification of the accused is disputed and is a matter of importance, the request of an accused for an identification parade should not be refused. Such a request should not also be rejected merely because it is regarded as measure to create delay, as it should be possible to arrange an identification parade without delay. Again, a request to hold such a parade should not be refused on the ground that it is some considerable time since the witnesses last saw the accused and the accused may have changed in appearance in the meantime, and in such cases in his report on the parade the Magistrate can record when the witnesses did see the accused last.

3. A case has been brought to the notice of Government in which the Magistrate holding an identification parade allowed the accused and other members of the parade to be so dressed and "made up" with dark glasses, patches of paper, etc., that it was well nigh impossible for the witnesses to identify the accused. As an identification parade is a test of the identifying witness's ability to recognise the culprit by what he appeared to be at the time of the commission of the offence, it is fair both to the prosecution and the accused that the members of the parade should be presented in a normal state and, if possible, the dress of the parade should have resemblance to the accused as he appeared to the witness at the time of the commission of the offence. It should, therefore, be impressed upon the Magistrates in all districts to ensure, while conducting identification parades, that the members of the parade including the accused are not allowed "make up", are presented in a normal state and if possible the parade be dressed as the accused was reported to be by the witness at the time of the commission of the offence.

PART D -- CANCELLATION OF CASES REPORTED BY POLICE

1. Magistrate's power to cancel cases reported by Police.--In regard to cognizable cases reported by the Police to the Magistrate having jurisdiction under section 157 and 173 of the Code of Criminal Procedure, it frequently becomes evident either (a) that the offence committed was really non-cognizable, or (b) that the information given to the Police was false or unfounded, and the Police apply for magisterial authority to show such cases as "non-cognizable" or "false" as the case may be. The Magistrate dealing with the Police reports in such cases, that is, ordinarily, the Magistrate who is empowered to take cognizance of the offence upon Police report, in respect of the particular Police Station, under section 159 or section 173 of the Code of Criminal Procedure, as the case may be, may, for sufficient reasons, pass an order accordingly.

*[**2. Duty of Magistrate to satisfy himself before passing order.-** When a Magistrate agrees with a Police report that the F.I.R./case should be cancelled, he acts in an administrative and not in a judicial capacity and the order he makes is not a judicial order. Such an order is not a revisable order and, therefore, the Magistrate is not required to give reasons for his order.

Though, Magistrates should exercise this discretion freely in making such order after satisfying themselves as to the grounds on which it is sought to be made, yet they should not treat the matter as one of ordinary routine. (See Rule 24.7 of the Punjab Police Rules, 1934 framed under section 46 of the Police Act, 1861 and Bahedu vs. The State PLD 1985 S.C. 62).]

3. Magistrate dealing with the final Police report is competent to pass order.--In the event of the first and final report not coming before the same officer, the Magistrate dealing with the final Police report would be competent to pass the order.

4. Order of cancellation when to be passed and by whom.--No Magistrate of the 2nd or 3rd class is competent to make such an order, but any Magistrate of the Ist class may do so. Such an order should only be made at the time of dealing with the police reports. No application from the Police for a direction of this character should be entertained if made otherwise than in the final report submitted under section 173 of the Code of Criminal Procedure. But

any Magistrate of the Ist, 2nd or 3rd class, may, of his own motion , in the course of trying any case reported by the Police as cognizable, pass such an order at any stage of the proceedings, before or at the time of delivering judgment, intimation of the order being given to the Police.

PART E -- CUSTODY OF PROPERTY SENT IN BY THE POLICE

1. Kinds of property sent in by Police.-- Property sent in by the Police is usually of three kinds:-

(i) Articles including (a) counterfeit coins, together with implements for their manufacture, such as dyes, moulds, etc., and (b) forged currency notes and implements such as dyes, moulds, etc,. used in the forgery of currency notes, transmitted to the Magistrate, under section 170 of the Code of Criminal Procedure, with the Police report in cases sent up for trial.

(ii) Property seized by the Police as stolen property or upon suspicion, and ordered by the Magistrate, under section 523 of the Code of Criminal Procedure, to be forwarded to headquarters.

(iii) Property taken charge of by the Police under section 25 of Act V of 1861, and ordered by the Magistrate of the district to be forwarded to headquarters.

2. Custody and disposal of the property.-- (a) With regard to property referred to in rule 1 (i) above, other than articles enumerated in (a) and (b), the Police Department will retain charge of it pending the disposal of the case. When the case is decided, the property, if not returned to the owner, will be made over to the Nazir for safe custody, or otherwise disposed of, as the Magistrate may direct.

(b) Articles enumerated in 1 (i) (a) above, will remain in the custody of the Police Department pending the disposal of the case. At the end of the case and not till after the appeal or revision, if any, the Court shall send them to the Treasury or Sub-Treasury together with a short description of the case; and

(c) Articles enumerated in 1(i) (b) above produced in and confiscated by a Court shall remain in the custody of the Police Department during the trial of the case. After the decision of the case and the Appeal or Revision, if any, from it, the Presiding Officer of the Court shall return, through the Police Department to the Currency Officer, State Bank of Pakistan in whose jurisdiction the forged note is/notes are detected for entry in their books and destruction and make the remaining articles over to the Police Department for

their destruction or for such other action as may be found suitable in accordance with the rules of that Department.

3. Custody and disposal of the property.-- Property of the second kind, when sent into headquarters, will remain in the custody of the Police until the Magistrate makes an order for the issue of a proclamation under section 523 of the Code of Criminal Procedure, when it should be transferred to the custody of the Nazir, or otherwise disposed of as the Magistrate may direct.

4. Custody and disposal of the property.-- Property of the third kind should on arrival at headquarters be made over at once to the Nazir by the Police Department.

5. Custody of coins, currency notes, etc.-- In any individual case where the property consists of bullion, coin, currency notes, valuable securities or jewels, and is of great value, say, above one thousand rupees, it should instead of being made over, under the preceding rules, to the Nazir, be made over to the Treasury Officer; coin or currency notes (other than counterfeit coin and notes) will be treated as regular deposits under the rules in Chapter III, Account Code, Volume II; bullion at its estimated value in cash, and securities, irrespective of their face value, and jewels will be deposited for safe custody, and an entry made not in the ordinary register, but in a special register which should be countersigned every month by the Deputy Commissioner. The orders of the Deputy Commissioner should first be obtained by the Police before placing bullion or jewellery, etc., for safe custody at the Treasury.

6. Responsibility of Police for safe custody.-- Until the property is, under the preceding rules, made over to the Treasury, the Police Department will continue to be responsible for its safe custody. When so made over, the responsibility for its safe custody will rest with the Nazir [*][or] Treasurer, as the case may be.

7. See also Volume IV, Chapter 10.-- "Forfeited and Unclaimed Property."

PART F -- INSPECTION BY POLICE OFFICERS OF RECORD AND OTHERS AFFECTING THE WORKING OF THE POLICE

1. Inspection by Police officers of the record of criminal cases in which a member of the Police is convicted or left under suspicion.-- District Magistrates are instructed to permit Superintendents of Police to peruse the proceedings and evidence in all criminal cases in which a member of the Police force is either sentenced to punishment, or, though acquitted, is left under suspicion or severely censured. The object is not to question the correctness of the decision of the Magistrate, but to enable the Police to take such departmental action as may appear necessary.

2. Copies of certain confessions to be sent to Inspector-General of Police.-- Copies of all confessions which may be valuable from a Police point of view, as inculpating accomplices, should be forwarded to the office of the Inspector-General of Police for record.

3. All modifications of the order of the lower court made in appeal, revision, or reference should be communicated to the Superintendent Police.-- ***[...] Intimation shall always be given to the Court Inspector of the District Magistrate's Court, for Communication to the Superintendent of Police, of all modifications made by a Court of Appeal, Revision or Reference in an order passed by a Court of Original Criminal Jurisdiction.

> **Note:-** As copies of all such orders (except orders passed in appeal by a Subordinate Magistrate invested with criminal appellate powers for the communication of which special provision should be made) are sent to District Magistrate, the above direction can be carried out without difficulty.

PART G. -- INFORMATION OF CONVICTION IN COMPLAINT CASES TO BE FURNISHED TO THE POLICE.

1. **Information of convictions in certain cases to be sent to police.**-- Magistrates are required to furnish the Police with information as to convictions in all cases taken up by them on complaint under the Acts noted below:-

I. (PAKISTAN PENAL CODE)

Chapter XI

Sections 193 to 195	Giving or fabricating false evidence.
Sections 211 to 377	False charge of committing an unnatural offence.

Chapter XII

Sections 231 to 232	Counterfeiting of coin.
Sections 233 to 235	Making, buying, selling or having in possession of instruments or material for counterfeiting coin.
Section 236.	Abetting the counterfeiting of coin out of Pakistan.
Sections 237 to 238	Import or export of counterfeit coins.
Sections 239, 240, 242, 243,	Possession or delivery of counterfeit coin.
Section 244.	Unlawful alteration of weight or composition of coin by persons employed in mints.
Section 245	Unlawful removal of coining instruments from Mints:
Sections 246 to 253	Unlawful alteration of weight, composition or appearance of coin and possession and delivery of such coin.
Section 255.	Counterfeiting of Government stamps
Sections 256 to 257	Making, buying, selling or having in possession instruments or

	material for counterfeiting Government stamps.
Sections 258 to 259	Possession or sale of counterfeit Government stamps.
Section 260.	Using of counterfeit stamps.
Sections 261 and 263	Fraudulent effacement or erasure of Government stamps.

Chapter XVI

Section 311	Being a thug.
Section 354	Indecent assault on a woman.
Sections 363 to 369	Kidnapping.
Section 376	Rape.
Section 377	Unnatural offence.

Chapter XVII

Sections 379 to 382	Thefts of all kinds.
Sections 384,386 to 389	Extortion of all kinds except section 385.
Sections 392 to 394, 397 & 398	Robbery of all kinds.
Sections 395,396,399,402.	Dacoity of all kinds.
Sections 400 and 401.	Belonging to a gang of thieves, dacoits.
Section 404.	Dishonest misappropriation of property belonging to a deceased person.
Sections 406 to 408.	Criminal breach of trust.
Section 409.	Criminal breach of trust by public servants.
Sections 411 to 414	Receiving stolen property.
Sections 418 to 420	Cheating of all kinds, except simple cheating, section 417.
Sections 429 to 433 and 435 to 440.	Serious mischief.
Sections 449 to 452	House-trespass in order to commit an offence.
Sections 454 to 458	Lurking house-trespass or house breaking other than simple, section 453.

Sections 459 and 460	Grievous hurt or death caused in house-breaking.
Section 461.	Dishonestly breaking open a closed receptacle.
Section 462.	Fraudulently opening a closed receptacle held in trust.
Sections 465 to 469	Forgery.

Chapter XVIII

Sections 489-A to 489-D.	Forgery of currency notes and bank notes.

[Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.- All offences which would, if committed in Pakistan have been punishable under Chapter XII or Chapter XVII of the Pakistan Penal Code with imprisonment of either description for a term of three years or upwards, in which the order or conviction was passed by a Court or tribunal in the territories of any Province acting under the general or special authority of the Federal or of any Provincial Government, - (vide Act III of 1910, amending section 75, Pakistan Penal Code)]

II. (CODE OF CRIMINAL PROCEDURE).

Chapter VIII

Sections 109 to 110	..Bad livelihood

*[III. (MISCELLANEOUS ACTS).

Prohibition (Enforcement of Hadd) Order, 1979.

The Arms Ordinance, 1965 (Ordinance XX of 1965).]

IV. (OTHER OFFENCES).

All offences in cases in which the subsequent proof of the conviction so recorded would render the person convicted liable by law to enhanced

punishment on subsequent conviction of the same or a similar offence by reason of the proof of such former conviction and all offences in which, upon such proof, the law establishes a presumption in favour of the prosecution.

***[Omitted]

2. **Form of statement prescribed for such information.**-- A form of the statement to be furnished to the Police is attached hereto.

3. **Filling up of the form.**-- In courts where there is '[an Attorney or Assistant Attorney, this official should] be held responsible for filling up the form in question, and Magistrate will only be required to sign it. In other Courts, Magistrate will, after filling up the form send it to the officer-in-charge of the nearest Police Station.

4. **Indent for forms.**-- Printed forms in English for these statements should be indented for in the usual way. The supply of vernacular forms should be arranged for by District Magistrate.

STATEMENT SHOWING CASES TAKEN UP BY THE MAGISTRATES ON COMPLAINT UNDER SECTIONS OF THE PAKISTAN PENAL CODE AND OTHER ACTS, OF WHICH THE POLICE DEPARTMENT MAINTAINS A RECORD, WHERE SUCH CASES END IN ,CONVICTION.

1	2	3	4	5	6	7
District in which trial is held	Name, parentage, caste, residence and occupation of person convicted	Offence of which convicted	Sentence	Date of sentence.	Name and powers of Magistrate	Remarks

5. **Criminal statistics supplied to Police.**-- For information regarding criminal statistics to be supplied by District Magistrates to the Police every year, see Volume IV, Chapter 23 -- "Reports and Returns."

PART H -- MISCELLANEOUS

1. Cases against Police officers.-- For cases against Police officers see Chapter 6, "Cases against Government servants and Soldiers."

*[**2. Police reports sent to Magistrates through a superior Police officer**- The following reports sent to Magistrates shall be submitted through a superior officer of Police:-

(a) Information reports or charge registers, under section 157, in all cases in which the Police have abstained from investigation.

(b) Completion reports, including charge-sheet, under section 173 in all cases in which no person is sent up for trial and whether any person has been arrested or not.

(c) Completion reports, including charge-sheets, under section 173, in all cases sent for trial at the headquarter of a district. (Punjab Government Notification No. 77, dated 26-4-1883).

The following Officers of Police shall be deemed to be "Superior Officers" within the meaning of these rules:-

Under clauses (a) and (b), the Superintendent of Police; and when the Superintendent of Police is unable to receive such reports, an Assistant Superintendent of Police, and when Superintendent of Police and Assistant Superintendent of Police is unable to receive such reports, an Inspector of Police.

Under clause (c), the Superintendent of Police, and in his absence, an Assistant Superintendent of Police, and in the absence of the Superintendent of Police and the Assistant Superintendent of Police, an Inspector of Police.]

3. Copy of judgment criticising conduct of Police to be sent to higher authorities.-- For transmission of a copy of judgment in which the conduct of the Police is criticised to higher authorities see Chapter I-H, paragraph 6.

CHAPTER 12
POLICE DIARIES AND STATEMENTS BEFORE THE POLICE

When accused is entitled to see Police diaries or statement of a witness recorded by Police.-- The Police diaries called for under section 172 of the Code of Criminal Procedure should not be shown to accused persons, or to their agents, or pleaders, except under the circumstances stated in the second clause of section 172 of the Code, that is, when they are used by a Police Officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police Officer. Sessions Judges and District Magistrates should issue such orders as are necessary to guard against the Police diaries being inspected by persons not entitled to see them. The right of an accused person to be furnished with a copy of the statement of a witness recorded in a Police diary is dealt with in section 162 of the Code.

Note:- These restrictions do not apply to person duly authorized to conduct the prosecution in any case.

2. Instructions regarding despatch of Police diaries and their translation with the records of criminal cases to the High Court.-- In submitting the records of criminal cases to the High Court, the Police diaries and English translations, or notes of them, should be separated from the records and placed in a sealed cover which should then be placed with the record.

3. Use of Police diary by Court.-- As to the manner in which Police diaries may be used by courts, the following remarks should be borne in mind:-

The provisions of section 172, that any Criminal Court may send for the Police diaries, not as evidence in the case but to aid it in an inquiry or trial, empowers the court to use the diary not only for the purpose of enabling the Police Officer who compiled it to refresh his memory, or for the purpose of contradicting him but for the purpose of tracing the investigation through its various stages, the intervals which may have elapsed in it, and the steps by which a confession may have been elicited, or other important evidence may have been obtained. The Court may use the special diary, not as evidence of any date, fact or statement referred to in it, but as containing indications of sources and lines of inquiry and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the state and the accused.

Should the Court consider that any date, fact or statement referred to in the Police diary is, or may be, material, it cannot accept the diary as evidence, in any sense, of such date, fact or statement, and must, before allowing any date, fact or statement referred to in the diary to influence its mind, establish such date, fact or statement by evidence.

Criminal Courts should avail themselves of the assistance of Police diaries for the purpose of discovering sources and lines of inquiry and the names of persons who may be in a position to give material evidence, and should call for diaries for this purpose.

4. Use of statement of witness made before Police; when accused may get its copies.-- As regards the proper use of statements made by witnesses before the Police during the course of an investigation, the provisions of section 162 of the Code should be carefully studied. It would appear from the provisions of that section that no statement made by a witness to a Police Officer during the course of an investigation under Chapter XIV of the Code can be proved at all for any purpose during the trial, if the statement has not been reduced into writing. If such a statement has been reduced into writing its use for any purpose whatever is also prohibited except when (a) it is the statement of witness called for the prosecution, and (b) the accused desires to use the statement or any portion thereof in the manner provided in [*][Article 140 of the Qunun-e-Shahadat, 1984], to contradict the witness and thus impeach his credit. In such circumstances, the Court is bound to furnish the accused, on his request, with a copy of the statement of the witness before the Police unless it thinks it fit to withhold it under the proviso to section 162. The original written record of the statement or any portion of it, which is relied upon, must be put to the witness as required by [*][Article 140 of the Qanun-e-Shahadat, 1984], and then the statement can be used for impeaching the credit of the witness as stated above. [***][...]

5. Method of contradicting a witness with previous statement.-- The procedure contemplated by Article 140 of the Qanun-e-Shahadat, 1984, should be carefully followed. When a witness is found to make statements conflicting with previous statements made by him in writing or reduced into writing, and it is intended to contradict him with the previous statements, the relevant portions of the previous statements should be read out to him and his

attention should be called to the discrepancies, and he should then be asked to offer his explanation(if any) with reference to the same. The record of the Magistrate or Judge should show clearly that this procedure has been followed. The best way of doing this should be to put direct questions reciting the relevant portions of the two statements and asking for an explanation as to the discrepancies between the same and to record fully such questions and the answers given by the witness.

6. Use of First Information Report for purposes of corroboration of statement.-- It will thus appear that, as a result of the provisions of section 162 of the Code of Criminal Procedure, a statement, made by a witness before the Police, cannot be used to corroborate his testimony inspite of the provisions of *[Article 153 Qanun-e-Shahadat, 1984,] (ef. I. L. R. 6 Lah. 171). The first information report recorded under section 157 of the Code, however, does not fall within the scope of section 162 as it is not a statement made in the course of an investigation and hence it can be used to corroborate the testimony of the person making the report if he appears as a witness. It frequently happens, however, that the person making the first information report has no personal knowledge at all of the fact stated in the report and in such cases the report has no value except in so far as it discloses the manner in which the Police obtained the first information about the offence.

***[7. Confession made by accused to Police is admissible in evidence if it has led to discovery of any fact.-** Section 162 of the Code of Criminal Procedure applies to the statement of persons examined as witnesses by the Police and not to the statement of an accused person, and it does not modify or override the provisions of Article 40 of the Qanun-e-Shahadat, 1984 in any way. Consequently a confession by an accused person to the Police, whether it has been reduced into writing or not, is admissible in evidence under Article 40 of the Qanun-e-Shahadat, 1984, if any fact is deposed to as having been discovered in consequence of such a confession.

8. Dying declaration excluded from operation of section 162, Cr.P.C.- Dying declarations falling under Article 46(1) of Qanun-e-Shahadat, 1984 are excluded from the scope of section 162 of the Code of Criminal Procedure.]

CHAPTER 13
CONFESSIONS AND STATEMENTS OF ACCUSED PERSONS

Statements of accused at various stages explained.-- The provisions of sections 164, 342 and 364 of the Criminal Procedure Code with regard to the confessions and statements of accused persons should be carefully studied. Section 164 deals with the recording of statements and confessions at any stage before the commencement of an enquiry or trial. Section 342 deals with the examination of accused persons during the course of the enquiry or trial. Section 364 prescribes the manner in which the examination of an accused person is to be recorded.

2. Use of confession of accused during Police trial recorded by Magistrate.-- The object of Section 164, Criminal Procedure Code, is to provide a method of securing a reliable record of statements or confessions made during the course of the Police investigation, which could be used, if necessary, during the enquiry or trial. Under [*][Article 38 of the Qanun-e-Shahadat, 1984], a confession to a Police Officer is in-admissible in evidence, and hence when an accused person confesses during the Police investigation, the Police frequently get it recorded by a Magistrate under section 164, Criminal Procedure Code, 1898, and it can then be used to the extent to which it may be admissible under the [*][Qanun-e-Shahadat, 1984.]

3. Presumption attached to confessions recorded by Magistrate and its evidential value. Safeguards provided in law to obtain a voluntary and precisely recorded confession.-- Under [*][Article 91 of the Qanun-e-Shahadat 1984], a Court is bound to presume that a statement or confession of an accused person, taken in accordance with law and purporting to be signed by any Judge or Magistrate, is genuine, and that the certificate or note as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such statement or confession was duly taken. The words "taken accordance with law" occurring in this section are very important and it is essential that in recording a statement or confession under section 164, the provision of that section [*][shall] be strictly followed. [***][...] The evidential value of a confession depends upon its voluntary character and

the precision with which it is reproduced and hence the section provides safeguards to secure this end. These safeguards are of great importance, as confessions are often retracted at a later stage and it becomes necessary for the court to ascertain whether the alleged confession was actually and voluntarily made. The mere fact that a confession is retracted does not render it inadmissible in evidence, but the Court has to scrutinize any such confession with the utmost care and accept it with the greatest caution. Experience and common sense in fact show that in the absence of some material corroboration it is not safe to convict merely on a retracted confession, unless from the peculiar circumstances under which it was made and judging from the reasons, alleged or apparent, of retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine. ***[...]

4. Important features of Section 164, Criminal Procedure Code.-- Some important features of section 164 ***[...] are:-

(a) Statements or confessions made in the course of an investigation can be recorded only by a Magistrate of the first class or of the second class who has been specially empowered by the Provincial Government.

(b) Confessions must be recorded and signed in the manner provided in section 364.

(c) Before recording any such confession the Magistrate shall 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 in evidence against him.

(d) No Magistrate shall record any such confession unless upon questioning the person making it he has reason to believe that it was made voluntarily, failure to question has been held to vitiate the confession. ***[...]

(e) The memorandum set forth in section 164 (3) must be appended at the foot of the record of the confession.

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

**[(g) Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement. [See Sub-Section (1-A) of Section 164 Cr.P.C.]

5. Form prescribed for recording confessions.-- *[For recording confessions taken under section 164 of the code the following form shall be used:-]

RECORD OF CONFESSION MADE BY AN ACCUSED PERSON

(Section 164 of the Code of Criminal Procedure)

---------- Division

In the Court of----------

THE STATE,

versus

The confession of----------taken by me----------, a Magistrate of the----------District, this----------day of----------19 .

Memorandum of Enquiry

(The Magistrate shall first, as required by section 164(3), Code of Criminal Procedure, explain to the accused person that he is not bound to make a confession, and that if he does so, it may be used as evidence against him, and shall then put and record answers to the following questions. If the answers are of such a character as to require him to do so, he should put such further questions as may be necessary to enable him to judge whether the accused person is acting voluntarily. In arriving at his conclusion on this point the Magistrate should consider *inter alia* the period during which the accused person has been in Police custody and make sure that the confession is not the result of any undue influence or ill-treatment. Special care should be taken when women or children are produced by the Police for their confessions being recorded).

1. Q.-- Do you understand that you are not bound to make a confession?

   A.-----

2 Q. Do you understand that your statement is being recorded by a Magistrate, and that if you make a confession, it may be used as evidence against you?

A.---------

3. Q.--- How long have you been in police custody?

A.---------

4. Q.—Do you understand that after making a statement before me you will not be remanded to police custody, but will be sent to the judicial lock-up?

A.---------

5. Q.—Understanding these facts, are you making a statement before me voluntarily?

A.---------

6. Q—What are your reasons for wishing to make a statement?

A.---------

Statement of accused
(Mark or signature of accused). Magistrate.

I have explained to ---------- 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.

Dated_____ Magistrate.

---

6. Instructions for recording confessions.—Unless there are exceptional reasons to the contrary confessions should be rcorded in open Court and during Court hours. Police officers investigating the case should not be present.***[…]

7. Accused who has made a confession should not be kept in Police custody, but should be kept in Judicial lock-up separate from other prisoners.—An accused person who had made a confession before a Magistrate should be sent to the judicial lock-up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required, and an order obtained from the Magistrate for the purpose of making a confession, has declined to make a confession or has made a statement which is unsatisfactory from the point of view of the prosecution he should not be remanded to Police custody.

7-A. When remanding to the lock-up an accused person who has made a confession, the Magistrate shall record an order for him to be kept separate from other prisoners as far as may be practicable.

8. Accused can be examined to explain the prosecution evidence against him and not to fill up gaps in that evidence .—Section 342 of the Code empowers the Court to put questions to the accused at any stage of enquiry or trial to enable him to explain any circumstances appearing in evidence against him. The question put under this section must be confined to the points brought out in the evidence and should not be in the nature of cross-examination of the accused person. Nor should the power given by the section be used to elicit information from the accused to fill up gaps in the prosecution evidence (cf I.L.R 4 Lah. 55). For, the conviction of an accused person can only be based on the evidence produced by the prosecution, no oath can be administered to the accused and the answers given by him can only be taken into consideration in explanation of the prosecution evidence.

8A. Accused can be questioned generally on the case only after prosecution evidence has been finished.—The Magistrate is allowed by section 342 of the Code of Criminal Procedure to examine the accused at an early stage of the case for the purpose of enabling him to explain any circumstances appearing in the evidence against him. This provision is intended for the benefit of the accused, and must not be used to elicit his defence before

the prosecution evidence is complete. Magistrate sometimes question the accused generally on the case as soon as a prima facie case has been made out, but before the prosecution evidence is complete. This is incorrect. According to the second part of clause (1) of section 342, it is only after the completion of the prosecution evidence that accused can be questioned generally on the case.

***[…]

9. Failure to examine accused at the close of prosecution evidence vitiates the trial.—Section 342 makes it obligatory for a Court to examine the accused generally on the case after the witness for the prosecution have been examined and before the accused is called for his defence. Even when an accused person has been examined at a earlier stage of Court must examine the accused generally after the close of the prosecution case (i.e.. after the examination and cross-examination of prosecution witnesses and their further cross-examination of prosecution witnesses and their further cross-examination, if any, after the charge is framed) and before the accused is called upon to produce his defence, so as to give him an opportunity to explain any points, which were not included in the questions put to him at earlier stages. *[Compliance with the provision of section 342 must be ensured for non-compliance may have the effect of vitiating the trial.]

10. Written statement of accused.—Under Section 256 of the Code, if the accused person puts in a written statement, it should be filed with the record. But a written statement of this kind does not relieve the Court of the duty of examining the accused in Court after the close of the prosecution evidence as laid down in section 342.

***[Omitted]

11. Mode of recording examination of accused.—Section 364 provides the mode in which the examination of an accused person is recorded. The question put to the accused and the answers given by him should be distinctly and accurately recorded, but the accused must confine himself to relevant answers to the questions asked by the Court. Section 364 does not prevent a Court from refusing to record irrelevant answers to questions put by it to the accused under section 342. If necessary, the Court may even prevent the accused making lengthy, irrelevant answers. The examination of the accused should be recorded in the language in which he is examined, and, if that is not

practicable, in the language of the Court or in English. In cases in which examination is not recorded by the Magistrate or Judge himself, he must record a memo thereof in the language of the Court or in English if he is sufficiently acquainted with the latter language. The examination must be read over to the accused and made conformable to what he declares to be the truth. The Magistrate or judge must then certify under his own hand that the examination was taken down in his presence and hearing, and that the record contains a full and true account of what was stated.]

**[The newly amended section 340 sub-section (2) of the Code deserves special attention. It provides that an accused person shall if he does not plead guilty give evidence on oath in disproof of charges or allegations made against him or any person charged or tried together with him at the same trial.

The stage for the accused person's statement on oath is after his statement under section 342 has been recorded. His attention should then be called to the requirements of section 340, sub-section (2) and he should be asked if he would make a statement on oath].

12. When evidence may be led to prove that accused duly made the confession or statement.—Under section 533 of the Code, if any Court, before which a confession or other statement of an accused persn recorded or purporting to be recorded under section 164 or section 364 is intended to be 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 must take evidence that such person duly made the statement recorded and such a statement may then become admissible in evidence notwithstanding the provision of *[Article 102 of the Qanun-e-Shahadat, 1984], provided the error has not prejudiced the accused as to his defence on merits.

13. Instructions about recording confessions.—(i) The following instructions have been issued by the Punjab Government for the guidance of Magistrates recording confessions (Punjab Government circular letter No. 6091-J-36/39829 (H. -- Judl.), dated the 19the December 1936, to all District Magistrates in the Punjab):-

(a) Accused should be left for some time away from influence of Police.— In order to ensure that a statement or confession under

section 164 of the Code of Criminal Procedure is made voluntarily, the following precautions should be taken. Before the Magistrate proceeds to record the confession, he should arrange-so far as is compatible with his safety and that of his staff and with the safe custody of the prisoner – that the latter is left for some time (say, for half an hour) out of the hearing of police officers or other persons likely to influence him.

(b) Confession recorded should not be handed over to the Police.—
The Magistrate who records a confession under section 164, Criminal Procedure Code, should not hand over the document after completion to the Police officer in charge of the prisoner, but should forward it, as required by sub-section (2) of that section, direct to the Magistrate by whom the case is to be enquired into or tried.

(c) Copy of recorded confession may be given to Police.—These instructions do not prohibit a Magistrate who has recorded a confession or statement from allowing the Police to take a copy of it before it is forwarded to the trial Magistrate: and Magistrates should always permit the Police to take a copy if they express a desire to do so. When permission is so given, the Police copy should be written out by a Police officer or clerk from the dictation of an officer of the court, in the actual presence of the Magistrate who recorded the confession.

Time and labour can be saved if the Magistrate recording a confession makes a carbon copy which can subsequently be made available for Police purposes, or alternatively dictate a copy to an official of the court at the same time as he himself writes the original.

CHAPTER 14

Approvers

1. Definition.—The term "Approver" is neither defined not used in the Criminal Procedure Code, but is usually applied to a person, supposed to be directly or indirectly concerned in or privy to an offence to whom a pardon is [tendered] under section 337 of the Code with a view to [obtaining] his testimony against other persons guilty of the offence.***[…]

***[2 when pardon may be tendered and by whom**.- A tender of pardon can only be made in the case of certain offences specified in section 337 of the Code and by the Magistrates mentioned therein.

By section 338 of the Code the High court or the Court of Session trying the case may tender or order the District Magistrate to tender a pardon on the same conditions as are mentioned in section 337].

3. Reasons for tendering pardon should be recorded and extent of pardon explained to the intended approver.--[…]

In all cases in which a pardon is tendered. [the reasons for tendering the pardon must be recorded and] the intended approver should always be made carefully to understand the extent of the pardon offered to him: it should be explained to him: it should be explained to him that he is being tendered a pardon and not be prosecuted in respect of such and such a case and no others.

4. ***[Omitted]

5. Testimony of an approver generally requires corroboration of conviction.— The evidence of an approver being that of an accomplice is prima facie of a tainted character, and has, therefore, to be scrutinized with the utmost care and accepted with caution ***[…] As a matter of law, pure and simple, a conviction is not bad merely because it proceeds upon the uncorroborated testimony of an accomplice (vide *[Article 16 of the Qanun-e-Shahadat 1984]. But it has now become almost a universal rule ***[…] not to base a conviction on the testimony of an accomplice unless it is corroborated in material particulars. As to the amount of corroboration which is necessary, no hard and fast rule can be laid down. It will depend upon various factors, such as

the nature of the crime, the nature of the approver's evidence, the extent of his complicity, and so forth. But, as a rule, corroboration is considered necessary not only in respect of the general story of the approver, but in respect of facts establishing the prisoner's identity and his participation in the crime.]

6. *[Omitted]**

7. If approver gives false evidence he can be tried for the offence and also for perjury.—An approver is under the condition of his pardon bound to make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether, as principal or abetter, in the commission thereof. If the approver fails to comply with this condition and gives false evidence, he is liable to be prosecuted for the offence in respect of which pardon was granted and also for perjury. He cannot, however, be tried for the former offence except upon a certificate granted by the Public Prosecutor as laid down in section 339. Sanction of the High Court is necessary for his prosecution for giving false evidence. An application to the High Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the State and by a letter of reference***[…].

***[8. Approver should be kept in judicial custody until close of trial**.- An approver accepting a pardon under section 337 of the Code has to be detained in custody until the termination of the trial. The word " custody" as used in section 337(3) has not been defined in the Code, but it has been held that this " custody" means judicial and not Police custody. The detention of an approver, therefore, must be in a judicial lock-up under the order of the Court and not in Police custody].

CHAPTER 15
PROCEEDINGS AGAINST ABSCONDERS AND RECORD OF EVIDENCE IN THEIR ABSENCE.

PART A.—MEASURES TO ENFORCE APPEARANCE.

1. Attachment and sale of property.—Section 87 and 88 of the Code of Criminal Procedure provide for the attachment and sale of the property of any accused person or witness whose presence is required by a Criminal Court as a last remedy for compelling his attendance. The procedure laid down must be strictly followed, otherwise the attachment and subsequent sale will be liable to be set aside. The proper forms for the proclamation, attachment, etc.. to be used in such proceedings, are given in schedule V of the Code.

2. Proclamation.—No proclamation can issue under section 87 unless a warrant has issued in the first instance and the Court has reason to believe that the person against whom it was issued has absconded or is concealing himself so that such warrant cannot be executed. The proclamation must fix a date for appearance of the person at a specified place and that place must be not less than thirty days from the date of the publication of the proclamation. The proclamation must be published in the manner specified in sub-section (2) of section 87, and the Court should be careful to record the statement as regards the due publication of the proclamation as required by subsection (3) of that section. The Court has the discretion to issue and order for attachment of property simultaneously with the issue of a proclamation. Section 88 ***[…] provides for the summary investigation of claims of objectors to the attachment by Magistrates. The decision of the Magistrate can be challenged by a civil suit within a year.

3. Consequences of non-appearance of proclaimed person; Sale of property.—If the proclaimed person does not appear within the time specified the proclamation, the property under attachment remains 'at the Government'. It can be sold at once at the discretion of the Court when it is liable to speedy the Court considers that the sale would be for the benefit of the owner., otherwise, it cannot be sold until the

expiration of six months form the attachment and until the disposal of claims of objectors (if any) by the Magistrate.

***[4. Directions for sale, Only life interest can be sold in certain cases.**- In conducting sales, the interest of the absconding person in the attached property which is to be sold should be clearly specified so as to avoid complications in the future].

5. Property or its proceeds may be given to absconder if he appears before Court.—If the absconder appears or is apprehended and brought before the Court within two years from the date of the attachment of his property and satisfies the Court (i) that he did not abscond or conceal himself for the purpose of evading execution of the warrant and (ii) that he had no such notice of the proclamation as could enable him to attend within the specified time, he can get the property back or its net proceeds if it has been sold (section 89).

PART B.—RECORD OF EVIDENCE IN THE ABSENCE OF THE ACCUSED.

1. Introductory.—The provisions of the Code of Criminal Procedure in regard to the taking and recording of evidence in the absence of accused persons are important and should not be overlooked.

***[2. Evidence recorded in the absence of the absconding accused may be used against him in certain cases.-** Section 512(1) of the Code of Criminal Procedure, 1898, provides that 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 or send for trial to the Court of Session or High Court 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. Any such depositions may on the arrest of such person, be given in evidence against him, on the enquiry with, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable. Section 164 enables a Magistrate to record, in the same manner as evidence, any statement regarding an offence made by an accused person whomsoever it may implicate.]

3. Proceedings under section 512.—Proceedings under section 512 of the Code should commence by evidence being taken and recorded (1) that the accused person has absconded and (2) that due pursuit having been made, there is no immediate prospect of arresting him.

4. Medical evidence should be recorded in some cases. – In cases where the crime has terminated fatally or where medical evidence would ordinarily be required at the trial, the evidence of the medical officer as to the cause of death, or as to the injuries inflicted, should invariably be recorded.

5. Section 512 can be availed of also in cases when offence is not known.-- In cases where the crime has been committed by some person unknown and the offence is punishable with death or *[imprisonment for life], the High Court may order an inquiry similar to that under section 512(1) of the

Code, and statements recorded in that inquiry can be used as evidence against the offender subsequently discovered.

6. Confession by accused implicating as absconder cannot be used after the execution of the confession case.-- *[The] confession by accused persons, who have been executed, implicating an absconder cannot be used after the execution of the confessor against the absconder, when the latter is found and placed upon his trial, as he is not being tried in a joint trial with the other, and has had no opportunity to cross-examine. *[(See Articles 43 and 44 if Qanun-e-Shahadat. 1984)].

CHAPTER 16

EXTRADITION AND FOREIGN

JURISDICTION

(CRIMINAL COURTS).

PART A.—EXTRADITION FROM PAKISTAN

1. Definition.-- Extradition means the surrender of a fugitive offender by one State to another in which the offender is liable to be punished or has been convicted. The law of extradition is based on the broad principle that it is in the interests of all nations that crimes recognised as such by the civilized world should not go unpunished.

***[2. Laws applicable.-** The Extradition Act, 1972 (XXI of 1972), deals with the surrender of fugitive offenders to Foreign States.

3. Procedure of surrender of fugitives to Foreign States.- The Extradition Act, 1972 (XXI of 1972) defines the 'extradition treaty', 'fugitive offender' and 'treaty State' and lays down the procedure in Chapter II, for the surrender of fugitive offenders to foreign states, that is to say, the States with which an extradition treaty is for the time being in operation as well as other foreign states in relation to which a direction under sub-section (1) of section 4 of the said Act is in force.

4. Arrest and detention of "fugitive criminal" of Foreign States.- (1) When the Government of a Foreign State makes requisition for the surrender of a fugitive offender in accordance with section 6 of the Extradition Act, 1972, and the Federal Government has issued an order to enquire into the case to any Magistrate of the First Class(section 7), the Magistrate shall make an enquiry under section 8 and if, after the enquiry, the Magistrate is of the opinion-

(a) that a prima facie case has not been made out in support of the requisition, he shall discharge the fugitive offender and make report to that effect to the Federal Government;

(b) that a prima facie case has been made out in support of the requisition, he shall-

(i) report the result of his enquiry to the Federal Government;

(ii) forward, together with such report, any such statement which the fugitive offender may desire to submit for the consideration of the Federal Government; and

(iii) subject to any provision relating to bail, commit the fugitive offender to prison to await order of the Federal Government(see section 10 of the Extradition Act, 1972).

(2) The Federal Government may upon receipt of report under section 10, issue a warrant for the delivery of the fugitive offender at a place and to a person to be named in the warrant (section 11).

If a fugitive offender is not conveyed out of Pakistan within two months of his committal, he may apply to the High Court for his discharge (section 12).

The Federal Government may, for reasons mentioned in section 13, order a fugitive offender to be discharged].

5. ***[Omitted].

6. ***[Omitted].

7. ***[Omitted].

PART B.—EXTRADITION TO BRITISH INDIA.

Part-B. --*[Omitted.]**

PART C.— JURISDICTION OF CRIMINAL COURTS

IN REGARD TO OFFENCES COMMITTED OUTSIDE PAKISTAN.

***[1. Persons liable to be tried.-** Section 188 of the Code of Criminal Procedure, 1898, renders citizens of Pakistan and servants of the State liable to be tried in Pakistan for offences committed beyond the limits of Pakistan in certain cases.]

2. *[Omitted].**

3. *[Omitted].**

***[4. Liability of citizens of Pakistan.-** By section 188 of the Code of Criminal Procedure a citizen of Pakistan is liable to be dealt with by the Pakistan Courts in Pakistan for any offence committed by him in any place whatever beyond the limits of Pakistan as if it had been committed at any place in Pakistan at which he may be found and he is liable to be punished for it, if it is an offence under the Pakistan Penal Code, by force of section 3 of the latter Code.]

5. *[Omitted].**

6. Trial permissible only on the certificate of Political Agent or sanction of Government.-- The *[first] proviso to section 188 of the Code of Criminal Procedure requires that no charge as to any such offence as is referred to in that section shall be inquired into in Pakistan, without a certificate of the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed. If there is no Political Agent, the sanction of the Provincial Government is necessary.

7. Even inquiry not permissible without Certificate.--The aforesaid proviso does not merely prohibit a trial upon a charge framed after an inquiry, but even an inquiry into the accusation in the absence of a certificate, when requisite. The section itself, however, still leaves a Court competent to issue process, such a summons or a warrant, or to take any other step which is merely preliminary to an inquiry.

8. ***[Omitted].

9. ***[Omitted].

***[10. Court to record a finding about nationality of offender and insert it in charge.-** It should be noted that a Magistrate is not (1) at liberty to shirk an inquiry into the nationality of an accused person merely because it may appear to him a question of nicety or difficulty: and (2) competent to dispense with the enforcement of the law and absolve a citizen of Pakistan from the penal consequences of an offence, prima facie established against him merely because the offence was not committed within the limits of Pakistan.]

11. *[Omitted].**

12. Special rule of evidence.—Section 189 contains a special rule of evidence for inquiries and trials under section 188. The object is to render admissible evidence taken before Courts which are not Criminal Courts of Pakistan, in order to supply evidence which might not be otherwise procurable.

PART D.— MISCELLANEOUS

***[1. Power of Police to arrest without warrant.-** It should be noted that section 54, seventhly, of the Code of Criminal Procedure, authorizes police officers to arrest, without an order from a magistrate and without a warrant, a person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Pakistan, which if committed in Pakistan 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 Pakistan.]

1-A *[Omitted].**

2. *[Omitted].**

Appendix *[Omitted].**

CHAPTER 17
LUNATICS

PART A.—GENERAL.

1. **Classification.—**Lunatics may be classed as follows:-

(a) Criminal lunatics.

(b) Lunatics for whose detention in an asylum a reception order has been passed.

(c) Lunatics so found by inquisition.

***[2. Criminal Lunatics**.- Criminal lunatics are lunatics for whose confinement an order has been passed under section 466 or 471 of the Code of Criminal Procedure, 1898, or under section 30 of the Prisoners Act, 1900.]

3. Reception orders.—Reception orders are dealt with in Chapter 11 of Lunacy Act, 1912 **[(IV of 1912)] which lays down the procedure to be observed before a person, other than a criminal lunatic or a lunatic so found by inquisition, can be detained in an asylum. Such reception orders are usually made by Magistrates.

4. Lunatics so found by inquisition.—Lunatics so found by inquisition are dealt with by the Civil Courts (See Part III, Lunancy Act, 1912).

5. Term "Mental Patient" and "Mental hospital" explained.— Although persons suffering from unsoundness of mind are described as lunatics in the Acts mentioned above, it is now considered more humane to refer to them as "mental patients". Similarly, institutions for the care and treatment of such persons, which were formerly called Lunatic Asylums, are now called mental Hospitals. The latter term should ordinarily be used in correspondence.

6. Admission in the Punjab Mental Hospital.—The only institution of this kind in the Punjab is the Punjab is the Punjab Mental Hospital at Lahore, to which all mental patients, whose confinement is considered necessary, are now sent. Accommodation is limited, and the earliest possible notice should be given, whenever it is proposed to send a patient to the Hospital.***[…]

7. Further directions about admission.—If possible, arrangements should be made for the patient to reach the hospital before 5 p.m., and

admission on *[Fridays] and gazetted holidays should be avoided. Lahore Cantonment is the nearest railway station for the hospital. Patients should invariably be brought to the hospital in a conveyance, and the escort should be instructed to see that the patient is properly clothed.

PART B.— **CRIMINAL LUNATIC-ENQUIRY.**

***[1. Magistrate bound to make enquiry about unsoundness of mind of the accused,-** When a Magistrate, holding an inquiry or a trial, has reason to believe that the accused is of unsound mind, and consequently incapable of making his defence the Magistrate shall inquire into the fact of such unsoundness and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Provincial Government directs, and thereupon shall examine such Surgeon of Officer as a witness, and shall reduce the examination to writing (section 464 of the Code of Criminal Procedure, 1898).]

2. *******[Omitted]

3. Stay of proceedings if unsoundness of mind proved.—If unsoundness of mind is established to the satisfaction of the Magistrate, a finding to that effect should be recorded, and further proceedings should be stayed.

***[4. Trial of the fact of insanity in Sessions trials.-** The procedure in a Court of Session is slightly different. There, the fact of unsoundness and incapacity is to be tried in the first instance by the Court and there is no specific provision for an examination by a Medical Officer. Trial of the fact, however, forms part of the trial before the Court; and the Court would ordinarily take the necessary evidence before proceeding to a finding.]

5. Accused may be released on security.-- *[…]** After the accused has been found to be of unsound mind, and incapable of making his defence, the Magistrate or Court may release the accused on sufficient security being given that he shall be-

(1) Properly taken care of;

(2) Prevented from doing injury to himself or any other person; and

(3) Produced before the Magistrate or Court or such other officer as the Magistrate or Court appoints, when required.

Such an order may be passed whether the case is bailable or not (section 466 of the Code).

6. In releasing accused due regard should be paid to public safety.—An order for release, however, should not be passed without due regard to the public interest. If the crime of which such a person is accused be an offence against the person, or if there is reason to believe that he has at any time been aggressive, a detailed medical history sheet should in all cases be obtained, and this should be consulted before orders are passed regarding bail. In the event of *[such a person] having at any time exhibited tendency to violence, it is the duty of the Magistrate or *[Court to be satisfied] that a sufficient length of time has elapsed since such manifestati8on to render a recurrence improbable, and that the sureties are in position to control the actions of the lunatic should they recur.

7. Action to be taken when accused cannot be released on bail.—If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court must order the accused to be detained in safe custody in such place and manner as he or it may think fit [section 466(2)]. The action taken must then be reported to the Provincial Government.

8. Accused may be sent to Medical Hospital in such cases.—This provision enables ***[…] Court to send an accused person direct to a Mental Hospital, instead of awaiting the orders of the Provincial Government, as was formerly necessary. But if an order is made for the detention of the accused in a Mental Hospital, this order must be in accordance with any rules which the Provincial Government may have made under the Lunacy Act, 1912.

***[9. Proceedings under sections 464-466 can be taken only when a prima facie case is made out by prosecution evidence.-** Before action is taken under section 466 of the Code the case of the prosecution should be gone into in order to discover whether any prima facie case is made out against the accused person].

10. Resumption of proceedings under section 467.—When an enquiry **[or trial] has been postponed under sections 464 or 465, the Magistrate or Court may at any time call for the accused ***[…] and resume proceedings under section 467. Such action will ordinarily be taken after a reasonable period in all cases when the accused has been released on security.

11. Patients certified by Mental Hospital to be fit to make their defence.—If, however, the accused has been detained in a Mental Hospital, the accused will usually be returned by the authorities under section 473, as soon as he is certified to be capable of making his defence. The practice in the Punjab Mental Hospital is for patients to be brought before the visitors' committee at the half-yearly inspection, and if the Medical superintendent considers that any person is capable of making his defence and of understanding the proceedings against him, he recommends that he should be put up for trial. If this recommendation is accepted by the committee, the patient is then sent back for trial.

12. Orders of Magistrate for detention may be varied by Government.—It should be noted that the orders of a Magistrate or Court for the detention of a Criminal lunatic may be varied by the Provincial Government—

*[(i) on a report by the Commission under section 474;or]

(ii) on an application by a friend or relative under section 475.]

13. Procedure when the accused is of sound mind at the time of trial but was not so at the time of committing the offence.—A second class of cases arises when an accused person appears to be of sound mind at the time of ***[…] trial, but there is reason to believe that he was of unsound mind at the time of committing the offence with which he is charged. In such cases the Magistrate must proceed to determine the facts with reference to section 84 of the Pakistan Penal Code.

***[14. Detto.—**If the Magistrate of Court finds reason to believe that the accused committed an act, while he was of unsound mind, which, but for such unsoundness, would be an offence, the Magistrate should proceed with the case.

15. If accused is acquitted on the pleas of insanity he be releases.- If the plea is accepted, and the accused is acquitted on the ground that although he committed an act which would have constituted an offence if he had been of sound mind, he was insane at the time of committing it, the Court cannot order his release, but must order him to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit and shall report the action taken to the Provincial Government (section 471 of the Code).

Final orders for the release or detention of a person detained under sections 466 or 471 of the Code will be made by the Provincial Government in the manner prescribed in section 474 of the Code.]

16. Superintendent Jail to keep the prisoner under observation and to report the result thereof.—In all cases in which insanity is pleaded or set up as a defence, the Superintendent of the Jail in which the convict is confined should be directed to keep the prisoner under observation and to report the result thereof to the High Court before the date fixed for hearing in that Court.

PART C.— **CRIMINAL LUNATIC-- DETENTION.**

1. Medical history sheet to be sent to Government.— The accompanying form (Printed at the end of Chapter 17-C as an Appendix) has been prescribed by the Provincial Government for all cases in which the papers of a criminal lunatic are sent to it for orders. Unless this for is completed, it is impossible to arrive at any safe decision regarding the period for which it will be necessary to detain him.

2. Same should be sent to Mental Hospital.—The same form should invariably be used when a criminal lunatic is sent direct to a Mental Hospital by a Magistrate or Court. ***[…]

3. Memo of principles to be observed in dealing with the cases of criminal lunatics.—Attention is called to the following memorandum, embodying the views of certain experts as to the principles which should apply generally in dealing with the cases of criminal lunatics. This memorandum is only intended to indicate broadly the action which may ordinarily be taken. The case of every criminal lunatic should be considered separately and dealt with on its own merits, and if *[in] any case the opinion of the officers responsible for advice regarding it is that the principles embodied in the memorandum do not apply, the action recommended should be that which the special circumstances of the case suggest to the experience of the officers concerned as the most appropriate.

I.— RECOVERED CRIMINAL LUNATICS

(1) Crime.—Offences against the person. Intoxicating drugs. Type-Acute or chronic mania.—If the crime be against the person, the cause, the use of intoxicating drugs, and the type of insanity, acute or chronic mania, a period of three years should be spent in an asylum free from all signs of insanity before any action is taken.

(2) Crime.—Offences against the person. Cause.—Other than intoxicating drugs. Type.—Acute or chronic mania.—If the crime be an offence against the person, the type of insanity, acute or chronic mania, and the alleged cause not the use of intoxicating drugs, a period of at least four years of

complete freedom from insanity should be spent in an asylum before action is taken.

(3) Crime.—Not an offence against the person, but where mental attitude is aggressive. Type.—Acute or chronic mania.—If the crime be not an offence against the person, but the lunatic has at any time exhibited dangerous or violent tendencies, a period of at least four years should be spent in an asylum before any recommendation is made for his transfer to jail or for his release.

(4) Crime.—Not an offence against the person, or, if so, trivial in its nature mental attitude not aggressive.—If the crime be not an offence against the person and there is no history that the lunatic was at any time aggressive, he may generally be treated ***[…] as if he were a non-criminal lunatic. The Provincial Government will generally be guided in such cases by the recommendations of the Visitors and of the Superintendent of the Asylum in which the lunatic is confined.

(5) Crime.—Murder. Type.—Melancholia.—If the crime be murder and the type of insanity be melancholia, a period of at least six years complete freedom from insanity should be passed in an asylum before action is taken.

(5) (a) If the crime be one against the person, and the lunatic has been originally confined in the asylum under the provisions of section 466 *[of the] Code of Criminal Procedure and has subsequently sufficiently recovered to stand his trial and has been acquitted under section 470 of the Code, it will be necessary that the lunatic shall be sent back to the asylum to undergo the same period of complete freedom from insanity in accordance with the above rules before a recommendation by te visitors can be made for the lunatic's release.

(6) Crime—Attempted suicide. Type.—Melancholia.—If the crime be attempt to commit suicide, the type melancholia and if the lunatic has not exhibited any violent tendencies while under observation, some relaxations of the rules may be permitted according to circumstances, age, period of detention, *[etc.]

II.-- UNRECOVERED CRIMINAL LUNATICS.

(7) **Crime.-- Offences against a person. Type.-- Chronic mania of irritable aggressive kind.**-- If the crime be an offence against a person, the type chronic mania of the irritable aggressive kind, it will seldom be possible to release the lunatic during continuance of insanity except in advanced age and on exceptional security.

(8) **Crime.-- Offences not against a person, or of trivial nature. Type.-- Mental attitude not aggressive.**-- If the crime be not an offence against the person, or, if an offence against the person, of trivial nature and the lunatic has never exhibited aggressive symptoms, he may generally be treated ***[...] as if he were a non-criminal lunatic and the Provincial Government dealing with his case under section 474 of the Criminal Procedure Code, will be guided mainly by the recorded opinion of the Superintendent of the Asylum as to the propriety of releasing him, and by the recommendations of the Visitors.

4. ***[Omitted].

APPENDIX

Form No. 155.

Medical History Sheet of Lunatics.

N. B.-- The ultimate responsibility for the preparation of this form rests with the committing officer who must see that the requisite information is supplied by the Police and the Medical Officer without undue delay.

QUESTIONS TO BE ANSWERED BY POLICE ALONE

1. Name of patient in full, and caste, or race.
2. Name of patient's father.
3. Sex and age of patient.
4. Marks whereby the patient may be identified.
5. Married or single or widowed.
6. Condition of life and previous occupation (if any)
7. Religion.

8. Place of birth and recent place of abode.*
9. Whether homeless or living with relatives.**
10. Pervious history and habits.#
11. Whether any member of patient's family has been or is affected with insanity.
12. Whether the attack is the first attack of insanity or not.
13. Age (if known) at outset of first attack.
14. Duration and nature of any previous attacks.
15. Supposed cause of insanity.##
16. Supposed exciting cause of present attack.*#

QUESTIONS TO BE ANSWERED BY POLICE AND MEDICAL OFFICER.

1. Duration of existing attack.
2. Whether suicidal.
3. Whether dangerous to others.

QUESTIONS TO BE ANSWERED BY MEDICAL OFFICER ALONE.

1. State of bodily health.***
2. Symptoms exhibited.
3. Whether subject to epilepsy or any other disease.

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*. Here the name of village, police station and district and length of residence should be stated.

**. This heading should show the names and addresses of the relatives or person legally bound to maintain the lunatic (if any) and whether they are able and willing to take charge of him or to bear the cost of his maintenance in the asylum and, if not, why not.

#. In this the mode of life the patient led, history of any particular illness which may have helped to produce this condition of mind, his temperament or any habit of taking or smoking any drug or any ground for supposing that the insanity is hereditary, should be mentioned, in the case of criminal lunatics, also the nature of the crime, the detailed circumstances under which it was committed, how he came to be arrested by the Police and the section under which the lunatic was charged and the result of trial, in addition to other particulars which may be available.

##. State here whether he is addicted to any spirits or drugs, and, if so, for how long he has been so addicted and what is the quantity habitually taken. Whether he is a member of any particular religious or political society.

*#. Under this heading should be stated whether the lunatic suffered from loss of property, loss of relatives, domestic trouble, or ill-health immediately before the attack.

***. In this the general health of the patient as well as any abnormality of feature or development should be entered. It is desirable that special mention be made as to whether the patient is or is not suffering from any tubercular disease.

PART D.— **NON-CRIMINAL LUNATIC.**

1. Reception order when passed.—Reception orders are dealt with in Chapter II of the Lunacy Act, 1912. The most important provisions relate to-

(a) reception orders passed on a petition;

(b) reception orders passed n a Police report or information otherwise received by a Magistrate.

2. Who may pass reception order.—Such orders may be passed by a District Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the 1st Class specially empowered in this behalf by the Provincial Government.

3. Reception orders on petition.—Reception orders passed on a petition are dealt with in sections 5 to 11. The most important provisions to be noted by Magistrates are—

(a) the petition should be presented by a relative; if not, reasons must be given.

(b) there must be two medical certificates, on separate sheets of paper, one of which must be from a gazetted Medical Officer of Government (unless any other Medical practitioner has been specially declared competent).

(c) if the lunatic is not dangerous or unfit to be at large, no order may be passed, unless it has been ascertained that the Mental Hospital is willing to receive him, and some person undertakes to pay for his cost of maintenance.

4. Reception orders passed otherwise.—Section 13 to 16 deal with orders passed otherwise than on petition. Such orders may be passed on the ground that person presented is –

(a) dangerous by reason of lunacy;

(b) not under proper care and control; or

(c) cruelly treated or neglected by any relative or other person having charge of him.

Reports under (a) may be presented only by the Police. Information under (b) and (c) may be given by the Police or any other person.

5. Period of detention for medical examination.—Section 16 *[empowers] the Magistrate to order detention up to ten days to enable

observation by a Medical Officer. If further time is required, there must be a fresh order, in the same way as with remands; but the total period of detention must not exceed thirty days from the date on which the person has first been brought before the Magistrate.

6. Copy of reception order to be sent to Mental Hospital.—A certified copy of every reception order must be sent to the Medical Superintendent of the Mental Hospital.

7. Questions to be put to medical witnesses in case of suspected insanity.—For questions which may suitably be put to a medical witness in case of persons suspected of insanity, see Chapter 18, “Medico-Legal Work” Part D, Appendix B, VIII.

8. Inquiry as to the domicile of the lunatic,-- A Magistrate making a reception order under section 14 or 15 of the Act, shall, after ascertaining that accommodation is available, direct the reception of the lunatic into the Punjab Mental Hospital, Lahore. He shall, in all cases, make strict inquiry as to the domicile of the lunatic, and shall see that entry to that effect is made in the medical history sheet (Form 9, page XLVII, in the Appendices to the Punjab Mental Hospital Manual) or is communicated as soon as possible to the Medical Superintendent of the Hospital in which the lunatic is to be admitted.

9. Admission of a lunatic in the Mental Hospital in another province.—A Magistrate cannot authorize the admission of a lunatic under sections 511 of the Act into a Mental Hospital in another province, except under a general or special order of the Provincial Government made in this behalf (section 85 of the Act). In all such cases he shall first satisfy himself that accommodation is available, and that the cost of maintenance will be paid (section 11). In order to effect the earliest possible treatment of the patient action shall be taken as soon as possible and the Magistrate shall furnish to Government in writing full details as to domicile, reasons for the admission, fees agreed to, etc.

10. Action to be taken on subsequent discovery of the domicile of the lunatic in another province.—As soon as it is known that a lunatic, who has been admitted to the Punjab Mental Hospital, is domiciled elsewhere than in

the Punjab, the fact (with details of the case) should be brought to the notice of the Provincial Government, so that action for the removal of the lulatic may, if advisable, be initiated early with the Government of the Province of domicile under section 35 of the Act.

11. Documents to be sent when lunatic is to be admitted to Mental Hospital.—No patient can be admitted to the Punjab Mental Hospital unless accompanied by the following documents;-

(a) In the case of patients admitted under sections 13 to 16 of the Lunacy Act, (IV of 1912), a Detention Order authorizing his detention for observation for a period of not exceeding 10 days, a Police report, and a statement of particulars***[…].

(b) In the case of a patient who has been kept under *[observation] at a Jail or Civil Dispensary prior to admission to the Punjab Mental Hospital the following documents are necessary;-

(i) Copy or the original order for detention.

(ii) Medical Certificate of observing Medical Officer.

(iii) Final Reception Order bearing the seal of the court, and dated with seven clear days of the Medical Certificate.

(iv) Police report or statement of particulars.

(v) In the case of patients who have not been admitted within 14 clear days of the Medical Certificate, a certificate should be sent stating the reasons and where the patient has been confined pending his removal to the Mental Hospital.

(c) In the case of patients admitted under sections 5 to 11 of the Lunacy Act;-

(i) Two medical certificates, dated not more than 7 clear days before.

(ii) Application of relatives or friends and statement of particulars.

(iii) Reception order bearing the seal of the court.

Note;- Patients must be admitted within 14 days of the date of the Medical Certificate, -vide Punjab Government letter No. 396-A (Home-jails) dated the 26th September, 1914. Committing Magistrates are further referred to Punjab

Government letter No. 17652-Medical, dated the 31st May, 1928, and are informed that, in accordance with the orders contained in paragraph 11 above, it will be necessary to report to Government all instances in which Committing Magistrates fail to comply with the provisions of the Lunacy Act, 1912, which have been summarized in this order.

PART E.— **RECOVERY OF MAINTENANCE CHARGES OF PATIENTS ADMITTED IN THE PUNJAB MENTAL HOSPITAL…..***[Omitted]**

CHAPTER 18
MEDICO-LEGAL WORK

PART A – POST-MORTEM EXAMINATIONS.

1. Effect of decomposition.—The questions to be determined by a post-mortem examination vary in different cases, and possibility of determining them effectually is not in every case equally dependent on the stage which the process of putrefaction has reached.

Thus, in death from drowning, strangulation and various diseases, questions respecting the appearance of flesh tissues, and the amount of blood in parts require to be considered, and these can only be determined soon after death, and before putrefaction has made much progress.

But it would be quite possible to determine the existence or absence of a wound or severe bruises of soft parts, even *[if] decomposition were considerably advanced: and injuries of bones, pregnancy, presence of foreign bodies, metallic poisoning, and some profound organic diseases, are ascertainable long after death.

2. Duty of Medical Officer to conduct post-mortem examination when nothing is known about causes.—In each case, the circumstances, so far as they are known, respecting the death and the discovery of the body, which are communicated by the Police, will enable the Medical officer to form an opinion as to whether it would be possible by a post-mortem examination to throw any light on the cause of death; and wherever such possibility exists, or whenever nothing is known, it is his duty to make as full an examination as possible.

3. Examination of body when advisable for examination.—These considerations should guide a Magistrate in determining on the propriety or otherwise of exerting the power given to him by law of ordering the exhumation of a body. In cases of doubt the Magistrate should, if possible, consult a medical officer before passing such an order.

4. ***[Omitted].

5. ***[Omitted].

6. Rules about the deposition of medical witnesses and reports of Chemical Examiners.—Attention is invited to the special rules of evidence regarding the depositions of medical witnesses and the reports of Chemical Examiners contained in sections 509 and 510 of the Code of Criminal Procedure.

PART B **– REFERENCES TO THE CHEMICAL EXAMINER.**

1. Medical Officer to be consulted about articles to be sent to Chemical Examiner.—(i) The question as to whether any, and, if so, what articles should be sent for chemical analysis, and the transmission of such articles to the Chemical Examiner will rest ordinarily with the Medical Officer *[concerned] who should, however, attend to any requisition made by the Magistrate or the Police in this matter.

(ii) In certain cases Police may send articles direct.—In cases where human subjects are not concerned the Police may send articles to, and correspond direct with, the Chemical Examiner.

(iii) All Magistrates are at liberty to forward any articles connected with any Criminal Case before them to the Chemical Examiner, but the desirability of their consulting the Civil Surgeon or other Medical Officer before doing so is obvious.

Every thing upon which the Chemical Examiner's opinion is necessary, should be forwarded to him with the least possible delay.

2. ***[Omitted].

3. Statement to accompany articles sent.—Whenever any article is sent to the Chemical Examiner, whether by a Magistrate, Medical officer or the Police, it should be accompanied by a statement containing all possible information that may serve to guide the Chemical Examiner in his investigation.

4. Mode of packing of articles to be sent.—All articles should be forwarded in separate bottles, the stomach I one, its contents in another, the liver in a third, dry particles in small phials, and when any articles liable to decomposition are sent, they should always, whether the season be hot or cold, be immersed in methylated spirits, which should be used in the proportion of one third of the bulk of the articles.

The cork of each bottle should be tied down and sealed, and each bottle should be numbered. To ascertain that it has been securely closed, the bottle should be placed for some minutes with its mouth down.

5. Weight of articles sent to be noted.—The weight of each article sent, and, where the portion of an organ is sent, the weight of the whole organ, as well as of the part sent, and in the case of fluids, the total quantity of the fluid and the quantity sent, should be stated on a ticket attached to the bottle, and also in the letter of invoice *[hereinafter prescribed.]

6. Precautions in packing bottles.—(i) The several bottles containing the articles sent should be enclosed in a tin or wooden box, which should be enclosed in a tin or wooden box which should be large enough to allow of a layer of raw cotton, at least three-fourths of a inch thick, being put between the bottle and the box; the box should be securely fastened and covered with wax-cloth.

(ii) In cases where any of the contents of the bottles might prove offensive, the box must be of tin, and Macdougall's powder or charcoal should be dusted between the box and wax-cloth.

7. Articles to be packed and sealed in the presence of the forwarding officer.—All articles on being put up by the forwarding officer, and sealed and numbered by him, should be packed in his presence and under his immediate supervision, and the package should then be sealed by him, in accordance with the usual rules of the Post Office as to parcels, in such a manner that it cannot be opened without destroying the seal. The seal used should be a private seal, and the same throughout.

8. Invoice of articles and post-mortem report or statement to accompany articles.—In all cases of transmission of articles to the Chemical Examiner, whether by a Magistrate, Medical Officer, or the Police, a letter of invoice, giving a full description of the articles sent, should be dispatched by post, together with the statement or postmortem report. A duplicate of the invoice should also be placed between the wax-cloth and the box to accompany the package. Both copies of the invoice should be stamped with an impression of the seal referred to *[above.] The Chemical Examiner should be requested to return, if possible, any articles sent to him for examination which is likely to be required at the trial.

9. Evidence should be taken to prove that Chemical Examiner's report refers to the subject connected with the inquiry.—In inquiries or

trials, where reference has been made to the Chemical Examiner, it will be the duty of the Magistrate to examine the official who dispatched the **[articles] for analysis with regard to the identity of the invoice and seal, and thereby establish the identity of the subjects reported on with those sent for analysis, and prove that the Chemical Examiner's report refers to the subject connected with the case under inquiry. If the decision of the case turns on the results of the Chemical Examination, a copy of the judgment, and of the evidence regarding symptoms and postmortem appearance, will be supplied to the Chemical Examiner; such copies being made at the expense of Government as a special charge.

10. Identity of body to be proved.—In all cases of homicide, where the body is found, the identity of the body with the person said to be deceased must be fully established before the *[Court] trying or inquiring into the case.

In such cases, where there has been a postmortem examination, evidence must be recorded by the *[Court] to prove the custody of the body of the deceased after death, and its delivery for the purpose of post-mortem examination to the medical officer.

11. Proper custody of articles to be proved.—In all cases in which articles are brought up in evidence, the custody of such articles, throughout the various stages of the inquiry must be clearly traced and established. Evidence must be recorded on this point, and the evidence should never leave it doubtful as to what person or persons have had charge of the articles at any stage of the proceedings. All such articles must be distinctively marked, and any reference to them in the record must be so clear as to leave no0 room for doubt as to the special articles referred to.

12. Evidence of non-professional witnesses re blood and human hair should be accepted with caution.-- ***[…] The evidence of non-professional witnesses on the subject of blood and of human hair must be accepted with the utmost caution, and where the case rests materially on the proof of such matters, the evidence of a professional witness must be taken, and reference made, if necessary, to the Chemical Examiner.

13. ***[Omitted].

PART C **– RULES FOR THE GUIDANCE OF POLICE OFFICERS REGARDING THE SUBMISSION OF BLOOD-STAIN CASES TO THE SEROLOGIST, TO GOVERNMENT OF PAKISTAN ISLAMABAD.**

***[1. Serologist appointed to distinguish human blood from other blood.-** For the whole of Pakistan the Government of Pakistan has appointed a Serologist at Islamabad to carry on the medico-legal work of distinguishing human blood from other blood. This officer has been designated as the Serologist to Government of Pakistan'.]

2. Articles to be sent to Chemical Examiner and when.—As it would not be possible for the *[Government]Serologist to cope with his work expeditiously if all articles suspected of having blood stains were sent direct to him, it has been decided to issue the following instructions for the guidance of Police officers in dealing with blood-stained articles:-

(a) Cases in which articles shall be sent to Chemical Examiner, Lahore.—In cases in which the evidence of the blood-stained articles, is, relatively to the whole body of the evidence of small importance, the articles shall be sent direct to the Chemical Examiner at Lahore for examination.

(b) In cases where blood stained articles form important piece of evidence the Chemical Examiner will select articles to be sent to the Serologist.—In cases in which the establishment of the fact that blood-stains are of human blood, as distinct from the general classification of " Mammalian", is material to the prosecution and has a really important bearing on the case, the blood-stained articles, shall be sent direct to the Chemical Examiner **[to Government], who will determine which of such articles he will forward to the *[Government] serologist with the necessary sketches, etc. In sending articles for the serologist test, the Superintendent of Police shall specifically ask for examination to test the source of the blood. The *[Government] Serologist will, after examining the articles sent to him by the Chemical Examiner **[to Government], return them with a copy of his report direct to the Superintendent of Police concerned.

(c) In some cases only stained portion of the articles may be sent.—In cases of articles of blood-stained clothing, etc., the stained portion only should be cut out and forwarded for determination of the source of the blood. In the case of weapons and other solid articles the entire articles should be sent.

(d) Medico-legal history of the case should be sent along-with the articles.—All articles sent should be accompanied by a complete medico-legal history of the case.

(e) Articles to be sent direct only, under the order of Police Superintendent.—No articles should be forwar4ded direct except under the express orders of the Superintendent of Police.

Note:- (1) As vegetable poisons cannot be detected in ashes it has accordingly been held useless to forward such poisons to the Chemical Examiner for detection.—vide Punjab Government letter No. 16781-Medl, dated 5th June, 1923.

(2) ***[Omitted].

PART D **– General.....*****[Omitted]**

CHAPTER 19
SENTENCES

PART A – GENERAL

1. The award of suitable sentence depends on a variety of considerations.—The determination of appropriate punishment after the conviction of a offender is often a question of great difficulty and always requires careful consideration. The law prescribes the nature and the limit of the punishment permissible for an offence, but the Court has to determine in each case a sentence suited to the offence and the offender. The maximum punishment prescribed by the law for any offence is intended for the gravest of its kind and it is rarely necessary in practice to go up to the maximum. The measure of punishment in any particular instance depends upon a variety of considerations such as the motive for the crime, its gravity, the character of the offender, his age, antecedents and other extenuating or aggravating circumstances, such as sudden temptation, previous convictions, and so forth, which have all to be carefully weighed by the Court in passing the sentence.

***[2. Various kinds of punishments, Minimum and enhanced punishments prescribed in different cases.-** The Pakistan Penal Code permits (vide section 53) the following classes of punishments viz. fine, forfeiture of property imprisonment, rigorous or simple, imprisonment for life and death. The Whipping Act, 1909, permits whipping to be imposed in lieu of or in addition to the punishments prescribed for certain specified offences under the Pakistan Penal Code as well as under other Acts. The Reformatory Schools Act, 1897, provides for "youthful offenders" i.e. offenders below the age of 15) sentenced to imprisonment being detained in a Reformatory School instead of being sent to jail. The Prohibition of offenders Ordinance, 1960 enables the Court to release offenders in certain cases after taking a bond for good behavior or in trivial cases even with a mere admonition. On the other hand there are certain offences for which a minimum punishment is prescribed (see e.g., section 397 Pakistan Penal Code), and the Court cannot pass a lesser sentence on a person convicted of such an offence. Section 75 of the Pakistan Penal Code makes a previous convict liable to enhanced punishment in the case

of certain offences. There are also other Acts of the Legislature e.g; the Punjab Excise Act), which lay down an enhanced penalty for repetition of an offence.

In certain cases, the Court can take action when passing the sentence to ensure good behaviour on the part of a convict on his release from jail. In the case of a person convicted of an offence involving a breach of the peace, the court can order him to execute a bond for keeping peace for a period up to three years (section 106, of the Code of Criminal Procedure).

3. Limits of the sentences which different classes of Magistrates can impose.- In passing sentences, the Court has not only to bear in mind the nature and the limits of the punishment prescribed for the offence of which the accused is found guilty, but also the nature and the limit of the punishment which it is empowered to impose. Section 31 to 35 of the Code of Criminal Procedure lay down the limits of the sentences which different classes of Courts are empowered to impose. Magistrates of the 2nd and 3rd class are not empowered to pass a sentence of whipping.

4. Procedure when Magistrate thinks that the accused should receive greater punishment than he can award.- Whenever a Magistrate of the 2nd or 3rd class having jurisdiction is of the opinion after hearing the evidence for the prosecution and the accused that an offender should receive a punishment different in kind from or more severe than, that which such Magistrate is empowered to inflict, or that he out to be3 required to execute a bond under section 106 of the Code he should take action under section 349 of the Code of Criminal Procedure, record the opinion and submit his proceedings, and forward the accused to a Magistrate of the 1st Class specially empowered in this behalf by the Provincial Government. Similarly when a Magistrate of the 1st Class is of opinion that an offender owing to previous convictions or other circumstances deserves a more severe sentence than what he can inflict, he should report the case to the Sessions Judge with a view to have it transferred to a Magistrate empowered under section 30 of the Code of Criminal Procedure or should send the case to the Court of Session if the case is serious enough to justify that course. (See sections 346 and 347 of the Code. See also chapter 23 of these Rules)].

5. Limitation imposed by Section 71, Pakistan Penal Code and section 35, Criminal Procedure Code. Sentences in cases of accused convicted of several offences. Concurrent sentences; Recommendation to Government for remission or commutation of punishment .- Where a persona is convicted of a an offence which is made up of parts each of which constituted an offence or when a person is convicted of more offences than one, the limitations imposed by section 71 of Pakistan Penal Code, and section 35 **[of the] Code of Criminal Procedure, must be adhered to. When a person is convicted of more than one offences, the Court should be careful to pass a separate sentence for each offence, so that if the conviction is set aide on appeal with respect to one of the offences, there will be no room for doubt as to the sentences passed with respect to the rest. The Court has a discretion to make such sentences run concurrently, and this discretion should be exercised so as to make the effective sentence proportionate to the gravity of the offences. Under Section 397 of the Criminal Procedure Code ***[…] the Court has ***[…] power to order, in the case of an accused person, who is already undergoing imprisonment for another offences, that s subsequent sentence of imprisonment passed on him shall take effect at one and run concurrently with the sentence he is undergoing.

It happens that times that a sentence which a Judge or Magistrate can pass under the law is unsuitable in view of all the circumstances of the case. In such cases all that can be done is to make a recommendation to the Provincial Government to take action under sections 401 and 402 of the Criminal Procedure Code. When a Sessions Judge or a Magistrate passing a sentence wishes a case to be brought to the notice of the Provincial Government for remission or communication of the punishment, he should submit the recommendation with his proceedings through the High Court; otherwise the High Court may hear in appeal a case in which Government has remitted *[or] commuted punishment, without knowing of such remission or communication.

***PART B*. – FINE.**

Fine should be in proportion to the means of the offender.- This is the lightest form of punishment which a Criminal Court can impose, but care should always be taken to see that the fine is not excessive with reference to the means of the offender. Indiscriminate imposition of fines without due regard to the capacity of the convict to pay it only results in waste of time of the Courts and the Police in attempting to realise it, and harassment to the convicted and his dependants. Courts are empowered to impose imprisonment is default of payment of fine, but such imprisonment can only be awarded subject to the limitations prescribed in section 64 to 67 of the Pakistan Penal Code.

Part C. – **IMPRISONMENT**

1. Kinds of imprisonment and their selection. – The Pakistan Penal Code provides for imprisonment of two kinds. Viz. simple and rigorous, and the Court must choose one or the other form in view of all the circumstances. In certain local and special Acts, it will be found that the Legislature has not specified the kind of imprisonment which may be awarded. Under Section 3(26) of the General Clauses Act, such imprisonment may be simple or rigorous. In the case of may offences under Pakistan Penal Code and other Acts, it is provided that the offender shall be punished with imprisonment up to a certain term and shall also be liable to fine. In such cases the offender must be sentences to some period of imprisonment (however small), but it is not obligatory to impose fine in addition. *[(See PLD 1978 SC 89)].

2. When simple imprisonment is suitable.-- Simple imprisonment is suitable where a fine will not suffice and a very short term of imprisonment has to be imposed. This ensures casual offenders being kept apart from the contamination of hardened criminals.

3. **When solitary confinement is suitable**.-- The Pakistan Penal Code provide for "solitary conferment" being awarded up to a certain limit (vide section 73). This form of punishment is appropriate in the case of the more heinous class of offences. It should be borne in mind, however, that solitary conferment can be awarded in the case of offences under the Pakistan Penal Code only and not in the case of offences under Special or Local Acts **[unless these Acts so provide.]

PART D. – **WHIPPING**

***[1. **Cases in which whipping not permissible.** -- Under the Code of Criminal Procedure, the punishment of whipping cannot be awarded in addition to imprisonment when the term of imprisonment is less than three months; nor can it be imposed nit he cases of females, or in the case of males sentences to death, imprisonment for life or rigorous imprisonment for over five years, or males whom the court considers to be more than forty five years of age. The number of stripes must not exceed fifteen I the case of persons under sixteen and thirty in the case of others (vide sections 391-393 of the Code of the Criminal Procedure).

In cases under the Offence of Zina (Enforcement of Hadood) Ordinance, 1979, the Prohibition (Enforcement of Hadd) Order, 1979 and Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, the above mentioned provisions must be read subject to the modifications made by the said Laws.]

2. [Omitted]

PART E. – **DETENTION IN A REFORMATORY SCHOOL……. ****[OMITTED].**

PART F. -- **TRANSPORTATION……. ****[OMITTED].

PART G. -- **PENAL SERVITUDE……. ****[OMITTED].

PART H. -- DEATH SENTENCES

1. Reasons for awarding lesser sentence should be recorded when the offences is punishable with death.—When an offence is punishable with death, but the Court inflicts a lesser penalty permitted by law the Court must state in the judgment its reasons for doing so.

2. Instructions to be observed by courts passing death sentence.— When a convict is sentenced to death by a Court of Session, it must-

(i) direct by its sentence that he be hanged by the neck till he is dead;

(ii) submit is proceedings to the High Court for confirmation of the sentence; and

(iii) inform the convict of the period within which he must appeal if he wished to do so.

APPENDIX ***[OMITTED]

CHAPTER 20

EXECUTION OF SENTENCES.

PART A. -- **FINES**

Realisation of fines. -- For instructions regarding the realisation of fines,, see volume IV, Chapter 11.

PART B. – **WARRANTS FOR EXECUTION**

1. ***[Omitted].

2. ***[Omitted].

3. Signature by means of a stamp not permissible. -- (i) The code of Criminal Procedure enacts that every warrant should be singed by the Magistrate with his own hand, and the practice of affixing a signature by means of a stamp is strictly prohibited and should never be resorted to. An officer is charge of a jail would be justified in refusing to receive or detain a prisoner in jail on a warrant to which is affixed a signature by means of stamp.

(ii). **Warrants should be signed, sealed and in the prescribed form.**-- Warrants of commitments should be in the form prescribed by Schedule V to the Code of Criminal Procedure and should be singed in full (no initialed) by the Judge or magistrate who issues it, and should be sealed with the seal of the Court.

(iii) **Separate warrants for each person.**-- In the case of under-trail prisoners, the warrants of commitment for intermediate custody should be prepared with the greatest care possible with reference t the above instructions. A separate warrant should be issued in respect of each person committed to jail.

(iv) **Superintendent of Jail should not refuse to admit a prisoner owing to defect in the warrant.--** Except in case falling under clause (i) of this rule the Superintendent of a Jail should not refuse to admit a person where the above instructions have not been carried out, but he should draw the immediate attention of the Magistrate concerned to the defect, and ask for its rectification at once, sending at the same time a copy of his letter to the Magistrate of the district for his information.

(v) **Leper convicts to be sent to Mianwali Jail**.-- Persons sentenced to imprisonment, who are found to be suffering form leprosy in an aggravated form, should in future be sent to the Mianwali Jail, where a special ward has been constructed for such persons. ***[…]

(vi) **Class of prisoner when other than C to be noted in the warrant.--** When a Court places a prisoner in a class other than C, it should make an endorsement to this effect on the warrant of commitment.

[Note:** 'Commitment' used in this rule ahs nothing to do with 'commitment proceedings'.]

4. Warrants for release or remission of sentence.-- Warrant for the release or remission of sentences of prisoners confined in jail, warrants for the release of prisoners on bail, and intimations of payment of fine sent to jail authorities should always be drawn up in Urdu or in English, and should be singed in full by such officer and sealed with the seal of his Court.

On receipt of a warrant for the release of a prisoner it should be forwarded without delay by registered cover to the jail in which the prisoner is confined, if it is necessary to send it through the agency of the post.

5. ***[Omitted]

***[6. Rules about classification and treatment of convicted and under trial prisoners.--** The following rules have been made under section 59 of the Prisons Act, 1894, in Chapter 9 of the Pakistan Prisons Rules 1978, to regulate the classification and treatment of convicted, under-trial and other prisoners:-

Chapter 9

"The classification and separation of prisoners.

Classes of Prisoners.

Rules 224.

A prisoner confined in prison may be:-

(i) a criminal prisoner; which includes:

(a) a convicted prisoner; and

(b) an un-convicted under trial prisoner;

(ii) a civil prisoner; or

(iii) a stet prisoner detained under Regulation III of 1818, or a person ordered to be detained in prison without trial under any law relating to the detention of such person.

Note: *Lunatics may also be temporarily detained din persons under the order of the Magistrate*

Classification of convicted prisoners

Rule 225.

(i). Convicted prisoners shall be classified into:-

a. Superior class;
b. Ordinary class; and
c. Political class;

(ii). Superior class include A and B class prisoners. Ordinary class comprises of prisoners other than superior class.

Political class comprises of prisoners who commit crimes not for personal gain but for political motives. This class is not criminal and does not require reformative or correctional treatment.

Casuals and habitual

Rule 226.

Convicted prisoners are classified into casual and habitual.

(i). Casuals are first offenders and who lapse into crime not because of a criminal mentality but on account of their surroundings, physical disability or mental deficiency.

(ii). Habitual are:-

a. Ordinary habitual prisoners; and
b. Professionals or repeaters.

Ordinary habitual prisoners are those who frequently lapse into their surroundings or some physical or mental defects.

Professionals or repeaters are men with an object, sound in mind and in body, competent, often highly skilled, who deliberately and with open eyes prefer a life of crime and know all the tricks and manoeuvres necessary for that life. They must be first offenders.

Classification of convicted prisoners according to age

Rule 227.

Convicted prisoners are further classified as under:-

(a) Juveniles under the age of 18.

(b) Adolescent over 18 to 21 years of age.

(c) Adults over the age of 21.

Nature of sentence

Rule 228.

There shall be two classes of convicted prisoners according to the nature of their sentence, i.e.:-

(a) those undergoing rigorous imprisonment; and

(b) those undergoing simple imprisonment.

Classification of under-trial prisoners

Rule 229.

(a) Committed to Sessions

(b) Committed to other Courts.

Classification of women prisoners

Rule 230

Women prisoners will be classified in the same manner as is provided in the case of males.

Separation of Prisoners

Rule 231.

Prisoners shall be kept separate as under.

(i) In a prison containing men as well as women prisoners, the women shall be imprisoned in a separate prison, or separate part of the same prison in such manner as to prevent their seeing, conversing or holding any communication with the male prisoners.

(ii) Under trial prisoners shall be kept separate from criminal prisoners.

(iii) Under trial prisoners shall be kept separate from convicted prisoners.

(iv) Civil prisoners shall be kept separate from criminal prisoners.

(v) Political prisoners shall be kept separate from all other prisoners.

Further provisions regarding separation

Rule 232.

Separation of the following prisoners shall, to the extent to which it can in each prison be observed, be carried into effect:

(i) Under trial prisoners who have been committed to Sessions, shall be kept separate from under trial prisoners who have not been so committed and those who have been previously convicted shall be kept separate from those who have not been previously convicted.

(ii) Casual convicted prisoners shall be kept separate from habitual convicted prisoners.

(iii) Simple imprisonment prisoners shall be kept separate from the rigorous imprisonment prisoners.

(iv) Convicted prisoners who are under 16 years of age shall be kept separate from convicted prisoners who are more than 16 years of age.

(v) Every habitual criminal shall, as far as possible be confined in a special prison in which only habitual criminals are kept. The Inspector-General may, however sanction the transfer to such special prison of any prisoner not being a habitual prisoner whom for reasons to be recorded, the Superintendent of the prison believes to be of so vicious and depraved a character; as to make his association with other casual prisoners undesirable. Prisoners so transferred shall not otherwise be subjected to the special rules affecting the habitual criminals.

(vi) Political prisoners may be kept separate from each other, if deemed necessary.

Exception to the rule regarding separation.

Rule 233.

When in any prison only one prisoner e4xists in any class and separation would amount to solitary confinement, such prisoner, if he so desires, be permitted to associate with prisoners of another class in such a manner so as not to infringe the provi8sions of section 27 of the Prisons Act.

Association and Segregation of Prisoners

Rule 234.

Subject to the provisions of rule 231, convicted prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

Segregation of under-trial prisoners

Rule 235.

Under trial prisoners may be confined separately in cells, when in the opinion of the Superintendent, it is necessary in the interest of the prison discipline to do so, or under the orders of the Inspector-General, or of Government.

Occupation of vacant cells

Rule 236.

Cells not in use for purposes of punishment or otherwise, shall be occupied by the convicted prisoners for the purpose of separation subject to the following conditions:-

(a) Juveniles shall in preference to any other class of prisoners be confined in cells both by day and night.

(b) Prisoners convicted under section 366(A) 376 and 377 of the Pakistan Penal Code, shall in preference to prisoners other than; placed in cells both by day and night.

(c) Habitual prisoners shall be placed in cells both by day and night in preference to casual prisoners.

Separation of habitual prisoners

Rule 237.

Habitual prisoners shall be subjected to the system of separation prescribed in the proceeding rules in relation thereto.

Separation of casuals

Rule 238.

If at any time there are more cells in any prison than suffice for the separation of all habitual prisoners of the casual class shall be confined in cells by night only in rotation.

Procedure when separation by day is not feasible

Rule 239-A.

Convicted prisoner who would ordinarily come under the operation of any of the preceding rules relating to the separation of prisoners, but cannot be confined in a cell by day, by reason that he is required for some prison service shall be confined in a cell by night.

Explanation- Separation under rules 235 to 239, is restricted merely to the separation of individual prisoners for purpose of prison management; such separation is not to have any irksome conditions attached to it.

Separation of prisoners to prevent the commission of any offence

Rule 240.

If in the opinion of the Superintendent, the presence of any prisoner in association with others is detrimental to good order and discipline, and is likely to encourage or lead to the commission of any offence, such prisoner may be kept separate in a cell.

Separation to be as complete as possible

Rule 241.

Subject to the previsions of rule 233, the separation of the various classes of prisoners shall be carried out to the fullest extent as far as possible. If there are not a sufficient number of latrines, bathing rooms and feeding arrangements to keep the classes completely apart such arrangement for separation as are under the circumstance practicable shall be made.

Rule for the classification of prisoners into A, B and C Class

Rule 242.

(i) Convicted shall be divi8ded into three classes; A, B and C class. A Class will contain all prisoners who are-

(a) casual prisoners of good character;

(b) by social status, education and habit of life have been accustomed to the superior mode of living and,

(c) have not been convicted of offence involving elements of cruelty, moral degradation, personal greed, serious or premeditated violence, serious offence against property, offences relating to the possession of explosives; firearms and other dangerous weapons with object of committing

or enabling an offence to be committed and abetment or incitement of offences falling within these sub-clauses.

(ii) Class “B” will consist of prisoners who by social status, education or habit of life have been accustomed to superior mode of living. Habitual prisoners can be included in this class by order the Government.

(iii) Class “C” will consist of prisoners who are not classified as A and B.

Classifying authority

Rule 243.

For A and B classes the classifying authority will be the Government. Courts may classify prisoners into A and B class pending final order of the Government. Class “C” will be classified by the trying Court, but such prisoner will have a right to apply for revision to the Government. Petitions of revision will be forwarded by the Superintendent to the Inspector General for transmission to Government.

Superintendent may award B class to convicted prisoners.

Rule 244.

In case convicting Courts omit to classify convicted prisoner for better class treatment, Superintendent of prisons subject to the approval of Government, may classify them as B class prisoners, provided that such prisoners appear to fulfil the conditions prescribed for better class treatment.

Qualifications for A and B class

Rule 245.

The recommending authority shall invariably furnish to Government the following details when recommending a prisoner to A or B class.

(a) Whether the prisoner is casual or habitual.

(b) Previous convictions if any.

(c) Offence and sentence.

(d) Social and financial status of family.

(e) Profession of the prisoner.

(f) Income of the Prisoner, if any.

(g) Academic qualifications of the prisoner.

If the statement of the prisoner on these points requires verification, further enquiries should be made from the District Magistrate or any other source. The recommending authority may either defer making any recommendations until it has received the information asked for or may make the recommendations on the materials available and state that the result of further enquiries will be submitted when received.

Disagreement between the convicting Court and the District Magistrate.

Rule 246.

In case in which there is disagreement between the convicting Court and the District Magistrate, as to the classification of any prisoner, the District Magistrate shall decide the class in which a convicted prisoner shall be kept pending final orders of the Government.

Condemned prisoners governed by these rules

Rule 247.

The above rules shall also apply to the prisoners under sentence of death.

Classification of under-trial prisoners

Rule 248.

(i) There shall be only two classes of under-trial prisoners-

  (a) better class; and

  (b) ordinary class.

(ii) Better class will include those under-trial prisoners who by social status, education or habit of life, have been accustomed to a

superior mode of living and will correspond to A and B class of convicted prisoners. Ordinary class will include all others and will correspond to C class.

(iii) Those under trial prisoners who pass matriculation or higher examination in 1st division during their class jail shall be allowed better class jail facilities with effect from the date the result is announced.

(iv) Before an under trial prisoner is brought before a competent Court it will be at the discretion of the Officer Incharge of the Police Station to properly classify him. After he is brought before the Court, he will be classified by that Court, subject to the approval of the District Magistrate.

Classification of political prisoners

Rule 249.

Classification of political prisoners will be determined by the authority ordering their detention in prison.]

PART C.—**WHIPPING**

Mode of infliction.—Sentence of whipping shall be executed by the infliction of the punishment on the buttocks of the person sentenced, with a rattan in the usual manner.

The rattan used should not be more than four feet in length and shall be half an inch in diamet5er and in the case of juvenile offenders a still lighter cane shall be employed. The triangle should be boarded on the side next the offender, so as to prevent the possibility of the rattan curling round and touching the front or any other part of his person than the breech.

In the case of persons under 16 years of age, whipping shall be inflicted on the buttocks in the way of school discipline, with a rattan not more than half an inch in diameter.

2. Flogging should be inflicted in private in the presence of a medical officer, a thin cloth to be spread over the buttocks.—(i) All Judicial floggings shall be inflicted in private, either at a jail, or in an enclosure near the court-house.

(ii) Wherever it is possible to do so, Magistrates shall secure the presence of a medical officer at the flogging.

(iii) The practice shall invariably be adopted of spreading a thing cloth soaked in some anti-septic over the prisoner's buttocks during the operation.

A pattern of the cloth used is supplied by the superintendent of the Central Jail, Lahore, and the following is the manner in which it should be used. When the prisoner to be shipped is laid on the triangle, his jangias should be slipped down below the knees and the cloth put round the buttocks. The triangle belt keeps the upper part of the cloth in its place, while the two pieces of tape are tied round the thighs below.

3. Magistrate to certify that the prisoner is in a fit state of health.—Magistrate who are empowered to pass sentences of whipping should, before the sentence is carried into execution, be careful in every case to satisfy themselves that the offender is in a fit state of health to undergo the punishment.

Whenever practicable, the opinion of a medical officer should be taken, but, if that is not procurable, the Magistrate must himself certify in each case that he believes the offender to be in a fit state to undergo the punishment.

4. Not to be inflicted until lapse of 15 days or until sentence is confirmed on appeal.—Every sentence of whipping is now subject to appeal. When an accused person sentenced to whipping only furnishes bail to the satisfaction of the Court or when the punishment of whipping is combined with imprisonment, section 391 of the Code of Criminal Procedure requires that the whipping is not to be inflicted until after the expiry of fifteen days from the date of sentence, or if a appeal be preferred, within that time, until the sentence is confirmed by the superior Court.

To secure effect being given to this provision of the Code the following rules have been made by the High Court:-

(i) Filing of appeal should be notified to the Jail Superintendent.—In all cases in which an appeal is preferred within fifteen days from the date on which a sentence of whi8pping is passed, whether or not such appeal is preferred through the jail authorities under a power attested in the Jail, immediate intimation of the fact of the appeal shall be given to the Superintendent of the Jail in which the appellant is confined.

Explanation:- An appeal presented to the Superintendent of the Jail within fifteen days is made within the period contemplated in this rule.

(ii) **Jail Superintendent may wait for such further time as is necessary for communication from the appellate Court**.—If no such intimation of an appeal having been preferred is received within fifteen days, the Superintendent of the Jail shall, nevertheless, allow such further time to elapse as is necessary for a communication from the Appellate Court to reach elapse as is necessary for a communication from the Appellate Court to reach him in the ordinary course of business before inflicting the whipping.

(iii) **Sessions Judge to decide for what further time the Jail superintendent should wait**.—Sessions Judges shall, in communication with Magistrates of District and Superintendents of Jails, fix, for their own courts and the Appellate Courts subordinate to them the number of days which shall be allowed under the preceding rule.

(iv) **Copy of order of whipping be given to accused.**—In cases in which a sentence of whipping is passed, a copy of the Court's order should be furnished to the person affected as soon as possible after his application therefore.

5. Magistrate should ensure that sentence has been duly carried out.—The following steps should be taken to ensure that sentences of whipping, not combined with any other punishment, are duly carried into execution, where it is not convenient that the whipping should be inflicted in the presence of the Magistrate who passed the sentence. In such cases the Magistrate should issue a warrant under section 390 of the Code of Criminal Procedure, setting the time and place at which the sentence should be executed, and this warrant should be immediately returned to the Magistrate who passed the sentence when the whipping has been inflicted or execution of the sentence has been stayed under section 394 of the Code of Criminal Procedure. Magistrates should carefully watch the return of this warrant, and, if undue delay takes place, sho8ld inquire why it has not been returned.

PART D. –**TRANSPORTATIONS ….*****[Omitted]**

PART E. –**SENTENCE OF DEATH .**

1. Order of High Court to be sent to Sessions Judge for carrying out sentence.—After a death sentence has been confirmed or other order has been made by the High Court, the Registrar will return the record, with a duplicate or an attested copy of the order under the seal of the Court, to the Sessions Judge, who will take the steps prescribed by section 381 of the Code of Criminal Procedure to cause the sentence or order to be carried into effect.

***[Omitted]

2. ***[Omitted]

PARTF. –**EXECUTION OF THE ORDERS OF CRIMINAL APPELLATE COURTS AND COURTS OF REVISION.**

The following rules, as to the mode of carrying out the ord4rs passed on appeal or in revision by Criminal Courts, should be observed:**-**

(i) **High Court will certify its decision to Lower Court**.—The High Court will certify its decision to the Court from whose judgment the petition of appeal or application for revision was preferred:

Provided that if such judgment was that of a Court subordinate to the Magistrate of the district, the decision of the High Court will be certified to the Magistrate of the district.

(ii) **Lower Court will inform prisoner and the Jail Superintendent.—** The Court to which the decision is certified will, in cases of rejection of appeal or confirmation of sentence, cause the appellant to be informed; and in cases of alteration, reversal or enhancement of sentence, will issue a warrant accordingly to the Superintendent of the Jail of the district in which the trial was held, or, if the original sentence was one of fine only, to the person to whom the original warrant was addressed.

Sessions Judges should not fail to communicate the High Court's orders in Murder References and appeals to the convicts merely on the assumption that the High Court will itself directly communicate the result to the convicts.

When a sentence of death is confirmed or passed by the High Court in appeal or revision, the Sessions Judge, to whom the decision of the High Court is certified, shall issue the warrant for the execution of sentence of death, to the Superintendent of the Jail to which the prisoner was originally committed. If the condemned prisoner has been or should be transferred to another jail, and the Superintendent to whom the original warrant of commitment was addressed returns the warrant for the execution of the sentence of death to the Sessions Judge with an intimation that the prisoner has been transferred to another jail, the Sessions Judge shall issue a revised warrant for the execution of the sentence of death to the Superintendent of the jail in which the condemned prisoner is confined.

Note:- when a sentence of death has been suspended under Chapter XXIX of the Code of Criminal Procedure, the passing of further orders regarding the

carrying out of such sentence is a matter for the Government ordering the suspension and not for Sessions Judge.

(iii) Session Judge will at once inform Jail Superintendent dirct about all orders of release or alteration or enhancement of sentence passed by him.—The Sessions Court will in all cases in which its order on appeal requires the immediate release of a prisoner, issue a warrant of release direct to Superintendent of the Jail in which the prisoner is confined. The Superintendent of the Jail will, after executing such warrant, forward it with the original warrant of commitment duly filled up, to the Magistrate of the district in which the trial was held. If in any case the warrants have not been received from the Superintendent of the Jail by the time the records in the case are retuned by the Sessions Court, it will be the duty of the Magistrate of the district to at once institute inquiries as to whether the prisoner has been released, and, if necessary to issue his own warrant for the release of the prisoner.

In cases of alteration, or enhancement of sentence, also the Sessions Court will issue a warrant direct to the superintendent of the Jail in which the prisoner is confined. In cases of rejection of appeal or confirmation of sentence, the sessions court will certify its decision on appeal to the Magistrate of the district in which the trial was held, who will cause the appellant to be informed. When an appeal is rejected the Superintendent of the Jail in which the prisoner is confined should also be informed direct by the Appellate Court.

Note: ***[Omitted].

(iv) **Prisoners not to be transferred from the jail until decision of appeal. Exceptions**.—The Magistrate of the district will, in communication with the Superintendent of the jail, arrange that no prisoner is removed from the Jail in which he has been confined by order of the Court sentencing him to imprisonment until the period of appeal has expired, or, if at that time an appeal is pending, until the decision of the Appellate Court is known:

Provided that prisoners committed to the Muzaffargarh Jail may be transferred to Multan Jail and prisoners committed to the Faisalabad Lock-up may be transferred to the Gujranwala, Jhelum or Sialkot Jails but no prisoner so transferred shall be removed from the jail to which the transfer is made until the

period of appeal has expired, or, if an appeal has been filed, until the decision of the Appellate Court is known; and that notices issued by any Court for service on such prisoner shall be forwarded without delay to the Superintendent of the Jail in which the prisoner is confined, with instructions that it be returned direct, after service, to the Court issuing such notice.

(v) **Duty of Jail Superintendent to inform the Superintendent of the Jail to which the prisoner has been transferred about orders passed by appellate court**.—If for any reason an exception is made to the above rule, and a prisoner is transferred before the order of the Appellate Court is known, the Superintendent of the Jail to which the prisoner was originally committed will forward the information or warrant of the order of the Appellate Court to the Superintendent of the Jail to which the prisoner has been transferred, and the latter officer, having executed the order, will report execution to the Court issuing the information or warrant.

(vi) **Execution of sentences passed under Section 35, Criminal Procedure Code.—**The Inspector-General of Prisons has pointed out that difficulties occasionally arise in carrying out sentences, passed under section 35 of the Code of Criminal Procedure, of which one is to take effect after the expiration of the other, when the first sentence to be executed is

subsequently set aside on appeal.

(vii) **If the sentence which is to take effect first is set aside on appeal the appellate court should direct the original court to issue a fresh warrant directing that the second sentence be carried out at once**.—When a prisoner, on whom separate sentences are passed under section 35 of the Criminal Procedure Code, is committed to jail under two separate warrants, the sentence in the one to take effect from the expiry of the sentence in the other, the date of such second sentence shall, in the event of the first sentence being set aside on appeal, be presumed to take effect from the date on which he was committed to jail under the first or original sentence. A direction to this effect should invariably be given and communicated by the Appellate Court to the Court which passed the original sentence, with a view to the issue of a fresh warrant to the Jail authorities in suppression of the original warrant.

(viii) **Procedure for execution of order of appellate court when accused has been admitted to bail.—**where an accused person has been admitted to bail pending the hearing of his appeal, the original warrant of commitment shall. After being retuned by the jail authorities to the court which issued it be forwarded to the appellate court, which may take action as follows on the decision of the appeal:-

(1) In every case in which a sentence is reversed on appeal. The Appellate court shall return the original warrant with a copy of its order to the court by which the accused was admitted to bail, with directions to discharge him.

(2) In every case in which a sentence is modified on appeal, the Appellate Court shall prepare a fresh warrant (in the form prescribed in the following rule) and shall forward the same, with the original warrant and with a copy of its order, to the Court by which the accused was admitted to bail, with directions to take measures to secure his surrender and commitment to jail on the modified warrant.

(3) In every case in which a sentence is confirmed on appeal, the Appellate Court shall make an endorsement on the original warrant to the effect that the sentence has been confirmed and return it with a copy of its order to the Court by which the accused was admitted to bail, with directions to take measures to secure his surrender and recommitment to jail on the original warrant.

In each of the cases last above-mentioned it shall be the duty of the Court to which the accused surrenders to his bail to endorse on the warrant the dates of his release on bail and of his subsequent surrender.

(ix) **Procedure when accused surrenders to his bail in Appellate Court**.—Where an accused who has been release on bail presents himself in an Appellate or a Revisional Court and his sentence is confirmed or so modified that he has still to serve some term of imprisonment, such Court shall commit him to Jail on the original or a modified Warrant, and shall inform the District Magistrate concerned of the action taken when sending a copy of its judgment.

(x) **Procedure when re-trial is ordered**.—When, on appeal, re-trial is ordered and the accused is not released on bail, but is remanded to the judicial lockup, the Jail authorities should retune the original warrant of commitment to the trial court. If, however, the order for re-trial is subsequently set aside, and the appellate court is directed to re-hear the appeal, the appellate court should take care to re-call the original warrant and re-commit the accused to jail to serve his sentence, pending disposal of the appeal. If it thinks it fit to release the accused on bail, the procedure laid down in paragraph (vii) above should be followed.

(xi) **Form of warrant when a sentence is modified or altered on appeal.—**The following form of warrant is prescribed for used by Appellate Courts when a sentence is modified or altered on appeal:-

In the Court of the ----------at ----------
To the Officer-in-charge of the Jail----------
at----------

Whereas----------son of----------of Village----------Police Station---------- in the district of ----------was convicted by----------Magistrate of ----------of the offence of ----------and was sentenced on the ----------day of----------19 to ----------, which convicted and sentence have been modified n appeal by this Court, and in lieu thereof the said----------has been convicted of the offence of----------and sentenced on the----------day of----------19 to----------.

This is to authorize and require you the said Superintendent to receive the said----------into your custody in the said jail, together with this warrant, and carry the aforesaid sentence into execution according to law; and this is further to authorize and require you to return to this Court the original warrant of commitment in lieu whereof this warraqnt is issued.

Given under my hand and seal of the Court, this-------day of----------

19

Sessions Judge or Magistrate.

CHAPTER 21

FIRST OFFENDERS ***[OMITTED]

CHAPTER 22

YOUTHFUL OFFENDERS

PART A.—GENERAL

1. ***[Omitted]

***[2.** **Commitment to prisons of children should be avoided**.- It is now generally accepted that the commitment of children to prison is against public policy, as it exposes them to the evils resulting from association with hardened criminals. Therefore, in case of children (i.e. persons under fourteen) the principle is that commitment to prison should be avoided as far as possible.

3. Remand to prison pending inquiry or trial not desirable.- Even for the purposes of remand pending enquiry or trial, the committal of children and young persons to prison should be avoided. There should be special place of detention such as remand-homes for them; but till such time as remand-homes are provided, Courts should make suitable arrangements, when practicable for the detention of children.

4. Police not empowered to release children on bail, but it should produce them at once before nearest Magistrate for grant of bail.- While the police have not power of taking bail in non-bailable offences, executive action should be taken by the district Magistrates by having children cases brought up to the nearest Magistrate.]

5. Sentence against juvenile offenders, alternatives. Imprisonment and detention in Reformatory School to be avoided.— When a Magistrate is called upon to sentence a juvenile offender, he has the following alternatives before him. He may order-

(a) whipping,
(b) fine,
(c) ***[Omitted]
(d) treatment under section 31 of the Reformatory School Act,
(e) detention in a Reformatory School,
(f) ***[…] imprisonment.

The subject of detention in a Reformatory School is dealt with separately in part C. Before ordering imprisonment, Magistrates should make free use of the other alternatives and should refrain from sending boys to the Reformatory School in cases where they can be suitably dealt with otherwise.]

6. Cases should be sent to Courts exercising powers of whipping.—Courts not empowered to pass orders ***[…] under the Whipping Act, should be encouraged to refer cases suitable to the application of these provisions of law to Courts which have been invested with the necessary powers.

7. Boys sentenced to but unfit for whipping to be sent to Reformatory School.—Boys sentenced to whipping and found unfit for it should be sent to the Reformatory School, if necessary and not to jail.

8. Age of the offender to be noted in the judgment. Sentence of youthful offenders to imprisonment to be reported to District Magistrate. Monthly return of offenders under 24 years of age to be sent. Duty of District Magistrate.—The failure of Magistrate to impose suitable sentences on youthful offenders is possibly due to inadvertence, the age of the accused not being prominently in the mind of the Magistrate at the time of passing the sentence. In order to minimise and, if possible, to abolish the infliction of sentences, which are likely to have prejudicial effect on the character of a youthful offender, when other suitable methods of punishment are available, ***[…] all Criminal Courts should in future enter the ages of the convicts in the body of their judgments, with a view to being directly seized with the question of age when deciding the sentence to be imposed on a juvenile or adolescent. ***[…] All Magistrates shall report the cases of convictions of youthful offenders under 18 years of age, where a sentence of imprisonment has been awarded, to the *[Sessions Judge or District Magistrate, as the case may be] as soon as judgment is passed. They shall also submit to the Sessions Judge or District Magistrate as the case may be at the end of every month returns of all cases in which persons under the age of 24 years are sentenced to imprisonment. The *[Sessions Judge or District Magistrates as the case may be] will scrutinize these cases and returns, and will take action on the revision side in all suitable cases in general and in particular in all cases in which casual offenders under 24 years of age have been sent to jail for short terms.]

***[9. Short sentence to be avoided.-** Free use of the provisions of section 31 of the Reformatory Schools Act, 1897, should be made where these can be applied. Section 31 runs as follows:-

(1) Power to deal in other ways with youthful offenders including girls.- Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to imprisonment of directing him to be detained in a Reformatory School, order him to be-

(a) discharged after due admonition, or

(b) delivered to his parent or to his guardian or nearest adult relative, or such parent, guardian or relative executing a bond, with or without sureties, as the Court may require, to be responsible for the good behavior of the youthful offender for any period not exceeding twelve months.

(2) For the purposes of this section the term 'youthful offender', shall include a girl.

(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under section8.

(4) When any youthful offender is convicted by a Court not empowered to act under this section and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender, it may record such opinion and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate.

(5) The District Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentences as he might have made or passed if the case has originally been tried by him.

Youthful offender defined- "Youthful offender" in the above section means a person under the age of 15 years at the time of conviction.]

PARTN B. –**CHILDREN'S COURTS**.

1. ***[omitted].

2. Selection of Magistrate to try children cases: Trial to be held at a different place,-- The Government *[have] decided that each *[Sessions Judge or District Magistrate as the case may be] should select one of the Magistrates subordinate to him whether honorary or stipendiary, before whom all cases concerning children should be brought. The trial of children should be held, if possible, at a different place from the Court in which cases are generally hear. If this is impossible these cases should be heard at a different time from other cases. In the case of outlying sub-divisions and tahsils, children will normally be brought before the Magistrate having jurisdiction in the place, who will hear their cases in the same way as the Magistrate selected at head-quarters.

3. Simple language of trial.—The language used at the trial of youthful offender should be as simple as possible, and legal phraseology should be reduced to the bare necessities.

4. Outsiders should not be allowed at the trial.—If the case has to be heard in the Magistrate's Court room (no other place being available), then the room should be cleared of all outsiders, only those actually concerned with the particular case being admitted.

PART C.—**REFORMATORY SCHOOLS**

***[1. Courts empowered to direct youthful offenders to the Reformatory School- Procedure for a Magistrate not so empowered.-** The only Courts empowered to direct youthful offenders to be sent to the Reformatory School are:-]

(a) The high Court.

(b) The Court of Session.

(c) ***[Omitted]

(d) Any Magistrate specially empowered by the provincial Government in this behalf.

The Provincial Government has empowered Magistrates of the 1st class only with powers mentioned in section 8(i) of the Reformatory Schools Act(vide Punjab Government notification No.578-Jails, dated the 7th January 1924); but any Magistrate who has not been so empowered may, under section 9 of the Act, refer the case of any youthful offender to the *[Sessions Judge] to whom he is subordinate and all Magistrates should do so in suitable cases.

2. Record a finding as to age. Definition of youth offender.—A youthful offender is defined as meaning any boy who has been convicted of any offence punishable with imprisonment, and who, at the time of such conviction, was under the age of 15 years; and it is incumbent on all Courts and Magistrates dealing with cases of youthful offenders (whether specially empowered or not), to make a preliminary inquiry and to record a finding as to the age of the offender before directing the offender to be sent to a Reformatory School or making a reference to the sessions Judge under section 9 for that purpose. In taking the medical evidence mentioned in paragraph 4 (a) of this chapter, the opinion of the Medical Officer as to the age of the boy should invariably be recorded.

3. Rules framed by Government. Youthful offender to be sent to Reformatory School when Magistrate awards imprisonment for life.—The rules framed by the Punjab Government under the Reformatory Schools Act should be studied. The effect of Punjab Government notification No. 37, dated the 20th January, 1906, under which these rules were published, appears to be this. A Court or Magistrate convicting any youthful offender of any of the

offences noted below should act as follows. If the presiding officer considers that the offence committed is one in connection with which the offender should be-

(a) whipped, or

(b) ***[Omitted]

(c) dealt with under section 31 of the Reformatory School Act, or

(d) fined,

he should pass orders accordingly.

If, however, he considers that the case should not be so dealt with, he must pass an order of imprisonment commensurate with the offence and then send the offender to the Reformatory School.

OFFENCES SPECIFIED

*[(1) Any offence except those described in sections 302, 303, 324, 337 and 377 of the Pakistan Penal Code and section 19(3)(a) of the Offence of Zina (Enforcement of Hudood) Ordinance 1979.]

(2) Any abetment or attempt in connection with any such offence.

4. Reformatory School intended for casual criminals and first offenders capable of reformation. Disqualifications preventing admission.—If should be borne in mind that before recording an order directing the detention of a boy in the Reformatory Schools, Courts should satisfy themselves-

(a) after taking medical evidence, that he is not totally blind, insane, idiot, leprous, tuberculous, epileptic, or suffering from any permanent physical incapacity for industrial employment; or

(b) that he has not been previously convicted under section 377 of the Pakistan Penal Code.

A youthful offender with any of these disqualifications will not be admitted into the Reformatory School, and Courts must deal with such an offender in the ordinary course under the Pakistan Penal Code. ***[…]

These rules will, it is hoped, secure as inmates of the Reformatory School casual criminals and first offenders capable of reformation, and will exclude the corrupting influence of incorrigible offenders, and of boys who have already learnt the evil that can be learnt in jail.

5. ***[**Omitted]**

6. **Period for which detention in the school is to be ordered**.— Section 8, subsection (1), of the Reformatory Schools Act, 1897 **[(VIII of 1897)] prescribes the period for which Magistrates must order detention in the Reformatory School. This section should be read in connection with Punjab Government notification No. 37, dated the 20th January, 1906, which further limits the Magistrate's discretion as to the period of detention he can order. It should nevertheless be borne in mind that a boy ordered to be detained in the Reformatory School for seven years will not necessarily be kept in the school for so long. He will in any case be discharged when he attains the age of 18 years.

7. ***[Sessions Judge] should recommend to Government when he thinks that youthful offender though not admissible under the rules is proper person for admission.**—Besides the case of youthful offenders convicted by a Court of one of the offences specified (vide paragraph 3 of this Chapter), section 10 of the Reformatory Schools Act contemplates another case in which detention in the Reformatory School may be directed. This section gives the Superintendent of a jail power to produce before the *[Sessions Judge] any boy who is under the age of 15 years. In deciding whether any youthful offender brought to his notice in this manner should be sent to the Reformatory School, the *[Sessions Judge] will, of course, be guided by the rules made by the Provincial Government under section 8, subsection (3), clause (a), of the Reformatory Schools Act published as Punjab Government notification No. 37, dated the 20th January 1906. Should the *[Sessions Judge} consider that the youthful offender, though not admissible to the Reformatory School under those rules, is a proper person to be an inmate of the School, he must refer the case to the Provincial Government.

8. Classification of boys in the school. *[Court] should recommend the class.—Under the rules made by the Provincial Government for the classification, separation and daily employment of youthful offenders, boys detained in a Reformatory School will be classed in two divisions, senior and a junior, and each division will be subdivided into two sub-division, A and B. The senior division will consist of boys above 14, and the junior division of boys under 14 years of age. Sub-division A will contain boys not in sub-division B and sub-division B will contain (1) boys, who by reason of previous offences, whether the subject of criminal prosecution or not, or of the character of their offence, or the circumstances under which it was committed (offences against morals and serious organized offences, whether against property or against ***[…] person) appear to have marked criminal propensities; (2) boys who have been in jail, except those sent to jail under the proviso to section 12 of the Reformatory School Act temporarily, i.e,. detained in jail for want of accommodation in the Reformatory School; (3) boys whose parents are habitual criminals, and boys who have been subjected to family influences and surroundings which are likely to *[lead] to a life of crime. In directing the detention of a boy in the Reformatory School. *[Courts] should, with reference to this rule record their opinion as to the sub-division in which the boy should be placed while under detention.

9. Duty of *[Court] to inquire about accommodation in school and to make arrangement if there is no accommodation.—When a *[Court] orders a boy to be detained in the Reformatory School he should by telegram ascertain from the Superintendent thereof whether accommodation is available. If there is accommodation, the boy should be sent at once to the school; otherwise, he would be sent to the Jail prescribed by the Provincial Government in notification No. 426, dated 2nd October, 1903, and the Superintendent of the Reformatory School should be informed of the Jail to which he is sent or to which he may thereafter be transferred.

***[10. Magistrates advised to visit the school**.—As many first class Magistrates as possible should pay a visit for inspection to the Reformatory School.]

11. Sanctioning authority for traveling allowance for the visit.—Under Travelling Allowance Rules 2.48 and 4.3 (serial 7), read with paragraph 22.4, item (3), Chapter 22.- Delegation Orders of Financial Handbook No. 2, volume II, Commissioners are authorized in the case of all first class Magistrates within their division to declares absence from headquarters for the period necessary to visit the Reformatory School ***[…] to be absence on duty, and thus to sanction the traveling allowance for such journeys.

12. Second and Third Class Magistrates not required to visit.— Magistrate should be encouraged to take advantage of these orders, and such visits should be facilitated, provided always that they do not interfere seriously with the routine of magisterial work. It is not proposed to grant this concession to Magistrates of the 2nd and 3rd class but will apply to Honorary Magistrates of the first class.

13. Sessions Judges may permit Civil Judges exercising criminal powers to visit the school.—The powers granted above to Commissioners has been delegated to District and Sessions Judges, who may permit civil Judges who are also Magistrates of the 1st class to visit the Reformatory School, ***[…] but one visit only not exceeding two days, may be allowed in each case.

PART D. **BORSTAL JAIL**

Attention is drawn to the Punjab Government Circular No. 362-J.L.39/4621 (H-Jails), dated the 4th February 1939, on the subject of Borstal Jail extracts from which are given below:-

1. Intended for the adolescent convicts of habitual type.—Cases have come to the notice of Government which indicate that misunderstanding still exists in the minds of some Magistrates and officials in regard to the nature of Borstal training and the type of offender to be sent to the Borstal Institution. Some officials appear to believe that the institution is no more than a Jail in which conditions are easier than in the ordinary prison; that Borstal is merely an up-to-date term for a juvenile Jail. In some quarters indeed it seems to be imagined that unless there is an order for Borstal treatment a juvenile convict will be made to serve his sentence in association with adult prisoners. The Punjab Borstal Act 1926 ***[…] provides a special kind of treatment for a particular class of offender; namely, the adolescent convict of habitual type or (to use the English prison phraseology) the young recidivist.

2. Sentence suitable for different kinds of youthful offenders.—Speaking broadly the types of course overlap-there are three categories of young offenders for whom provision has to be made:-

(a) Casual offenders, other than those convicted of heinous crime.

(b) Juveniles sentenced for offences of a comparatively minor character, but who are former convicts or are otherwise known to be tending towards a life of crime.

(c) Juveniles sentenced for murder and other flagrant offences.

Juvenile offenders of type (a) should normally be released on probation of good conduct or after admonition. In more serious cased where such treatment appears unsuitable there will perhaps be a sentence of whipping or fine. As has been repeatedly emphasized, short sentences of imprisonment are always to be avoided, and the juvenile offender should never be sent to jail, even for a second offence, if his case can be adequately dealt with in some other way. Offenders of type (c) present a special problem to which reference will be made later in this chapter. There remains type (b). It is for this class of convicts

that the Borstal Institutions is intended—the young hooligan or waster on whom perhaps a previous warning has had no effect and who appears likely unless reformative treatment is quickly applied, to develop into a professional criminal. It is not essential, before an order is passed for detention in a Borstal Institution, that a previous conviction should be established but in the language of section 6 of the Punjab Act there must be "criminal habits or tendencies or association with persons of bad character". In view of this wording it would be permissible to order Borstal detention, for instance, in the case of lad of sixteen or seventeen who had been associated with older men in a burglary or dacoity, provided that he had not been personally concerned in murder or some similar offence. But it would not be proper to use the Act in a rape case, unless there was reason to believe that the offender had been responsible for similar outrages before, or had been misled by bad companionship.

3. Distinguishing features of Borstal treatment, Release on licence.—The characteristics which distinguish Borstal treatment from ordinary imprisonment are two:-

(i) An order of Borstal detention must always be for an extended period-a period longer than for which the offender would have been sent to jail if he had been sentenced in the ordinary way. In the Punjab Act a minimum of two years is prescribed. The period must be sufficient to enable the good influences which it is hoped to bring to bear on the convict to have their effect.

(ii) After a certain period in the Borstal Institution the offender will normally be released to served the balance of his term on probation outside. Other classes of prisoners can, of course, be released on probation by order of the provincial Government under the Good Conduct Prisoners Probational Release Act, 1926, or under section 401 of the Code of Criminal Procedure. In the case of Borstal detenue, however, release on probation can be ordered by the Visiting Committee, subject to the sanction of the Director of Borstal Institutions,* without reference to Government.

Release on licence is thus an integral feature of Borstal treatment. The young criminal is to be subjected for an extended period to reformative influences: first within the walls of the institution, where he will be in contact with a house master, taking a close personal interest in his character and development; and afterwards on licence outside, where a probation officer will fufil a similar function.

4. Primary object of keeping such offenders in Borstal Jail.—Such an automatic system of probational release would clearly be unsuitable for prisoners of type (c) mentioned above-juveniles sentenced for homicide or other flagrant offences. For the most part the offenders in this class have brought themselves within the reach of the law by a single violent act. They have no tendency to-wards crime in general, and if it were possible to concentrate exclusively on the reformation of the individual, disregarding all other considerations, the most suitable treatment in many cases would be immediate release. The primary object in keeping them in confinement is, ***[…] "to satisfy the public indignation with regard to the serious character of the crime which calls for punishment". The need for bringing good influences to bear should always be kept in mind, but with offenders of this type the reformative aspect of imprisonment must be secondary. In some cases it may be possible to release the prisoner on probation after a certain period in jail, but this is permitted only under the orders of the Provincial Government. Adolescent prisoners of this type are thus radically different from those for whom the Borstal system has been devised. They must of course be kept separate form adult convicts, but their sentences are to be served in jail, not in a Borstal Institution.

5. When offenders should be sent to the Borstal Institution and when to the Reformatory School.--***[…] Magistrates may at times feel a doubt whether a particular offender should be sent to the Borstal Institution or to the Reformatory School. Such doubts can generally be resolved by considering the age of the offender. The School ***[…] established under the Reformatory School Act, 1897, is intended for younger type of offenders than that for which the Borstal Institution caters. To be sent to the Reformatory School the offenders must at the time of conviction be under fifteen: the corresponding age in the case of the Borstal Institution is twenty one. Cases sometimes occur in

which it is necessary to sentence boys of only ten or twelve years of age to imprisonment. In such cases the Reformatory School is always to be preferred; children of this age would be quite out of place in the Borstal Institution. The School also differs form the Borstal in the character of the training given to the inmates. The Borstal Institution has of course, its school, as well as the factories in which the lads are given vocational training, but the educational arrangements are much more elaborate. The boys there are of ordinary school age, and an education is provided for them which would hardly be suitable for the older adolescents in the Borstal. It may be mentioned here that in the case of admissions to the Reformatory School there is no such distinction between casual and habitual offenders as there is in the case of the Borstal Institution. Whereas there is an absolute bar against the use of the Borstal Act in the case of juveniles convicted of offences punishable with death, the School will receive even this type of juvenile offender, with the special permission of the Provincial Government.

CHAPTER 23

HABITUAL OFFENDERS

PARTA--**PREVENTIVE MEASURES**

Preventive measures against habitual offenders.—The Criminal Procedure Code provides for preventive measures of two kinds against habitual offenders. Under section 110, security can be taken for their good behaviour (vide Chapter 3, Security Cases) ***[…], for a period extending upto five years in the event of their conviction in certain offences. In the Punjab another important remedy is provided by the "Restriction of Habitual Offenders Act 1918(V of 1918). Under this Act an habitual offender can be restricted in his movements to a certain area or required to report himself at times and places in the manner prescribed in the order. An order of restriction may be passed in the same circumstances in which an order for security for good behaviour may be passed, but both orders cannot be made against a person at the same time (ef. Section 7 of the Act). The procedure to be followed in proceedings under this Act is mostly the same as that in proceedings under section 110 *[of the Code of Criminal Procedure 1898]; but there are certain differences. For instance, when an order of restriction for a period of more than one year is passed by a Magistrate, the order of restriction does not require any confirmation by the Sessions Judge. Care should be taken to see that the order of restriction is in conformity with the rules framed by the Provincial Government under the Act (vide part F of this Chapter). An order directing a person not to leave his house between 8 p.m. and 5 a.m was held in 8 I.L.R. Lah. 267, to be ultravires, not being in conformity with the aforesaid rules. District Magistrates have power to substitute an order of restriction in lieu of an order for security under section 110, of the said Code in any case coming to their notice on appeal or otherwise. Sessions Judges can make a similar order in cases submitted to them under section 123(2) *[of the said Code].

An order of restriction is especially suitable in the case of habitual offenders who are not in a position to furnish security and in whose case an order for security under section 110 *[of the said Code] would necessitate their commitment to jail.

PART B.—**SENTENCES**

1. Enhanced punishment under section 75 Pakistan penal Code.- Under section 75 of the Pakistan Penal Code, a person convicted a second time of an offence punishable under Chapter XII or Chapter XVII of the code, with three years' imprisonment and upwards is liable to a greatly enhanced sentence.

***2. Procedure for Magistrates not competent to award enhanced punishment.-** This of course, does not increase the competence of the Court trying the offender; but section 348 of the Code of Criminal Procedure gives the Magistrate a discretion to try the case himself, if in his opinion, an adequate sentence can be passed by him. If the Magistrate is unable adequately to punish the accused person, he should send such person to the Court of Session or High court.]

3. ***[Omitted].

***[4. Procedure when Magistrate cannot punish adequately.--** Where a Magistrate finds he is unable to punish an offender adequately, he should under section 347 of the Code of Criminal Procedure, send the case for trial to the Court of Session or High Court.]

5. Enhanced punishment not obligatory.—Although section 75 of the Pakistan penal Code makes a previous convict in certain classes of cases liable to enhanced punishment, it is of course, not obligatory to impose an enhanced sentence in every case of this description. In deciding whether an enhanced sentence under this section is needed and whether the case should be sent to a ***[…] Magistrate empowered under section 30 of the *[Code of Criminal Procedure] or committed to the Sessions Court, the Magistrate should fully consider all the circumstances of the present offence as well as the past conviction.

Enhanced punishment not suitable in petty cases or in cases of old convictions. Ordinarily, cases of petty nature (e.g., thefts of small quantities of food, clothes, utensils etc.) should be left to First Class Magistrate, unless the nature, number and sequence of previous convictions and the sentences previously undergone clearly show the necessity of a higher sentence than two years' imprisonment. Similarly, very old convictions (e.g., when the offence is

committed say, more than five years after the last release of the offender from jail) should not ordinarily be made a ground, for imposing an enhanced penalty under this section in the absence of special reasons.

Case of organized crimes.—Cases of organized crime stand on a different footing, and where the offence under trial and the previous offences are of this description greater weight must be attached to them.

Enhanced punishment suitable when previous convictions indicate a criminal habit which needs to be checked by deterrent punishment.—The General principle to be borne in mind is that is meant to be used as a deterrent only when the punishment provided for the offence itself is considered to be inadequate in view of the antecedents of the offender. The judgments in the previous cases should be referred to freely in 0rder to ascertain the real character of the offender and the section should not be resorted to unless the previous convictions indicate a criminal habit or instinct which needs to be checked by a punishment higher than that provided for the offence.

It should also be remembered that a moderate sentence or an order of restriction under the Restriction of Habitual Offenders Act, is generally a better way of dealing with habitual offenders than the imposition of long term of imprisonment.

6. Previous conviction for attempts to commit an offence not covered by Section 75, Pakistan Penal Code.--***[…] Previous convictions for attempts to commit offences specified in section 75 or a security order under section 110, Criminal Procedure Code, do not bring an offender within the scope of section 75, Pakistan Penal Code.

7. ***[Omitted].

***[8. Action to be taken by Magistrate of 2nd or 3rd Class when he cannot award adequate punishment**.—Section 349 of the Code of Criminal Procedure gives a Magistrate of the second or third Class the means of securing the proper punishment of an accused when he finds, in the course of the trial, that the maximum sentence which he is empowered to inflict would be insufficient. At the same time, in resorting to this section, it must be remembered that, when the accused appears to be a habitual offender and the

Magistrate thinks that he ought to receive more severe punishment than he is competent to inflict, he should forward the accused to a Magistrate of the 1st Class specially empowered in this behalf by the Provincial Government.

9. Duty of the Police to prove previous conviction. Discovery of previous conviction after Judgment has been pronounced.- It is the duty of the Police, in conducting the investigating, to take proper steps to establish the identity of an accused person and to obtain and produce evidence of previous convictions against him for the discovery, subsequent to sentence, that the prisoner was a previous convict, but that this had escaped notice on account of a change of name is not in itself a ground for interference on appeal or revision.]

10. Previous convictions to be noted on the warrant of commitment and in a separate statement. Note on the warrant when the identity of the prisoner has not been proved or he declines to give an account of himself.—In Punjab Government Circular No. 43-1077, dated the 29th July, 1870, the Criminal Courts of the Province were instructed to enter any previous conviction or convictions of prisoner upon the warrant committing him to jail, and the attention of all Magistrates is directed to these instructions. In the form of warrant of commitment prescribed for use under the Code of Criminal Procedure, provision had been made for mention of the fact that the convict has been previously convicted, when one or more previous convictions have been proved against him at his trial, and for the entry of the particulars of the previous convictions in a separate statement, which should be attached to the warrant of commitment in such cases.

***[…] The Magistrates, when committing a prisoner to jail, will enter a note in red ink on the warrant of commitment, in case where the identity of the prisoner has not been satisfactorily ascertained, or he declines to give an account of himself.

PART C.—DEFINITION AND CLASSIFICATION OF HABITUAL CRIMINALS

Persons liable to be classified as habitual criminals.—The *[Federal] Government has framed the following rules defining and prescribing the treatment of "habitual criminals" for the purpose of jail discipline:-

I.-- The following persons shall be liable to be classified as "habitual criminals", namely:-

(i) Any person convicted of an offence punishable under Chapter XII, XVII, and XVIII of the Pakistan Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he is by habit a robber, house-breaker, dacoit, thief or receiver of stolen property, or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps, or forgery.

(ii) Any person convicted of an offence punishable under Chapter XVI of the Pakistan Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he habitually commits offences against the person.

(iii) Any person committed to or detained in prison under section 123 (read with section 109 or section 110) of the Code of Criminal Procedure.

(iv) Any person convicted of any of the offences specified in (i) above when it appears from the facts of the case, even although no previous conviction has been proved, that he is by habit a member of a gang of dacoits, or of thieves or a dealer in slaves or in stolen property.

(v) Any member of a criminal tribe, subject to the description of the Provincial Government concerned.

(vi) Any person convicted of an offence an sentenced to imprisonment under the corresponding sections of the Pakistan Penal Code, and the Code of Criminal Procedure. ***[…]

(vii) Any person convicted by a Court or Tribunal acting outside Pakistan under the general or special authority of the *[Federal] Government of an offence which would have rendered him liable to be classified as a habitual criminal if he had been convicted in a Court established in Pakistan.

Explanation:- For purpose of this definition the word "conviction" shall include an order made under section 118, read with section 110, of the Criminal Procedure Code.

II.-- Classifying authority. Right of prisoner for revision of the order of classification.—The classification of a convicted person as a habitual criminal should ordinarily be made by the convicting Court, but if the convicting Court omits to do so, such classification may be made by the District Magistrate, or in the absence of an order by the convicting Court or District Magistrate, and pending the result of a reference to the District Magistrate, by the officer incharge of the jail where such convicted person is confined: provided that any person classed as a habitual criminal may apply for a revision or the order.

III.-- Power of District Magistrate or convicting Court not to classify certain convicts as habitual criminals.—The convicting Court or the District Magistrate may, for reasons to be recorded in writing, direct that any convicted person or any person committed to or detained in prison under section 123 read with section 109 or section 110 of the Code of Criminal Procedure, shall not be classed as a habitual criminal and may revise such direction.

IV.-- Revision of classification.—Convicting Courts or District Magistrates, as the case may be, may revise their own classifications, and the District Magistrate may alter any classification of a prisoner made by a convicting Court or any other authority; provided that the alteration is made on the basis of facts which were not before such Court or authority.

Note:- The expression "District Magistrate" whether it occurs in paragraphs II, III and IV above means the District Magistrate of district in which the criminal was convicted, committed or detained.***[…]

V.-- Habitual Criminal to be kept in a special jail.—Every habitual criminal shall as far as possible be confined in a special jail I which no prisoner other than habitual criminal shall be kept: provided that the Inspector-General of Prisons may transfer to this special Jail any prisoner not being a habitual criminal whom, for reasons to be recorded in writing, he believes to be of so vicious or depraved a character, and to exercise or to be likely to exercise, so evil an influence on his fellow prisoners that he ought not to be confined with other non-habitual prisoners, but a prisoner so transferred shall not otherwise be subject to the special rules affecting habitual criminals. Government of India Resolution No. F.III-Jail, dated 15th September 1922).

VI Member of criminal tribe defined.—With reference to rule 1(v) above, the Provincial Government has defined "a member of a criminal tribe" as follows:-

"A registered member of a criminal tribe who is convicted of any of the offences specified in rule 28 of the Rules under the Criminal Tribes Act, viz.-

(a) section 109 or 110 of the Criminal Procedure Code;

(b) non bailable offence described in Chapter XII and XVII of the Pakistan Penal Code; and

(c) offences under the Criminal Tribes Act, 1911 unless the convicting Magistrate otherwise directs".

VII.-- Convicting officer to decide about classification and should note it on the warrant.—Whenever a person is sentenced to imprisonment for an offence, the Magistrate or Judge who passes the sentence should determine whether the prisoner is to be classed as a habitual criminal or otherwise, and should endorse the words "habitual" or "non-habitual", as the case may be, on the warrant of commitment, and sign such endorsement.

VIII.-- Statement of previous conviction should be attached to warrant.—If the prisoner has been previously convicted, a statement containing the particulars of the previous co9nvictions should be attached to the warrant of commitment.]

PART D.—**RESIDENCE OF RELEASE CONVICTS.**

Copy of order under Section 565, Criminal Procedure Code to be sent to jail. – In every case in which an order under section 565 of the Criminal Procedure Code is made, directing that the person sentenced to imprisonment shall notify his residence and any change of residence after release, a copy of such orde should be transmitted by the Court passing the sentence and order, with the warrant of commitment issued under section 384 of the Code, to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined. Attention is also invited to the following rules:-

NOTIFICATION

The 6th March, 1931.

No. 7335.—In exercise of the powers conferred by subsection (3) of section 565 of the Code of Criminal Procedure, 1898, the Governor-in-Council is pleased to make the following rules regulating the notification of residence or change of or absence from, residence by released convicts in regard to whom an order has been made under subsection (1) of section 565 of the said Code.

Punjab Government notification No. 395 (Home-Judicial), dated the 13th March 1901, is hereby cancelled.

RULES

I. **Released convicts to observe rules**.—When, at the time of passing sentence of transportation or imprisonment on any person, the Court or Magistrate also orders that his residence and any change of residence after release be notified for the term specified in such order, such person shall comply with and be subject to the rules next following. In these rules a person released subject to an order of the nature herein before described is called a “released convict.”

II. **Released convict to notify, at the time of release, intended place of residence to releasing officer**.—Every convict in regard to whom an order has been made under section 565 of the Code of Criminal Procedure, 1898, shall, not less than fourteen days before the date on which he is entitled to be released, notify the officer incharge of the jail, or other place in which he

may for the time being be confined, of the place at which he intends to reside after his release.

III. Released convict to notify intention to change first residence at local Police Station.—Whenever any released convict intends to change his place of residence, from the place which he specified at the time of his release as the place at which he intended to reside, to any other place, he shall notify the fact of such intention and the place at which he hereafter intends to reside, not less than twenty-four hours before he so changes his residence, to the officer in charge of the Police Station within the jurisdiction of which he resides at the time when he notifies his intention to change his residence.

IV. Released convict to similarly notify all subsequent intentions to change residence.—Whenever any released convict intends to change his place of residence from any place at which he may, at any time, be residing, under the provisions of Rule II, he shall notify any intended change of residence in the manner in that rule provide.

V. Period to be appointed for taking up residence.- In default the convict to notify his actual residence.—The Officer recording a notification under rule II, rule III or rule IV, shall appoint such period as may be reasonably necessary to enable the convict to take up his residence in the place notified. If the convict does not take up his residence in such place within the period so appointed he shall, not later than the day following the expiry of such period, notify in person his actual place of residence to the officer in charge of the Police Station within the limits of which he is residing.

VI. Released convict to notify the fact of his having actually taken up his residence at the place specified under preceding rules.—Every released convict shall, within twenty-four hours of his arrival at the place of residence notified under rule II or rule III or rule IV, notify the fact of such arrival to the officer in charge of the Police Station within the jurisdiction of which such place of residence is situate.

VII. **Particulars of place of residence to be supplied.** – In notifying places of residence under these rules released convict shall—

(a) if the place of residence is in a rural tract—specify the name of the village, hamlet, or locality of such place and the Jail, thana, tahsil and district within the limits of which such place is situate;

(b) if the place of residence is in a town or city—specify the name of the town or city and the street, quarter and sub-division of the town or city within the limits of which such place is situate.

VIII. Manner of notifying changes of residence.—Every notification, to be made by a released convict under rules III, IV and VI, respectively, shall be made by such convict personally at the proper Police Station:

(a) the District Magistrate may, by order in writing, exempt any released convict from the operation of this rule any may permit such convict to make such notifications in writing or in such other manner as the District Magistrate may, in such order, prescribe in that behalf;

(b) if from illness or other unavoidable cause, any released convict is prevented from making any notification required by these rules personally at the proper Police Station, he may do so by written communication addressed to the officer in charge of the proper Police Station. Such communication shall state the cause of his inability to attend in person at the Police Station, and shall, before it is transmitted to the proper Police Officer, be attested by a village headman or other village officer.

Note 1:-Subsidiary Rules issued by the Police Department will be found in Appendix 28—39 (I) to the Punjab Police Rules, Volume II.

Note 2:-Rules made by the Punjab Government in exercise of the powers conferred by Section 16 of the Restriction of Habitual Offenders (Punjab) Act, 1918 (V of 1918), are published in Punjab Government Notification No. 9853, dated the 29th April, 1918.

PART E.—IDENTFICATION OF RE-CONVICTED PRISONERS

Introductory.—At the request of the Provincial Government the following instructions are issued with a view to insuring the proper recognition of re-convicted prisoners for the purpose of jail discipline.

2. Descriptive roll of the convict.—According to the existing practice in this Province, the descriptive roll of each person sent up by the police for trial is retained in the office of the Magistrate and filed with the Judicial record of the case. Under instruction of the Central Government, it is necessary that a descriptive roll of every prisoner arrested by the police should be prepared at the station-house and be sent up with the prisoner to the Magistrate, and that this roll, in the event of the final conviction of the prisoner by the Magistrate, should be copied in a register kept up in the jail for the purpose.

3. Charge sheet to be sent up by police.—As in the Punjab the descriptive roll is embodied in the charge sheet sent up by the police, all that appears to be required is that the charge sheet, instead of being at once filed with the magisterial records of the case, should accompany the warrant of commitment to the jail, that the descriptive roll of the prisoner should be copied into the jail register, and that thereafter the charge sheet should be returned to the Magistrate.

4. Charges to be sent to jail.—Magistrates are, therefore, instructed to forward the charge sheet, with the warrant of commitment, to the Superintendent of the Jail, who will be directed by the Inspector General of Prisons to cause the descriptive roll to be copied from the charge sheet into the appropriate jail register. The Superintendent will then return the charge sheet to the Magistrate.

PART F.—RULES FRAMED UNDER THE PROVISIONS OF RESTRICTION OF HABTUAL OFFENCDERS (PENJAB) ACT, 1918.

The 29th April 1918.

No. 9853. – In exercise of the powers conferred by section 16 of the Restriction of Habitual Offenders (Punjab) Act, 1918, the Lieutenant-Governor (now Governor) is pleased to make the following rules:-

RULES

1. Definition.—In these rules the expression "Court" includes "Magistrate."

2. Areas of restriction.—The areas to which persons may be restricted by an order under this Act shall ordinarily by--

(a) if the person resides in a village – the area of the village to which may be added at the discretion of the Court the areas of any contiguous villages in which the said person owns or occupies any immovable property or practices any trade or calling;

(b) if the person resides in a town – the area of the town;

But in special cases the Court may fix a larger area.

(i) *Exception.* – Unless the person restricted is an owner of land or an occupancy tenant, the Court may, if it is of opinion that restriction to the aforesaid areas is expedient, select any other village or town, as the case may be, in the district within which the person ordinarily resides.

(ii) If the person restricted has been twice convicted of offences under Chapter XVII of the Pakistan Penal Code, and is not an owner of land or an Occupancy Tenant, the area of restriction may be any settlement established under section 16 of the Criminal Tribes Act, 1911, but the Court must obtain the concurrence of the Deputy Commissioner for Criminal Tribes before restricting any person to such settlement.

3. Absence without leave Passes.—No person restricted by an order of restriction under this Act shall leave or be absent from the area of restriction without having obtained a pass in accordance with these rules and except in accordance with the terms of such pass.

Proviso.—Nothing contained in this rule shall be deemed to render it illegal for any restricted person to leave the limits of the area of restriction whenever necessary for the purpose of appearing at the police station or before the nearest Magistrate to complain of an offence affecting himself or his family, or to present an appeal or petition of revision against the order of restriction, or to obtain a pass under these rules, provided that he gives due notice of his intended departure to the headman of his village or town or to the officer in charge of the settlement, proceeds, straight to the police station or Court of the Magistrate and returns without unnecessary delay.

4. Times of report.—The times at which a person is required by an order of restriction to report himself shall be such times at intervals of not less than 24 hours and not more than 7 days as the Court may fix; but such times shall not be more frequent than the Court thinks strictly necessary in each case.

Places of report.—The place of report shall be the house of the headman or other person or officer, who, in exceptional cases for reasons to be recorded in writing, may be a police officer not below the rank of an officer-in-charge of a police station, as the Court may direct; provided that no person shall be required to report himself at a place situated more than three miles from the place where he ordinarily resides.

Mode of report.—Every person required to report himself by an order of restriction under this Act shall do so by attending in person and announcing his presence, unless physically incapacitated from doing so.

5. Leave for one day.—A person restricted to any area by an order of restriction under this Act may be granted a pass in Form A appended to these rules authorizing him to leave the said area for one day, between sunrise and sunset--

(a) if he is restricted to any village or group of contiguous villages or larger area—by any headman of the village in which he ordinarily resides;

(b) if he is restricted to town—by such person or officer as may be specified by the District Magistrate;

(c) if he is restricted to a settlement—by the officer-in-charge of the settlement.

6. Leave not exceeding 15 days.—The officer-in-charge of the police station or settlement within the limits of which any person is restricted by an order of restriction under this Act may on due cause being shown grant such person leave of absence for a period not exceeding 15 days and may issue a pass to him.

7. Long leave.—The District Magistrate of the district in which any person is restricted by an order of restriction under this Act, or any person only authorized by the District Magistrate in writing in this behalf, may on due cause being shown grant such person any leave of absence which he may deem reasonable and may issue a pass to him.

8. Conditions attaching to absence on leave.-- Any person granted leave of absence under rule 6 or rule 7 shall travel to his destination and return to his residence by the route specified in the pass. He shall have the time and date of his arrival endorsed on the pass by the headman of the village of destination, and within three days of his arrival he shall report himself at the police station within the limits of which his destination is situated, and shall present his pass for endorsement.

9. Reports while on leave.—During such time as any person restricted to any area by an order of restriction under this Act is absent from the area of restriction, he shall report himself once every three days to the headman of the village in which he may happen to be, and once in every 15 days he shall, unless exempted by order of the District Magistrate, report himself to, and present his pass for endorsement by, the officer-in-charge of the police station.

10. Surrender of passes.—On his return to his residence he shall deliver the pass up to the authority from whom he received it. All passes so returned shall be sent for record to the police station within whose limits the person is restricted.

11. Form of passes.—Passes issued under rule 6 or rule 7 shall be printed and filled in Urdu in Form B appended to these rules. They shall be drawn up in triplicate and each part shall be signed or sealed by the authority granting the pass. One part shall be retained by such authority, the second shall be given to the person granted leave, and the third part shall be sent to the officer in charge of the police station within the limits of which the destination of the holder of the pass lies.

12. Person on leave unable to return, Withdrawal of passes.—If any person who has been granted a pass under these rules is from any unavoidable cause prevented from returning to his residence within the period of his leave, he shall at once give information to the nearest police station. The officer-in-charge of the police station shall verify the information and shall send a report to the authority which issued the pass.

13. Withdrawal of passes.—Any pass granted under these rules may at any time be withdrawn by the authority which granted it, or by the District Magistrate or any officer duly authorized by him in writing in this behalf.

FORM A (Rule 5)

(To be printed in Urdu)

(FOIL)

Day pass for persons restricted under Punjab Act I of 1918

Serial No._____Date_____Place_____

Name	Father's Name	Tribe	Residence	LEAVE		Place to which the person will go
				Date	Day	

Note - Rule 5 is reproduced on the Form here.

Seal or signature of the headman

(COUNTERFOIL FOR PERSON GIVEN LEAVE)

Day pass for persons restricted under Punjab Act I of 1918

Serial No._____Date_____Place_____

Name	Father's Name	Tribe	Resid-ence	LEAVE		Place to which the person will go
				Date	Day	

Note - Rule 5 is reproduced on the Form here.

Seal or signature of the headman

FORM B (Rule 11)

(To be printed in Urdu)

(FOIL FOR RECORD)

(Pass for leave granted to persons restricted under Punjab Act 1 of 1918

Serial No. Date Place

Name	Father's Name	Tribe	Residence	Leave granted	Route Prescribed

Signature of Officer granting leave

NOTE.- Rules 8 to 11 are reproduced on the Form here.

(COUNTERFOIL FOR THE POLICE STATION TO WHICH PERSON IS GOING)

(Pass for leave granted to persons restricted under Punjab Act 1 of 1918

Serial No. Date Place

Name	Father's Name	Tribe	Residence	Leave granted	Route Prescribed

Signature of Officer granting leave

NOTE.- Rules 8 to 11 are reproduced on the Form here

(COUNTERFOIL FOR THE PERSON GRANTED LEAVE)

(Pass for leave granted to persons restricted under Punjab Act 1 of 1918

Serial No. Date Place

Name	Father's Name	Tribe	Residence	Leave granted	Route Prescribed

Signature of Officer granting leave

NOTE.- Rules 8 to 11 are reproduced on the Form here.

ENDORSEMENTS WHILE ON LEAVE

Date of departure on leave	Signature of headman or officer	Dates of endorsements while on leave	Signature of headman or officer	Dates of endorsements while on leave	Signature of headman or officer.
Date of endorsements While on leave	Signature of headman or officer				
				Date of return to residence	Signature of headman or officer
				Date of pass reaching police station	Signature of officer incharge

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CHAPTER 24
SESSIONS CASES
*[PART A-GENERAL.

1. Cognizance of offence by Court of Session.—Commitment proceedings stand abolished, but except as otherwise expressly provided by the Code of Criminal Procedure or by any other law for the time being in force, no Court of Session can take cognizance of any offence as a Court of original jurisdiction unless the case has been sent to it under sub-section (3) of section 190, of the Code of Criminal Procedure.[See section 193, sub-section (1)].

2. Magistrate to send the case to Court of session.—Section 190(3) requires a Magistrate taking cognizance under sub-section (1) thereof, of an offence triable by a Court of Session, to send the case to the Court of Session for trial without recording any evidence.

3. Magistrate to apply his mind before sending the case.—The cases "triable exclusively by a Court of Session" under section 190(3) are significant; for example, all offences punishable with death and offences punishable under the offence of Zina (enforcement of Hadood) Ordinance, 1979 are offences triable exclusively by the Court of Session. Though the magistrate is required to send the case to the Court of Session without recording any evidence, yet, he is not to act as a mere post office. He must apply his judicial mind to the material before him to ascertain whether the case is one exclusively triable by the Court of Session or it is one which he can proceed to try himself. (See1985 SCMR 1314; 1981 SCMR 267).

4. Magistrate to justify sending of case.—It is also to be noted that what the Magistrate sends to the Court of Session is the "Case" and not a particular accused. The occurrence of the name of a person in a particular co9lumn of the Challan or even the absence of a person's name from the Challan does not, therefore, affect the jurisdiction of the Court of Session to summon that person to stand his trial, if there be material on the record to justify such a cause. (See 1985 SCMR 1314).

5. STATE AS "PROSECUTOR".—In all cases sent for trial to the Court of Session the "State" should be entered as a prosecutor.

6. Trial by Additional sessions Judges.—Additional Sessions Judges can try such cases only as the Provincial Government may by general or special order direct them to try or as the Sessions Judge of the Division by general or special order, make over to them for trial. (Section 193(2) of the Code.)]

PART B. – **TRIAL OF SESSIONS CASES.**

***[1. **Introductory**.- For the expeditious disposal of Sessions cases, Sessions Judges should reserve for each Sessions case several days for trial, preferably in consultation with the prosecutor and the defence counsel.

2. Reservation of several days for possible Sessions cases.- The trial of a Sessions case shall, as a rule, be held from day to day and unless there be compelling reasons for adjournment, there should be no adjournment.

3. Priority of Sessions' cases over other work.- The instructions contained in paragraph 5-A of Chapter 1, Part A of this Volume regarding postponement of cases in order to avert the arrest of other accused in the case apply mutates mutandis to Sessions cases.

4. Prompt disposal of Sessions' cases.- Cases of flagrant disregard of the day to day hearing rule have come to the notice of this Court. It has been noticed that in some case, Sessions trial have, after their commencement, taken months, in some cases years, to conclude. The High Court takes a very serious view of this practice and requires:

(i) explanation to be furnished in monthly Sessions statement of any cases pending over six months; and

(ii) explanation for every case in which trial has commenced but has not concluded during the days reserved for them; this explanation shall mention the date of the commencement of the trial and reason for each adjournment.]

5. ***[Omitted].

6. ***[Omitted].

7. ***[Omitted].

***[8. **Examination of record**.- On receipt of the record the case will be registered and when the date and place of the trial have been fixed a memorandum should be made on the calendar and due notice thereof sent to all concerned.

8-A. Under section 14-A of the Arms Ordinance 1965, an offence under section 13 or section 14 is now triable by a Magistrate of the First Class.

The intention of the law appears to be that even the possession of illegal arms forming part of the same transaction with the graver offence, as for instance, the possession of the illegal weapon at the time of murder should be tried by Magistrates.

In such cases the Magistrate should record evidence, but should preferably reserve judgment till the decision of the Sessions case.

9. Sessions Judge may summon any witness not included in the Calendar.- The Police diaries should be examined to make sure that material witness has not been left out. If the record is carefully examined on its receipt, Sessions Judges will be able to summon any witness not included in the calendar whom they may consider material and thus avoid the necessity of an adjournment, which is extremely inconvenient in Sessions trials.]

10. ***[Omitted]

***[11. Charge to be read out. Mode of recording evidence**.- The names and description of the counsel appearing for the prosecution and defence should be noted on the first page of the record of trial. If the accused is unrepresented the fact should be noted. The record should show every examination and re-examination of each witness; and if the accused does not avail himself of the liberty to cross-examine, a note should be entered to that effect.]

12. ***[Omitted]

***[13. Papers to be transferred to Sessions record.-** The various papers in the Sessions record should be compiled in the following order:-

1. Order Sheet.
2. Covering Sheet.
3. Opening sheet.
4. Charge Sheet.
5. Chemical Examiner’s report.

6. Serologist's report.
7. Medical evidence.
8. Deposition of prosecution witness.
9. Statement under section 342 Cr.P.C. of the accused.
10. Defence sheet of the accused including his statement under section 340(2) Cr.P.C.
11. Judgment
12. List of documentary exhibits.
13. Documentary exhibits.

14. In preparing records in Sessions cases and in copying judgments, the following instructions should be strictly followed, namely-

(1) the record of evidence of each witness shall be numbered;

(2) the evidence should usually begin with that of the medical witness;

(3) confessions and other previous statements of each accused person shall immediately precede his or her statement in the Court of Session;

(4) the pages of the original judgment should be noted in the margin of each copy of a judgment issued and the pages of copies of the record of evidence of witnesses should be similarly noted.

14-A. Medical evidence.- (1) The medical evidence should be recorded with care and precision in the English language and should be translated into Urdu and read over to the accused in order that he may have an opportunity to cross-examine.

(2) The Court recording medical evidence should not content with merely taking down, in the presence of the accused, the statement of the Medical Officer but should, if necessary, examine him further in view of the detailed instructions contained in Chapter 18 of this Volume titled "Medical

Legal Work" in which suitable questions to be put to Medical Officers in certain classes of cases are suggested.

14-B. Inquest reports.- In all cases in which the medical evidence is that the body of a person alleged to have been murdered reached the witness in a state of decomposition, evidence of the condition of the body when first discovered should be recorded and formal proof obtained of the "inquest report" "Surat-e-Hal" when there is one. In almost all cases of homicide, it is desirable that the police officer who first viewed the body and prepared the "surat-e-hal" shall be required to put in and prove that document.

14-C. Other circumstances to be proved.- Circumstances connected with the finding of the body, or of the property or with the state of locality, or the department etc. of the accused, must be proved by the evidence of the witnesses who saw what they described, or by the police officer who conducted the investigation.

14-D. Identity of body and clothes.- In cases of homicide evidence should be taken to identify the body of the person killed, to prove the custody of the body from the moment it is discovered to the time of its delivery to the Medical Officer for post-mortem examination, and to show that it has not been interfered with during its conveyance from the scene of death to the place of examination. Clothes and ornaments found on the body should similarly be identified by proper witnesses produced in Court and their removal from the body and custody should be proved.

14-E. Custody of other articles.- Similar care is often required in tracing the custody of prisoner's substances, personal food, blood-stained clothes etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the Chemical Examiner. The person who packs, seals and dispatches such articles should invariably be examined.

14-F Every article to be produced.- Clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses.

14-G. Plans.-(1) In all cases where a plan of the locality is material, such a plan should be sent up with the record. It must, however, be remembered that plans as well as police reports are not evidence until they have been sworn in Court by the persons who prepared them or who of their personal knowledge can depose to their correctness.

(2) In all case where the decision turns upon topography or the position and construction of a dwelling, a plan, drawn to scale accurately representing the place or dwelling should be proved by the person who prepared it and it should be marked and recorded as a exhibit.

14-H. Exhibits.- All exhibits should be marked with a letter or numbers. Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record wherever any such articles is referred to and should be distinctly marked as "admitted or not admitted". If the exhibits have already been assigned numbers by the police, that series of numbers should be mentioned to avoid confusion.

A printed label should be affixed or attached to each exhibit containing the following particulars:-

(i) Number of exhibit

(ii) Produced by

(iii) Admitted(Signature of Court)

(iv) Date

(v) Case

(vi) Description of exhibits.

The Sessions Judge, should see that these entries are properly made.

15. Use of previous statements of witnesses. In using previous statement be police to discredit witnesses, careful attention should be paid to the provision s of section 162 of the Code of Criminal Procedure and section 140 of Qanun-e-Shahadat, 1984 (Also see Chapter 12 of this Volume, Police Diaries, etc.)]

16. ***[Omitted]

17. ***[Omitted]

*[18. **Procedure**.- The procedure to be observed by the High Court and the Courts of Sessions in the trial of cases triable by them is contained in Chapter XXII-A of the Code of Criminal Procedure.

19. Public prosecution.- In every trial before a Court of Session, initiated upon a police report, the prosecution is to be conducted by the public Prosecutor. (Section 265-A Cr.P.C.)

20. **Procedure in case of previous conviction.-** In a case where, by reason of a previous conviction, the accused has been charged under section 221 of the Code, the court after finding the accused guilty of the offence charged and recording a conviction, shall record the plea of the accused in relation to such part of the charge; and if the accused admits the previous conviction, the court may pass a sentence but if the accused does not admit it, the court may take evidence in respect of the previous conviction, record a finding and then pass a sentence according to law. (Section 265-I Cr. P.C).

21. The statement of a witness duly recorded under section 164, if made in the presence of the accused and if he had notice of it and was given opportunity of cross-examination, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provision s of the “Qanun-e-Shahadat, 1984(section 265-J Cr.P.C).]

22. ***[Omitted]

23. ***[Omitted]

24. ***[Omitted]

25. ***[Omitted]

26. ***[Omitted]

***[27. Judgment should be pronounced in open court by Sessions Judge**.- The judgment should be pronounced by the Sessions Judge either immediately after the trial or on some future day of which due notice must be

given to the parties or their pleaders. Sentence should be passed in open Court and then explained to the prisoner. Section 367(1) of the Code of Criminal Procedure clearly lays down that a judgment shall be dated and signed by the presiding officer in open Court at the time of pronouncing it. Under section 17(4) of the Code, the Sessions Judge may, for the reasons given, make provision for disposal of any urgent application by the Additional Sessions Judge, but there is no authority for the proposition that the power given to a Sessions Judge under section 17(4) extends to delegation of the duty to pronounce judgments. Sessions judges must arrange to pronounce judgment in original cases before proceeding on leave if a delay in pronouncing judgment is likely to cause hardship to any person under trial.]

28. Judgment to be written before announcing.--The judgment must always be written and delivered before sentence is pronounced. It is illegal to pass sentence at the termination of a trial and to postpone the writing of the judgment to a future occasion. All cases must continue to be shown on the pending file until a judgment and sentence are written and delivered.

29. Copy to be forwarded to District Magistrate.-- In cases tried by a Court of Session, the Court shall forward to the District Magistrate a copy of the judgment in addition to the copy of the finding and sentence required by section 373 of the Code of Criminal Procedure.

Where there has been a complete acquittal of all or any of the accused by a Court of Session, the Sessions judge should, at the time of pronouncing the judgment, also forward a facsimile copy thereof to the District Magistrate, in whose jurisdiction the trial was held, so as to enable him to consider whether or not an appeal against acquittal is to be recommended. The stenographer should be required to prepare an extra carbon copy, for this purpose, while transcribing the judgment dictated to him by the Sessions Judge.

In case in which an accused charged with murder receives a sentence for *[imprisonment] for life or is tried for an offence under section 302, Pakistan Penal Code, but is convicted under section *[318], of the said Code, the Sessions Judge should follow the same procedure.

30. Documents to be forwarded to High Court when sentence requires confirmation.—If the sentence is one which has to be referred to the

High Court for confirmation, under section 374 of the Code of Criminal Procedure, the record of the Court of Session, with the exception of the final judgment, should be submitted in original. In addition to the type-written copy of the judgment which takes the place of the original 9retained in the Court of Session) two extra type-written copies will be forwarded for use in the High Court together with type-written copies of the following documents on the Sessions record:-

(1) First report at police station (if any) in Urdu only.

(2) Statement under section 364, Criminal Procedure Code.

(3) Examination under section 364 by the Magistrate.

(4) ***[Omitted]

(5) Record of evidence in Court of Session with any further examination undr section 364, Criminal Procedure Code, and altered charge if any.

(6) Material documentary evidence, if any.

(7) ***[Omitted]

Note:- Photographs and bahis should be treated as “documentary evidence” and should be marked with letter like other documents, and should always be sent to the High Court.]

31. Reference to High Court *[shall] be in prescribed form.—The coy of the final judgment shall be signed by the Sessions Judge himself and not by the clerk or other officer of the Court on his behalf, as certifying such copy to be a true copy. The reference to the High Court for confirmation of the death sentence should be made in the prescribed form.

32. In death sentence accused *[shall] be informed about period for appeal.—In all cases in which a person is sentenced to death, the Sessions Judge shall as directed in section 371(3) of the Code of Criminal Procedure, *[inform] the condemned man that he must file his appeal within seven days.

32-A *[Omitted].**

33. Sessions Judge to ask accused and promptly deliver if he requires a copy of judgment.—In order to prevent delay, the Sessions Judge should, on delivering judgment, ask the accused if he desires to have a copy or translation of the judgment, to which he is entitled under section 371*[(3)] of the Code for the purposes of appeal. The Sessions Judge should record in the judgment that this has been done, and when necessary, should furnish the copy or translation without delay.

34. Endorsements on copy sent to accused.—The copy or translation of the judgment required by the accused should be sent to him by the Session Judge with the following endorsements, namely-

(a) the date of the dispatch of the copy or translation of the judgment;

(b) notice that the appeal must be presented within seven days from the date of sentences (exclusive of that date and of the time which has been spent in supplying him with the copy of the judgment) mentioning the latest dates on which his appeal can be filed;

(c) intimation that, on the expiry of seven days, the record will be sent to the High Court, and that the hearing of the reference with a view to confirmation of sentence (under section 374 of the Code) will take place about one month after dispatch of the copy.

***[35. Record to be sent to High Court soon after period of appeal has expired.-** When the condemned person has taken a copy of the judgment, the record should not be forwarded to the High Court until after the expiration of the total period within which his appeal can be legally filed, i.e., a period of seven days from the date of sentence plus the time spent in supplying the copy.]

35-A. ***[Omitted].

***[36. Notice to accused and Advocate General on receipt of record**.- In the High Court immediately on receipt of the record, notice shall issue to the accused in jail informing him that the proceedings will be considered, with a view to an order of confirmation being made under section 374 of the Code of Criminal Procedure and the appeal (if any) be heard, on date to be entered in the notice. Similar notice will also be issued to the Advocate General when an

appeal is preferred. Unless records are promptly submitted, it will not be possible to carry out the above standing order, and Sessions Judges are accordingly required to pay strict attention to the instruction here given.]

37. Copy of High Court judgment to be sent to Sessions Judge.-- After the sentence has been confirmed or other order has been made by the High Court, the Registrar will return the record, with a duplicate or an attested copy of the order under the seal of the Court, to the Sessions Judge, who will take the steps prescribed by section 381 of the Code of Criminal procedure to cause the sentence or order to be carried into effect.

38. Record to be sent to Government when death sentence has been confirmed.-- The record of every case, as prepared for the use of the High Court, in which the sentence of death has been confirmed by the High Court, should as soon as orders have been passed confirming the death sentence, be forwarded to the Provincial Government, together with the Court's order thereon, and the English file of the Sessions Court.

39. Death for execution of death sentence.-- In issuing warrants for the execution of sentences of death, Sessions Judges should as directed by Government fix a date for the execution of the sentence that is not less than fourteen or more than twenty-one days from the date of the issue of the warrant.

40. Record to be sent to Government when a woman has been sentenced to *[imprisonment] for infanticide.--***[…] In every case in which a sentence of *[imprisonment] for life is passed on a woman for the murder of her infant child, and the sentence is not appealed against, the record of the case shall, after the expiration of the period allowed for appeal, be forwarded to the High Court for submission to Government, with a view to the consideration of the question whether any commutation or reduction of the sentence should be allowed.

41. Weapons to be sent to the High Court- (i) All weapons with which injuries are alleged to have been inflicted by the accused, whether the nature of the injuries is in dispute or not, shall be forwarded to the High Court when a case is referred by a Sessions Judge for confirmation of a sentence of death. In order to secure that this will be done, the Sessions Judge shall record a note at the foot of his judgment stating what weapons are to be forwarded to the

High Court and he should see that they are forwarded when the records are dispatched.

(ii) In a case in which a convicted person is called upon to show cause why his sentence should not be enhanced to death similar weapons are required in the High Court, but will not be forwarded to the High Court until the High Court calls for them.

42. Blood-stained clothes sent to High Court.—(i) All garments of an accused persons which are proved to have been stained with human-blood and have been made exhibits shall be forwarded along with the record to the High Court when a case is referred by a Sessions Judge for confirmation of a sentence of death. In order to secure that this is done, the Sessions Judge shall record a note at the foot of his judgment staining what garments are to be forwarded to the High Court.

(ii) In a case in which a convicted person called upon to show cause why his sentence should not be enhanced to death similar garments are required in the High Court, but will not be forwarded to the High Court, until the High Court calls for them.

43. Exhibited articles- Exhibited articles, which are not documents and are not referred to in paragraphs 41 and 42 of this Chapter, should not be sent to the High Court, unless the High Court calls for them, or unless the Sessions Judge considers that a particular exhibit will be required in the High Court, in which case he should record a note at the foot of his judgment that the exhibit should be forwarded to the High Court in the event of an appeal.

PARTC. – **PROVIDING AN ACCUSED PERSON WITH LEGAL ADVICE.**

***[1. Presiding officer to report whether accused can afford to engage counsel.-** If the accused is unrepresented in a Sessions case and cannot afford to engage a counsel, the Sessions Judge shall make arrangement to employ a counsel at Government expense. Counsel in such cases should be appointed well in time to enable him to study the documents mentioned in section 265-C of the Code of Criminal Procedure.

2. Counsel for accused to be provided by Sessions Judge.- When the accused is a woman prisoner who is unable to afford a counsel, the presiding officer on an application made by her shall make arrangement to employ a counsel at Government expense to defend her in all offences except those triable in a summary way under chapter XXII of the Code of Criminal Procedure.]

3. Fees of Counsel.-- The legal practitioner thus engaged by the Court trying the case shall receive the same fees as private practitioners engaged under the note to rule X(2) of the rules regulating the conduct of business in the Law Department, and the fees shall be entered in the same register and drawn in the same manner as is prescribed for such practitioners.

CHAPTER 25

APPEAL AND REVISION—CRIMINAL

PART A.—ADMISSION OF PETITIONS.

1. Persons competent to lodge petition.-- A petition of appeal or revision on behalf of a person convicted by a Criminal Court or an application for transfer shall not be admitted by a Criminal Court, unless it is either submitted through the jail authorities, or is presented by the convicted person himself, or by some person authorized by a ***[…] power of attorney to present it on his behalf; and a petition for revision by a complainant shall not be admitted unless it is presented by the complainant or by some person authorized by a ***[…] power of attorney to present in on behalf of the complainant;

Provided that a person confined to jail shall be allowed to appoint his pleader, whether falling under sub-clauses (1) or (2) of clauses (r) section 4 of the Code of Criminal Procedure, by means of a printed form, signed by him, and attested by the Superintendent of the Jail, and that no stamp shall be required on this form.

Note:- A specimen of the form is given in the Appendix attached to this part.

2. Authentication of petitions written by jail officials for prisoners.—Petition of appeal and revision, written by Jail officials on behalf of prisoners, shall be authenticated by the Superintendent of the Jail and every such petition received from the Superintendent of a Jail shall be examined upon receipt, and if it has not been authenticated by the Superintendent, it shall be returned forthwith for this to be done.

3. Petitions received by post.—A petition of appeal or for revision received by post otherwise than through Jail should, if possible, be returned to the person from whom it was received by post 'bearing'.

4. Pleader engaged by agent.—When an agent has been duly appointed by a convict to file an appeal or revision, a pleader engaged by the latter shall be required to file a power-of-attorney.

5. Court-fees on appeals.—No Court-fees shall be charged on appeals preferred on behalf of a prisoner by a pleader or by agent.

6. ***[Omitted].

APPENDIX

Form of declaration by a person confined to Jail appointing a pleader for presenting an appeal or revision on his behalf in a Criminal Court.

IN The Court of----------

Appellant.

Petitioner

versus

The *[STATE]----------

Respondent.

Charge under section ----------

Sentence ----------

Appeal

----------from the order of ----------

Magistrate

Revision

exercising----------powers at----------

I,----------, son of----------

---, caste----------, resident of----------

----------, now a prisoner in the Jail at----------, hereby authorise ----------, to file an appeal in the above case on my behalf and to act, plead and take all other steps in furtherance thereof.

Signatures

or

thumb-impression
of the Appellant ----------
or Petitioner

Date ----------

Station----------

Attestation by the Superintendent of Jail----------

The above declaration has been made by ---------- --------- prisoner No.----------, at present confined in the---------- ------ Jail which is under my charge as Superintendent. The contents of the declaration have been read over to the prisoner who admits them to be correct. Let this be given to his pleader for necessary action.

Signatures----------

Designation----------

Date----------

Station----------

PART B. -- **THE SUBMISSION OF RECORDS TO THE HIGH COURT FOR PURPOSES OF REVISION. ***[OMITTED]**

PART C. – **PROCEDURE IN HEARING**

CRIMINAL APPEALS

Introductory.—The attention of all Criminal Appellate Courts subordinate to the High Court is invited to the procedure laid down in sections 421 to 423 of the Code of Criminal Procedure.

2. Summary disposal, appellant to be hear.—If, on a perusal of a petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel, or authorized agent, if he appears, the Appellate Court considers that there is no sufficient ground for questioning the correctness of the decision or interfering with the sentence or order appealed against, it may reject the appeal summarily. In acting under section 421 of the Code of Criminal Procedure, the Court may, and when the records are readily forthcoming ordinarily should, call for and examine the proceedings of the lower Court, but is not bound to do so. When a petition of appeal is presented by the appellant in person or by his counsel or duly authorized agent, the Court should of course, intimate to such person the day on which it will be prepared to hear hi, if the appeal is not brought forward for hearing on the day on which it is presented or if the hearing is adjourned.

***[3. Notice of date of hearing.-** If the Appellate Court decides to hear the appeal, notice of the day fixed for hearing should be given to the appellant or his pleader, and notice must also be given to such office as the Provincial Government may appoint in this behalf. The District Magistrate and in certain cases the Advocate General are the officers to receive, on behalf of the State, notice of the time and place fixed for the hearing of appeals admitted to a hearing under section 422 of the Code of Criminal Procedure. Attention is also invited to notifications in the same part directing the notice of the hearing of certain appeals to be given to the heads of the Railway Administration and the Postmaster General, Punjab. The notice of the appellant or his pleader need not be a formal notice in writing, if either of them is present in person when the day of hearing is fixed. It will be seen from section 4(1) (r) of the Code that the term “Pleader” includes (1) an Advocate, a Vakil, and an Attorney of a High

Court so authorized; and (2) any other person appointed with the permission of the Court, to act in such proceedings.

4. The order fixing the date should state under what section the hearing is.- To distinguish between appeals rejected under section 421 and appeals in which the sentence is confirmed after hearing under section 423 the order fixing the date should distinctly state whether or not the hearing is to be under section 423 of the Code.

5. Appeal should not be dismissed in default.- A criminal appeal must be disposed of on its merits as it cannot be dismissed in default.]

6. If appeal cannot be rejected summarily it should be admitted to hearing.—The practice which prevails in some Courts of continuing ***[…] in cases in which it is found necessary to direct a further inquiry under section 428, is irregular. If it appears that an appeal cannot be properly rejected on the record as it stands, it should be admitted to a hearing under section 422.

***[7. Contents of judgment.-** The judgment of an Appellate Court should contain the points for determination, the decision thereon and the grounds for that decision. (See section 367, and 424 of the Code of Criminal Procedure.)]

8. ***[Omitted].

9. Remand.—Whenever a criminal appeal is sent back for further inquiry under section 428 of the Code at Criminal Procedure, the Appellate Court should invariably fix a date for re-hearing the case, taking care that the date so fixed is in each instance sufficiently remote to allow of a return being made to the order of remand, and that the case is duly entered under such date in the appropriate register.

PART D. – NOTICE OF APPEAL

In railway cases notice to District Magistrate and Railway authority.— The following notifications under section 422 of the Code of Criminal Procedure, prescribing the officers to whom notice is to be given of an appeal which is not summarily rejected, are re-printed for information and guidance.

I.—PUNJAB GOVERNMENT NOTIFICATION NO. 172,

DATED THE 28TH JANUARY, 1891.

With reference to section 422 of the Code of Criminal Procedure, 1882, prescribing that any Appellate Court which does not reject an appeal summarily shall cause notice to be given to such officers as the Provincial Government may appoint in this behalf, the Hon'ble the Lieutenant-Governor (now Governor) is pleased to direct that in the case of an appeal preferred by a Railway employee in a case in which he has been convicted of an offence committed in his capacity of Railway servant, the Appellate Court shall cause notice to be given of the time and place of hearing of such appeal to the Head of the Railway Administration concerned as well as to the District Magistrate as directed in Punjab Government Notification No. 108-597, dated 8th February, 1883.

II.—PUNJAB GOVERNMENT NOTIFICATION NO. 206,

DATED THE 10TH FEBRUARY, 1905.

Postal cases. Notice to District Magistrate and Postmaster General.— With reference to section 422 of the Code of Criminal Procedure, 1898, prescribing that any Appellate Court which does not reject an appeal summarily shall cause notice to be given to such officer as the Provincial Government may appoint in this behalf, the Hon'ble the Lieutenant-Governor (now governor) is pleased to direct that in the case of an appeal preferred by a Postal employee in a case in which he has been convicted of an offence committed in his capacity of a Postal servant, the Appellate Court shall cause notice to be given of the time and place of hearing of such appeal to the Postmaster-General, Punjab and North-west Frontier Province, as well as to the District Magistrate concerned, as directed in Punjab Government Notification No. 108-597, dated 8th February, 1883.

III.—PUNJAB GOVERNMENT NOTIFICATION NO. 1110-J-,
37/13020/HOME-JUDICIAL, DATED THE 1ST APRIL, 1937.

Notice to Advocate-General and District Magistrate in other cases.—With reference to section 422 of the Code of Criminal Procedure, 1898, the Governor of the Punjab is pleased to direct, in supersession of Punjab Government notification No. 1764, dated the 7th December, 1898, that in the case of appeals other than those which lie to the District Magistrate or other Magistrate empowered to hear appeals under section 407 of the Code, the Appellate Court shall cause notice of the time and place of hearing to be given-

(1) to the Advocate-General, Punjab, in all cases in which the sentence is one of death, imprisonment for life, or imprisonment for a term not less than ten years;

(2) to the District Magistrate in other cases.

IV.—PUNJAB GOVERNMENT NOTIFICATION NO. 1776-JJ-50/29746,
DATED THE 30TH MAY, 1950.

In pursuance of the powers conferred by section 422 of the Code of Criminal Procedure, 1898, the Governor of the Punjab is pleased to direct in partial modification of Punjab Government Notification No. 1110-J-37/13020, dated the 1st April 1937, that in cases challanced by the Pakistan Special Police Establishment, the Appellate Court shall cause notice of the time and place of hearing of the appeal to be given to the Superintendent of Police, Special Police Estabishment.

V.—GOVERNMENT OF WEST PAKISTAN, HOME DEPARTMENT
NOTIFICATION NO.JUDL-1-4(II)/60, DATED THE 8TH AUGUST, 1961.

In pursuance of section 422 of the Code of Criminal Procedure, 1898 and in continuation of Government of West Pakistan, Home Department notification No. Jud;-1-4(II)/60, dated the 21st June 1960 (hereinafter referred to as the said notification), the Governor of West Pakistan is pleased to appoint—

(i) the Governor of State Bank of Pakistan; and

(ii) the Secretary to the Government of Pakistan, Ministry of Finance,

as the Officer to whom (in addition to the Officers to whom notice is to be given in compliance with the said notification) notice in the matter of appeal made to the High Court of West Pakistan against conviction under the Foreign Exchange Regulation Act, 1947 shall be given by the said Court, of the time and place at which such appeal will be heard.

PART E. – **APPEALS FROM ORDERS OF ACQUITTAL**

Appeal to be filed in certain cases.—Sessions Judge and District Magistrates should bear in mind the following order of the Provincial Government regarding appeals against acquittals under section 417 of the Criminal Procedure Code.

The Provincial Government will not direct an appeal—

(1) where the case is trifling in itself and the acquittal involves no erroneous principles of law, the correction of which is of public importance;

(2) where, however serious or otherwise important the case, the legal guilt of the accused is fairly questionable or the evidenc admits of any reasonable doubt, and the Court has considered and weighed it with impartiality, intelligence and care;

(3) merely on account of the production of fresh evidence after the acquttal, or

(4) where there is no distinct probability that the appeal will result in an order of re-trial.

2. Travelling expenses for the accused.-- In cases where it is decided that an appeal out to be filed, the ***[…] Government considers that the accused should have legal assistance at his trial and with this end in view, the Judges are pleased to direct that District Magistrate on receipt of a notice for service upon the person acquitted to show cause why he should not be convicted, shall, if he is satisfied that the accused is unable because of poverty to proceed to the High Court at Lahore, provide him with sufficient funds to enable him to do so should he so desire and, in the even of the apprehension of the person concerned and his custody in a lock-up, arrange that the accused (should he so desire and should he not be represented by counsel of his own choice) be conveyed to the High Court at Lahore, for the purpose of attending the hearing of the appeal against his acquittal.

3. Legal assistance to the accused.—With the same object in view, namely, to give every reasonable protection to the defence, a reasonable fee to

enable him to engage counsel, if such is his intention, shall be paid by the Government to the accused in all such cases, whatever may be the result of the appeal and whether he is or is not in attendance when the appeal is heard. He would be at liberty to supplement this himself in order to obtain counsel of superior caliber, should he so desire. The payment of the fee herein referred to shall be arranged and paid by the District Magistrate concerned in consultation with the *[Solicitor] to Government, Punjab, in the form of a letter of credit which the accused person's counsel can cash after actual appearance in the High Court.

4. Legal assistance in cases of enhancement of sentence.-- In the case of an application for enhancement of sentence made by the Provincial Government the same procedure should be followed in the matter of provision of counsel for the accused as is prescribed in paragraph 3 above.

***[5. High Court can alter the conviction from Section 304 to 302 only when Government appeals.—**In this connection it should be noted that ***[…] when a person is tried for an offence under section 302, Pakistan Penal Code, but is convicted under Section *[318] of *[the said Code] and sentenced to a term of imprisonment, the Sessions Judge's order amounts to acquittal under section 302. On application to a High Court for revision of sentence, the High Court has no jurisdiction in view of the provisions contained in clause (4) of section 439 Criminal Procedure Code, to alter the conviction to one under section 302 and sentence the accused to death. In such cases an appeal by the Provincial Government or by an aggrieved person under section 417 of the Code is required to give the High Court jurisdiction, if it is desired to alter the conviction.

6. Requisition for records for scrutiny when appeal for acquittal is contemplated.—For securing the original records of trial court for scrutiny in cases where an appeal against an acquittal, etc., is under contemplation the following procedure should be observed:-

(a) Where there has been a complete acquittal by the Court of Session of all the accused in a case, the Sessions Judge should, on a certificate furnished by the District Magistrate that an Appeal from acquittal is in contemplation, hand over to the

District Magistrate the sessions record of the case and such other connected papers in the custody of the Sessions Court as the District Magistrate may require.

(b) In cases where some of the accused have been convicted and others acquitted by the Sessions Court and no appeals against convictions are pending the procedure laid down in (a) above should be followed, but where appeals from convictions are pending, the records should, on receipt of a certificate from the District Magistrate that an appeal from an acquittal is in contemplation, be forwarded to the High Court.

(c) When sending records to District Magistrates, Sessions Judges should see that the Sessions records of the case are complete in all respects and include the ***[…] Police papers if they are in the possession of the Sessions Court.

PART F. – **APPEALS IN SCRUTINY CASES…***[Omitted]**

PART G. – SUPPLY OF COPIES TO APPELLANTS AND APPLICANTS FOR REVISION, AND TRANSMISSION OF APPEALS AND APPLICATIONS OF PRISONERS TO APPELLATE AND REVISIONAL COURTS

Introductory.—The particular attention of Sessions Judges and District Magistrates is invited to the following directions relating to the supply of copies to appellants and applicants for revision, and for the transmission of appeals and applications of prisoners to the Courts to which; they are addressed. Superintendents of Jails have been supplied with these directions to guide them in dealing with application s for copies made by prisoners under their custody.

***[2. Appeal to be accompanied by copy of judgment or order. Free supply of copy in certain cases.-** Section 419 of the Code of Criminal Procedure requires every petition of appeal presented to a Criminal Court to be accompanied (unless the Court to which it is presented otherwise directs) by a copy of the judgment or order appealed against. This copy (or a translation of the judgment where the accused desires to have a translation), unless the appellant has been convicted in any case tried summarily or for an offence under any law other than the Pakistan Penal Code, must, under the provisions of section 371 of the Code, be given free of cost.

3. Application for revision to be accompanied by copy of judgment. Free supply of copy to accused in warrant cases.- Similarly, application for revisions will not be received unless accompanied by copies of the judgment or judgments impeached, or unless the Court, otherwise directs under section 419, of the Code of Criminal Procedure. If it is intended that the Court should give such directions, it should be stated clearly why the prisoner is unable to furnish the copy. When the applicant has been convicted in any case not being a case tried summarily or where the accused has been committed of an offence other than the Pakistan Penal Code, ***[…] he is entitled, if he has not appealed, to get a copy of the judgment of the Court, which convicted him free of charge and if he has appealed, to get a free copy of the judgment of the Appellate Court, or a translation of such judgment, where he desires to have a translation (sections 371 and 424 of the Code of Criminal Procedure). If he has appealed, the applican6t is not entitled to a second free copy of the judgment of the original Court.]

3-A. Free supply of copies to jail prisoner.—The High Court has decided that notwithstanding anything contained in paragraphs 2 and 3, when the accused is in jail, a copy of the judgment or order may be supplied free of cost if he or his agent requires it for purposes of filing an appeal or petition for revision and not otherwise, provided that a second copy of the judgment or order of the original Court shall not be supplied free of cost for purposes of revision if he has already obtained one for the purposes of filing an appeal.

3-B. A copy of the judgment of the court of Session, in appeal or revision, in every criminal case in which, as a result of the decision of the Sessions Judge, any convicted person is required to undergo imprisonment for a period of not les than two years, shall be supplied free of cost to the Superintendent of the Jail concerned within one month from the date of judgment or order.

4. Petitions of appeal preferred by prisoners.—Petitions of appeal preferred by prisoners through the Superintendent of the Jail should be sent direct to the Appellate Court, as required by Section 420 of the Code of Criminal Procedure. The Appellate Court will itself requisition the records from the Record Room.

5. Typewritten copies of record and judgment to be sent to high Court. – Whenever the appeal of a person, convicted by a Court of Session is forwarded to the High Court, particular care should be taken to see that the petition of appeal is accompanied by a typewritten copy, *in English,* of the whole proceedings of the Sessions trial. When the sentence is one of death or transportation for life, *two* typewritten copies of the record should be sent.

6. Extra copies to be prepared in advance by stenographers- So far as possible, stenographers in typing from dictation, evidence and judgments in all classes of cases should prepare by duplication all extra copies likely to be required for this purpose, as will as for supplying the accused or any other person requiring a free copy. This should avoid the preparation of fresh copies by the Copy Clerk. Similarly these copies should be duplicated when they are likely to be required by any subordinate Court.

7. ***[Omitted]
8. ***[Omitted]
9. ***[Omitted]

PART H. -- TRANSMISSION OF APPELLATE COURTS' ORDERS TO LOWER COURTS.

Rules re transmission of Appellate Court's order to Lower Courts.-- The following rules should be observed in regard to the transmission of Appellate Court's orders to Lower Courts:-

RULES

1. The Sessions Judge will send copies of all his judgments to district Magistrate.

2. The District Magistrate will transmit the copies to the original Court for information and return direct to the Record keeper, to whom the original records will be sent at once.

3. The District Magistrate, Additional District Magistrate will send copies of all their judgments on appeal to the original Court for information and return direct to the Record-keeper, to whom the original record will be sent at once.

4. Appellate Courts will attach to the original record the following forms:-

Date.----------

Copy of judgment despatched by District Magistrate. .. ..

Copy of judgment despatched by Additional District Magistrate. .. ..

Copy of judgment received by Record keeper. .. ..

(Translation---*is*/*is not*----------attached)

(It will be simpler to have only one form)

5. (a) The Record-keeper will maintain a running list prepared from the above form of all cases in which copies of judgments have been sent out. When the copies of judgments are returned to him by the original Courts, he will add them to the records, fill in the date of receipt, and strike those cases off his running list.

(b) If copies are not returned within 10 days of despatch he will issue a reminder (which should be on a printed form), and if that is ineffective, report the matter to the despatching Court.

(c) The running list will be in the following form:-

Name of case.	Date of despatch	Date of reminder, if any.

(d) The reminder will be in the following printed form:-

To the Court of----------

A copy of the judgment of the---------- was despatched to you by the----------on----------and has not yet been received by the Record-keeper. Please return at once.

*Dated.*_____ *Record-keeper.*

6. Officers presiding over subordinate Courts held at District Headquarters, if in any particular case they desire to see their original record, will be allowed to call for it provided that it must not leave their Court room.

7. ***[Omitted].

CHAPTER 26

TRANFER OF CRIMINAL CASES.

PART A. – Transfer Of Criminal Cases.

***[1. **Power of High Court- Re transfer of cases.-** Under section 526 of the Code of Criminal Procedure the High Court has power to transfer any case from one Court subordinate to it to another on any of the grounds specified therein. This power for transfer extends to all classes of cases.

2. Sessions Judges power to transfer.- Under section 528 of the Code, Sessions Judges also have general power to withdraw3 any case from any Judicial Magistrate and to refer it for enquiry or trial to any other Judicial Magistrate competent to inquire into or try the same.

The Sessions Judge may also, at any time before the trial of a case or the hearing of an appeal has commenced before an Additional Sessions Judge, recall the case or appeal and may try the case or hear the appeal himself or may make it over to another Court for trial or hearing, as the case may be.

Sessions Judge may empower any Judicial Magistrate who has taken cognizance of any case to transfer such case for trial to any other Judicial Magistrate in his District any such magistrate may dispose of the case accordingly.

2-A. Under section 528-A, the District Magistrate may withdraw or recall any case which he has made over to any Executive Magistrate subordinate to him and may either try the case himself or make it over for trial to any other Executive Magistrate subordinate to him.

Any District Magistrate may empower any Executive Magistrate subordinate to him who has taken cognizance of any case to transfer such case for inquiry or trial to any other Executive Magistrate in his district who is competent under the Code to try the accused and such Magistrate may dispose of the case accordingly.

It is not obligatory to stay the proceedings or adjourn the hearing for the purpose of an application under section 528. Applications for transfer should be promptly disposed of. Notice to the opposite party is not obligatory under

section 528 but is advisable except when the application appears to be frivolous on the face of it and is summarily rejected. Sessions Judges should carefully enquire into the grounds on which the application is based and deal with the same, seriatim, in his order.]

3. Cases triable in more than one district. Forum to be determined with regard to public convenience.—The necessity for transfer of a case may arise purely on grounds of jurisdiction or in the ends of justice. As regards the former, sections 179 to 183 of the Code should be consulted, when a case is to be instituted in Court. In carrying out the provisions of these sections, cases which are triable in more than one district should not be transferred unnecessarily from one district to another. A Magistrate should act under these sections solely with reference to the public convenience. Ordinarily, the proper district for the enquiry into, and trial of offences falling under those sections would be the district in which the witnesses could, with the least inconvenience, attend.

4. Procedure when a Magistrate thinks the case should be tried in another district.—If a Magistrate is of opinion that it would be more convenient if an enquiry or trial were held in another district he should at once address the District Magistrate.

If the District Magistrate considers the transfer of the case to another district desirable, he will forward the paper to the District Magistrate of the latter district. If the District Magistrate so addressed concurs, the case should be **[referred to the High Court and] transferred to that district accordingly. If he dissents, the Magistrate should either proceed with the enquiry **[or trial], or refer the question to the High Court, *[which] will, under the provisions of section 185 of the Code of Criminal Procedure, decide in which district the enquiry or trial should be held.

5. Reasons to be given for proposal to transfer.—When a transfer is proposed by any Magistrate his proposal should always be accompanied by a short statement of the case and of the reasons for making the proposal.

6. Common grounds on which applications for transfer are made.—Applications for transfer of criminal cases are frequently made by accused persons on the allegation that such transfer is necessary in the interests

of justice. The most common grounds on which such applications for transfer are made are (a) that the Judge or Magistrate is personally interested in the case, or (b) that he is connected with one or the other party to the case by relationship, friendship, etc., and is, therefore, likely to be partial, or (c) that he has already formed or expressed an opinion on the subject matter of the enquiry or trial, or (d) that he has conducted himself in such a manner that no fair or impartial enquiry or trial can be expected from hi.

***[7. Remarks on those grounds. Cases of local bodies with which Magistrate is connected.**- As regards (a), the provisions of section 556 of the Code which prohibit a Judge or Magistrate from trying certain cases without the permission of the Appellate Court should be carefully borne in mind. The section is founded on the maxim that no man can be judge of his own cause or give judgment concerning his own rights. The general rule as to disqualification is, that a person who, by reason of his interest, pecuniary or personal, is likely to have a bias in the matter of the prosecution, ought not to sit as a Judge in the case. The interest, however, must be a substantial interest giving rise to a real bias, and not merely to the possibility of a bias. The question frequently arises as to whether the connection of a Magistrate with a local body disqualifies him from trying a case to which that body is party. This must be decided on the facts of each case.]

8. Connection of the Magistrate with a party.—In cases where the Judge or Magistrate happens to be connected with one or the other party by relationship, friendship, etc., it is advisable for him to move the proper authority at once to transfer the case to some other Court; for howsoever straightforward and impartial he may be, there is always the danger of his actions being regarded with suspicion and misinterpreted. An immediate transfer of the case would avoid the possibility of an application for transfer being made at a later stage and consequent delay in the disposal of the case.

9. Cases in which Magistrate has already expressed his opinion.- The same course would be advisable in cases in which the Judge or Magistrate has already formed and expressed a definite opinion on the material issues requiring decision, against the accused concerned.

10. Cases wherein a party apprehends that he will not have a fair trial.—As regards the last category, the presiding officers of Courts should carefully bear in mind that it is their duty not only to be thoroughly impartial, but to conduct themselves in such a manner as not to give rise to any reasonable apprehension in the mind of an accused person that he will not have a fair and impartial enquiry or trial. In dealing with an application for transfer, the Court has to consider not merely the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial. As observed by Lush J. in Sergeant versus Dale [(1877) 2 Q.B.D 558] "the law has regard, not so much perhaps to the motives which might be supposed to bias the Judge, as to the susceptibilities of the litigant parties. One important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is essential to social order and security."

***[11. Adjournment on application under section 526.**- In an inquiry under Chapter VIII or any trial, the fact that any party intimates to the court at any stage that he intends to make an application under this section shall not require the court to adjourn the case; but the Court shall not pronounce its final judgment or ordr until the application has been finally disposed of by the High Court and, if the application is accepted by the High Court, the proceedings taken by the Court subsequent to the intimation made to it shall, at the option of the accused, be held afresh. [Section 526(8)]. If a party to an appeal intimates to the Court, before the argument begins, that he intends to make an application under section 526, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding five hundred rupees; that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for application to be made and an order to be obtained thereon. {Section 526(9)].

12. Transfer applications should be supported by affidavits. Notice to other party. High Court will not entertain applications unless Sessions Judge has first been moved.—Applications for transfer whether to the District Magistrate or **[Sessions Judge or] the High Court, should always be supported by affidavits in support of the grounds of transfer.

13. ***[Omitted].

***[14.** Succeeding Court may act on the evidence already recorded.- When a case is transferred from one Court to another, the provisions of section 350 of the Code apply, and the succeeding Court may act on the evidence recorded by its predecessor or it may re-examine the witnesses and recommence the enquiry or trial.

15. ***[Omitted].

PART B. APPLICATIONS FOR TRANSFER OF CRIMINAL CASES TO FORM PART OF SEPARATE RECORD.

1. Applications for transfer of criminal cases and the proceedings therein should form files separate from the record of the main case sought to be transferred and the records of such transfer applications should be separately consigned to the Record Room. The original order on the transfer application should be kept on the record of the transfer proceedings and a copy of this order should be sent to the Court concerned.

2. Such applications *[shall] be entered in the Register of Applications for transfer of Criminal Cases (Criminal Register No. XX) and not in the Register of Miscellaneous Applications.

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

CHAPTER 27
Judicial Lock-ups.

Introductory.—The annexed consolidated and amended rules and instructions, regulating the management of, and control over, Judicial Lock-ups, are issued by the High Court, with the concurrence of the Inspector-General of Prisons and the approval of the Provincial Government, in supersession of previous orders on the subject.

GENERAL REMARKS.

1. Difference between a Judicial and a Police Lock-up.—The essential difference between a Judicial and a Police Lock-up is—

(i) that in a Judicial Lock-up no prisoner can be kept without the written order of a Judicial office to the Jailor or other officer in charge, stating the offence for which he is detained and whether bail is allowed or not, nor can a prisoner be removed without such written order;

(ii) that in a Police Lock-up no prisoner can be detained longer than twenty-four hours, exclusive of the period necessary for jouney from the place of arrest to the Magistrate's Court without the special order of a Magistrate.

2. Persons to be kept in Judicial Lock-up.—Judicial Lock-ups contain—

(i) persons under-trial before Magistrates, including persons remanded at the request of the Police as well as persons in cases remanded to Police;

(ii) persons under trial before the Sessions Judge; and

(iii) in certain districts, prisoners under sentence for short terms who are detained in Lock-ups for the whole period of their sentence, and prisoners under sentence for long terms, who are similarly detained until opportunity offers for their transfer to the nearest jail.

3. When other Lock-ups are to be treated Judicial Lock-ups.—Every Lock-up which is used for purposes other than that for which the Police

are entitled to use a Lock-up [as explained above in clause (ii) of paragraph 1] must ipso facto be regarded and treated as Judicial Lock-up. In several districts the Judicial Lock-up at the headquarters of the District is located in the Jail and is managed by the Jail authorities. In some districts the Look-ups at headquarters of the Tahsil are located in the local Police Station, and are used for confining persons in temporary Police custody as well as those in Magisterial custody. In all such cases the Lock-up is to be regarded and treated as a Judicial Lock-up. The mere fact that in several districts no special establishments have been sanctioned for Judicial Lock-up does not show that no such Lock-ups exist in such districts. The lock-up or one of the Look-ups at the headquarters of every District and Tehsil must necessarily be a Judicial Lock-up. District Magistrates are required by the rules [rule XVI, clause (iii)] to assign proper places for Judicial Lock-ups and their guards at all Court houses, and should see that this rule is at once complied with in regard to the Courts at the headquarters of the District and at each Tahsil.

4. Management of Police Lock-ups and their use as Judicial Lock-ups.—Purely Police Lock-ups are under the exclusive control of the Police Department. Police officers are strictly responsible for any infringement of the law in regard to them, and the magistrate is bound, of his own motion, to take cognizance of such infringement. Where a Police Lock-up comes to be used as a Judicial Lock-up the District Magistrate immediately becomes responsible for the enforcement therein of these rules.

5. Certain Lock-ups declared to be Subsidiary Jails.—The Lock-ups at Multan Sadr. **[…] Kasur, Mianwali, Bhakkar, Rajanpur and Muzaffargarh, were declared to be Subsidiary Jails by Punjab Government notification No. 484, dated the 21st December, 1896.

6. Financial control of Inspector-General of Prisons over Judicial Lock-ups.—The Inspector-General of Prisons has hitherto exercised financial control over all Judicial Lock ups in regard to such matters as sanctioning expenditure, approving of budget arrangements and dealing with questions relating to the entertainment of special establishments and other similar matter. It is not intended to introduce any change in regard to these matters.

7. Inspection of judicial Lock-ups by Sessions Judge. Responsibility of District Magistrate for efficient management.—District Magistrates should see that all Lock-ups within their districts are efficiently

managed; that prisoners confined therein are properly cared for; and that these rules are duly observed. It should be regarded as an important part of the Sessions Judge's duty to inspect Judicial Lock-ups on all convenient occasions; and a brief report of the result of every such inspection should be communicated to the Inspector-General of Prisons, the Government and the High Court.

8. Prisoners under-trial should not needlessly be taken about from place to place when a Magistrate goes on tour.

***[9. Quick disposal of the prisoners of the Lock-up.**- Courts should consider the case in which the accused is in custody as urgent and as having the first claim on their attention.]

10. Interview with prisoners in Lock-ups.—Under-trial prisoners confined in a Lock-up should not be permitted to converse with people outside; but provision should be made under the rules to enable them to hold interviews with their friends and advisors, subject to such limitations as to times and places as may be proper and convenient.

11. Harassing of prisoners in Lock-up.—Care should be taken that prisoners are not exposed to any unnecessary inconvenience, suffering or degradation.

RULES REGULATING THE MANAGEMENT OF, AND
CONTROL OVER, JUDICIAL LOCK-UPS AND
THE TREATMENT OF UNDER-TRIAL PRISONERS.

I.-- Control, management and inspection of Judicial Lock ups in jail.—(i) Judicial Lock-ups located within or attached to a Jail shall be managed entirely by the Jail Department, provided that they shall be subject to these rules in regard to inspection by the Sessions Judge of the Division in which they are situate and to the submission of the monthly statements and weekly reminders hereinafter prescribed.

(ii) The Judicial Lock-up at Rajanpur in the Dera Ghazi Khan District, which are also used as Subsidiary Jails for short-term prisoners, shall be subject to the orders of the Inspector-General of Prisons so far as may be necessary for the purpose of dealing with prisoners undergoing sentences of imprisonment therein and subject to the same proviso as that contained I clause (i) of this rule.

(iii) Subject to the provisions of clauses (i) and (ii) of this rule, every Judicial Lock-up shall be under the direct control of the Provincial Government to be exercised through the Commissioner and the District Magistrate. The Sessions Judge will, however, be responsible for the inspection of all Judicial Lock-ups, subject to the General control for the High Court.

(iv) For the under-mentioned purposes every Judicial Lock-up shall be regarded as being subject to the orders of the Inspector-General of Prisons, namely—

(a) adjustment of budget estimates;

(b) sanction to expenditure;

(c) entertainment of establishments.

For the purposes of this clause the Inspector-General of Prisons will from time to time issue such instructions as may be necessary direct to District Magistrates.

II. Control over other Lock-ups.—The immediate supervision and control over every Judicial Lock-up, other than a Lock-up referred to in clause(i) of rule I, shall vest in the District Magistrate of the District in which it is situated: provided that, in the case of a Judicial Lock-up situated within a Sub-Division or a Cantonment, the immediate control shall vest in the Sub-Divisional or Cantonment Magistrate (as the case may be) subject to the supervision and orders of the District Magistrate.

III. Officers in charge of Judicial Lock-ups.—Every Judicial Lock-up situated at the head-quarters of a district, other than a Lock-up referred to in clause (i) of rule, I, shall be in the charge of the Sheriff; and every Judicial Lock-up situated elsewhere shall be in charge of such officer as the District Magistrate may from time to time appoint in that behalf.

IV. Responsibility of Police to guard Lock-ups and to conduct prisoners.—The Police Department will be responsible for the security of every Judicial Lock-up not located within or attached to a Jail, and will supply the necessary guards for its protection and for the conduct of prisoners to and from the Courts, both at the headquarters of Districts and in Sub-Division, Tahsils and Cantonments, in accordance with the orders of Government and the rules of that Department.

V. Count of prisoners to be taken morning and evening.—Count shall be taken morning and evening of the prisoners in every Judicial Lock-up not located within or attached to a Jail. At the evening count the number of prisoners in each ward of the Lock-up shall be entered in a register to be maintained for the purpose and the entry initialed as correct by the officer in charge of the Police Guard. At the morning count, if the number of the prisoners in the Lock-up is found to be correct, the entry shall be initialed by the officer in charge of the Lock-up.

VI. Officer in charge responsible for discipline and proper dieting of prisoners.—In the case of Judicial Lock-ups other than those referred to in clause (i) of rule , the officer in immediate charge shall, subject to the Magisterial supervision and control specified in rule II, be responsible for the maintenance of discipline amongst, and the dieting of, the prisoners confined therein.

VII. Prisoner's tickets.—Every prisoner confined in a Judicial Lock-up shall be provided with a wooden or cardboard ticket about two inches square, on which shall be written—his name; the date of his admission; the offence for or provision of the law under which he is in custody; and the Court in which his case is pending.

VIII. Date of hearing to be entered in the warrant.—The date of hearing of the case shall be entered in the warrant directing the confinement of a person to a Judicial Lock-up.

Note1:- The magistrate of district will be responsible for the due observance of this rule by all Subordinate Magistrates in the District.

Note 2:- The Jailor or Superintendent of Jail in charge of a Judicial Lock-up should not refuse admittance to a prisoner where the provisions of this rule have not been observed, but he should draw the immediate attention of the Magistrate concerned to the defect, and ask for its rectification at once, sending at the same time a copy of his letter to the Magistrate of the District for his information.

IX. Weekly reminder of case in which prisoner has been in the lock-up for more than a month.—(i) The officer in charge of every Judicial Lock-up shall submit to the Magistrate, to whom he is subordinate (i.e.,

District Magistrate, Sub-Divisional Magistrate or Cantonment Magistrate, as the case may be), a weekly reminder, in the form prescribed, showing every case in which a prisoner has been in confinement for more than a month since the date of his first admission to the Lock-up, except case in which the prisoner is awaiting trial by the Sessions Judge under a warrant of committal to the Sessions.

(ii) In the case of Lock-ups situated within Sub-Divisions and Cantonments, the Sub-Divisional Magistrate or Cantonment Magistrate (as the case may be), receiving a reminder under the preceding clause of this rule, will initial and date it, and forthwith submit it, with any remarks which he may deem necessary, to the District Magistrate for information and orders.

(iii) In every case in which a prisoner has been detained for a longer period than one month, the reminder shall be forthwith submitted by the District Magistrate to the Sessions Judge with an explanation of the cause of the delay.

X. Monthly return.—(i) A Judicial Lock-up return, in the form prescribed, shall be submitted monthly be the District Magistrate, in regard to every Judicial Lock-up in his district, whether located within or attached to a Jail or not, to the Sessions Judge. The Sessions Judge will make such remarks and pass such orders thereupon as he may deem fit, and shall then forward the return to the Inspector-General of Prisons for information.

(ii) For the purposes of this rule every officer in charge of a Lock-up located within or attached to a Jail or of a Lock-up mentioned in clause (ii) of rule I, shall forward a copy of the monthly return to the district Magistrate, the original being submitted to the Inspector-General of Prisons.

(iii) The monthly return for the district shall be submitted by the District Magistrate to the Sessions Judge on or before the tenth of every month. A copy of the monthly return shall also be submitted by the District Magistrate to the Commissioner of the Division at the same time.

XI. Scale of diet.—(i) Under-trial prisoners confined in Judicial Lock-ups shall be dieted according to the following scale:-

XI.- (i) Under-trial prisoners confined in Judicial Lock-ups shall be dieted according to the following scale:-

Diet scale for under-trial prisoners

DESCRIPTION OF PRISONERS	TWICE A WEEK	TWICE A WEEK	THREE TIMES A WEEK	FOUR TIMES A WEEK	THRICE TIMES A WEEK	DAILY					
	Wheat	Barley or Jowar	Bajra or Makki	Dal, Urd or Mung	Dal, Urd or Mung	Pare.	Salt	Condiments	Firewood	Vegetables	Oil
	Chs.	Chs	Chs	Chs	Chs		Grs.	Chs.	Chs.	Chs.	Chs
For male prisoners above 16 years of age.	10	12	12	2	1 ½	2	200	1/3	6	4	1/4
For female prisoners and juveniles under 16 years of age.	8	10	10	1 ½	1	1	200	1/4	6	4	1/4

N.B.-- In regard to the issue of inferior grains see paragraphs 921 and 922 of Jail Manual.

The proportion of the different ingredients for one day's rations of condiments for eight prisoners should be--

Coriander	3/16 Chattacks.
Garlic	6/16 "
Turmeric	4/16 "
Chillies	3/16 "

Note II: The ration of vegetables prescribed should consist of one or other of the following vegetables, according to season:-

Cabbage, carrot, cauliflower, knol kohl, onion, parsnip, spinnach, turnip, radish, red sag, white sag, French bean, sword bean, cucumber, pumpkin, squash, sweet potato, bottle gourd egg plant, country pumpkin, karela:

Provided that if an under-trial prisoner belongs to such a class of life that the ordinary Jail diet is reasonably distasteful to him, or, in any case, if the Medical Officer considers it necessary, arrangements shall be made for the supply to hi, in the former case at his own expense and in the latte at the public cost, of articles of extra diet.

When articles of diet are supplied at the expense of the prisoner, they shall be supplied to him through the officer in charge of the lock-up.

(ii) **Opium, tobacco, liquors, etc**.—No tobacco, alcoholic liquors or intoxicating drugs shall be supplied to under-trial prisoners except on the order of the Medical Officer, who should give a written order specifying the daily quantity to be allowed in each case.

In the case of an under-trial prisoner addicted to the use of opium, who cannot be conveniently taken before the Medical Officer at once, a proper quantity of opium may be given daily by the officer-in-charge of the lock-up until the Medical officer has seen the prisoner; provided that the prisoner or his friends supply the opium, and that the quantity given shall be limited to what is actually necessary to maintain the health of the prisoner.

XII. Inspection by Inspector-General of Prisons.—(i) The Inspector-General of Prisons, in his annual tours, will inspect all Judicial Lock ups in order to see that the sanitary arrangements are satisfactory and that the financial management is efficient. He will bring to the notice of the Sessions Judge, the District Magistrate and the Commissioner of the Division any defects which he may observe, submit a brief report of the result of every such inspection to Government, and will review the general management of Judicial Lock ups in his annual Jail Report.

(ii) The Inspector-General of prisons may at any time bring to the notice of the Government any matter connected with the management of any Judicial lock-up which he considers to be unsatisfactory or to need attention.

XIII. Inspection by Sessions Judges.—The Sessions Judge should, as often as may be possible, inspect every Judicial Lock-up in his Division, and should bring to the notice of the District Magistrate any defects in the management which he may observe, and pass such orders as he may consider

necessary. A brief report of every such inspection should be submitted to the High Court; a copy thereof being sent to the Inspector-General of Prisons and another copy to Government.

XIV. Sub-Divisional Cantonment Magistrate to see to the sanitation, discipline, etc., of Lock-ups under their control.—(i) The District, Sub-Divisional or Cantonment Magistrate, having a Judicial Lock-up under his control, is at all time responsible that, though the strict rules as to sanitation and discipline observed in regular Jails are not in force in Judicial Lock-ups, the point are duly attended to. As to sanitation, the Magistrate should see that sanitary precautions similar to those observed in Jails are taken; that the buildings are not crowded or badly ventilated; and that the food is of proper quality and according to the prescribed scale of diet.

In regard to discipline, the Magistrate should take measures to ensure proper behaviour amongst the prisoners. He should see that prisoners are not permitted to be noisy or turbulent, or to quarrel or fight with one another, and that they behave in a quiet and orderly manner, and are respectful and obedient to the officer in charge of the lock-up. Prisoners confined in a lock-up should not be permitted to Communicate with persons outside; nor should they be permitted to procure or to endeavour to procure any article from outside except on the written order of the Magistrate in charge of the lock-up.

(ii) **Separate accommodation for female and juvenile prisoners**.— Separate accommodation should be provided for female prisoners, who should be allowed sufficient privacy. Juveniles should not be placed in the same ward with adults.

XV. Receipts for prisoners taken out. Police to conduct prisoners.- The officer in charge should invariably give a receipt to the Jailor, turnkey or other officer, as the case may be, for the body of every prisoner taken charge of by him, and should invariably use the agency of the Police to conduct prisoners to and from Court or any other place to which they may be sent under proper authority.

XVI. Prisoners not to be kept in Police Lock-up without orders of Magistrate.—(i) No prisoner under-trial should be permitted to remain in a Police Lock-up except under the orders of a Magistrate or when in transit. A

prisoner in a case remanded to the Police should not be sent to the Police Lock-up without the written order of the Magistrate, even though his case may be the Police.

(ii) **Prisoners accompanying Magistrate on tour should be taken to be in Judicial Lock-up**.—If a Magistrate proceeds on tour and prisoners under trial accompany him, they are still to be considered as being constructively in the Judicial Lock-up of such Magistrate's station for the purposes of these rules.

(iii) **Provision of a lock-up in each Court-house**.—In each Court-house or in the buildings attached to it, a proper place shall be provided for prisoners under trial and their guard.

Note:- The amount of space which should be available in a Judicial Lock-up should ordinarily be not less than 648 cubic feet of air space and 36 feet of floor area per prisoner. Lateral ventilation exclusive of iron bars and door jams should not be less than ten square feet. Separate accommodation should be provided for females and juveniles.

XVII. Prisoners received or taken out under orders of magistrates.—(i) Under-trial prisoners shall not be received into or removed form a Judicial Lock-up except on the written order of a Magistrate.

The order should be made on the prescribed form of warrant. Whenever p prisoner is sent out of the Lock-up, the officer in charge should, after making the necessary endorsement, send the warrant with him to the Magistrate for the purpose of having the return endorsement made thereon by the Magistrate, as noted on the form.

(ii) **Expenses of transfer of prisoner**.—When a prisoner under-trial is transferred from one place to another under the orders of a Magistrate, the Magistrate under whose order the prisoner is transferred shall pay, in advance, the traveling expenses for the whole journey, and not merely to the headquarters of the nearest district en route.

(iii) **Sick Prisoners to be kept in jail hospitals. Transfer of sick prisoners.—**Under-trial prisoners shall not be transferred while suffering form serious illness; and if there is a dispensary at the place where a lock-up is

situated, no prisoner who is ill shall be transferred until previous medical examination has shown him to be in a fit state of health to undergo the journey. Sick or wounded prisoners under trial at the head-quarters of district shall be confined in Jail hospitals whenever medical advice or treatment may be necessary.

XVIII.- Clothing.—Prisoners under trial shall be allowed to wear their own clothing; but in order to provide for persons who are insufficiently clad a supply of blankets hall be kept in stock at each Judicial Lock-up. The blankets shall be obtained from the Jail of the district or from a neighboring Jail on indent prepared by the District Magistrate and passed by the Inspector-General of Prisons.

XIX. Handcuffs, fetters and other restraints.—Under-trial prisoners are to be subjected to no further restraint than is necessary for their safe custody, and shall not ordinarily be confined in fetters or placed under mechanical bodily restraint: Provide that the officer in charge may, with the permission in writing of the Magistrate having control over the Lock-up, have recourse to fetters or other necessary mechanical bodily restraint in the case of any under-trial prisoner who is violent or turbulent, or who is considered to be otherwise dangerous.

Under-trial prisoners while being escorted to and from Court by the Police should not be handcuffed, unless there is a reasonable expectation that such prisoner will use violence, or that an attempt will be made to rescue them.

XX. Habitual offenders and previous convicts to be reported.— Whenever it shall come to the knowledge of the officer-in-charge of a Lock-up that a prisoner confined therein is an habitual offender or has been previously convicted of any offence, he shall forthwith report the fact to the Magistrate.

Note:- Restrictions regarding under-trail prisoners.—Under-trial prisoners should not be permitted to crop their hair or to alter their personal appearance in any way so as to make it difficult to recognize them.

XXI. Information to be sent to Officer in charge when a prisoner is discharged or released on bail.—When an under-trail prisoner is discharged in open Court or released on bail while attending the Court, the presiding

officer of the Court shall intimate the fact in writing, under his signature, the same day, to the officer in charge of the Judicial Lock-up from which the prisoner was sent to such Court.

XXII. Interviews and correspondence.—Prisoners under-trial shall be given all reasonable facilities for communicating, either personally or by letter, with their friends, or legal advisers. Interviews may be allowed and letters forwarded under the authority of the Magistrate having control over the Lock-up.

XXIII. Disposal of money or other property found on the person of the prisoner.—Money or other property found on the persons of under-trial prisoners, other than necessary wearing apparel, shall be taken charge of by the Court Inspector. A lit of such articles shall be recorded on the back of the prisoner's warrant, and the Court Inspector shall be held responsible for seeing that they are made over to the prisoner, or duly forwarded to him, if he is discharged or acquitted or punished otherwise than with imprisonment, or that they are forwarded to the officer in charge of the Jail in which he is, or is to be confined if he is sentenced to imprisonment.

XXIV. Punishment for breach of discipline.—(i) The punishments awardable for breaches of rules shall be as follows:-

(a) Isolation in a cell or separate ward for a period not exceeding seven days.

(b) Penal diet consisting of bread and water for a period not exceeding three days; the quantity of bread to be 8 chittacks of wheaten flour made into chapatis.

(c) In the case of turbulent or dangerous prisoners, confinement in fetters.

(ii) Punishment may be inflicted under the written order of the Magistrate having control over the Lock-up.

XXV. Prisoners under sentence temporarily confined in Lock-up.— Prisoners under sentence who may be temporarily confined in a Lock-up or who may be required to undergo their sentence in a Lock-up which is a Subsidiary

Jail, shall, as far as may be, be subject to the same rules with regard to labour and discipline as are in force in regular jails.

XXVI.- Register of under-trial prisoners.—A register, in the form prescribed, showing every admission to an removal from a Judicial Lock-up shall be maintained by the officer in charge.

CHAPTER 28

JURORS AND ASSESSORS…….***[Omitted].

CHAPTER 29

PUBLIC PROSECUTORS.

PART A. – APPOINTMENTS OF PUBLIC PROSECUTORS.

1. Appointment, transfer, etc.—All matters relating to the appointment, remuneration, transfer or removal of Public Prosecutors ret with the Executive and not with the Judicial Department. Commissioners and Deputy Commissioners will consult the Sessions Judge as to matters on which they desire to obtain the opinion of that officer. References relating to Public Prosecutors (other than proceedings as regards professional misconduct falling under the rules relating to Legal Practitioners) should not be submitted to or through the High Court, it being left to the Government to consult the judges when thought desirable.

2. ***[Omitted].

3. ***[Omitted].

4. ***[Omitted].

5. ***[Omitted].

6. ***[Omitted].

7. ***[Omitted].

8. ***[Omitted].

9. Diary.—A brief diary should be maintained by all Public Prosecutors.

10. ***[Omitted].

SCHEDULE SHOWING THE SCALE OF PAY FIXED FOR PUBLIC PROSECUTORS IN THE VARIOUS DISTRICTS OF THE PUNJAB.

*****[Omitted]**

11. ***[Omitted].

PART B. – THE SUPPLY OF COPIES TO THE ADVOCATE GENERAL AND PUBLIC PROSECUTORS.

1. Records and copies to be supplied in cases before Sub-ordinate Courts.—When the Advocate-General as Public Prosecutor, has been ordered to undertake a case, he shall, if his appearance is required in any Court other than the High Court, be supplied as soon as practicable, with the following papers, according to the stage which the proceedings may have reached:-

(a) In original trials and inquiries before a Magistrate **[or a Court of Session] (1) a list of the witnesses for the prosecution, with a note of the evidence each is expected to give; (2) copies of any documents material to the case which are available.

(b) In appeals before a Court of Session, a complete copy of the record of the lower Court, except formal papers not affecting the merits of the case.

(c) Copies of the Police papers whenever, in the opinion of the officer applying for the services of the Advocate-General, they are likely to help materially to a proper understanding of the case.]

(d) ***[Omitted].

2. Records and copies to be supplied in cases before Subordinate Courts.—In addition to the above, any papers and records, including copies of depositions of witnesses recorded by the trying Courts, which may be required by the Law Officer, shall be supplied as soon as possible after receipt of his requisition.

Note:- The Public Prosecutors should, however use more discrimination in their requests for full copies of evidence and should, as far as possible, obtain the material required by them from inspection of judicial records; copies should not be obtained by them except in complicated cases, when inspection will not serve the purpose. (Punjab Government Letter No. 12012-Judl., dated the 15th April, 1926, and Legal Remembrancer's letter No. 1829, dated the 7th May 1926.)

3. Copies in cases before High Court.— In cases in which the Advocate-General is ordered to appear in an appeal or revision case before the

High Court, it will ordinarily be for him to obtain copies of such parts of the record as he requires; but if in any case copies can be more conveniently obtained by the officer who has applied for his services, such officer may be required to obtain and transmit the necessary copies. In any case, the cost of obtaining copies shall be defrayed by the officer who has applied for the Advocate-General's services.

JUDICIAL POWERS—CRIMINAL.

PART A. – POWERS OF CRIMINAL COURTS.

1. Powers defined in the Criminal Procedure Code and other Acts.—The constitution and powers of the Criminal Court are regulated by Chapter II and III, and schedules III and IV, of the Code of Criminal Procedure. Column 8 of Schedule II of the Code indicates the class of Court competent to try each offence falling under the Pakistan Penal Code. In regard to offences falling under Local and Special Laws, the classes of Courts by which such offences are triable are usually specified in the Act creating the offences. Where, in any such Act, the term "Magistrate" is used without qualification, it includes all persons exercising all or any of the powers of a Magistrate under the Code [General Clauses Act, Section 2 Clause (13)].

2. Special powers.--- The general powers which Magistrates are entitled to exercise in addition to those conferred upon them by sections 32 and 33 of the Code will be found in the third and fourth Schedules of the Code. Besides their ordinary powers detailed in the third Schedule, Magistrates of the first class may (1) require security for good behaviour under section 110, and (2) issue process for a person who within local jurisdiction has committed an offence outside such local jurisdiction. **[(See section 186 Cr.P.C.)] (Punjab Government Notification No. 507, dated 5th April 1904). The same notification empowers all Magistrates of the first and second classes (1) to make orders prohibiting repetitions of nuisances, under section 143; (2) to make orders under section 144 as regards nuisance; and (3) to take cognizance of offences upon information, under section 190. All Magistrates are empowered to take cognizance of offences upon (1) Complaint or (2) Police report. -**[(See section 190 Cr.P.C.)].

3. Powers conferred by Government.—For powers conferred by the Provincial Government upon certain classes of officers, either under the Code of Criminal Procedure or any other Act, see Schedule A and B attached to this Order.

SCHEDULE A.- Magisterial Powers.

Serial No.	Officer	Powers conferred	Limits	No. and date of Government Notification
1.	Registrar, High Court, Punjab.	Magistrate, 1st Class ..	Within the limits of High Court building and compound.	No. 1004, dated 26th July, 1897.
2.	Tahsildars (Permanent or temporary).	Magistrates, 2nd Class ..	Within the limits of any district to which the person may be posted.	No. 1081, dated 24th August, 1910.
3.	Assistant Commissioners and Extra Assistant Commissioners (not invested with any higher powers).	Magistrate , 3rd Class ..	Ditto	No. 3, dated 2nd January, 1889.
4.	Naib-Tehsildars holding the office of Naib-Tehsildar of a Sub-Tehsil.	Magistrate , 2nd Class ..	Ditto	No, 28643-Gaz., dated the 28th August, 1935.
5.	Naib-Tehsildars (permanent)..	Magistrate, 3rd Class ..	Ditto	No. 1536, dated 8th November, 1899.
6.	Settlement Tahsildars employed in the work of Colonization or Settlement.	Magistrate, 3rd Class ..	Within the limits of any district or districts in which the person may from time to time be employed, and only for the purposes of disposing of complaints brought by or against members of the District and Settlement or Colony Establishment working under their orders.	No. 1108, dated 13th September, 1904.

NOTE:--Permanent Naib-Tahsildars will, under serial No. 5, exercise 3rd Class Magisterial powers. Officiating Naib-Tahsildars will not ordinarily be re-invested, but if likely to continue to act for a considerable period, an Officiating Naib-Tahsildar who has passed the prescribed examination, may be specially recommended.

SCHEDULE B- Special Powers

Serial No.	Officer	Powers conferred	Limits	No. and date of Government Notification
1.	Registrar, High Court, Lahore	To try summarily under section 260, Criminal Procedure Code of 1882, offences agaisnt the Police Act.	Within the limits of High Court building and compound.	No. 1005, dated 26th July, 1897.
2.	All Magistrates, Ist Class	(*i*) To require security for good behaviour (section 110, Criminal Procedure Code). (*ii*) To make orders as to local nuisances (section 133). (*iii*) To issue process for a person within local jurisdiction who has committed an offence outside the local jurisdiction (section 186). (*iv*) To sell property alleged or suspected to have been stolen (section 524).		No. 507, dated 5th April, 1904.

SCHEDULE B- Special Powers.

Serial No.	Officer	Powers conferred	Limits	No. and date of Government Notification
3.	All Magistrates of the 1st and 2nd classes.	(i) To make orders prohibiting repetition of nuisances (section 143). (*ii*) To make orders under section 144. (*iii*) To hold inquests (section 174). (*iv*) To take cognizance of offences upon information received from any person other than a Police Officer or upon their own knowledge or suspicion [section 190 (1)(*c*)]		No. 507, dated 5th April, 1904.
4.	All Magistrates	To take cognizance of offences upon complaint or Police report [section 190 (*i*)(*a*) and (*b*)].		Ditto
5.	All Sub-Divisional Magistrates ..	To call for records (section 135)		Ditto

SCHEDULE B- Special Powers.

Serial No.	Officer	Powers conferred	Limits	No. and date of Government Notification
6	All Magistrates, 1st Class	Powers mentioned in section 8(1) of the Reformatory Schools Act, 1897.	Within the local Limits of their Jurisdiction	No 576, dated 7th January, 1924
7	All Stipendiary Magistrates, 2nd class	Power to authorise the detention of accused persons in the custody of the Police under Section 167 (2) of the Code of Criminal Procedure		No 11984, dated the 16th April, 1924
8	All District Magistrates	Power to withdraw classes of cases from the Magistrates subordinate to them (section 528 of the Code of Criminal Procedure)		No 101, dated the 3rd February, 1883.
9	[Omitted]			

NOTE.-- All the powers mentioned in serial Nos 2 to 5 will be exercised subject to the general control of the Sessions Judges or the District Magistrates, as the case may be

PART B. – **CONFERMENT OF CRIMINAL MAGISTERIAL POWERS.**

Instructions in re recommendations for conferment of criminal magisterial power.- The Hon'ble Judges have been pleased to issue the following instructions, which have been approved by the Provincial Government, in regard to recommendations for the conferment of criminal magisterial powers:-

***[1. For Federal and provincial Civil Servants**.- Recommendations for the conferment of Criminal Magisterial powers upon Officers of the Federal and Provincial services should ordinarily originate as the circumstances of each case may require, with the District Magistrate through Commissioner, in the case of Executive Magistrate and with the Sessions Judge, through the High Court in the case of Judicial Magistrates.

2. Channel of recommendation.- When it is desired to confer enhanced powers e.g. the powers under section 260 of the Code upon an Executive or Judicial Magistrate, the District Magistrate or the Sessions Judge as the case may be, shall address their proposal for the conferment of such powers to the High Court, provided that the proposal for the conferment of powers on the Executive Magistrate shall be forwarded to the High Court through the Sessions Judge.]

3. When Commissioner shall consult Sessions Judge.—In other cases, the Commissioner, before forwarding the proposal to the High Court, may consult the District and Sessions Judge if he thinks it necessary to do so; but he shall do so whenever it is proposed to confer on any person the enhanced powers mentioned in paragraph 2 and.-

(a) First class magisterial powers;

(b) ***[Omitted]

4. Statement of previous exercise of powers to be sent alongwith recommendation.—When recommendation for the investiture of Extra Assistant Commissioner and Tahsildars with criminal powers are submitted to the High Court, it should invariably be specified whether the officer recommended has exercised powers before of the same or of a lower class, and for what periods, the Government notification conferring such powers should be

quoted in each case. If officer has never exercised criminal powers before, the fact should be stated.

5. Necessary qualifications for exercise of special powers.—Special care should be taken when recommending the investiture of officers with the important powers of a section 30 or 260 Magistrate, with criminal appellate powers or with the powers of an Additional District Magistrate. Ordinarily the qualifications necessary for the conferment of powers under section 260 of the Code of Criminal Procedure are-

(a) The exercise of first class of first class magisterial powers for at least three years;

(b) the officer recommended must be reported to be a capable and reliable Magistrate;

(c) he should keep his records and write his judgments in English;

(d) his English should be intelligent and his handwriting legible; and

(e) he should have served for at least *[five] years. Service rendered in an honorary capacity may be taken into consideration.

Note: These conditions are not applicable to officers of *[a Federal Service] who are governed by the orders regulating the training of Assistant Commissioners.

6. Recommendations should ordinarily be made at the time of revision of annual confidential powers lists.--- Government maintains confidential lists of officers of *[Federal and Provincial Services] who are considered qualified to exercise or to be tried with certain enhanced civil and criminal powers. These lists are revises annually under instructions which are issued separately b the High Court. The channel prescribed in paragraphs 2 and 3 for the transmission of proposals applies only to the case of individual recommendations made from time to time during the year and not to the procedure for the revision of the annual confidential powers lists.

Normally, recommendations for the investiture of officers with enhanced powers should be confined to the time of the annual revision of lists, save when enhancement of powers is essential in the interests of work. The records of all officers recommended at the time of such revision are very carefully examined

and it means extra work and less accurate results if individual cases are taken up at other times.

7. Conferment of higher powers in emergency does not qualify permanently.--- It sometimes happens that higher powers are conferred in an emergency upon officers not in every way competent to exercise them permanently: this, however confers no claim to be given such powers permanently at the next revision of lists. Some officers are apt to consider that because they do not get higher powers, or their names do not appear on the confidential lists of officers qualified to exercise or to be tried with higher powers, as soon as they expect to, there are some undisclosed complaints against them, when the real reason may merely be that the High Court does not consider that they are quite ready to exercise them.

CHAPTER 31

[SESSIONS DIVISIONS……..OMITTED]
