

FOREWORD



I am pleased to release the study material for the book on IPC, CrPC and Indian Evidence Act for Ladakh Police Officers which will be very relevant and pertinent in the field of Policing. This handbook will serve an important source of valuable information through variety of well researched and in depth material on topics of Laws in the country.

I am sure that the readers will get some useful information for discharging their duties efficiently as guardian of Law & Justice. I greatly appreciate efforts of the author for devoting his time in penning this material and the effort made by team of CDTI Ghaziabad Officers in putting together this material in the shape of handbook.

I extend my deep gratitude to DG, BPR&D Shri V.S.K. Kaumudi, ADG BPR&D Shri Santosh Mehra and IG(Training) BPR&D Shri Neeraj Sinha who have guided and motivated us throughout the landmark training of Ladakh Police Officers. I will also like to thanks to IGP Ladakh Shri S.S. Khandare, DIG Ladakh Shri B.S. Tuti for their guidance which has made the course successful.

I hope readers in the Ladakh Police will find it relevant and educative.

Jai Hind!

Ambar Kishor Jha
Director, CDTI
Ghaziabad

ABOUT HANDBOOK



This handbook is reference material to understand some important provisions of Criminal Major Acts i.e. **Criminal Procedure Code, Indian Penal Code and the Evidence Act** including some Criminal Minor Acts. In this handbook, an attempt has been made to highlight the differences between the provisions of these Acts prior to the Reorganisation Act and after the commencement of the Reorganisation Act.

Although it is not possible to compile all the laws, their differences as well as the important case laws governing the field, but in this handbook we have tried to touch almost every important aspect of the subject. This handbook will be useful for the investigating officers to find out the differences between the previous laws and the laws in vogue and will also help them in better understanding the new laws.

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PREFACE

Change is inevitable and difficult. This is true not only about life but also about law. The overarching mission of the author, in the preparation of this book is to avoid complexities of the Acts explained in these lectures and eliminate procedural difficulties.

Police are one of the most ubiquitous organisations of the society. The policemen, therefore, happen to be the most visible representatives of the government. In an hour of need, danger, crisis and difficulty, when a citizen does not know, what to do and whom to approach, the police station and a policeman happen to be the most appropriate and approachable unit and person for him. The police are expected to be the most accessible, interactive and dynamic organisation of any society. Their roles, functions and duties in the society are natural to be varied, and multifarious on the one hand; and complicated, knotty and complex on the other. Broadly speaking the twin roles, which the police are expected to play in a society are maintenance of law and maintenance of order. However, the ramifications of these two duties are numerous, which result in making a large inventory of duties, functions, powers, roles and responsibilities of the police organisation. Understanding the criminal justice system is a prelude to understanding the police.

CRIMINAL LAW -

The criminal law consists of the substantive law contained in the Indian Penal Code (IPC) as well as the special and local laws enacted by the central and state legislatures from time to time and the procedural law laid down mainly in the Code of Criminal Procedure, 1973 (Cr PC.) and the Indian Evidence Act, 1872. These three major Acts, i.e. the IPC, Cr. P.C. and the Indian Evidence Act were enacted by the British during the second half of the 19th Century. Of these, the only major law that has been revised since Independence is the Cr.PC, which was revised in 1973 on the recommendations made by the Law Commission of India. The other two laws, except for some minor amendments, have remained unchanged.

SUBSTANTIVE LAW -

The IPC defines different types of crimes and prescribes appropriate punishment for offences. Offences are classified under different categories i.e. offences against state, armed forces, public order, public justice, public health, safety, morals, human body, property and offence relating to elections, coins, government stamps, weights and measures, religion, documents and property marks, marriage and defamation. The IPC has 511 Sections, of which 330 are about punishments.

INTRODUCTORY



CHAPTER 1

INDIAN PENAL CODE

In this lucid narration of the code, important section have been referred in appropriate places and also supplemented with important cases laws in a very penetrating way, so as to make the work not only a guide to Police, but also a readable summary of the code.

1.1 Offences against the Public Tranquillity- Section 152, 153, 153A, 153AA/153 A, 153B of IPC.

SECTION 152- ASSAULTING OR OBSTRUCTING PUBLIC SERVANT WHEN OFFENCES AGAINST PUBLIC TRANQUILLITY UNDER INDIAN PENAL CODE,1860

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CLASSIFICATION :

COGNIZABLE , BAILABLE , TRIABLE BY MAGISTRATE FIRST CLASS

RANBIR PENAL CODE,

Section 152–ASSAULTING OR OBSTRUCTING PUBLIC SERVANT WHEN SUPPRESSING RIOT , etc.

Whoever assaults or threatens to assault, or ob-structs or attempts to obstruct, any public servant in the dis-charge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished [with imprisonment which shall not be

less than one year but may extend to five years and shall also be liable to fine.

Classification;

May arrest without warrant .Warrant . Non bailable . Not compoundable. Imprisonment which shall not be less than one year but may extend to five years and shall also be liable to fine .
Special judge .

INDIAN PENAL CODE

SECTION 153-WANT ONLY GIVING PROVOCATION WITH INTENT TO CAUSE RIOT

Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed.— Whoever maliciously, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

CLASSIFICATION:-

Wantonly giving provocation with intent to cause riot if rioting be committed. - One year or fine or both, cognizable, bailable, any magistrate.

If not committed. - 6 months or fine or both , cognizable, bailable, Magistrate first class.

RANBIR PENAL CODE;

SECTION 153 –Wantonly giving provocation with intent to cause riot.

Whoever maliciously, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

CLASSIFICATION;

If rioting be committed. May arrest without warrant. Bailable. Not compoundable. imprisonment of either description for one year or fine or both. Any judicial magistrate.

If not committed. May arrest without warrant. Summons. Bailable. Not compoundable. Imprisonment of either description for 6 months, or fine or both. Any judicial magistrate.

INDIAN PENAL CODE

153A.- Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

Whoever—(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

RANBIR PENAL CODE

SECTION 153-A:-Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds or religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill- will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or in likely to disturb the public tranquillity,

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment [which shall not be less than four years but may extend to ten years and shall also be liable to fine].

(2) **Offence committed in place of worship, etc.-** whoever commits an offence specified in sub- section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment 3[which shall not be less than five years but may extend to ten years and shall also be liable to fine.]

INDIAN PENAL CODE

SECTION 153AA :- PUNISHMENT FOR KNOWINGLY CARRYING ARMS IN ANY PROCESSION or ORGANIZING OR HOLDING OR TAKING PART IN ANY MASS DRILL OR MASS TRAINING WITH ARMS.

Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under section 144A of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees. Explanation.—“Arms” means articles of any description designed or adapted as weapons for offence or defence and includes fire-arms, sharp edged weapons, lathis, dandas and sticks.]

*Inserted by Code of Criminal Procedure (Amendment) Act, 2005, section 44.

(Above section was not mentioned in Ranbir Penal Code)

INDIAN PENAL CODE

SECTION 153-B:- Imputations, assertions prejudicial to national-integration.

Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

RANBIR PENAL CODE

153-B: Assertions etc. prejudicial to maintenance of harmony.

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise, —

(a) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(b) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which shall not be less than 4 years but may extend to 10 years and shall also be liable to fine.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremony, shall be punished with imprisonment which shall not be less than 4 years but may extend to 10 years and shall also be liable to fine.]

CLASSIFICATION:

May arrest without warrant. Not bailable. Not compoundable. Imprisonment not less than 4 years but may extend to ten years . Special judge

1.1 Offences affecting the Public Health Safety- Section 268-277 of IPC.

SECTION 268

Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an

illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.

Punishment in Public Nuisance is mentioned in Section 290 IPC

“Whoever commits a public nuisance in any case not otherwise punishable by this code shall be punished with fine which may extend to two hundred rupees.(Rs. 200/-)”

Also upon the gravity of situation court can order the defendant to pay the charges to compensate the nuisance caused or may order fine which will make the punishment exemplary.

What is Nuisance?

The dictionary meaning of Nuisance is a person or thing causing inconvenience or annoyance.

In law, Nuisance is an act which is harmful or offensive to the public or a member of it and for which there is a legal remedy.

Relevant Case Law:

In *k Ramakrishnan vs. state of Kerala*, (AIR 1999 KER 385)

It was Argued that smoking of tobacco in any form of public places makes the non-smokers ‘passive smokers’ and thereby causes public nuisance as defined under s 268 of the IPC. The Kerala high court, therefore, was urged to declare smoking of tobacco not only illegal as it causes public nuisance but also unconstitutional. The high court held that tobacco smoking in public places in the form of cigarettes, cigars, or beedis falls within the mischief of the penal provisions relating to public nuisance. Relying upon the right to life guaranteed under article 21 of the constitutional the high court declared that smoking of tobacco is unconstitutional.

SECTION 269

Negligent act likely to spread infection or disease dangerous to life—

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

What is negligence?

Negligence is a failure to take reasonable care to avoid causing injury or loss to another person. There are four steps in proving negligence.

1. That there is a duty in the circumstances to take care (*duty of care*).
2. That the behaviour in the circumstances did not meet the standard of care which a reasonable person would meet in the circumstances (*breach of duty*).
3. That a person has suffered injury or loss which a reasonable person in the circumstances could have been expected to foresee (*damage*).
4. That the damage was caused by the breach of duty (*causation*).

Under what circumstances Section 269 can be invoked?

These laws can also be applied by the police in the application of measures to make India Swachh Bharat. These can be enforced for various acts such as public spitting, dumping garbage on the road, urinating and defecating in the open, not wearing face masks in public when suffering from swine flu, medical establishments not making masks available at the registration counter and not implementing infection control precautions, the government not handling air pollution and allowing water to stagnate, leading to the spread of mosquito-borne diseases.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine, or both

Cognizable—Bailable—Triable by any Magistrate---Non-compoundable.

SECTION 270

Malignant act likely to spread infection of disease dangerous to life—

Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both

Cognizable—Bailable— Triable by any Magistrate, Non-compoundable.

SECTION 272

Adulteration of food or drink intended for sale.—

Whoever adulterates any article of food or drink, so as to make such article noxious as food or

drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Main Ingredients:

1. The section requires that the accused must adulterate any article of food or drink.
2. The adulteration must be such that the article of food or drink becomes noxious.
3. The accused must have intention to sell such a noxious article of food or drink, or must have knowledge that such noxious article of food or drink is likely to be sold as food or drink.

Since the adulteration must be to make the article of food or drink noxious, an adulteration which does not make it noxious is not punishable under this section.

Adulterating milk with water does not make the milk noxious but only adds to the profit margin of the person adulterating, and consequently this section is not applicable.

Mixing fat with ghee does not entail liability under this section as the ghee does not become noxious by such adulteration. **‘Noxious’ means injurious to health and not repugnant to one’s feelings.**

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine of 1,000 rupees, or both

Non-Cognizable—Bailable—Triable by any Magistrate

Non-compoundable.

SECTION 271

Disobedience to quarantine rule—

Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

What is Quarantine Rule?

Quarantine refers to strict isolation imposed to prevent the spread of disease. Governments use quarantines to stop the spread of contagious diseases. Quarantines are for people or groups who don’t have symptoms but were exposed to the sickness. A quarantine keeps them away from others so they don’t unknowingly infect anyone.

Quarantines may be used during:

Outbreaks: When there's a sudden rise in the number of cases of a disease.

Epidemics: Similar to outbreaks, but generally considered larger and more widespread.

Pandemics: Larger than epidemics, generally global in nature and affect more people (Corona Virus Pandemic).

What is Disobedience to Quarantine rule under section 271?

It means that if anybody who knowingly disobeys any rule made with the object of isolating places where an infectious disease prevails from other places, then the person will be guilty under the provision. The section requires disobedience with knowledge of a rule made and promulgated by the government.

Under Section 271 of the code, disobedience to quarantine rule is punishable. The motive behind such disobedience is immaterial. A person who knowingly disobeys any rule made by the government shall be punished whether any injurious consequence flow from it or not.

To 'quarantine' persons means to keep them when suspected of having contracted or been exposed to an infectious disease, out of the community, or to confine them to a given place therein, and to prevent intercourse between them and the people generally of such community.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine, or both

Non-cognizable—Bailable—Triable by any Magistrate

Non-compoundable.

SECTION 273

Sale of noxious food or drink.—

Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Main Ingredients:

1. The section requires that the accused must either sell, or offer or expose for sale, any article as food or drink.
2. Such article must have been rendered noxious, or must have become noxious, or it must be in a state unfit for food or drink.
3. The accused must know or must have reason to believe that the article is noxious as food or drink.

Since this chapter relates to ‘public’ health etc., the sale of noxious food or drink must be for consumption of human beings. Consequently, sale of noxious food or drink for animal consumption is not covered under this section. Sale of milk mixed with water, or ghee mixed with vegetable oil cannot be punished under this section as the state of the article has not become noxious nor has it become in a state unfit for being consumed as food or drink.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine of 1,000 rupees, or both

Non cognizable—Bailable—Triable by any Magistrate

Non-compoundable.

Section 274

Adulteration of drugs.—

Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Main Ingredients:

1. The section requires that there must be adulteration of any drug or medical preparation.
2. This must be done in such a manner as to lessen its efficacy or change its operation, or to make it noxious.
3. The accused must have the intention that it shall be sold or used for any medicinal purpose, or knowledge that it is likely to be so sold or used, as if to show that no such adulteration has taken place.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine of 1,000 rupees, or both

Non cognizable—Bailable—Triable by any Magistrate

Non-compoundable.

Section 275

Sale of adulterated drugs.—

Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated,

or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Main Ingredients:

1. The section requires that the accused knows that any drug or medical preparation has been so adulterated as to lessen its efficacy, or to change its operation, or to render it noxious.
2. He must either sell it, or offer it or expose it for sale, or issue it from a dispensary for medicinal purposes as without adulteration, or cause it to be used for medicinal purposes by anyone not knowing of the adulteration.
3. The section not only prohibits sale of adulterated drugs but also its issuance from a dispensary. The expression 'exposes it for sale' does not necessarily mean that the drug must be exposed to view; it is sufficient if it is contained in a packet or in other wrappings. A compressive law, the Drugs and Cosmetics Act, 1940 now regulates the import, manufacture, distribution and sale etc. of drugs.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine of 1,000 rupees, or both

Non cognizable—Bailable—Triable by any Magistrate

Non-compoundable.

Section 276

Sale of drug as a different drug or preparation.—

Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The prosecution must prove that drug or medical preparation has been knowingly sold, or offered or exposed for sale, or issued from a dispensary for medicinal purposes, as a different drug or medical preparation. This section does not refer to adulteration at all.

The liability has been fixed by this section not for the injury caused but for selling, offering or exposing for sale, or for issuing any drug or medical preparation.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine of 1,000 rupees, or both

Non-cognizable—Bailable—Triable by any Magistrate

Non-compoundable.

Section 277

Fouling water of public spring or reservoir.—

Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Main Ingredients:

1. There must be corrupting or fouling the water of any public spring or reservoir.
2. This must be done so as to render it less fit for the purpose for which it is ordinarily used. The act of doing so must be voluntary.
3. The use of the expression 'less fit' and not 'unfit' is deliberate.
4. The water may not have been rendered totally unfit, but if it has been turned less fit, The accused is guilty.
5. The water must be of a public spring or reservoir. A spring or reservoir is public whose water is used by the public; it is immaterial whether the public is entitled lawfully to use that water or not. The water may be for drinking purpose or for any other purpose. A river is not a spring or reservoir.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 months, or fine of 500 rupees, or both

Cognizable—Bailable—Triable by any Magistrate

Non compoundable.

1.3 EXTORTION- SECTION 383-389 OF IPC.

CHAPTER NO. 17 OF THE IPC

Offences against the property

- Theft
- Extortion
- Robbery
- Dacoity

Section 383 of IPC: Extortion

DEFINITION.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.

EXAMPLES:-

- (a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A.

INGREDIENTS OF EXTORTION

- ❖ FEAR OF INJURY
- ❖ INTENTIONALLY
- ❖ DISHONESTLY INDUCES
- ❖ DELIVERY TO ANY PERSON

1) FEAR OF INJURY

Section 44 of the Penal Code defines injury as any harm whatever illegally caused to any in body, mind, reputation or property.

- It is clear that the injury may also include other types of injury such as injury to the mind, reputation and damage or loss of property.
- Thus, the prosecutor must prove that the victim was put in fear of injury and that fear must exist in the victim mind at the time he surrenders the property or valuable security.
- However, if the extorter removed the property or valuable security from the victim, the element of putting a person in fear of injury and thereby inducing the delivery of the property is not fulfilled.
- **Jadunandan Singh & Anr. AIR (1941) 129**
The accused attacked the victim by force which he put the victim's thumbprint on a few pieces of blank paper. Then, he used it as valuable securities. He was charged under the offence of extortion. But the court acquitted the accused on the charge of extortion and convicted him with the offence of using criminal force.

2) INTENTIONALLY/VOLUNTARY.

Intentionally means the person intended to cause it. It can be also known as voluntarily. **Section 39** of the Penal Code provide the definition of voluntarily as a person is said to cause an effect 'voluntarily' when he causes it by means whereby he intended to cause it, or by means which at the time of employing those means, he knew or had reason to believe to be likely cause it.

- For example, A sets fire to an empty house for the purpose of robbery and thus cause the death of a person. Here, A is not intended to cause death, yet, if he knew that his action was likely to cause death, he is said to cause death voluntarily

3) DISHONESTLY INDUCES

- The act must induce someone to do a certain thing. The inducement must be done dishonestly.
- Section 24 - 'dishonestly' as whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, irrespective of whether the act causes actual wrongful loss or gain, is said to do that thing dishonestly.

This is shown in an Indian case of *R v Abdul Kader ValadBalaAbuji*, (1866) Crown Cases 45, HC Bombay,

- Where the accused had purchased from the government some rights with respect to the gathering of firewood. He misconstrued the extent of the right and demanded payment from the complainants for some wood that they had gathered.
- He was found not guilty of extortion on a number of grounds including the absence of dishonesty. Even if his belief was unfounded, he did not intend wrongful gain or loss.

4) DELIVERY TO ANY PERSON

Delivery: in order to commit extortion it is important that the property induced under threat must be delivered. However the threat may be used by one person and the property may be received by another person and both of them will be guilty of extortion. Before delivery, the offence will be attempt to extortion and once delivery is made the offence becomes extortion.

- Means, it is not necessary that the person who extorts receives the extorted property.
- The ingredient of extortion is the actual, delivery of ownership of a property by the, person who is being put in fear.
- For instance, A extorts C, and B to receive the extorted goods from C. This is possible because it has been mutually agreed by A and B. Hence, both A and B are guilty of extorting C.

ANY PERSON

Section 11 of the Penal Code, which include any company or registered association or body of persons, whether incorporated or not. • It means, if A extorts a company or registered association, then A is said to have extorted a person.

ANY PROPERTY

- Encompasses both moveable and immovable property.
- Section 22 of the Penal Code define moveable property to include corporeal property of every description, except land and things attached to the earth.
- Hence, property like cars, clothes, jewelries, cattle's and etc. come within the definition of moveable property.

VALUABLE SECURITY

Section 30

- Section 30 defines valuable security to denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released or whereby any person acknowledges that he lies under legal liability or has not a certain legal right.
- For example, A writes his name on the back of a bill of exchange. It is known as endorsement as the right to the bill will be transfer to any person who become the lawful holder. This is regards as valuable security.

This section does not draw a distinction between a stamped or Signed Document and whether it is signed by an adult or minor.

An Indian case, Emperor v Ramnarian Sahu, (1933) 15 PLT 66, 35 Cr LJ 124 where a minor was forced to make a credit note. The court held that the credit note was regarded as a valuable security.

Held accused was guilty for extortion.

GENERAL PUNISHMENT IN IPC Section 384-

Whoever commits extortion shall be punished with imprisonment with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Offence	Punishment	Cognizance	Bail	Triable
Extortion	3 Years or Fine or Both	Cognizable	Non-Bailable	Any Magistrate

GENERAL PUNISHMENT IN RPC Section 384-

Whoever commits extortion shall be punished with imprisonment with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Offence	Punishment	Cognizance	Bail	Triable
Extortion	3 Years or Fine or Both	Cognizable	Non-Bailable	Court Of Session or Judicial Magistrate of First Class or Second Class

TYPES OF EXTORTION

1. SECTION 385-Putting person in fear of injury in order to commit extortion
2. SECTION 386-Extortion by putting a person in fear of death or grievous hurt
3. SECTION 387-Putting person in fear of death or of grievous hurt, in order to commit extortion
4. SECTION 388- Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc
5. SECTION 389 - Putting person in fear or accusation of offence, in order to commit extortion.

SECTION 385-Putting person in fear of injury in order to commit extortion.

Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Offence	Punishment	Cognizance	Bail	Triable
Putting or attempting to put in fear of injury, in order to commit extortion	2 Years or Fine or Both	Cognizable	Bailable	Any Magistrate

DIFFERENCE BETWEEN IPC AND RPC

Section 385 IPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It is cognizable, bailable, Non-compoundable and triable by magistrate.

Section 385 RPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It is Non-cognizable, bailable, Non-compoundable and triable by Court of Session or Judicial Magistrate of First or Second Class.

SECTION 386 -Extortion by putting a person in fear of death or grievous hurt.

Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Offence	Punishment	Cognizance	Bail	Triable
extortion by putting a person in fear of death or grievous hurt	10 Years + Fine	Cognizable	Non-Bailable	Magistrate First Class

DIFFERENCE IPC AND RPC

Section 386 IPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.. It is cognizable, Non-bailable, Non-compoundable and triable by Magistrate of First Class.

Section 386 RPC-Offence under this section shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. It is Non-cognizable, Non-bailable, Non-compoundable and triable by Court of Session.

SECTION 387-Putting person in fear of death or of grievous hurt, in order to commit extortion

Whoever in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Offence	Punishment	Cognizance	Bail	Triable
Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion	7 Years + Fine	Cognizable	Non-Bailable	Magistrate First Class

DIFFERENCE IPC AND RPC

Section 387 IPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. It is cognizable, Non-bailable, Non-compoundable and triable by Magistrate of First Class.

Section 387 RPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. It is cognizable, Non-bailable, Non-compoundable and triable by Court of Session.

SECTION 388- Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.

Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

Offence	Punishment	Cognizance	Bail	Triable
Extortion by threat of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 Years.	10 Years + Fine.	Cognizable	Bailable	Magistrate First Class
If the offence threatened be an unnatural offence	Imprisonment for Life	Cognizable	Bailable	Magistrate First Class

DIFFERENCE IPC AND RPC

Section 388 IPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine and if the offence be one punishable under section 377 of this code may be punished with (imprisonment for life.) It is cognizable, bailable, Non-compoundable and triable by Magistrate of First Class.

Section 388 RPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine and if the offence be one punishable under section 377 of this code may be punished with (imprisonment

for life). It is cognizable, bailable, Non-compoundable and triable by Court of Session.

SECTION 389-Putting person in fear or accusation of offence, in order to commit extortion

According to section 389 of Indian penal code, Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

Offence	Punishment	Cognizance	Bail	Triable
Putting a person in fear of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 Years in order to commit extortion.	10 Years + Fine	Cognizable	Bailable	Magistrate First Class
If the offence be an unnatural offence	Imprisonment for Life	Cognizable	Bailable	Magistrate First Class

DIFFERENCE IPC AND RPC

SECTION 389 IPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine and if the offence be one punishable under section 377 of this code may be punished with (imprisonment for life.) It is cognizable, bailable, Non-compoundable and triable by Magistrate of First Class.

SECTION 389 RPC- Offence under this section shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine and if the offence be one punishable under section 377 of this code may be punished with (imprisonment for life). It is cognizable, bailable, Non-compoundable and triable by Court of Session.

1.4 ROBBERY AND DACOITY- SECTION 390-402 OF IPC.

ROBBERY- (IPC SEC. 390,392-394,401)

MEANING :- Taking of something valuable whether money or property obtained from someone, through the use of threat or physical force is considered to be robbery.

ELEMENTS OF ROBBERY-

- The taking or carrying away of money or property.
- With intent to steal it
- From victim's presence
- Through the use of force or threat of violence.

SECTION 390 ROBBERY-

- In all robbery there is either theft or extortion.
- Robbery is the aggravated form of theft or extortion.

In all robbery there is either theft or extortion-

WHEN THEFT IS ROBBERY- Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

Theft can be called as a robbery when the conditions given below are satisfied:

- When the offender voluntarily attempts to cause death;
- wrongful restraint;
- fear of instant death;
- instant wrongful restraint;
- Instant hurt.

And the above acts are done:

- While committing the theft,
- While carrying away the property acquired by theft, or
- While attempting to carry away property.

For example, if A holds B down and fraudulently takes B's money from B's clothes without B's consent. Here A has committed theft and by committing theft he has voluntarily caused wrongful restraint to B. Therefore, A has committed robbery

WHEN EXTORTION IS ROBBERY- Extortion is “**robbery**” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

For example, if A meets B and B’s child is on a road. A takes the child and threatens to fling it down a height unless B delivers his purse. B delivers his purse. Here A has extorted the purse from B by causing B to be in fear of instant hurt to the child who is present. A has therefore robbed B. However if A obtains the property by saying that your child is in my hand of my gang and he/she will be put to death unless you send us ten lakh rupees. This will amount to extortion, and punishable as such, but it would not be considered as robbery unless B is put in fear of instant death of his child.

SECTION 392 Punishment for robbery.—

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Rigorous imprisonment for 10 years and fine—Cognizable— Non-bailable — Triable by Magistrate of the first class—Non-compoundable.

Para II: Punishment—Rigorous imprisonment for 14 years, and fine— Cognizable—Non-bailable —Triable by Magistrate of the first class—Non-compoundable.

SECTION 393 Attempt to commit robbery

- Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment- Rigorous imprisonment for 7 years and fine- Cognizable-Non-bailable-Triable by Magistrate of the first class- Non compoundable.

SECTION 394 Voluntarily causing hurt in committing robbery

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

- Cognizable—Non-bailable—Triable by Magistrate of the first class-Non-compoundable.
- COMMENTS
Not only the person who actually causes hurt but an associate of his/her would equally be liable for the mischief contemplated by this section;
Shravan Dashrath Darange v. State of Maharashtra, (1997)

SECTION 401 Punishment for belonging to gang of thieves.

Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

DACOITY

(Aggravated form of Robbery)

(IPC SECTION 391,395,396,399,400,402)

- According to the dictionary of oxford, dacoity means an act of violent robbery which is committed by an armed gang.
- There is only one factor which differentiates dacoity from robbery and that is the number of offenders.
- One person can also commit a robbery and more than 1 person can also commit robbery. But when 5 or more than 5 commit a robbery it is termed as dacoity.

SECTION 391. DACOITY

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “**dacoity**”.

ESSENTIAL INGREDIENTS OF DACOITY

In order to commit dacoity, there are 3 essentials which must be there :-

1. There should be at least five or more than five persons;
2. They should conjointly commit or attempt to commit dacoity;
3. They should have dishonest intention.

SECTION 395. Punishment for dacoity

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

- **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

- *The State vs Sadhu Singh and Ors* in this case, four and one kurda Singh was involved in committing a dacoity. They all were armed with deadly weapons such as rifles and pistols. They committed a robbery at the house of Gharsiram. They injured Gharsiram, Jugalkishore, Sandal and Jugalkisore. The dacoits, in this case, tried to take a wristwatch and a shawl of one person but as they were villagers the dacoits were not able to take anything with them. When dacoits started running from the villagers they received a hot chase from them and in return dacoits shot a fire. As a result, dharma, one of the villagers died but the villages captured one of the dacoits. In this case, the dacoits were charged under Section 395 of the Indian Penal Code.

SECTION 396. Dacoity with murder

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

- **CLASSIFICATION OF OFFENCE**

Punishment-Death, imprisonment for life, or rigorous imprisonment for 10 years and fine-Cognizable-Non-bailable-Triable by Court of Session—Non-compoundable.

- **COMMENTS**

When prosecution failed to establish any nexus between death and commission of dacoity, charge under section 396 will fail; *Wakil Singh v. State of Bihar*, (1981)

SECTION 399. Making preparation to commit dacoity.

- Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.
- **CLASSIFICATION OF OFFENCE**
Punishment—Rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

SECTION 400. Punishment for belonging to gang of dacoits.

- Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with

imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

SECTION 402. Assembling for purpose of committing dacoity.

- Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.
- **CLASSIFICATION OF OFFENCE**
Punishment—Rigorous imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

SECTION 397. Robbery, or dacoity, with attempt to cause death or grievous hurt.

- If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.
- **CLASSIFICATION OF OFFENCE**
Punishment—Rigorous imprisonment for not less than 7 years—Cognizable— Non-bailable—Triable by Court of Session—Non-compoundable.
- **COMMENTS**
 1. An act would only fall within the mischief of this section if at the time of committing robbery or dacoity the offender-
 - a. uses any deadly weapon; or
 - b. causes grievous hurt to any person; or
 - c. attempts to cause death or grievous hurt to any person; *Shravan Dashrath v. State of Maharashtra*, (1997)
 1. There can be no quarrel that knife is a deadly weapon within the meaning of section 397;
State of Maharashtra v. Vinayak Tukaram Utekar, (1997).

Ashfaq v state : the Supreme court ruled that weapon with which the offender is armed is a deadly weapon within the meaning of this section, if it is within the vision of the victim and is capable of creating terror in the mind of the victim.

SECTION 398. Attempt to commit robbery or dacoity when armed with deadly weapon.

- If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for not less than 7 years—Cognizable— Non-bailable—Triable by Court of Session—Non-compoundable.

Basis	THEFT	EXTORTION	ROBBERY	DACOITY
Defined	U/S. 378	U/S. 383	U/S. 390	U/S. 391
Subject matter	Movable Property	Movable or Immovable Property (Valuable Security)	Movable (T) or Immovable Property (E).	Movable (T) or Immovable Property (E).
Consent	Without consent	With consent by fear (No instant fear)	With consent by fear (Instant fear)	With consent by fear (Instant fear)
Min. no. of accused	One person	One person	One person	At least 5 persons or more
Element of force	No	Yes	Yes	Yes
Attempts	511	385, 387 or 389	393, 398	398
Preparation	Not punishable	Not punishable	Not punishable	Punishable u/S. 399 Assembling – punishable u/S. 402
Right of Private Defence	Available	Not available	Available	Available
Punishment(s)	U/Ss. 379 to 382	U/Ss. 384 to 389	U/Ss. 392, 394, 397, & 398	U/Ss. 395, 396, 397, 398, 400, & 401

Judgements

- Offences against the public tranquility
Tara Singh Gopi Chand vs The State on 28 November, 1950 Punjab-Haryana High Court
- Extortion
Sudha Tripathi vs The State Of Madhya Pradesh on 2 May, 2019 THE HIGH COURT OF MADHYA PRADESH M.Cr.C.11871/2019
- Robbery
Indira V/S Pathutty THE HIGH COURT OF Kerala Cr. Mc. No. 571 of 2015
- Dacoity
Shyam Behari VS State of U.P. supreme Court Of India
- Proclamation
Smt. Deeksha Puri vs State Of Haryana Punjab-Haryana High Court CRM M-359 of 2012

CHAPTER 2

CODE OF CRIMINAL PROCEDURE-1973

This code is an instance of adjective law dealing with practice and procedure. Procedure is a mere machinery, having its objective to facilitate the administration of justice, meaning thereby that procedure necessary to be undertaken for enforcement or recognition of the legal rights and liabilities of the litigating parties by Court of Law. The procedural rules are equally important as much as the rules of substantive law.

The following work is the clear and brief exposition of the important provisions of the code and gives an overview of the conduct of police under this code.

2.1 Preliminary- Section 3

Relevancy of Facts- Section- 5,6,8,9,10

Public Prosecutor- Section 24, 25A.

Power of Court- Section 26

- **SECTION 3-CONSTRUCTION OF REFERENCES.**

(1) In this Code,-

(a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires,-

(i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;

(ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(b) any reference to a Magistrate of the second class shall, in relation to an area outside a metropolitan area, be construed as a reference to a Judicial Magistrate of the second class, and, in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(c) any reference to a Magistrate of the first class shall,-

(i) in relation to a metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area,

(ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;

(d) any reference to the Chief Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area.

(2) In this Code, unless the context otherwise requires, any reference to the Court of a Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Court of the Metropolitan Magistrate for that area.

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code,-

(a) to a Magistrate of the first class, shall be construed as a reference to a Judicial Magistrate of the first class;

(b) to a Magistrate of the second class or of the third class, shall be construed as a reference to a Judicial Magistrate of the second class;

(c) to a Presidency Magistrate or Chief Presidency Magistrate, shall be construed as a reference, respectively, to a Metropolitan Magistrate or the Chief Metropolitan Magistrate;

(d) to any area which is included in a metropolitan area, as a reference to such metropolitan area, and any reference to a Magistrate of the first class or of the second class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area.

(4) Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters-

(a) which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

RELEVANCY OF FACTS- SECTION- 5,6,8,9,10

SECTION5- SAVING.

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

- **Section 6 - Classes Criminal Courts.**

Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:-

(i) Courts of Session;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

- **Section 8-Metropolitan areas.**

(1) The State Government may, by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purposes of this Code.

(2) As from the commencement of this Code, each of the Presidency towns of Bombay, Calcutta and Madras and the city of Ahmedabad shall be deemed to be declared under sub- section (1) to be a metropolitan area.

(3) The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million.

(4) Where, after an area has been declared, or deemed to have been declared to be, a metropolitan area, the population of such area falls below

one million, such area shall, on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place.

(5) Where the State Government reduces or alters, under sub- section (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place. Explanation.- In this section, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

- **Section 9.-Court of Session.**

1. The State Government shall establish a Court of Session for every sessions division.

2. Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.
3. The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.
4. The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.
5. Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.
6. The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation.- For the purposes of this Code, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government.

Section 10-Subordination of Assistant Sessions Judges.

1. All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.
2. The Sessions Judge may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges.
3. The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.

PUBLIC PROSECUTOR- SECTION 24, 25A.

- **Section 24-Public Prosecutors.**

1. For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.
2. The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.
3. For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.
4. The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.
5. No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub- section (4).
6. Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub- section (4).
7. A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.
8. The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.
9. For the purposes of sub- section (7) and sub- section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

Section 25 A- Directorate Of Prosecution

1. The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

2. A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.
3. The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.
4. Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.
5. Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (1), or as the case may be, Sub-Section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.
6. Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (3), or as the case may be, Sub-Section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under Sub-Section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.
7. The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.
8. The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.

Section 26- Courts by which offences are triable.

Subject to the other provisions of this Code,-

(a) any offence under the Indian Penal Code (45 of 1860), may be tried by-

- (i) the High Court, or
- (ii) the Court of Session, or
- (iii) any other Court by which such offence is shown in the First Schedule to be triable;

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by-

- (i) the High Court, or
- (ii) any other Court by which such offence is shown in the First Schedule to be triable.

2.2 WARRANT- SECTION 78/83, 79/84, 80/85, 81/86.

**PROCLAMATION AND ATTACHMENT- SECTION 82/87, 82(IV), 83/88, 84/89
(CENTRAL/ STATE OF J&K CODE)**

Under Central Code

SECTION 78:-

Warrant forwarded for execution outside jurisdiction

1. When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.
2. The Court issuing a warrant under sub- section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person.

Under J&K STATE CODE

Section 83

Warrant forwarded for execution outside jurisdiction

1. When a warrant is to be executed outside the local limits of the jurisdiction of Court issuing the same , such Court may , instead of directing the warrant to a police officer , forward the same by post or otherwise to any Magistrate or District Superintendent of Police within the local limits of whose jurisdiction it is to be executed.
2. The Magistrate or District Superintendent to whom such warrant is so forwarded shall endorse his name thereon , and if practicable , cause it to be executed in the manner hereinbefore provided **within the local limits of his jurisdiction.**
3. The Court issuing a warrant under sub- section (1) shall forward, along with the warrant , the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under **section 86** to decide whether bail should or should not be granted to the person.

UNDER CENTRAL CODE

SECTION 79:-

Warrant directed to police officer for execution outside jurisdiction.

1. When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.
2. Such Magistrate or police officer shall endorse his name thereon and such endorsement

shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

3. Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

SECTION 84 OF STATE CODE OF J&K. (No changes Between The Two)

Warrant directed to police officer for execution outside jurisdiction.

1. When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.
2. Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same within such limits , and the local police shall, if so required, assist such officer in executing such warrant.
3. Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of jurisdiction of the Court which issued it.

Under Central Code

SECTION 80 :- Procedure of Arrest of person against whom warrant issued.

When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall , unless the court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made , or unless the security is taken under Section 71 , be taken before such Magistrate or District Superintendent or Commissioner.

UNDER J&K STATE CODE:-

SECTION 85:- Procedure of Arrest of person against whom warrant issued.

When a warrant of arrest is executed outside the district in which it was issued , the person arrested shall , unless the court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police within the local limits of whose jurisdiction the arrest was made , or unless the security is taken under Section 76 , be taken before such Magistrate or District Superintendent .

Under Central Code

SECTION 81 :-

Procedure by Magistrate before whom such person arrested is brought.

1. The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such directions the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant: Provided further that if the offence is a non- bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub- section (2) of section 78, to release such person on bail.
2. Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.

UNDER J&K STATE CODE

SECTION 86

Procedure by Magistrate before whom such person arrested is brought.

1. Such Magistrate or District Superintendent of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such directions the Magistrate or District Superintendent shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non- bailable one, it shall subject to the provisions of section 497), be lawful for the chief judicial magistrate or where there is no chief judicial magistrate, the Additional district magistrate or the Sessions Judge of the district in which the arrest is made on consideration of the information and the documents referred to in sub- section (3) of section 83, to release such person on bail.

2. Nothing in this section shall be deemed to prevent a police officer from taking security under section 76.

PROCLAMATION AND ATTACHMENT UNDER CENTRAL CODE

SECTION 82:

Proclamation for person absconding.

1. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.
2. The proclamation shall be published as follows:-(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.
3. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

UNDER J&K STATE CODE

SECTION 86

1. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.
2. The proclamation shall be published as follows :—
 - a. it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;
 - b. it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village ; and
 - c. Copy thereof shall be affixed to some conspicuous part of the court-house.
3. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Under Central Code

SECTION 82 (IV)

Where a proclamation published under subsection (1) is in respect of a person accused of an offence punishable under Section 302 , 304 , 364 , 367 , 382 , 392 393 394 395 , 396 , 397 , 398 , 399 , 400 , 402 , 436 , 449 , 459 or 460 of the Indian Penal Code and such person fails to appear at the specified place and time required by the proclamation , the Court may , after making such inquiry as it thinks fit , pronounce him a proclaimed offender and make a declaration to that effect .

(5) The provisions of subsection (2) and (3) shall apply to a declaration made by the court under subsection (4) as they apply to the proclamation published under sub section (1)

THE ABOVE SECTION WAS NOT MENTIONED UNDER J&K STATE CODE.

UNDER CENTRAL CODE

SECTION 83:-.

Attachment of Property of person absconding.

1. The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person: Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to, be issued,-(a) is about to dispose of the whole or any part of his property, or(b) is about to remove, the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.
2. Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.
3. If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-
 - a. by seizure; or
 - b. by the appointment of a receiver; or
 - c. by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or
 - d. by all or any two of such methods, as the Court thinks fit.
4. If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district which the land is situate, and in all other cases-
 - a. by taking possession; or
 - b. by the appointment of a receiver; or
 - c. by an order in writing prohibiting the payment of rent on delivery of property to the

- proclaimed person or to any one on his behalf; or
- d. by all or any two of such methods, as the Court thinks fit.
- 5. If the property ordered to be attached consists of live- stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.
- 6. The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

UNDER J&K STATE CODE

SECTION 87

1. The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both belonging to the proclaimed person.
2. Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate [or Chief Judicial Magistrate] within whose district such property is situate.
3. If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—
 - (a) by seizure ; or
 - (b) by the appointment of receiver ; or
 - (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf ; or
 - (d) by all or any two of such methods, as the Court thinks fit.
4. If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—
 - a. by taking possession ; or
 - b. by the appointment of a receiver ; or
 - c. by an order in writing prohibiting the payment of rent or delivery property to the proclaimed person or to anyone on his behalf ;
 - d. by all or any two of such methods, as the Court think fit.
5. If the perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.
6. The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Order XL of the Code of Civil Procedure.

UNDER CENTRAL CODE

SECTION 84:-

Claims and objections to attachment

1. If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part: Provided that any claim preferred or objection made within the period allowed by this- sub- section may, in the event of the death of the claimant or objector, be continued by his legal representative.
2. Claims or objections under sub- section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub- section (2) of section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.
3. Every such claim or objection shall be inquired into by the Court in which it is preferred or made: Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.
4. Any person whose claim or objection has been disallowed in whole or in part by an order under sub- section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

SECTION 84 UNDER CENTRAL CODE WAS MENTIONED UNDER

SUB-SECTION(6-A) (onwards) OF SECTION 87 OF STATE CODE OF J&K.

SECTION 87(6-a):-

If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may, be allowed or disallowed in whole or in part :

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6-b) Claims or objections under sub-section (6-a) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate [or Chief Judicial Magistrate] in

accordance with the provisions of sub-section (2), in the Court of such Magistrate.

(6-c) Every such claim or objection shall be inquired into by the Court in which it is preferred or made :

2[Provided that if it is preferred or made in the Court of a District Magistrate, or any other Executive Magistrate, such Magistrate shall refer it to the Chief Judicial Magistrate who shall either dispose it of himself or make it over for disposal to any Judicial Magistrate of the first class subordinate to him, and such Judicial Magistrate shall have all the powers and jurisdiction in respect of such claim or objection as if the order of attachment had been issued by such Judicial Magistrate and the claim or objection had been originally preferred or made before him.]

(6-d) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6-a) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute ; but subject to the result of such suit, if any, the order shall be conclusive.

UNDER CENTRAL CODE

SECTION 85:-

Release, sale and restoration of attached property

1. If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.
2. If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 84 has been disposed under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.
3. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub- section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

UNDER J&K STATE CODE

SECTION 89

Restoration of attached property.

If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under sub-section (7) of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying there out all costs incurred in consequence of the attachment, be delivered to him.

UNDER CENTRAL CODE

SECTION 86:-

Appeal from order rejecting application for restoration of attached property.

Any person referred to in sub- section (3) of section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first- mentioned Court.

(Above section was not mentioned under J&K STATE CODE)

OTHER RULES REGARDING PROCESSES

UNDER CENTRAL CODE

SECTION 87:-Issue of warrant in lieu of, or in addition to, summons

A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

SAME WAS MENTIONED IN J&K Cr.P.C (old){no changes}.

UNDER CENTRAL CODE

SECTION 88 :-

Power to take bond for appearance

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.

SAME WAS MENTIONED IN J&K Cr.P.C (old) {no changes}.

UNDER CENTRAL CODE

SECTION 89 :- Arrest on breach of bond for appearance.

When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

SAME WAS MENTIONED IN J&K Cr.P.C (old) {no changes}.

UNDER CENTRAL CODE

SECTION 90 :-

Provisions of this Chapter generally applicable to summonses and warrants of arrest.

The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

SAME WAS MENTIONED IN J&K Cr.P.C (old){no changes}

UNDER CENTRAL CODE

SECTION 91 :-

Summons to produce document or other thing.

1. Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
2. Any person required under this section merely to produce a document or other thing

shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to

3. Nothing in this section shall be deemed-(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

SAME WAS MENTIONED IN J&K Cr.P.C (old){no changes}.

UNDER CENTRAL CODE

SECTION 92 :- Procedure as to letters and telegrams

1. If any document, parcel or thing In the custody of a postal or telegraph authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs.
2. If any such document, parcel or thing is, in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authority, as the case may be, to cause search to be made for and to detail such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub- section (1).

UNDER STATE CODE

SECTION 95

(1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, I[Chief Judicial Magistrate,] High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities as the case may be to deliver such document, parcel or thing to such person as such magistrate or Court directs.

If any such document parcel or thing is in the opinion of any other Magistrate of District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District magistrate, I[Chief Judicial Magistrate]

UNDER CENTRAL CODE

SECTION 93 :-

When search warrant may be issued

(1) (a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub- section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or (b) where such document or thing is not known to the Court to be the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

UNDER STATE CODE

SECTION 96

(1).Where any Court has reason believe that a person to whom a summons or order under section 94 or requisition under section 95, sub-section (1) has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition.

or where such document or thing is not known to the Court to be in the possession of any person.

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection. it may issue a search warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorise any Magistrate other than a District Magistrate [or Chief Judicial Magistrate] to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

3.3 Searches- Section 100/102, 101,99, 102(I,ii,iii), 103/105, 104/104, 105A, 105B, 105C, 105D, 105E, 105F, 105G, 105H, 105I, 105J, 105K, 105L (Central/ State of J&K code)

INTRODUCTION

As per the law dictionary and as observed in different judicial decisions, the term ‘search’, in the simplest language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find anything concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc., can only be carried out under proper and valid authority of law. It is also well established that search should have a nexus with the crime, it cannot be a random search.

Searches are proceedings for the collection of evidence and are therefore part of investigation u/s 2(h) . In order to recover physical evidence police must search the premises and seize inculpatory articles from persons and places. Search also means to find out the accused connected with any offence, who may have concealed itself in certain premises, hence entry into the premises to search for the accused is imperative.

A police officer or any other authorised person carrying out a procedure such as search or seizure is supposed to know the rules and acts relating to it to work effectively and efficiently. These functions requires specialized knowledge of skill and procedure. Sometimes the officer might make mistakes while applying the rules and acts relating to search, seizure and production of materials which becomes fatal for the department’s case when it comes to judicial scrutiny.

Section 99 Cr.P.C.-

Direction, etc., of search-warrants.—

The provisions of sections 38, 70, 72, 74, 77, 78 and 79 shall, so far as may be, apply to all search-warrants issued under section 93, section 94, section 95 or section 97.

(S38. Aid to person, other than police officer, executing warrant. S70. Form of warrant of arrest and duration. S72. Warrants to whom directed. S74. Warrant directed to police officer. S77. Where warrant may be executed. S78. Warrant forwarded for execution outside jurisdiction. S79. Warrant directed to police officer for execution outside jurisdiction.)

Section 101 J&K Cr.P.C.-

Direction, etc., of search-warrants.—

The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, section 99-A or section 100.

(S43. Aid to person, other than police officer, executing warrant. S75. Form of warrant of arrest and duration. S77. Warrants to whom directed. S79. Warrant directed to police officer. S82. Where warrant may be executed. S83. Warrant forwarded for execution outside jurisdiction. S84. Warrant directed to police officer for execution outside jurisdiction.)

Section 100 of Central Cr.P.C.-

Persons in charge of closed place to allow search.—

- (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
- (2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.
- (3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.
- (4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.
- (5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.
- (6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.
- (7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.
- (8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (**Omission to assist public servant when bound by law to give assistance.**)

*Subsection 4 to 8 are only available in Central Cr.p.c

Section 102 J&K Cr.P.C-

Persons in charge of closed place to allow search.—

1. Whenever any place liable to search or inspection under this Chapter is closed, any person residing in or being in charge of, such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
2. If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.
3. Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of **section 52(mode of Searching a women)** shall be observed.

Section 101 of Central Cr.P.C.-

Disposal of things found in search beyond jurisdiction.—

When, in the execution of a search-warrant at any place beyond the local jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

Section 99 J&K Cr.P.C-

Disposal of things found in search beyond jurisdiction.—

When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same any of the things for which search is made, are found, such things together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court in which case the list and things shall be immediately taken before such Magistrate and unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

Section 102 of Central Cr.P.C.-

Power of police officer to seize certain property.—

1. Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.
2. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

3. Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation,] he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:]

[Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.]

Section 550 of J&K Cr.P.C.-

Powers to police to seize property suspected to be stolen.—

Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police officer, if subordinate to the officer-in-charge of a police station, shall forthwith report the seizure to that officer.

Section 103 of Central Cr.P.C.-

Magistrate may direct search in his presence.—

Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Section 105 of J&K Cr.P.C.-

Magistrate may direct search in his presence.—

Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant

Section 104 of Central Cr.P.C.-

Power to impound document, etc., produced.—

Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

*Impound- seize and take legal custody of (something, especially a vehicle, goods, or documents) because of an infringement of a law.

Section 104 of J&K Cr.P.C.-

Power to impound document, etc., produced.—

Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

Section 105 of Central Cr.P.C.-

Reciprocal arrangements regarding processes.—

(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—

(a) a summons to an accused person, or (b) a warrant for the arrest of an accused person, or (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or (d) a search-warrant, [issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.]

(2) Where a Court in the said territories has received for service or execution—

(a) a summons to an accused person, or (b) a warrant for the arrest of an accused person, or (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or (d) a search-warrant, [issued by—

(I) a Court in any State or area in India outside the said territories;

(II) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed] as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81,

(ii) a search-warrant has been executed, the things found in the search shall, so far as possible,

be dealt with in accordance with the procedure prescribed by section 101:

[Provided that in a case where a summons or search-warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.]

*S80. Procedure on arrest of person against whom warrant issued., S81. Procedure by Magistrate before whom such person arrested is brought

*S101. Disposal of things found in search beyond jurisdiction.

Section 93-A of J&K Cr.P.C.-

Special rules regarding processes in certain cases.—

1. In this section, the expression ‘Internal Court’ means any court in the State of Jammu and Kashmir and the expression ‘External Court’ means any Court in any other part of the territory of India].
2. Where an internal Court desires that a summons to or a warrant for the arrest of, an accused person issued by it shall be executed at any place within the local limits of the jurisdiction of an external Court, it may send such summons or warrant in duplicate, by post or otherwise, to the presiding officer of that court to be served or executed; and where any such summons has been so served, the provision of section 74 shall apply in relation to such summons as if the presiding officer of the external Court to whom it is sent were a Magistrate in the territories to which this Court extends.
3. Where an internal Court has received for service or execution a summons to, or a warrant for the arrest of an accused person issued by an external Court, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another internal Court for service or execution within the local limits of its jurisdiction; and where any such warrant of arrest has been so executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 85 and 86].
4. Where an internal Court desires that—
 - (a) a summons to any person requiring him to attend and produce a document or other thing, or to produce it or
 - (b) a search warrant, issued by it shall be served or executed at any place within the local limits of the jurisdiction of an external Court, it may send such summons or warrant in duplicate by post or otherwise to the presiding officer of that Court to be served or executed.
- (5) Where an internal Court has received for service or execution—
 - (a) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(b) a search warrant, issued by an external Court, it shall cause the same to be served or executed as if it were a summons or search warrant received by it from another internal Court for service or execution within the local limits of its jurisdiction; and where any such search warrant has been so executed the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 99].

*S85. Procedure on arrest of person against whom warrant issued., S86. Procedure by Magistrate before whom such person arrested is brought

*S99. Disposal of things found in search beyond jurisdiction.

Chapter VIIA of the Code of Criminal Procedure, 1973 Specifically provide the procedure to deal with the property and person associated with a criminal matter who are lying outside the territory of India, and in a contracting state (foreign state with whom a contract and arrangements regarding the same, has been made).

The J&K Cr.P.C. Dealt only with domestic issues and as such did not have any provision relating to foreign arrangements.

Now after the passing of Jammu and Kashmir Reorganisation Act, 2019, as the Code of Criminal Procedure, 1973 extends to the U.T. of J&K so shall the provisions of this chapter be extended to the U.T.

SECTION 105 A

Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) “identifying” includes establishment of a proof that the property was derived from, or used in, the commission of an offence;

(c) “proceeds of crime” means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property;

(d) “property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime;

(e) “tracing” means determining the nature, source, disposition, movement, title or ownership of property.

SECTION 105 B

Assistance in securing transfer of persons.—

(1) Where a Court in India, in relation to a criminal matter, desires that a warrant for arrest of any person to attend or produce a document or other thing issued by it shall be executed in any place in a contracting State, it shall send such warrant in duplicate in such form to such Court, Judge or Magistrate through such authority, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Notwithstanding anything contained in this Code, if, in the course of an investigation or any inquiry into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that the attendance of a person who is in any place in a contracting State is required in connection with such investigation or inquiry and the Court is satisfied that such attendance is so required, it shall issue a summons or warrant, in duplicate, against the said person to such Court, Judge or Magistrate, in such form as the Central Government may, by notification, specify in this behalf, to cause the same to be served or executed.

(3) Where a Court in India, in relation to a criminal matter, has received a warrant for arrest of any person requiring him to attend or attend and produce a document or other thing in that Court or before any other investigating agency, issued by a Court, Judge or Magistrate in a contracting State, the same shall be executed as if it is the warrant received by it from another Court in India for execution within its local limits.

(4) Where a person transferred to a contracting State pursuant to sub-section (3) is a prisoner in India, the Court in India or the Central Government may impose such conditions as that Court or Government deems fit.

(5) Where the person transferred to India pursuant to sub-section (1) or sub-section (2) is a prisoner in a contracting State, the Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

SECTION 105 C

Assistance in relation to orders of attachment or forfeiture of property.—

(1) Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J (both inclusive).

(2) Where the Court has made an order for attachment or forfeiture of any property under sub-section (1), and such property is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.

(3) Where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J (both inclusive) or, as the case may be, any other law for the time being in force.

SECTION 105 D

Identifying unlawfully acquired property.—

(1) The Court shall, under sub-section (1), or on receipt of a letter of request under sub-section (3) of section 105C, direct any police officer not below the rank of Sub-Inspector of Police to take all steps necessary for tracing and identifying such property.

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-Section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions issued by the said Court in this behalf

SECTION 105 E

Seizure or attachment of property.—

(1) Where any officer conducting an inquiry or investigation under section 105D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made.

SECTION 105 F

Management of properties seized or forfeited under this Chapter.—

(1) The Court may appoint the District Magistrate of the area where the property is situated, or any other officer that may be nominated by the District Magistrate, to perform the functions of an Administrator of such property.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which the order has been made under sub-section (1) of section 105E or under

section 105H in such manner and subject to such conditions as may be specified by the Central Government.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

SECTION 105 G

Notice of forfeiture of property.—

(1) If as a result of the inquiry, investigation or survey under section 105D, the Court has reason to believe that all or any of such properties are proceeds of crime, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the source of income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be proceeds of crime and forfeited to the Central Government.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

SECTION 105 H

Forfeiture of property in certain cases.—

(1) The Court may, after considering the explanation, if any, to the show-cause notice issued under section 105G and the material available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are proceeds of Crime:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the Court or represent his case before it within a period of thirty days specified in the show-cause notice, the Court may proceed to record a finding under this sub-section ex parte on the basis of evidence available before it.

(2) Where the Court is satisfied that some of the properties referred to in the show-cause notice are proceeds of crime but it is not possible to identify specifically such properties, then, it shall be lawful for the Court to specify the properties which, to the best of its judgment, are proceeds of crime and record a finding accordingly under sub-section (1).

(3) Where the Court records a finding under this section to the effect that any property is proceeds of crime, such property shall stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

SECTION 105 I

Fine in lieu of forfeiture.—(1) Where the Court makes a declaration that any property stands forfeited to the Central Government under section 105H and it is a case where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the Court may, by order, revoke the declaration of forfeiture under section 105H and thereupon such property shall stand released.

SECTION 105 J

Certain transfers to be null and void.—

Where after the making of an order under subsection(1) of section 105E or the issue of a notice under section 105G, any property referred to in the said order or notice is transferred by any mode whatsoever such transfers shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 105H, then, the transfer of such property shall be deemed to be null and void

SECTION 105 K

Procedure in respect of letter of request.—

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf.

SECTION 105 L

Application of this Chapter.—

The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.]

2.4 Security for Keeping the peace and good behaviour- Section 106/106, 107/107, 108/108, 109/109, 110/110, 111/112 (Central/ State of J&K code)

INTRODUCTION

Security, for the purpose of Chapter VIII, means collateral in the form of a bond to pay a specific amount on breach of the condition of the bond. Chapter VIII of the Code of Criminal Procedure, 1973 deals with security proceedings conducted by the courts. It is not only the duty of the criminal law to bring the offender to justice but to ensure that such offences are not repeated.

Keeping this in consideration, the lawmakers have inserted **Sections 106 to 110** to empower the courts to conduct security proceedings under the Code to prevent convicted offenders and habitual offenders from reiterating such acts.

Section 106 Cr.P.C.-

Security for keeping the peace on conviction.—

(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub-section (1) are—

(a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence punishable under section 153A or section 153B or section 154 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

The important ingredients of the provision are:

Firstly, it applies to “offences under Chapter VIII of the Indian Penal Code including the offence of assault, criminal force and criminal Intimidation”

Secondly, the bond can be executed “with or without sureties” to take the guarantee in case

there is a violation of the conditions of the bond and the person escapes from justice.

Thirdly, the persons must be “convicted by a court of competent jurisdiction” after a fair trial.

Fourthly, if the “conviction is set aside in an appeal or review or otherwise, the bond executed shall be void”

Chapter VIII of IPC - OFFENCES AGAINST THE PUBLIC TRANQUILLITY

Section 106 J&K Cr.P.C.-

Security for keeping the peace on conviction.—

(1) Whenever any person accused of any offence punishable under Chapter VIII of the Ranbir Panel Code, other than an offence punishable under section 143, section 149, section 153-A or section 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence before the High Court, Court of Session, Court of Chief Judicial Magistrate or any other Judicial Magistrate of the first class.

And such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace.

Such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means with or without sureties for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) Any order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

Section 107 Cr.P.C.-

Security for keeping the peace in other cases.—

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such

jurisdiction.

Object : The objective of the provision is preventive in nature and not punitive. The section is designed “to enable the Magistrate to take measures with a view to preventing the commission of offences involving breach of peace or disturbance of public tranquillity”

In **Rajendra Singh Pathania v. State**, the court observed that the object of the provisions is “to invoke it in an emergent situation when prompt action is necessitated to deal with threatening apprehension of breach of peace.

The Executive Magistrate is the head of the police force in a district who is accountable for maintaining peace and tranquillity. Thus, “he has absolute and unqualified discretion to decide whether or not it is imperative, for maintenance of peace, to institute proceedings under **Section 107**” However, this discretion must be guided by reason and not a whim. To ensure the reasonable exercise of power under this provision the sine qua non have been obtruded by the courts:

Firstly, the Magistrate should be of “the opinion that there is sufficient ground for proceeding against the person informed against”

Secondly, the Magistrate is “bound to record the reasons for forming such opinion before issuing notice under **Section 111**”

Section 107 J&K Cr.P.C.-

Security for keeping the peace in other cases.—

(1) Whenever a District Magistrate, Sub-Divisional Magistrate or Executive Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do not any wrongful act that may probably occasional a breach of the peace, or disturb tranquillity, the Magistrate if in his opinion there is sufficient ground for proceeding may in manner hereinafter provided. Such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceeding under this section may be taken before any Magistrate empowered to proceed under sub-section (1) when either the place where the breach of the peace or disturbance is apprehended is within the local limits of such Magistrate’s jurisdiction or there is within such limits a person who is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act as aforesaid beyond such limits].

Procedure of Magistrate not empowered to act under sub-section (1).— When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if

he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

A Magistrate before whom a person is sent under sub-section (3) may in his discretion detain such person in custody pending further action by himself under this Chapter

Section 108 Cr.P.C.-

Security for good behaviour from persons disseminating seditious matters.—

- (1) When an Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,—
 - (i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,—
 - (a) any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 295A of the Indian Penal Code, or
 - (b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code,
 - (ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code,and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.
- (2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf.

The second clause of the provision provides for “taking security for the dissemination of obscene material” In the first part, it is essential that the dissemination was done intentionally whereas, for the second part, the intention is not a consideration. Any person who “makes, produces, publishes or keeps for sale, imports, export conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter” shall be included under this section. Moreover, the section does not only apply on the commission of offence but also on attempt and abetment of the same offences.

Section 108 J&K Cr.P.C.-

Security for good behaviour from persons disseminating seditious matter.—

Whenever a District Magistrate or Executive Magistrate of the first class specially empowered by the Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits either orally or in writing, or in any other manner intentionally disseminates or attempts to disseminate or in any way abets the dissemination of,—

- (a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Ranbir Penal Code ; or
- (b) any matter the publication of which is punishable under section 153-A of the Ranbir Penal Code ; or
- (c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Ranbir Penal Code ;

Such Magistrate, if in his opinion there is sufficient ground for proceeding, may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Publications Act, 1989, with reference to any matter contained in such publication except by the order or under the authority of the Government of some other or under the authority of the Government or some officer empowered by it in this behalf.

Section 109 Cr. P.C.-

Security for good behaviour from suspected persons.—When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

“Conceal presence”- While explaining the scope of the terms “conceal presence” under **Section 109**, the court in **Abdul Ghafoor v. Emperor** held that “these words are sufficiently wide to cover not only the concealment of bodily presence in a house or grove, etc. but also the concealment of appearance by wearing a mask or covering the face or disguising in any other way”

Now, in order to apply the provisions of **Section 109**, the courts have laid down two essential conditions:

- i. “The person must be taking precautions to conceal his presence, and
- ii. “The concealment must be with a view to committing a cognizable offence”

Section 109 J&K Cr. P.C.-

Security for good behaviour from Suspected persons.—

Wherever a District Magistrate, Sub-Divisional Magistrate or Executive Magistrate of the First Class receives information that there is within the local jurisdiction of such Magistrate a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, such Magistrate may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

Section 110 Cr. P.C.-

Security for good behaviour from habitual offenders.—

When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

- a. is by habit a robber, house-breaker, thief, or forger, or
- b. is by habit a receiver of stolen property knowing the same to have been stolen, or
- c. habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or
- d. habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or
- e. habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or
- f. habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

- a. the Drugs and Cosmetics Act, 1940;
- b. the Foreign Exchange Regulation Act, 1973;
- c. the Employees' Provident Fund 3[and Family Pension Fund] Act, 1952;
- d. the Prevention of Food Adulteration Act, 1954;
- e. the Essential Commodities Act, 1955;
- f. the Untouchability (Offences) Act, 1955;
- g. the Customs Act, 1962;
- h. the Foreigners Act, 1946; or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require

such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

In **Emperor v. Vijaidatta Jha**, the court averred that “the object of the section is to protect the public against hardened and habitual offenders” The information received by the police officer under this section “should not be vague and must indicate that person against whom the information is given is by habit an offender”

Section 110 J&K Cr. P.C.-

Security for good behaviour from habitual offenders.—

Whenever a District Magistrate or Sub-Divisional Magistrate or an Executive Magistrate of the first class specially empowered in this behalf by the Government receives information that any person within the local limits of his jurisdiction—

- a. is by habit a robber, house-breaker, thief or forger, or
- b. is by habit a receiver of stolen property knowing the same to have been stolen, or
- c. habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or
- d. habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Ranbir Penal Code, or under section 489-A, section 489- B, Section 489-C or section 489-D of that Code, or.
- e. habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or
- b. habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely—

- a. the Jammu and Kashmir Employees Provident Funds Act, 1961 ;
- b. the Drugs and Cosmetics Act, 1940 ;
- c. the Foreign Exchange Regulation Act, 1973 ;
- d. the Prevention of Food Adulteration Act, 1954 ;
- e. the Essential Commodities Act, 1955 ;
- f. the Protection of Civil Rights Act, 1955 ;
- g. the Customs Act, 1962 ;

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or]

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

Such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good

behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

Section 111 Cr.P.C.-

Order to be made.—

When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Section 112 J&K Cr.P.C.-

Order to be made.—

When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

2.5 Evidence in Inquiries- Section 219A.

Inquiries and Trials- Section- 306/337, 311/ 540, 311A, 320/345.

Provisions to accused person of unsound mind- Section 328, 329.

Section 357/545, 357A/545A,357B/545B,357C/545C,358

(Central/ State of J&K code)

SECTION 291 A

IDENTIFICATION REPORT OF MAGISTRATE

(1)Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Code, although such Magistrate is not called as a witness;

Provided that where such report contains a statement of any suspect or witness to which the provisions of section 21, section 32, section 33, section 155 or section 157, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), apply, such statement shall not be used under this Sub-Section except in accordance with the provisions of those sections.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject matter of the said report

SECTION 306 (CENTRAL)

Tender of pardon to accomplice

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has, accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,—(a) commit it for trial—(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

UNDER STATE CODE (OLD)

SECTION 337

Tender of pardon to accomplice

(1) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment [which may extend to seven years] or any offence under

any of the following sections of the Ranbir Penal Code, namely, sections 2[161, 165], 3[165-A], 216-A, 369, 401, 435 and 477-A, 4[a Chief Judicial Magistrate, a Sub-Divisional Magistrate or any Judicial Magistrate of the first class] may, at any stage of the investigation or enquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof :

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the 4[Chief Judicial Magistrate] shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the 4[Chief Judicial Magistrate] has been obtained to the exercise thereof.

(I-a) Every Magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

(2) Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

(2-a) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be.

1[(2-b) In every case where the offence is punishable under section 161 or section 165 or section 165-A of the Ranbir Penal Code, 1989 (XII of 1989) or sub-section (2) of section 5 of the Prevention of Corruption Act, 2006 (XIII of 2006), and where a person has accepted a tender of pardon and has been examined under sub-section (2) then notwithstanding anything contained in sub-section (2-a) the Magistrate shall, without making any further inquiry, send the case for trial to the Court of the Special Judge appointed under the Criminal Law Amendment Act, 1958.]

(3) Such person, unless he is already on bail, shall be detained in custody until the termination of the trial

SECTION 311

Power to Summon Material Witness , or examine person present

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a

witness, or. recall and re- examine any person already examined; and the Court shall summon and examine or recall and re- examine any such person if his evidence appears to it to be essential to the just decision of the case

UNDER STATE CODE(OLD)

SECTION 540

Power to summon material witness, or examine person present.—

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case

SECTION 311A (CENTRAL)

Power of Magistrate to order person to give specimen signature or handwriting

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting;

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

SECTION 320 (CENTRAL)

COMPOUNDING OF OFFENCES

1. The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:

Offence	IPC Section	Responsibility
1	2	3
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Voluntarily causing hurt.	323	The person to whom the hurt is caused.
Voluntarily causing hurt on provocation.	334	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341 , 342	The person restrained or confined.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining a person for ten days or more.	344	Ditto.
Wrongfully confining a person in secret.	346	Ditto.
Assault or use of criminal force.	351 , 352 , 353	The person assaulted or to whom criminal force is used.
Theft.	379	The owner of the property stolen.
Disonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust by a carrier, wharfinger, etc.	407	The owner of the property in respect of which the breach of trust has been committed.
Disonestly receiving stolen property knowing it to be stolen.	411	The owner of the property stolen.

Assisting in the concealment or disposal of stolen property, knowing it to be stolen.	413	Ditto.
Cheating.	417	The person cheated.
Cheating by personation.	419	Ditto.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426 , 427	The person to whom the loss or damage is caused.
Mischief by killing or maiming animal.	428	The owner of the animal.
Mischief by killing or maiming cattle, etc.	429	The owner of the cattle or animal.
Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person.	430	The person to whom the loss or damage is caused.
Criminal trespass.	447	The person in possession of the property trespassed upon.
House-trespass.	448	Ditto.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.

Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	Ditto.
Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark.	486	Ditto.
Criminal breach of contract of service.	491	The person with whom the offender has contracted.
Adultery.	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	The husband of the woman and the woman.
Defamation, except such cases as are specified against section 500 of the Indian Penal Code (45 of 1860) in column 1 of the Table under sub-section (2).	500	The person defamed.
Printing or engraving matter.	501	Ditto.
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	Ditto.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation.	506	The person intimidated.
Inducing person to believe himself an object of divine displeasure.	508	The person induced.

2. The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:

Offence	IPC Section	Compoundable By
1	2	3
Causing miscarriage.	312	The woman to whom miscarriage is caused.
Voluntarily causing grievous hurt.	322	The person to whom hurt is caused.
Causing hurt by doing an act so rashly and negligently as to safety of others.	331	None.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	334	None.
Assault or criminal force in attempting wrongfully to confine a person.	317	The person assaulted or to whom the force was used.
Theft, by clerk or servant of property in possession of master.	381	The owner of the property stolen.
Criminal breach of trust	405	The owner of property in respect of which breach of trust has been committed.
Criminal breach of trust by a clerk or servant.	408	The owner of the property in respect of which the breach of trust has been committed.
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	413	The person cheated.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	The person cheated.
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the Public Prosecutor.	500	The person defamed.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon.

3. When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under section [34](#) or [149](#) of the Indian Penal Code, may be compounded in like manner.

4. —When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence.

When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court compound such offence.

5. When the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the Court to

which he is committed, or, as the case may be, before which the appeal is to be heard.

6. A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

7. No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

8. The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

9. No offence shall be compounded except as provided by this section.

SECTION 345(CONTD. ON NEXT SLIDES)

Compounding offences(STATE CODE)

The offences punishable under the sections of the Ranbir Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table :—

Offence	Sections of the Ranbir Penal Code applicable	Persons by whom offence may be compounded	Offence	Sections of the Ranbir Penal Code applicable	Persons by whom offence may be compounded
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.		The person whose religious feelings are intended to be wounded.	Defamation.	500	The person defamed.
Causing hurt	323, 334	The person to whom the hurt is caused.	Printing or engraving matter, knowing it to be defamatory.	501	
Wrongfully restraining, for confining any person.	341, 342	The person restrained or confined.	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.		
Assault or use of criminal force.	352, 355	The person assaulted or to whom criminal force is used.	Insult intended to provoke a breach of the peace.	504	The person insulted.
Unlawful compulsory labour.	374	The person compelled to labour.	Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.	Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.
Criminal trespass.	447	The person in possession of the property trespassed upon.	(2) The offences punishable under the sections of the Ranbir Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table :—		
House-trespass.	448		[Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.	Voluntarily causing grievous hurt.	325	"
Adultery.	497	The husband of the woman.	Voluntarily causing grievous hurt on grave and sudden provocations.	335	"
Enticing or taking away or detaining with criminal intent a married woman.	498				

1. Substituted by Act XLII of 1968 for the former table.

Offence	Sections of the Ranbir Penal Code applicable	Persons by whom offence may be compounded
Causing hurt by doing an act so trivially, negligently as to endanger human life or the personal safety of others.	324	The person to whom hurt is caused.
Causing grievous hurt by doing an act so trivially and negligently as to endanger human life or the personal safety of others.	336	-
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining for ten or more days.	344	The person confined.
Wrongfully confining a person in secret.	346	-
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Theft where the value of property stolen does not exceed two hundred and fifty rupees.	379	The owner of the property stolen.
Theft by clerk or servant of property in possession of master, where the value of the property stolen does not exceed two hundred and fifty rupees.	381	-
Debauched misappropriation of property.	403	The owner of the property misappropriated.

Offence	Sections of the Ranbir Penal Code applicable	Persons by whom offence may be compounded
Fraudulent execution of deed or transfer containing false statement of consideration.	423	The person affected thereby
Fraudulent removal or concealment of property.	424	-
Mischief by killing or maiming animal of the value of ten rupees or upwards.	426	The owner of the animal.
Mischief by killing or maiming cattle etc. of any value or any other animal of the value of fifty rupees or upwards.	429	The owner of the cattle or animal.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	462	The person to whom loss or injury is caused by such use.
Counterfeiting trade or property mark used by another.	463	The person whose trade or property mark is counterfeited.

Offence	Sections of the Ranbir Penal Code applicable	Persons by whom offence may be compounded
Criminal breach of trust, where the value of the property does not exceed two hundred and fifty rupees.	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger, etc., where the value of the property does not exceed two hundred and fifty rupees.	407	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a clerk or servant, where the value of property does not exceed two hundred and fifty rupees.	408	-
Cheating.	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	The person cheated.
Cheating by personation.	419	-
Cheating and dishonestly inducing delivery of property or the making, valuable security.	420	-
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing them being made available for his creditors a debt or demand due to the offender.	422	-

Offence	Sections of the Ranbir Penal Code applicable	Persons by whom offence may be compounded
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	The person whose trade or property mark is counterfeited.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object tending to insult the modesty of a woman or intruding upon the privacy of woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon.

(7) When any offence is compoundable under this section, the abettment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(14) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(15) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(15-4) The High Court acting in the exercise of its powers of revision under section 439 may allow any person to compound any offence which he is competent to compound under this section.

(16) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(7) **No offence shall be compounded except as provided by this section.**

PROVISIONS TO ACCUSED PERSON OF UNSOUND MIND

SECTION 328 (CENTRAL CODE)

Procedure in case of accused being lunatic.

(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defense, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

(3) If such Magistrate is of opinion that the person referred to in sub- section (1) is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings.

UNDER STATE CODE (OLD)

SECTION 464

Procedure in case of accused being lunatic

1) 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 Chief Medical Officer of the Province or such other medical officer as 1[the Government] direct, and thereupon shall examine such Chief Medical Officer or other officer as a witness, and shall reduce the examination to writing.

(1-a) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466.

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

SECTION 329

Procedure in case of person of unsound mind tried before court.

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness

and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.

UNDER STATE CODE (OLD)

SECTION 465

Procedure in case of person of unsound mind tried before Court.

(1) If any person committed for trial before a Court of Session or the High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence the Court 2[xxx] shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Court is satisfied of the fact, the Judge shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

SECTION 357

ORDER TO PAY COMPENSATION

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

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

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented,

before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

J&K STATE CODE

SECTION 545

Power of Court to pay expenses or compensation out of fine

(1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal revision or otherwise a sentence of fine, or 2[a sentence (including a sentence of death) of which fine forms a part] the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

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

u(b) in the payment to any person of compensation for any loss .or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court ;

3(bb) when any person is convicted of any offence far having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1977, entitled to recover damages from the person sentenced for the loss resulting to them from such death] ;

(c) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payments shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when

passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision].

UNDER CENTRAL CODE

SECTION 357A

VICTIM COMPENSATION SCHEME

1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.
2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)
3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

UNDER J&K STATE CODE

SECTION 545A

VICTIM COMPENSATION SCHEME

- (1) The Government may prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the

crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 545 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Service Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub- section (4), the State or the District Legal Service Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Service Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first- aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the Police Station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit].

UNDER CENTRAL CODE

SECTION 357 B

COMPENSATION TO BE IN ADDITION TO FINE UNDER SECTION 326 A OR 376 D OF INDIAN PENAL CODE

The compensation payable by the State Government under section [357A](#) shall be in addition to the payment of fine to the victim under section [326A](#), section¹ [376AB](#), section [376D](#), section [376DA](#) and section [376DB](#) of the Indian Penal Code.

UNDER J&K STATE CODE

SECTION 545B

Compensation to be in addition to fine under section 326A or section 376D of the Ranbir Penal Code.

Compensation payable by the State Government under section 545B shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Ranbir Penal Code.

UNDER CENTRAL CODE

SECTION 357 C

TREATMENT OF VICTIMS

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section [326A](#), [376](#), [376A](#), [376AB](#), [376B](#), [376C](#), [376D](#), [376DA](#), [376DB](#) or section [376E](#) of the Indian Penal Code, and shall immediately inform the police of such incident¹

UNDER J&K STATE CODE

SECTION 545C

TREATMENT OF VICTIMS

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section [326A](#), [376](#), [376A](#), [376B](#), [376C](#), [376D](#) or [376E](#) of the Ranbir Penal Code and shall immediately inform the police of such incident.

*Explanation:—*The expression “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of victims during convalescence or of victims requiring medical attention or rehabilitation or medical examination or pathological tests].

UNDER CENTRAL CODE

SECTION 358

Compensation to persons groundlessly arrested.

(1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

UNDER J&K STATE CODE

SECTION 553 Omitted

2.6- Provision to Bail- Section 433A, 436/496, 436A/496D, 437/497, 437A, 439/498, 439A, 441/499, 441A, 442/500, 444/502, 446A. of Cr.P.C. (Central/ State of J&K code)

Commutation of Sentences (Section 433 & 433 A CrPC)

And Provisions To Bail (Section 436 to Section 446 CrPC)

Section 433 of Cr.P.C:

Power to commute sentence.—

- a. The appropriate Government may, without the consent of the person sentenced, commute—
 - a. a sentence of death, for any other punishment provided by the Indian Penal Code;
 - b. a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
 - c. a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;
 - d. a sentence of simple imprisonment, for fine.

Application Of Section 433: This section applies to prisoners undergoing imprisonment for life who (1) have been sentenced for an offence punishable with death or life, or (2) to prisoners who have been sentenced to death by Court but whose death sentence has been commuted to imprisonment for life. Such prisoners cannot be released by remission of their sentences unless they have undergone imprisonment for at least fourteen years in jail.

Object: The object of inserting the new Section 433-A is to make sure that the power of remission of whole or any part of sentence under Section 432 is not misused by the Government and the murderers and dangerous offenders who are sentenced to life imprisonment are not allowed to be set free only after a few days or few years imprisonment in jail.

The provision of mandatory requirement of undergoing at least fourteen years imprisonment by the life convicts, therefore, seems to be an effective restraint on unbridled power of the Government to release lifers on remission.

It must, however, be clarified that the requirement of at least 14 years' imprisonment in jail for a life convict as contemplated in Section 433-A does not in any way affect the pardoning power of the Head of the Executive Government conferred on him by Article 72 or Article 161 of the Constitution and the President and the Governor of the State may commute or remit the sentence under these constitutional provisions on the advice of their respective Council of Ministers.

Section 402 of J&K CrPC:

Power to commute punishment.—(1) The Governor may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it :—

death, life imprisonment, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Ranbir Penal Code.

* Article 72 & article 161 pardoning power of President and Governor respectively

Section 433A of Cr.P.C:

Restriction on powers of remission or commutation in certain cases.—

Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

Even with remissions earned, sentence of life imprisonment cannot be reduced to below fourteen years. While Sections 432 and 433 of Cr P.C. empower the appropriate Government to suspend, remit or commute sentences including a sentence of death and life imprisonment, Section 433-A imposes a fetter that life convict cannot be released from prison unless he has served at least 14 years of imprisonment.

Chapter XXXIII of Cr.P.C

PROVISIONS AS TO BAIL AND BONDS

Introduction:

In general, the term bail means the temporary release of an accused person on a temporary basis. As the term bail has been derived from the French word bailer which means to deliver or to give. The term bail has been used for a long time. As defined in the oxford dictionary bail is the absolution of an accused person temporarily awaiting the trial or a sum of money is lodged by the accused person as a guarantee for his appearance in the court.

The provisions regarding the bail and bonds have been specified from section 436 to 450 of the Criminal Procedure Code. These provisions envisaged in the code gives the brief regarding the provisions of the bail.

The concept of bail is that it acts as security lodged by the accused person on the basis of which he can be released on a temporary basis but needs to appear in court whenever required by the court. The process of bail takes place while the trial of the accused person is still pending. Generally, a person seeks this option in order to get himself released from the police custody.

Section 436 of Cr.P.C:

In what cases bail to be taken.—

(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Explanation.—Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso:

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 or section 446A.

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

Main Ingredients:

1. The person shall be an accused of a bail able offence;
2. Should have been arrested or detained without a warrant;
3. Is prepared to furnish a surety either to the investigating officer or to the court, that he will not abscond himself from the course of justice;

The application of bail can be made at any time either to the officer in charge under whose custody the accused/detainee is or at any stage of proceeding before the court.

Section 496 of J&K Cr.P.C.

In what cases bail to be taken.—

1. When any person other than a person accused of a non-bail able offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail :

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance

as hereinafter provided :

Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107 sub-section (4), or section 117, subsection (3).

2. Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 514.

Section 436A of Cr.P.C:

Maximum period for which an under-trial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

Ingredients:

1. Person accused of an offence, not being an offence which attracts death punishment;
2. Has undergone detention up to one-half of the maximum period of imprisonment specified for the offence charged with, has a right to be released on personal bond with or without sureties by the court.

Section 497-D of J&K Cr.P.C:

Maximum period for which an under-trial prisoner can be detained.—Where a person has during the period of investigation, inquiry or trial under this Code or an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under the law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties :

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded in the writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of personal bond with or without sureties :

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than maximum period of imprisonment provided for said offence under the law.

Explanation:—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded].

Section 437 of Cr.P.C:

When bail may be taken in case of non-bailable offence.—(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2). If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court, on the execution by him of a

bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,—

- (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,
 - (b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
 - (c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.]
- (4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.
- (5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.
- (6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.
- (7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

Section 497 of J&K Cr.P.C;

When bail may be taken in case of non-bail able offence.—

(1) When any person accused of or suspected of the commission of any non-bail able offence is arrested or detained without warrant by an officer incharge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there

appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life :

Provided that the Court may direct that any person under the age of sixteen years of any woman or any sick or infirm person accused of such an offence be released on bail :

Provided further that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and given an undertaking that he shall comply with such directions as may be given by the Court.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bail able offence, but that there are sufficient grounds for further inquiry into his guilt the accused shall, pending such inquiry be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(2-a) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the State Ranbir Penal Code, 1989, or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court may impose, any condition which the Court considers necessary—

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter ; or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused, or of the commission of which he is suspected ; or

(c) otherwise in the interests of justice.]

(3) An officer or a Court releasing any person on bail under subsection (1) or sub-section (2) shall record in writing his or its reasons for so doing.

[(3-a) If, in any case triable by a Magistrate, the trial of a person accused of any non-bail able offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing the Magistrate otherwise directs.]

(4) If, at any time after the conclusion of the trial of a person accused of a non-bail able offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) The High Court or Court of Session and, in the case of a person released by itself, any other

Court may cause any person who has been released under this section to be arrested and may commit him to custody.

Section 437A of Cr.P.C;

Bail to require accused to appear before next appellate Court.—

- (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.
- (2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply.]

Section 439 of Cr.P.C;

Special powers of High Court or Court of Session regarding bail.—

(1) A High Court or Court of Session may direct,—

- (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;
- (c) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

- (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

Section 498 of J&K Cr.P.C;

Power to direct admission to bail or reduction of bail.—

- (1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstance of the case, and shall not be excessive ; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced ;
- (2) The High Court or Court of Session may cause any person who has been admitted to

bail under sub-section (1) to be arrested and may commit him to custody.

Section 439A. Cr.P.C

Power to grant bail Notwithstanding anything contained in this Code, no person,

(a) Who being accused of or suspected of committing an offence under sections 120B, 121, 121A, 122, 123, 124A, 153A, 302, 303, 304, 307, 326, 333, 364, 365, 366, 366A, 366B, 367, 368, 376, 386, 387, 392, 394, 395, 396, 397, 399, 412, 436, 449 and 450 of the Indian Penal Code, (45 of 1860) and sections 25, 26, 27 and 28 of the Arms Act, 1959 (54 of 1959) and sections 3, 4, 5 and 6 of the Explosives Substances Act, 1908, (Act VI of 1908), is arrested or appears or is brought before a court; or

(b) Who, having any reason to believe that he may be arrested on an accusation of committing an offence as specified in clause (a) has applied to the High Court or Court of Session for a direction for his release, on bail in the event of his arrest shall be released on bail or, as the case may be, directed to be released on bail except on one or more of the following grounds, namely.

(i) That the court including the High Court or the Court of Session for reasons to be recorded in writing, is satisfied that there are reasonable grounds for believing that such person is not guilty of any offence specified in clause (a);

(ii) That such person is under the age of sixteen years or a woman or a sick or infirm person;

(iii) That the Court including the High Court or the Court of Session, for reasons to be recorded in writing, is satisfied that there are exceptional and sufficient grounds to release or direct the release of the accused on bail.”

UNDER CENTRAL CODE

SECTION 441

BOND OF ACCUSED AND SURETIES

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition, is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either, hold an inquiry itself or cause an inquiry

to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

UNDER STATE CODE

SECTION 499

BOND OF ACCUSED AND SURETIES

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

2[(3) For the purpose of determining whether the sureties are sufficient, the court may, if it so thinks fit, accept affidavits in proof of the facts contained therein relating to the sufficiency of the sureties or may make such further inquiry as it deems necessary].

UNDER CENTRAL CODE

SECTION 441 A

DECLARATION BY SURETIES

Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars

UNDER CENTRAL CODE

SECTION 442

DISCHARGE FROM CUSTODY

1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him .

2) Nothing in this section, section [436](#) or section [437](#) shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

UNDER J&K STATE CODE

SECTION 500

DISCHARGE FROM CUSTODY

(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released ; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer-in-charge of the jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

UNDER CENTRAL CODE

SECTION 444

DISCHARGE OF SURETIES

1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

UNDER J&K STATE CODE

SECTION 502

DISCHARGE OF SURETIES

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

UNDER CENTRAL CODE

SECTION 446 A

CANCELLATION OF BOND AND BAIL BOND

Without prejudice to the provisions of section [446](#), where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition—

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition;

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.

CHAPTER 4 THE INDIAN EVIDENCE ACT 1872

3.1 Presumption of documents- Section 79,80,81A,85,85A,85B,85C,88A,90A.

- Introduction

The evidence in criminal cases plays an important role in deciding the case and to bring out justice. The Indian Evidence Act accepts two forms of evidence, documentary evidence and oral evidence. According to the Indian Evidence Act, the documents which are produced for the inspection of the court are called documentary evidence. The documentary evidence is of great help and they are very reliable during the process of investigation. The documents are mainly of two types: private document and public document.

- Public Documents:

Section 74 of the Indian Evidence Act defines public documents as “**Documents forming the act or records of sovereign authority, namely Parliament, Legislative Assemblies, official bodies, tribunals, public officers, or any part of India or Commonwealth or foreign country.**” Public Documents are those documents which are authenticated by a public officer and subsequently which is made available to the public at large for reference and use. Public documents also contain statements made by the public officer in their official capacity, which acts as admissible evidence of the fact in civil matters. These documents are also known as public records as these are issued or published for public knowledge.

Example: Electoral roll, Census report, town Planning reports, Birth and death register, etc.

- **Private Documents:**

Section 75 of the Indian Evidence Act says that **all other documents other than public documents are private documents**. Private documents are those documents which are prepared between persons for their usual business transactions and communications. These documents are kept in the custody of the private persons only and are not made available to the public at large. Certified copies of the private documents are generally not considered as evidence unless there is proof of the original copy is provided.

Example: A person's ID card, gift deed, passport are all private documents.

- Section 79 to Section 90 of the Indian Evidence Act provides various presumptions as to the documents. There are certain presumptions regarding the documentary evidence in this act. According to the Indian Evidence Act, the presumption is of two types. There are certain cases in which the Court "shall presume" and in certain cases, it "may presume". The terms are defined in Section 4 of the Evidence Act. According to this Section,

"May presume" means whenever it is mentioned by this Act that the Court may presume a fact, it may either consider such fact as proved, unless and until it is disproved or may call for proof of it.

"Shall presume" means whenever it is mentioned in this Act that the Court shall presume a fact, it shall consider such fact as proved, unless and until it is disproved.

- **SECTION 79 PRESUMPTION AS TO GENUINENESS OF CERTIFIED COPIES. –**

The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer [of the Central Government or of a State Government, or by any officer [in the State of Jammu and Kashmir] who is duly authorized thereto by the central Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified held when he signed it, the official character which he claims in such paper.

- **PRINCIPLE**

Section 79 is founded upon the maxim "**omnia proesumuntur rite esse acta**" i.e., **all acts are presumed to be rightly done**. According to the section when a certified copy of an original document is produced before the court as a secondary evidence the court is bound to presume it to be genuine and it is admissible as evidence. The presumption

that the court has to draw that a certified copy of a document is genuine and also that the officer signed in his official character, is also correct. This presumption is liable to be rebutted, if the document in question is not certified copy. If anyone alleges that the certified copy is not genuine the burden of proving the same shall lie on him.

- **SECTION 80 PRESUMPTION AS TO DOCUMENTS PRODUCED AS RECORD OF EVIDENCE.** –

Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume - that the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Application

The section applies:

- (i) to the document which purports to be a record or memorandum of the evidence given by a witness in a judicial proceeding or before any official authorized by law to take such evidence, and
- (ii) to a statement or confession of an accused person taken and recorded as per law.

- **SECTION 81-A: PRESUMPTION AS TO GAZETTES IN ELECTRONIC FORMS.**

The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

Explanation.-Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

- **SECTION 85: PRESUMPTION AS TO POWERS-OF-ATTORNEY.**

The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.

Power of attorney means “Power of Attorney is a document of agency whereby the principal appoints an agent to do and execute certain acts or deeds on his behalf.”

- **Conditions for valid Power of Attorney:**

Two conditions have to be satisfied according to Section 85:

- (1) It must be executed before a Notary Public or any Court, Judge, Magistrate etc.. and
- (2) It must be authenticated by him.

- **SECTION 85-A PRESUMPTION AS TO ELECTRONIC AGREEMENTS. –**

The Court shall presume that every electronic record purporting to be an agreement containing the electronic signatures of the parties was so concluded by affixing the electronic signature of the parties.

This section specifically talks about the presumptions of the courts in India with regards to electronic agreements and says that the courts shall presume that every available electronic recording which has an electronic signature affixed to it shall be considered to have a valid evidentiary value under the Indian Evidence Act and in the eyes of the courts in India.

- **SECTION 85-B: PRESUMPTIONS AS TO ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES-**

- (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.
- (2) In any proceedings, involving secure electronic signatures the Court shall presume unless the contrary is proved that –
 - a. the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;
 - b. except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any electronic signature.

This section tells us that the court shall presume that the e-contract or documents which are being presented in front of the court have not been tampered with i.e. they are presented in their original form without anyone making any alterations in it. The secure status of such information shall be required to be maintained until a specific time. The section also tells us that once a digital signature is affixed to an agreement available online, such shall be presumed by the courts to be an acceptance of such agreements.

SECTION 85-C: PRESUMPTION AS TO ELECTRONIC SIGNATURE CERTIFICATES –

The Court shall presume, unless contrary is proved, that the information listed in a electronic signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

This section tells us that if a digital signature is affixed to a particular document then the court shall presume that such document is true and correct.

- **SECTION 88-A: PRESUMPTION AS TO ELECTRONIC**

MESSAGES –

The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the court shall not make any presumption as to the person by whom such message was sent".

Explanation : For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000.

The very purpose of this section is to define the terms ‘addressee’ and ‘originator’ concerning an e-contract. It mainly talks about the power of the court with regards to presumption of the addressee of an electronic communication. The section says that the courts shall presume the ‘addressee’ to be a person to such electronic communication has been directed by the ‘originator’. Though, as per this section, the court does not have any power with regards to the presumption of who the ‘originator’ of the thread of electronic communication is.

Addressee and originator as per IT Act:

Section 2(b) "**addressee**" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

Section 2(1)(za) "**originator**" means a person who sends, generates, stores or transmits any electronic message, or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

- **SECTION 90-A: PRESUMPTION AS TO ELECTRONIC RECORDS FIVE YEARS OLD-**

Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Explanation : Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

According to this Section, the Court presumes that when any electronic record that is above five years old and it is procured from the proper custody for investigation. It is presumed that the digital signature corresponds to the particular person whose custody the record is or the signature belongs to the person who has authorized it. The term proper custody means that the electronic record is with the care of the person and in a place where it would naturally be. It is also mentioned in the Section that no custody is improper if it is proved that the custody is of legitimate origin in the particular case to render such origin possible.

INFERENCE

- The above Sections regarding presumptions is a very important part of the Indian Evidence Act as they help in the investigation. The presumptions make the investigation easier and fast. The Court has to follow all the presumptions and it can only change its notion on presumptions only when it is necessary. The documents have a lot of evidentiary value and it is important to investigate them properly and also save the Court's valuable time at the same time. Thus the presumptions regarding the documents are a very essential part of the Indian Evidence Act.

CONCLUSION

As a law enforcement officer, it is the fundamental duty of the police to serve the mankind, to safeguard lives and property, to protect the innocent against the deception, the weak against oppression or intimidation and the peaceful against violence and disorder and to respect the constitutional right of all men to liberty, equality and justice.

The most important traditional function of the Police is to deal with a criminal in an action; this function requires detection and investigation of crime, arrest of the offenders and the collection of evidences against those who are prosecuted in the court of law.

According to the Preamble of the Police Act 1861, "the police officer is n instrument for the prevention and detection of crime. If any person is in trouble or if he is having a threat to his life he always remember the protector of our rights i.e. Police.

The criminal justice system is composed of three primary and discernible components: police, courts, and corrections. These components are sometimes referred to as *subsystems*. From this perspective, the components of the criminal justice system are seen as interrelated, interdependent, and striving to achieve a unified goal. This view of criminal justice often focuses on how cases flow through the system, causing ripple effects as cases move from one component to the next. The actions of police officers on the streets, for example, affect the

workload of courts, and the decisions of judges in courtrooms affect the operation of jails and prisons.

Police holds a special place in the criminal justice system. Not only do the activities of law enforcement officers affect the operations of the entire criminal justice system, but police are said to be the **“gate keepers”** of the system. They are usually the first to make contact with accused offenders and are in a position to make some very important decisions about what will happen to those individuals. Perhaps the most frequent decision that a police officer makes is **to initiate an alleged offender's journey through the maze of criminal justice.**