THE CODE OF CRIMINAL PROCEDURE

[INDIA ACT V, 1898.]

(1ST JULY, 1898.)

[Amendment : 20.01.2016]

PART I

Preliminary

CHAPTER I

Extent.

1. This Act extends to the whole of the Union of Myanmar; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now 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.

2-3. * * * *

Definitions.

4. (1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:-

“Bailable offence.” “Non-bailable offence.”

(a) “bailable offence” means an offence shown as bailable in the second schedule, or which is made bailable by any other law, for the time being in force; and “non-bailable offence” means any other offence:

Provided that the President of the Union may, by notification declare that an offence punishable under section 188 or section 506 of the Penal Code, when committed in any area specified in the notification, shall be non-bailable.

(b) * * * *

“Charge”

(c) “charge” includes any head of charge when the charge contains more heads than one:

(d) * * * *

"Clerk of the Court."

(e) "Clerk of the Court" means the Registrar of the District Court appointed under the Courts Act, 1945, and includes any officer specially appointed by the Chief Justice of the High Court to discharge the functions given by this Code to the Clerk of the Court.

"Cognizable offence." "Cognizable case."

(f) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant:

Provided that the President of the Union may, by notification declare that any offence punishable under sections 186, 188, 189, 190, 228, 295A, 298, 505, 506, or 507 of the Penal Code, when committed in any area specified in the notification, shall be cognizable.

"Commissioner of police."

(g) "Commissioner of Police" includes a Deputy Commissioner of Police;

"Complaint."

(h) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police-officer:

(i) * * * *

(j) * * * *

"Inquiry."

(k) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court;

"Investigation."

(l) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf:

"Judicial Proceeding."

(m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath:

"Non-cognizable offence." "Non-cognizable case."

(n) “non-cognizable offence” means an offence for, and “non-cognizable case” means a case in, which a police–officer may not arrest without warrant:

“Offence.”

(o) “offence” means any act or omission made punishable by any law for the time being in force: it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act:

“Officer in charge of a police-station.”

(p) “officer in charge of a police-station” includes, when the officer in charge of the police–station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the President of the Union so directs, any other police-officer so present:

“Place.”

(q) “ place” includes also a house, building, tent and vessel:

“Pleader.”

(r) “pleader,” used with reference to any proceeding in any Court means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate of the High Court so authorized, and (2) any other person appointed with the permission of the Court to act in such proceeding:

“Police Station.”

(s) “police-station” means any post or place declared, generally or specially, by the President of the Union to be a police-station, and includes any local area specified by the President of the Union in this behalf:

(ss) * * * *

“Public Prosecutor.”

(t) “Public Prosecutor” means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of [the State] in the High Court in the exercise of its original criminal jurisdiction:

“Sub-division.”

(u) “ sub-division” means a sub-division of a district:

“ Summons-case.”

(v) “summons–case” means a case relating to an offence, and not being a warrant- case; and

“Warrant-case.”

(w) “warrant-case” means a case relating to an offence punishable with death, transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term exceeding six months as provided in the relevant Law:

(x) “transportation for life” means the imprisonment for a term of twenty years:

(y) “Court of Session” in this Code means a Court of the Self-Administered Division or a Court of the Self-Administered Zone or a District Court; and

(z) “Magistrate” means any judge who is empowered by the Code of Criminal Procedure to take evidence and pronounce a judgement in any criminal proceeding.

Words referring to acts. Words to have same meaning as in Penal Code.

(2) Words which refer to acts done extend also to illegal omissions; and all words and expressions used herein and defined in the Penal Code and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

<Amendment 20.01.2016>

Trial of offences under Penal Code.

5. (1) All offences under the Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

Trial of offences against other laws.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

PART II

Constitution and Powers of Criminal Courts and Offices

CHAPTER II

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES

A.- Classes of Criminal Courts

6. Besides the Supreme Court of the Union and Courts constituted under any law other than this Code for the time being in force, there shall be three classes of criminal Courts in the Republic of the Union of Myanmar, namely:-

I.- High Courts of the Region or High Courts of the State:

II.- Courts of the Self-Administered Division or Courts of the Self-Administered Zone or District Courts:

III.- Township Courts.

<Amendment 20.01.2016>

B.- Territorial Divisions

Sessions divisions and districts.

7. (1) The Union of Myanmar shall consist of sessions divisions: and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

Power to alter divisions and districts.

(2) The President of the Union may alter the limits or the number of such divisions and districts.

Existing divisions and districts maintained till altered.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

Power to divide districts into sub-divisions.

8. (1) The President of the Union may divide any district into sub-divisions, or make any portion of any such district a sub-division and may alter the limits of any sub-division.

Existing sub-divisions maintained.

(2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.- Courts and Offices

Court of Session.

9. (1) The President of the Union shall establish a Court of Session for every sessions division, and appoint a judge of such Court.

(2) The President of the Union may, by general or special order in the Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order is made, the Courts of Sessions shall hold their sittings as heretofore.

(3) The President of the Union may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A Sessions Judge of one sessions division may be appointed by the President of the Union 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 either division as the President of the Union may direct.

District Magistrate.

10. (1) In every district the President of the Union shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The President of the Union may appoint any Magistrate of the first class to be an Additional District Magistrate, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force, as the President of the Union may direct.

(3) For the purposes of section 192, sub-section (1), 407, sub-section (2), and 528, sub-sections (2) and (3), such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.

Officers temporarily suceeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the President of the Union, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

12. (1) The President of the Union may appoint as many persons as he thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district; and the President of the Union or the District Magistrate, subject to the control of the President of the Union, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

(3) Notwithstanding anything contained in any other law, the appointment of every person as an Honorary Magistrate made prior to the commencement of the Code of Criminal Procedure

(Amendment) Act, 1947, shall be deemed to have been made under sub-section (1) and for a period of three years only, to be reckoned from the date on which he was so appointed.

Power to put Magistrate in charge of sub-division.

13. (1) The President of the Union may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-divisional Magistrate.

Delegation of powers to District Magistrate.

(3) The President of the Union may delegate his powers under this section to the District Magistrate.

Special Magistrates.

14. (1) The President of the Union may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the President of the Union may by general or special order direct.

(3) The President of the Union may delegate, with such limitations as he thinks fit, to any [District Magistrate] the powers conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

Benches of Magistrates.

15. (1) The President of the Union may direct any two or more Magistrates in any place to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the President of the Union thinks fit.

Powers exercisable by Bench in absence of special direction.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is

present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Power to frame rules for guidance of Benches.

16. The President of the Union may, or, subject to the control of the President of the Union, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:-

(a) the classes of cases to be tried;

(b) the times and places of sitting;

(c) the constitution of the Bench for conducting trials;

(d) the mode of settling differences of opinion which may arise between the Magistrates in session.

Subordination of Magistrates and Benches to District Magistrate;

17. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches consituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches; and

to Sub-divisional Magistrate.

(2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

18-21. * * * *

E.- Justices of the Peace

22. * * * *

23-27. * * * *

CHAPTER III

POWERS OF COURTS

A.-Description of Offences Cognizable by each Court.

28. Subject to the other provisions of this Code, any offence under the Penal Code may be tried-

(a) by the Supreme Court of the Union, or

(b) by a High Court of the Region or a High Court of the State, or

(c) by a Court of the Self-Administered Division or a Court of the Self-Administered Zone or a District Court, or

(d) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

<Amendment 20.01.2016>

Offences under other laws.

29. (1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned. it may be tried by a High Court of the Region or a High Court of the State or, subject as aforesaid, by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

<Amendment 20.01.2016>

29A. * * * *

29B. * * * *

Offences not punishable with death.

30. The President of the Union may [* * * *] invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death.

B.- Sentences which may be passed by Courts of various Classes.

Sentences which High Court and Sessions Judges may pass.

31. (1) The Supreme Court of the Union may pass any sentence authorized by law.

(2) A High Court of the Region or a High Court of the State or a District Court may pass any sentence authorized by law; but any sentence of death passed by any such Court shall be subject to confirmation by the Supreme Court of the Union.

(3) Repeal

<Amendment 20.01.2016>

Sentences which Magistrates may pass.

32. (1) The Courts of Judges may pass the following sentences, namely:-

(a)	Courts of Magistrates of the first class:	Imprisonment for a term not exceeding three years, including such solitary confinement as is authorized by law; Fine not exceeding one hundred thousand kyats.
(b)	Courts of Magistrates of the second class:	Imprisonment for a term not exceeding one year, including such solitary confinement as is authorized by law; Fine not exceeding fifty thousand kyats.
(c)	Courts of Magistrates of the third class:	Imprisonment for a term not exceeding three month; Fine not exceeding thirty thousand kyats.

(2) The Court of any Magistrate may pass any lawful sentence combining any of the sentences which it is authorized by law to pass.

<Amendment 20.01.2016>

Power of Magistrates to sentence to imprisonment in default of fine.

33. (1) The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default:

Proviso as to certain cases.

Provided that-

(a) the term is not in excess of the Magistrate's powers under this Code;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

34. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of imprisonment for a term of twenty years for a term exceeding seven years.

<Amendment 20.01.2016>

34A. * * * *

Sentence in cases of conviction of several offences at one trial.

35. (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Penal Code, sentence him for such offences to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment of transportation, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum trem of punishment.

Provided as follows:-

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

C.- Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their “ordinary powers.”

Additional powers conferrable on Magistrates.

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the President of the Union or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the President of the Union or the District Magistrate.

Control of District Magistrate’s investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the President of the Union.

D.- Conferment, Continuance and Cancellation of Powers.

Mode of conferring powers.

39. (1) In conferring powers under this Code the President of the Union may, by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Powers of officers appointed.

40. Whenever any person holding an office in the service of the Government who has been invested with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature within a like local area, he shall, unless the President of the Union otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

Powers may be cancelled.

41. (1) The President of the Union may withdraw all or any of the powers conferred under this Code on any person by him or by any officer subordinate to him.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III

General Provisions

CHAPTER IV

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS

Public when to assist Magistrate and police.

42. Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid,-

(a) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or, in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

Aid to person other than police-officer, executing warrant.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Public to give information of certain offences.

44. (1) Every person aware of the commission of, or of the intention of any other person to commit, an offence punishable under any of the following sections of the Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

(2) For the purposes of this section the term “offence” includes an act committed at any place out of the Union of Myanmar which would constitute an offence if committed in the Union of Myanmar.

Village headmen, landholders and others bound to report certain matters.

45. (1) Every village-headman, village police-officer, owner or occupier of land, and the agent of any such owner or occupier in charge of the management of that land, and every officer employed in the collection of revenue or rent of land on the part of Government, shall, forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may possess respecting-

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects to be, a thug, robber, escaped convict or proclaimed offender;

(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, 144, 145, 147, or 148 of the Penal Code;

(d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances, or the discovery in or near such village of any corpse or part of a corpse in circumstances which lead to a reasonable suspicion that such a death has occurred, or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;

(e) the commission of, or intention to commit, at any place out of the Union of Myanmar near such village any act which, if committed in the Union of Myanmar, would be an offence punishable under any of the following sections of the Penal Code namely, 231, 232, 233, 234, 235, 236, 237, 238, 302, 304, 382, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489A, 489B, 489C, and 489D;

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the President of the Union, has directed him to communicate information.

(2) In this section-

(i) “village” includes village-lands; and

(ii) the expression “ proclaimed offender” includes any person proclaimed as an offender by any Court or authority established or continued by the President of the Union in any part of the Union of Myanmar in respect of any act which [* * * *] would be punishable under any of the following sections of the Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

Appointment of village-headmen by District or Sub-divisional Magistrate in certain cases for purposes of this section.

(3) Subject to rules in this behalf to be made by the President of the Union, the District Magistrate or Sub-divisional Magistrate may from time to time appoint one or more persons with his or their consent to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law

CHAPTER V

OF ARREST, ESCAPE AND RETAKING

A.-Arrest generally

Arrest how made.

46. (1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with transportation for life or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law. <Amendment 20.01.2016>

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and in order to effect an entrance into such place to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after announcement of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Power to break open doors and windows for purposes of liberation.

49. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Search of arrested persons.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.-Arrest without Warrant

When police may arrest without warrant.

54. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest-

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the President of the Union;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

sixthly, any person reasonably suspected of being a deserter from [the Myanmar] Army, Navy or Air Force;

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of the Union of Myanmar which, if committed in the Union of Myanmar, would have been punishable as an offence, and for which he is, under any law relating to extradition [* * * *] or otherwise, liable to be apprehended or detained in custody in the Union of Myanmar;

eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) * * * *

Arrest of vagabonds, habitual robbers, etc.,

55. (1) Any [police-officer] may, in like manner, arrest or cause to be arrested-

(a) any person found taking precautions to conceal his presence [within the limits of the police-station to which such police-officer is attached] under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person [within the limits of the police-station to which such police-officer is attached] who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put presons in fear of injury.

(2) * * * *

Police-officer may depute subordinate to arrest without warrant.

56. An officer in charge of a police-station or any police-officer making an investigation under Chapter XIV may require any officer subordinate to him to arrest without a warrant any person who may lawfully be arrested without a warrant.

Refusal to give name and residence.

57. (1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in the Union of Myanmar, the bond shall be secured by a surety or sureties resident in the Union of Myanmar.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should be fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Pursuit of offenders into other jurisdictions.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter, pursue such person into any place in the Union of Myanmar.

Arrest by private persons and procedure on such arrest.

59. (1) Any private person may arrest any person who in his view commits an non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If

there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Person arrested to be taken before officer in charge of police-station.

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested [* * * *] before the officer in charge of a police-station.

Person arrested not to be detained more than twenty-four hours.

61. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to [the police-station, and from there to the Magistrate's Court].

Police to report apprehensions.

62. Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Discharge of person apprehended

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Offence committed in Magistrate's presence.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in the Union of Myanmar.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

CHAPTER VI

OF PROCESSES TO COMPEL APPEARANCE

A.-Summons

Form of summons.

68. (1) Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the Supreme Court of the Union may, from time to time, by rule, direct.

Summons by whom served.

(2) Such summons shall be served by a police-officer, or, subject to such rules as the President of the Union may prescribe in this behalf, by an officer of the Court issuing it or other public servant. <Amendment 20.01.2016>

Summons how served.

69. (1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in the Union of Myanmar. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult [* * * *] member of his family; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when service cannot be effected as before provided.

71. If service in the manner mentioned in sections 69 and 70 cannot be the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government or of Railway Administration.

72. (1) Where the person summoned is in the active service of the Government or of a Railway Administration, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court, under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service in such cases and when serving officer not present.

74. (1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.- Warrant of Arrest

Form of warrant of arrest.

75. (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates by any member of such Bench; and shall bear the seal of the Court.

Continuance of warrant of arrest.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Court may direct security to be taken.

76. (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state-

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(c) the time at which he is to attend before the Court.

Recognizance to be forwarded.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

77. (1) A warrant of arrest shall ordinarily be directed to one or more police-officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrants to serveral persons.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant may be directed to land-holders, etc.

78. (1) A District Magistrate or Subdivisional Magistrate may direct a warrant to any landholder, [occupier] or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, [occupier] or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land [* * * *] or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Warrant directed do police-officer.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required shall show him the warrant.

Person arrested to be brought before Court without delay.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in the Union of Myanmar.

Warrant forwarded for execution outside jurisdiction.

83. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such 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 manner hereinbefore provided within the local limits of his jurisdiction.

Warrant directed to police-officer for execution outside jurisdiction.

84. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the 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 the local limits of whose 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 the jurisdiction of the Court which issued it.

Procedure on arrest of person against whom warrant issued.

85. 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 security is taken under section 76, be taken before such Magistrate or District Superintendent.

Procedure by Magistrate before whom person arrested is brought.

86. (1) Such Magistrate or District Superintendent 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 or 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 direction, 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.

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

C.-Proclamation and Attachment

Proclamation for person absconding.

87. (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) a 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.

Attachment of property of person absconding.

88. (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize 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 moveable 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 immoveable, 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-

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) 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 liablities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure.

(6A) 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.

(6B) Claims or objections under sub-section (6A) 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 in accordance with the provisions of sub-section (2), in the Court of such Magistrate.

(6C) 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 District Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class subordinate to him.

(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) 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.

(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of 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 sub-section (6A) has been disposed of under that sub-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.

Restoration of attached property.

89. 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 nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.-Other Rules regarding Processes

Issue of warrant in lieu of. or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror [* * * *], 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.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons of 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.

Arrest on breach of bond for appearance.

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

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

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

CHAPTER VII

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED

A.- Summons to produce

Summons to produce document or other thing.

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

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Evidence Act, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

Procedure as to letters and telegrams.

95. (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, the Supreme Court of the Union or a High Court of the Region or a High Court of the State 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.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of the Commissioner of Police or any 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 or Court. <Amendment 20.01.2016>

B.- Search- warrants

When search-warrant may be issued.

96. (1) Where any Court has reason to believe that a person, to whom a summons or order under section 94 or a 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 here inafter contained.

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

Power to restrict warrant.

97. 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.

Search of house suspected to contain stolen property, forged documents, etc.

98. (1) If a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

or if a District Magistrate or a Sub-divisional Magistrate, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or

production of any obscene object such as is referred to in section 292 of the Penal Code or that any such obscene objects are kept or deposited in any place,

he may by his warrant authorize any police-officer above the rank of a constable-

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seal, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials or of any such obscene objects as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials or such obscene objects before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials or such obscene objects, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging, or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported, or exported.

(2) The provisions of this section with respect to-

(a) counterfeit coin,

(b) coin suspected to be counterfeit, and

(c) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply respectively to-

(a) pieces of metal made in contravention of the Metal Tokens Act, or brought into the Union of Myanmar in contravention of any notification for the time being in force under section 19 of the Sea Customs Act,

(b) pieces of metal suspected to have been so made or to have been so brought into the Union of Myanmar or to be intended to be issued in contravention of the former of those Acts, and

(c) instruments or materials for making pieces of metal in contravention of that Act.

Disposal of thing found in search beyond jurisdiction.

99. 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 authorizing them to be taken to such Court.

Power to declare certain publications forfeited and to issue search warrants for the same.

99A. (1) Where-

(a) any newspaper, or book as defined in the Press (Registration) Act, or

(b) any document,

wherever printed, appears to the President of the Union to contain any seditious matter [or any matter which advocates, advises or teaches the duty, necessity, desirability or propriety of overthrowing or destroying the organs of the Union or of its constituent units by force or violence] or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of [persons resident in Myanmar] or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under section 124A [or section 124B] or section 153A or section 295A of the Penal Code, the President of the Union may, by notification in the Gazette stating the grounds of his opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other document to be forfeited to[the State], and thereupon any police-officer may seize the same wherever found in the Union of Myanmar and any Magistrate may by warrant authorize any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) “document” includes also any painting, drawing or photograph, or other visible representation.

Application to a High Court of the Region or a High Court of the State to set aside order of forfeiture.

99B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to a High Court of the Region or a High Court of the State to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A.

<Amendment 20.01.2016>

Hearing by Special Bench.

99C. Every such application shall be heard and determined by a Special Bench of a High Court of the Region or a High Court of the State composed of three Judges.

<Amendment 20.01.2016>

Order of Special Bench setting aside forfeiture.

99D. (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained seditious or other matter of such a nature as is referred to in sub-section (i) of section 99A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

Evidence to prove nature or tendency of newspapers.

99E. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.

Procedure in Supreme Court of the Union.

99F. The Supreme Court of the Union shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

<Amendment 20.01.2016>

Jurisdiction barred.

99G. No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions or section 99B.

C.-Discovery of Persons wrongfully confined

Search for persons wrongfully confined.

100. If any Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D.- General Provisions relating to Searches

Direction, etc., of search-warrants.

101. 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 99A or section 100.

Persons in charge of closed place to allow search.

102. (1) Whenever any place liable to search of 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 shall be observed.

Search to be made in presence of witnesses.

103. (1) Before making a search under this Chapter, the officer or other person about to make it shall require two or more persons to attend and witness the search and may issue an order in writing to any inhabitant of the locality in which the place to be searched is situate so to do.

(2) 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.

Occupier of place searched may attend.

(3) The occupier of the place searched, or some person on his behalf, shall be permitted to attend during the search, and, if present, shall be required to sign the list prepared under sub-section (2) in token of the correctness thereof, and a copy of the said list shall be delivered to such occupier or person by the officer or other person making the search.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

(5) 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 Penal Code.

E.-Miscellaneous

Power to impound document, etc., produced.

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

Magistrate may direct search in his presence.

105. 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.

PART IV

Prevention of Offences

CHAPTER VIII

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

A.-Security for keeping the Peace on Conviction

Security for keeping the peace on conviction.

106. (1) Whenever any person accused of any offence punishable under Chapter VIII of the Penal Code, other than an offence punishable under [* * * *], section 149, [* * * *] 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 a High Court of the Region or a High

Court of the State, a Court of Session, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it 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) An order under this section may also be made by an appellate Court including a Court hearing appeals under section 407 or by a High Court of the Region or a High Court of the State when exercising its powers of revision.

<Amendment 20.01.2016>

B. -Security for keeping the Peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

107. (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class in informed 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, the 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 keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended are within the local limits of the Magistrate's jurisdiction.

Procedure of Magistrate not empowered to act under sub-section (1).

(3) 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.

(4) 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.

Security for good behaviour from persons disseminating seditious matter.

108. Whenever a District Magistrate [a Sub-divisional Magistrate]or a Magistrate of the first class specially empowered by the President of the Union 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 anywise abets the dissemination of-

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Penal Code, or (aa) any matter the publication of which is punishable under section 124B of the Penal Code, or

(b) any matter the publication of which is punishable under section 153A of the Penal Code, or

(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the 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 (Registration) Act, with reference to any matters contained in such publication, except by the order or under the authority of the President of the Union or some officer empowered by the President of the Union in this behalf.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information-

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

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 one year, as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

110. Whenever a District Magistrate or Sub-divisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the President of the Union 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 Penal Code, or under section 489A, section 489B, section 489C or section 489D of the Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, 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.

111. * * * *

Order to be made.

112. 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.

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court;

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order under section 112 to accompany summons or warrant

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112 and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information.

117. (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace in the manner hereinafter prescribed for conducting trials and recording evidence in

summons-cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant cases, except that no charge need be framed.

(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that:-

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

Order to give security.

118. (1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided-

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than or for a period longer than, that specified in the order made under section 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly, that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Discharge of person in formed against.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or if such person is not in custody, shall discharge him.

C.-Proceedings in all Cases subsequent to Order to furnish Security

Commencement of period for which security is required.

120. (1) If any person, in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2)In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

Contents of bond.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties.

122. (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond:

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1) and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing:

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

Imprisonment in default of security.

123. (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

Proceedings when to be laid before Court of Session.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the order of the District Judge; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(3A) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the District Judge under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub- sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3B) A District Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional District Judge or Deputy District Judge, and upon such transfer

such Additional District Judge or Deputy District Judge may exercise the powers of a District Judge under this section in respect of such proceedings.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the order of such Court or Magistrate.

Kind of imprisonment

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

<Amendment 20.01.2016>

Power to release persons imprisoned for failing to give security.

124. (1) Whenever the District Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts:

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The President of the Union may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.

125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

Discharge of sureties.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

Security or unexpired period of bond.

126A. When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122 or under section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX

UNLAWFUL ASSEMBLIES

Assembly to disperse on command of Magistrate or police officer.

127. (1) Any Magistrate or officer in charge of a police-station [or police-officer not below the rank of sub-inspector] may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) * * * *

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station [or police-officer not below the rank of sub-inspector] may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer, soldier, sailor or airman in [the Myanmar] Army, Navy or Air Force or a member of either of the Forces constituted by the Myanmar Territorial Force Act or the Myanmar Auxiliary Force Act, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in [the Myanmar] Army, or of any members of either of the Forces constituted by the Myanmar Territorial Force Act or the Myanmar Auxiliary Force Act, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistant with dispersing the assembly and arresting and detaining such persons.

Power of commissioned military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of [the Myanmar] Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this Chapter.

132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any criminal Court, except with the sanction of the President of the Union; and-

(a) no Magistrate or police- officer acting under this Chapter in good faith,

(b) no officer acting under section 131 in good faith,

(c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X

PUBLIC NUISANCES

Conditional order for removal of nuisance.

133. (1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated such goods or merchandise should be removed or the keeping thereof regulated, or,

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or

to remove or support such tree; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2)No order duly made by a Magistrate under this section shall be called in question in any civil Court.

Explanation- A “public place” includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Service or notification of order.

134. (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the President of the Union may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fitted for conveying the information to such person.

Person to whom order is addressed to obey or show cause.

135. The person against whom such order is made shall-

(a) perform, within the time and in the manner specified in the order, the act directed thereby; or

(b) appear in accordance with such order and show cause against the same.

Consequence of his failing to do so.

136. If such person does not perform such act or appear and show cause [* * * *] as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Penal Code, and the order shall be made absolute.

Procedure where he appears to show cause.

137. (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

138/139 * * * *

Procedure where existence of public right is denied.

139A. (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 137 [* * * *], inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 [* * * *], as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial [* * * *].

Procedure on order being made absolute.

140. (1) When an order has been made absolute under (section 136 or section 137), the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Penal Code.

Consequences of disobedience to order.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

141. * * * *

Injunction pending inquiry.

142. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may [* * * *] issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Magistrate may prohibit repetition or continuance of public nuisance.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the President of the Union or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Penal Code or any special or local law.

CHAPTER XI

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

144. (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the President of the Union or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 124, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex-parte.

(3) An order under this section may be directed to a particular individual, or to the public generally (* * * *).

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order: and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the President of the Union, by notification in the Gazette, otherwise directs.

CHAPTER XII

DISPUTES AS TO IMMOVEABLE PROPERTY

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the ground of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

Inquiry as to possession.

(4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

Party in possession to retain possession until legally evicted.

(6) If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction, and when he proceeds under the first proviso to sub-section (4) may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Power to attach subject of dispute.

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, had been appointed by any civil Court, appoint a receiver thereof,

who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure:

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

Disputes-concerning rights of use of immoveable property, etc.

147. (1) Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section (2) (whether such right be claimed as an easement or otherwise), within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he shall make an order prohibiting any interference with exercise of such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he shall make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a civil Court of competent jurisdiction.

Local inquiry.

148. (1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

Order as to costs.

(3) When any costs have been incurred by any party to a proceeding under this Chapter the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. Such costs may include any expenses incurred in respect of witnesses, and of pleaders' fees, which the Court may consider reasonable.

CHAPTER XIII

PREVENTIVE ACTION OF THE POLICE

Police to prevent cognizable offences.

149. Every police- officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any cognizable offence.

Information of design to commit such offences.

150. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the nearest police-officer to whom he is subordinate.

Arrest to prevent such offences.

151. A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Prevention of injury to public property.

152. (1) A police-officer may of his own authority interpose for the purpose of preventing and shall, to the best of his ability, prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

Inspection of weights and measures.

153. (1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V

Information to the Police and their powers to investigate

CHAPTER XIV

Information in cognizable cases.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in-charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the President of the Union may prescribe in this behalf.

Information in non-cognizable cases.

155. (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

Investigation into cognizable cases.

156. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police- officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

Procedure where congnizable offence suspected.

157. (1) If , from information received or otherwise, an officer in charge of a police- station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers, not being below such rank as the President of the Union may, by general or special order, prescribe in this behalf, to proceed to the spot to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided as follows:-

Where local investigation dispensed with.

(a) When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

Where police officer in charge sees no sufficient ground for investigation.

(b) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the President of the Union, the fact that he will not investigate the case or cause it to be investigated.

Reports under section 157 how submitted.

158. (1) Every report sent to a Magistrate under section 157 shall, if the President of the Union so directs, be submitted through such superior officer of police as the President of the Union, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

Power to hold investigation or preliminary inquiry.

159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Police officer's power to require attendance of witnesses.

160. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Examination of witnesses by police.

161. (1) Any police-officer making an investigation under this Chapter, or any police- officer not below such rank as the President of the Union may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Statements to police not to be signed; use of such statements in evidence.

162. (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used as evidence (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness, whose statement has been reduced into writing as aforesaid, is called either for the prosecution or for the defence in such inquiry or trial, any part of such statement, if duly proved, may be used, either by the defence or by the prosecution, as the case may be, for the purpose of contradicting such witness in the manner provided by section 145 of the Evidence Act, or for the purpose of impeaching the credit of such witness in the manner provided by section 155 of the Evidence Act: and when any part of such statement is so used any part thereof may also be used in the re-examination of such witness for the purpose only of explaining any matter referred to in the cross-examination.

(2) When any such statement as aforesaid has been reduced into writing the Court shall, on the request of the accused, direct that the accused be furnished with a copy thereof:

Provided that if the Court is of opinion that any part of such statement is not relevant to the subject-matter of the inquiry or trial, or that its disclosure to the accused is not essential in the interest of justice and is also inexpedient in the public interest, it shall record such opinion (but not the reason therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(3) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 27 or of clause (1) of section 32 of the Evidence Act.

No inducement to be offered.

163. (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Evidence Act, section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

Power to record statements and confessions.

164. (1) Any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the President of the Union may, if he is not a police-officer, record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him, and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:-

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was

voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Explanation.- It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Search by police-officer.

165. (1) Whenever an officer in charge of a police-station or a police-officer making an investigation considers that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police-station of which he is in charge or to which he is attached, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such thing according to the directions of the summons or order, or when such thing is not known to be in the possession of any person such officer may search, or cause search to be made for the same in any place within the limits of such police-station.

(2) Such officer shall, if practicable, conduct the search in person; but if he is unable to conduct the search in person, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched and, so far as possible, the thing for which search is to be made, and such subordinate officer shall thereupon search for such thing in such place.

(3) The provisions of this Code as to search-warrants and the general provisions as to searches contained in sections 102 and 103 shall, so far as may be, apply to a search made under this section.

When officer in charge of police- station may require another to make search.

166. (1) An officer in charge of a police-station or a police-officer [* * * *] making an investigation may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of

the commission or an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103 [* * * *],

(5) * * * *

Procedure when investigation cannot be completed in twenty-four hours.

167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation [* * * *] shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom the accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit. But the detention of such person shall not exceed in the whole 30 days where a person is accused of an offence punishable with rigorous imprisonment for a term of not less than seven years, and where a person is accused of an offence punishable with rigorous imprisonment for a term of less than seven years, the detention of such person shall not exceed 15 days in the whole. If such Magistrate has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub- divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report of investigation by subordinate police-officer.

168. When any subordinate police-officer has made any investigation under this Chapter, he shall report result of such investigation to the officer in charge of the police- station.

Release of accused when evidence deficient.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police-officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Case to be sent to Magistrate when evidence is sufficient.

170. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or [the police-officer making the investigation] that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station or [the police-officer making the investigation] forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, or when a report and relevant documentary evidence is submitted, if such property is not physically and easily produceable and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4) * ***

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

<Amendment 20.01.2016>

Complainants and witnesses not to be required to accompany police-officer

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer.

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Diary of proceedings in investigation.

172. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police- officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Evidence Act, section 161 or section 145, as the case may be, shall apply.

Report of police-officer.

173. (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall-

(a) forward to a Magistrate empowered to take congnizance of the offence on a police- report, a report in the form prescribed by the President of the Union, setting forth the names of the parties, the

nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the President of the Union, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2)Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the President of the Union by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) * * * *

Police to inquire and report on suicide. etc.

174. (1) The officer in charge of a police-station or some other police-officer specially empowered by the President of the Union in that behalf, on receiving information that a person-

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and [* * * *] shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more [* * * *] inhabitants of the neighbourhood, shall make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what maner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police- officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the President of the Union may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the President of the Union, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) * * * *

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, and any Magistrate especially empowered in this behalf by the President of the Union or the District Magistrate.

Power to summon persons.

175. (1) A police-officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

Inquiry by Magistrate into cause of death.

176. (1) When any person dies while in the custody of the police, and ,unless a first information report has been recorded under the provisions of section 154, in any other case mentioned in clauses (a), (b) and (c) of sub-section (1) of section 174, the nearest Magistrate empowered to hold inquests shall hold an inquiry into the cause of death, in addition to the investigation held by the police-officer, and in conducting such inquiry he shall have all the powers which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in the manner hereinafter prescribed for summons cases, and shall come to a finding as to the cause of death.

Power to disinter corpses

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

PART VI

Proceedings in Prosecutions

CHAPTER XV

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

A.- Place of Inquiry or Trial

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Power to order cases to be tried in different sessions divisions.

178. Notwithstanding anything contained in section 177, the President of the Union may direct that any cases or class of cases committed for trial in any district may be tried in any other local area:

Provided that such direction is not repugnant to any direction previously issued by a High Court of the Region or a High Court of the State [* * * *] under this Code, section 526.

<Amendment 20.01.2016>

Accused triable in district where act is done or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence, may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a thug or belonging to a gang of dacoits, escape from custody, etc.

181. (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

Theft.

(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was

committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

Kidnapping and abduction.

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Place of inquiry or trial where scene of offence is uncertain or not in one district only, or where offence is continuing, or consists of several acts.

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Offence committed on a journey.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

184. * * * *

A High Court of the Region or a High Court of the State to decide, in case of doubt, district where injury or trial shall take place.

185.(1) Whenever a question arises as to which of two or more Courts subordinate to a High Court of the Region or a High Court of the State ought to inquire into or try any offence, it shall be decided by a High Court of the Region or a High Court of the State.

(2) * * * *

<Amendment 20.01.2016>

Power to issue summons or warrant for offence committed beyond Local Jurisdiction, Magistrate's procedure on arrest.

186. (1) When a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the President of the Union, a Magistrate of the first class, sees reason to believe that any person within

the local limits of his jurisdiction has committed without such limits (whether within or without the Union of Myanmar) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in the Union of Myanmar, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of a High Court of the Region or a High Court of the State.

<Amendment 20.01.2016>

Procedure where warrant issued by subordinate Magistrate.

187. (1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of citizens of the Union for offences committed out of the Union of Myanmar.

188. When a citizen of the Union commits an offence at any place without and beyond the limits of the Union of Myanmar, he may be dealt with in respect of such offence as if it had been committed at any place within the Union of Myanmar at which he may be found:

Provided that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in the Union of Myanmar shall be a bar to further proceedings against him under the Myanmar

Extradition Act in respect of the same offence in any territory beyond the limits of the Union of Myanmar.

Power to direct copies of depositions and exhibits to be received in evidence.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the President of the Union may, if he thinks fit, direct that copies of depositions made or exhibits produced before [* * * *] a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B.- Conditions requisite for Initiation of Proceedings

Cognizance of offences by Magistrates.

190. (1) Except as hereinafter provided, any District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The President of the Union, or the District Magistrate subject to the general or special orders of the President of the Union, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The President of the Union may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial.

Transfer or commitment on application of accused.

191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate.

Transfer of cases by Magistrates.

192. (1) Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Cognizance of offences by Courts of Session.

193. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional District Judges and Deputy District Judges shall try such cases only as the President of the Union, by general or special order, may direct them to try, or as the District Judge of the district, by general or special order, may make over to them for trial.

<Amendment 20.01.2016>

Cognizance of offences by High Court.

194. (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any [law for the time being in force] or any other provision of this Code.

Information by Attorney-General.

(2) (a) Notwithstanding anything in this Code contained, the Attorney-General may, with the previous sanction of the President of the Union, exhibit to the High Court, against person subject to the jurisdiction of the High Court, informations for all purposes for which Attorney-General may exhibit informations on behalf of the Government in the High Court.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Attorney-General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the [State].

(d) The High Court may make rules for carrying into effect the provisions of this section.

Prosecution for contempt of lawful authority of public servants.

195. (1) No Court shall take cognizance-

(a) of any offence punishable under sections 172 to 188 of the Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate; or

Prosecution for certain offences against public justice.

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

Prosecution for certain offences relating to documents given in evidence.

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1) the term "Court" includes a civil, revenue or criminal Court, but does not include a Registrar or Sub-Registrar under the Registration Act.

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a civil and also to a revenue Court, such Court shall be deemed to be subordinate to the civil or revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

Prosecution for offences against the State and for offences relating to elections.

196. No Court shall take cognizance of any offence punishable under Chapter VI or VIB or IXA of the Penal Code (except section 127, section 171F, so far as it relates to the offence of personation, and section 171J), or punishable under section 108A, or section 153A, or section 294A of the same Code, unless upon complaint made by order of or under authority from the President of the Union or some officer empowered by the President of the Union in this behalf.

Prosecution for certain classes of criminal conspiracy.

196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Penal Code.

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order of or under authority from the President of the Union or some officer empowered by the President of the Union in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the President of the Union, or a District Magistrate empowered in this behalf by the President of the Union, has, by order in writing, consented to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary.

Preliminary inquiry in certain cases.

196B. In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).

Prosecution of Judges and public servants.

197. (1) When any person who is a Judge within the meaning of section 19 of the Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the President of the Union [or some higher authority], is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the President of the Union.

Power of President as to prosecution.

(2) The President of the Union may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Prosecution for breach of contract, defamation and offences against marriage.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code, or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf.

Prosecution for adultery or enticing a married woman.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed:

Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf.

Objection by lawful guardian to complaint by person other than person aggrieved.

199A. When, in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made, is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall

be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.

CHAPTER XVI

OF COMPLAINTS TO MAGISTRATES

Examination of complainant.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows:-

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;

(aa) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;

(b) * * * *

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognizance of the case.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Postponement for issue of process.

202. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class,

direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint;

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.

Dismissal of complaint.

203. The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under section 202, there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

CHAPTER XVII

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

Issue of process.

204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

Magistrate may dispense with personal attendance of accused.

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reasons so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT

Power to commit for trial.

206. (1) Any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, or any Magistrate (not being a Magistrate of the third class) empowered in this behalf by the President of the Union, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrate where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

208. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.

Process for production of further evidence.

(3) If the complainant or officer conducting the prosecution or the accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

When accused person to be discharged.

209. (1) When the evidence referred to in section 208, sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

When charge is to be framed.

210. (1) When, upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Charge to be explained and copy furnished to accused.

(2) As soon as such charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be give to him free of cost.

List of witnesses for defence on trial.

211. (1) When the charge has been read and explained to him, the accused shall be required to state forthwith whether he desires to give evidence on his own behalf and whether he desires to call witnesses, and the Magistrate shall warn him in the manner required by sub-section (1) of section 342.

(2) If the accused states that he desires to call witnesses, he shall be required at once to give in, orally or in writing, a list of the persons, and their occupations and addresses, whom he wishes to be summoned to give evidence on his trial.

Further list.

(3) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Court a further list of persons whom he wishes to be summoned to give evidence on such trial: provided that nothing in this sub-section shall entitle the

accused to require that any person named in such subsequent list shall be summoned and examined at such trial.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, if the accused desires to give evidence on his own behalf, take the evidence of the accused in manner hereinafter provided, and may also summon and take the evidence of witnesses named in any list given in to him under section 211.

Order of commitment.

213. (1) When the accused has declined to give evidence or to give in a list of witnesses under section 211, or when he has either stated that he desires to give evidence or has given in such list, or has both expressed his desire to give evidence and has given in such list, and the Magistrate has, if he decides so to do, taken the evidence of the accused, and of the witnesses included in such list whom he desires to examine, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be.

(2) If the Magistrate, after hearing the evidence of he accused and of the witnesses (if any) for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused, and in such case he shall record his reasons for discharging the accused.

214. * * * *

Quashing commitments under section 213.

215. A commitment once made under section 213 by a competent Magistrate, or by a civil or revenue Court under section 478, can be quashed by the High Court only, and only on a point of law.

Summons to witnesses for defence when accused is committed.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself to appear before the Court to which the accused has been committed:

Provided that [* * * *] the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Court, and such witnesses may be summoned accordingly:

Refusal to summon unnecessary witness unless deposit made.

Provided also that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice, the Magistrate may require the accused to satisfy

him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witnesses (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

Bond of complainants and witnesses.

217. (1) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

(2) If any complainant or witness refuses to attend before the Court of Sessions or High Court or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Commitment when to be notified.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the President of the Union in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge:

Charge, etc,. to be forwarded to High Court or Court of Session.

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence (* * * *) to the Clerk of the Court or other officer appointed in this behalf (* * * *).

(2) * * * *

Power to summon supplimentary witnesses.

219. (1) The committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under section 206 may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

(2) Such examination shall, if possible, be taken in the presence of the accused, and a copy of the evidence of such witnesses shall be given to the accused free of cost.

Custody of accused pending trial.

220. Until and during the trial the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant to custody.

CHAPTER XIX

OF THE CHARGE

Form Of Charges

Charge to state offence.

221. (1) Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient doeliscriptions

(2) If the law which creates the offence gives if any specific name, the offence may be described in the charge by that name only.

How stated where offence had no specific name.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge. Previous conviction when to be set out.

(6) The charge shall be written (* * * *) in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Penal Code; that it did not fall within any of the general exceptions of the same Code: and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception I, one or other of the three provisos to that exception applied to it.

(b) A is charged, under section 326 of the Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Penal Code, and that the general exception did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Penal Code; but the sections under which the offence is punishable must in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Particulars as to time, place and person.

222. (1) The Charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234:

Provided that the time included between the first and last of such dates shall not exceed one year.

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such

particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sence of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of errors.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged, under section 242 of the Penal Code, with “having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit”, the word “fraudulently” being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

Procedure on commitment without charge or with imperfect charge.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, (* * * *) the Clerk of the Court, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Illustrations

1. A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted.
2. A is charged with forging a valuable security under section 467 of the Penal Code. A charge of fabricating false evidence under section 193 may be added.
3. A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Penal Code cannot be added.

Court may alter charge.

227. (1) Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials by jury before the Court of Session or a High Court of the Region or a High Court of the State, before the verdict of the jury is returned.

(2) Every such alteration or addition shall be read and explained to the accused.

<Amendment 20.01.2016>

When trial may proceed immediately after alteration.

228. (1)Whenever a charge is altered or added to by the Court after the commencement of the trial the Court may, in its discretion, either-

(a) Proceed with the trial as if the new or altered charge had been the original charge, or

(b) adjourn the trial for such period as it may, in the interest of justice, deem necessary, or

(c) direct a new trial.

(2) When the Court either proceeds with or adjourns the trial under clause (a) or clause (b) of sub-section (1), the prosecution and the accused shall be allowed to recall and examine, with reference to such alteration of or addition to the charge, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

229. * * * *

Stay of proceedings if prosecution of offence in altered charge requires previous sanction.

230. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

231. * * * *

Effect of material error.

232. (1) If any appellate Court, or the Supreme Court of the Union in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration

A is convicted of an offence under section 196 of the Penal Code upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

<Amendment 20.01.2016>

Joinder of Charges

Separate Charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion A must be separately charged and separately tried for the theft and causing grievous hurt.

Three offences of same kind within year may be charged together.

234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with and tried at one trial for any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code or of any special or local law:

Provided that, for the purpose of this section, an offence punishable under section 379 of the Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Trial for more than one offence.

235. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Offence falling within two definitions.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Acts constituting one offence, but constituting when combined a different offence.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one or more of such acts.

(4) Nothing contained in this section shall affect the Penal Code, section 71.

Illustrations

to sub-section (1)-

(a) A recues B, a person in lawful custody, and in so doing causes grievous hurt to C a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Penal Code.

(b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Penal Code.

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Penal Code.

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Penal Code.

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B,

intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Penal Code.

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.

to sub-section (2)-

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Penal Code.

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntraily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Penal Code.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Penal Code.

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the Penal Code.

to sub-section (3)-

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Penal Code.

When it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved with constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once: or he may be charged in the alternative with having committed some one of the said offences.

Illustrations

(a) A is accused of an act which may amount to theft or receiving stolen property, or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen property criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

When a person is charged with one offence, he can be convicted of another.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

When offence proved included in offence charged.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by the section.

Illustrations

(a) A is charged, under section 407 of the Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under

section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) A is charged under section 325 of the Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

What persons may be charged jointly.

239. The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment or of an attempt to commit such offence.

(c) persons accused of more than one offence of the same kind, within the meaning of section 234, committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

(g) persons accused of any offence under Chapter XII of the Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

Withdrawal of remaining charges on conviction on one of several charges.

240. When in the same trial several charges are framed against the same person and when a conviction has been had on one or more of such charges the complainant or the officer in charge of the prosecution may, with the consent of the Court, at any time before judgment is pronounced or the verdict of the jury is returned on the remaining charge or charges, withdraw such charge or charges, or the Court of its own accord may stay the trial of such charge or charges. Such withdrawal or stay shall have the effect of an acquittal on such charge or charges unless the conviction be set aside, in which case the Court (subject to

the order of the Court setting aside the conviction) may proceed with the trial of the charge or charges so withdrawn or stayed.

CHAPTER XX

OF THE TRIAL OF SUMMONS CASES BY MAGISTRATES

Procedure in summons cases.

241. The following procedure shall be observed by Magistrates in the trial of summons cases.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but is shall not be necessary to frame a formal charge.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

Procedure when no such admission is made.

244. (1) If the Magistrate does not convict the accused under section 243 or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution and also, if the accused desires to give evidence on his own behalf, to hear the accused, or, if the accused does not desire to give evidence, to examine the accused, and take all such evidence as the accused produces in his defence; provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

Acquittal.

245. (1) If the Magistrate, upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and [(if the accused does not give evidence)] examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Finding not limited by complaint or summons.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Non-appearance of complainant.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance and proceed with the case.

Withdrawal of complaint.

248. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Magistrate of the first class, or with the previous sanction of the District Magistrate any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Frivolous Accusations in Summons and Warrant Cases.

False, frivolous or vexatious accusations.

250. (1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a

Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding fifty thousand kyats or, if the Magistrate is a Magistrate of the third class, not exceeding thirty thousand kyats as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the persons ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any sub-sequent civil relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation [* * * *] may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has

been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order. <Amendment 20.01.2016>

CHAPTER XXI

OF THE TRIAL OF WARRANT – CASES BY MAGISTRATES

Procedure in warrant cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Evidence for prosecution.

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution, and the accused shall have the right to cross- examine the complainant (if any) and the witnesses produced in support of the prosecution:

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by the Court.

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary, and the accused shall have the right to cross-examine such person summoned to give evidence for the prosecution.

Discharge of Accused.

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an

offence triable under this Chapter which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Plea.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea and may in his discretion convict him thereon.

Procedure in case of previous convictions.

255A. In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 255, sub-section (2), or section 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.

Defence.

256. (1) If the accused refuses to plead, or does not plead or claims to be tried, he shall be required to state forthwith whether he wishes to cross-examine any, and, if so, which of the witnesses for the prosecution whose evidence has been taken. If he says that he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any) they also shall be discharged. The accused shall then be called upon to enter upon his defence, and if he puts in any written statement it shall be filed with the record.

(2) On entering upon his defence the accused shall be asked whether he desires to give evidence on his own behalf, and the Magistrate shall warn him in the manner required by sub-section (1) of section 342. If the accused decides to give evidence, his evidence shall next be taken, and after his cross-examination and re-examination (if any) the evidence of witnesses for the defence (if any) shall be taken. If the accused declines to give evidence, he shall, before the evidence of the witnesses for the defence is taken, be examined in the manner provided by sub-section (2) of section 342.

Process for compelling production of evidence at instance of accused.

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers

that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Acquittal.

258. (1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

(2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Absence of complainant.

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

CHAPTER XXII

OF SUMMARY TRIALS

Power to try summarily.

260. (1) Notwithstanding anything contained in this Code,-

(a) the District Magistrate,

(b) any Magistrate of the first class specially empowered in this behalf by the President of the Union, and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the President of the Union

may, if he or they think fit, try in a summary way all or any of the following offences:-

[(a) offences not punishable with death, transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law or imprisonment for a term exceeding one year;

(b) theft, under section 379, 380 or 381 of the Penal Code, where the value of the property stolen does not exceed fifty thousand kyats;

(c) dishonest misappropriation of property under section 403, and criminal breach of turst under section 406, of the same Code, where the value of the property misappropriated or converted does not exceed fifty thousand kyats;

(d) receiving or retaining stolen property under section 411, and assisting in the concealment or disposal of stolen property under section 414, of the same Code, where the value of such property does not exceed fifty thousand kyats;

(e) mischief under section 427 of the same Code;

(f) offences under section 451, 453, 454, 456 and 457 of the same Code;

(g) insult with intent to provoke a breach of the peace under section 504, and criminal intimidation under section 506, of the same Code;

(h) abetment of any of the foregoing offences;

(i) attempt to commit any of the foregoing offences, when such attempt is an offence;

(j) Repeal

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.

<Amendment 20.01.2016>

Power to invest Bench of Magistrates invested with less power.

261. The President of the Union may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:-

[(a) offences not punishable with death, transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law or imprisonment for a term exceeding three months;

(b) offences against sections 264, 265, 266, 269, 271, 272, 273, 274, 275, 276, 279, 280, 282, 284, 285, 286, 289, 290, 291, 292, 293, 294, 323, 337, 342, 374, 434, 448, and 504, of the Penal Code;

(c) theft under section 379 or 380 of the same Code, where the value of the property stolen does not exceed thirty thousand kyats;

(d) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed thirty thousand kyats;

(e) receiving or retaining stolen property under section 411, and assisting in the concealment or disposal of stolen property under section 414 of the same Code, where the value of such property does not exceed thirty thousand kyats;

(f) abetment of any of the foregoing offences;

(g) attempt to commit any of the foregoing offences when such attempt is an offence.]

<Amendment 20.01.2016>

Procedure for summons and warrant cases applicable.

262. (1) In trials under this Chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant –cases, except as hereinafter mentioned.

Limit of imprisonment.

(2) No sentence of imprisonment for a term exceeding [six months] shall be passed in the case of any conviction under this Chapter.

Record in cases where there is no appeal.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such forms as the President of the Union may direct the following particulars:-

(a) the serial number;

(b) the date of the commission of the offence;

(c) the date of the report or complaint;

(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming [under clause (b), clause (c) or clause (d) of sub-section (1) of section 260 or clause (c), clause (d) or clause (e) of section 261,] the value of the property in respect of which the offence has been committed;

(g) the plea of the accused and his examination (if any);

(h) the finding, and in the case of a conviction a brief statement of the reasons therefor;

(i) the sentence or other final order; and

(j) the date on which the proceedings terminated.

Record in appealable cases.

264. (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

(2) Such judgment shall be the only record in cases coming within this section.

Language of record and judgment.

265. (1) Records made under section 263 and judgments recorded under section 264 shall be written or prepared by the Magistrate [* * * *] in the language of the Court, and shall be signed by him.

Bench may be authorized to employ clerk.

(2) The President of the Union may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the District Magistrate, and the record or judgment so prepared shall be signed by each member of the Bench present and taking part in the proceedings.

(3) If no such authorization is given, the record prepared by any member of the Bench and signed as aforesaid shall be the proper record.

(4) If the members of the Bench differ in opinion any dissentient member may write a separate judgment.

CHAPTER XXIII

OF TRIALS BEFORE THE HIGH COURT AND COURTS OF SESSION

A.-preliminary

266. * * * *

Trials before High Court to be by jury.

267. All trials under this Chapter before the High Court shall be by jury, and notwithstanding anything herein contained, in all criminal cases transferred to the High Court the trial may, if the High Court so directs, be by jury.

268. * * * *

President may order trials before Court of Session to be by jury.

269. (1) The President of the Union may, by order in the Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may revoke or alter such order.

(2) The President of the Union, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge on application made to him or of his own motion so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session [* * * *] for such of them as are not triable by jury.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor.

B.- Commencement of Proceedings

Commencement of trial

271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Refusal to plead or claim to be tried. Trail by same jury of several offenders in succession.

272. If the accused refuses to or does not plead, or if he claims to be tried, the Court shall proceed to choose jurors (if the offence is triable by jury) as hereinafter directed and to try the case; provided that, subject to the right of objection hereinafter mentioned, the same jury may try as many accused persons successively as the Court thinks fit.

Entry on unsustainable charges.

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

C.-Choosing a Jury

Number of jury.

274. (1) In trials before the High Court the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session the jury shall consist of such uneven number, not being less than five or more than nine, as the President of the Union, by order applicable to any particular district or to any particular class of offences in that district, may direct:

Provided that, where any accused person is charged with an offence punishable with death, the jury shall consist of not less than seven persons [* * * *].

275. * * * *

Jurors to be chosen by lot.

276. The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct:

Provided that-

Existing practice maintained;

first, pending the issue under this section of rules for any Court the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Persons not summoned when eligible;

Secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present;

trial before special jurors.

thirdly, in a trial at Yangon before the High Court-

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs, the jurors shall be chosen from special jury list hereinafter prescribed; and

fourthly, in any district for which the President of the Union has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

Names of jurors to be called.

277. (1) As each juror is chosen, his name shall be called aloud, and upon his appearance the accused shall be asked if he objects to be tried by such juror.

Objection to jurors.

(2) Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection without grounds stated.

Provided that, in the High Court, objection without grounds stated shall be allowed to the number of eight on behalf of the Government and eigh on behalf of the person or all the persons charged.

Grounds of objection.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:-

(a) some presumed or actual partiality in the juror;

(b) some personal grounds, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

(c) his having by habit or religious vows relinquished all care of worldly affairs;

(d) his holding any office in or under the Court;

(e) his executing any duties of police or being entrusted with police-duties;

(f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(g) his inability to understand the language in which the evidence is given, or when such evidence is interpreted the language in which it is interpreted;

(h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Decision of objection.

279. (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

(2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury:

Provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman of jury.

280. (1) When the jurors have been chosen, they shall appoint one of their number to be foreman.

(2) The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

281. When the foreman has been appointed, the jurors shall be sworn under the Oaths Act.

Procedure when juror cases of attend, etc.

282. (1) If, in the course of a trial by jury at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

(2) In each of such cases the trial shall commence anew.

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remianing at the bar.

D.-Choosing Assessors.

284. * * * *

284A. * * * *

285. * * * *

DD.-Joint trials

285A. * * * *

E.- Trial to Close of Cases for Prosecution and Defence

Opening case for prosecution.

286. (1) If the trial is by jury, when the jurors have been chosen, or if the trial is without a jury, when the accused has refused to plead or has claimed to be tried, the prosecutor shall open his case by reading from the Penal Code or other law the description of the offence charged and stating briefly by what evidence he expects to prove the guilt of the accused.

Examination of witnesses

(2) The prosecutor shall then examine his witnesses.

Examination of accused before Magistrate to be evidence.

287. The examination of the accused (if any) duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Evidence given at preliminary inquiry admissible.

288. The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act.

Procedure after examination of witnesses for prosecution.

289. (1) When the examination of the witnesses for the prosecution is concluded, the accused shall be asked whether he desires to give evidence on his own behalf and whether he means to adduce evidence and the presiding Judge shall warm the accused in the manner provided by sub-section (1) of section 342.

(2) If the accused declines to give evidence he shall be examined for the purposes of enabling him to explain any circumstances appearing in the evidence against him, unless the presiding Judge considers such examination unnecessary.

(3) If the accused declines to give evidence and states that he does not mean to adduce evidence, then after the examination (if any) of the accused is concluded the prosecutor may sum up his case, and if the Court considers that there is no evidence that the accused committed the offence it may record a finding of acquittal, or in a case tried by jury direct the jury to return a verdict of not guilty.

(4) If the accused, or any one of several accused, desires to give evidence on his own behalf or says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, it may nevertheless record a finding of acquittal, or in a case tried by jury direct the jury to return a verdict of not guilty.

(5) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or it on his saying that he does not mean to adduce evidence the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter upon his defence.

Defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. The accused shall then give evidence, if he desires to give evidence, on his own behalf, and after his examination, cross-examination and re-examination (if any) he shall examine his witnesses (if any), and after their cross-examination and re-examination (if any) he may sum up his case.

Right of accused as to examination and summoning of witnesses.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and [228], be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Prosecutor's right of reply.

292. The prosecutor shall be entitled to reply-

(a) if the accused or any of the accused examines any witness ; or

(b) with the permission of the Court, on a point of law; or

(c) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that, in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced.

View by jury.

293. (1) Whenever the Court thinks that the jury [* * * *] should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury [* * * *] shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury [* * * *], and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

When juror may be examined.

294. If a juror [* * * *] is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Jury to attend at adjourned sitting.

295. If a trial is adjourned, the jury [* * * *] shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Locking up jury.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial [* * * *] lasting for more than one day; and subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.-Conclusion of Trial in Cases tried by Jury

Charge to jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

298. (1) In such cases it is the duty of the Judge-

(a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations

(a) It is proposed to prove a statement made by a person not being a witnesses in the case, on the ground that circumstances are proved which tender evidences of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of Jury.

299. It is the duty of the jury-

(a) to decide which view of the facts is true and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(c) to decide all questions which according to law are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustration

(a) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b) The question is whether a person entertained a reasonable belief on a particular point- whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to or hold any communication with any member of such jury.

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall in-form the Judge what is their verdict, or what is the verdict of a majority.

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Verdict to be given on each charge. Judge may question jury. Questions and answers to be recorded.

303. (1) Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

(2) Such questions and the answers to them shall be recorded.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in High Court when to prevail.

305. (1) When in a case tried before the High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

(2) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of Jury in other cases.

(3) If the Judge disagrees with the majority, he shall at once discharge the jury.

(4) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Verdict in Court of Session when to prevail.

306. (1) When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the judge shall record judgment of acquittal. If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 562, pass sentence on him according to law.

Procedure where Sessions Judge disagrees with verdict.

307. (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction.

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail.

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G.-Re-trial of Accused after Discharge of Jury

Re-trial of accused after discharge of jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.-Conclusion of Trial in Cases tried (without a jury)

Judgment.

309. When in a case tried without a jury the case for the defence and the prosecutor's reply (if any) are concluded, the Judge shall give judgment, and if the accused is convicted he shall, unless he proceeds in accordance with the provisions of section 562, pass sentence on the accused according to law.

I. Procedure in case of previous Conviction

Procedure in case of previous conviction.

310. In the case of a trial by jury, when the accused is charged with an offence and is further charged that he is by reason of a previous conviction liable to enhance punishment or to punishment of a different kind for such subsequent offence, such further charge shall not be read out in Court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution or any evidence adduced thereon, unless and until-

(i) he has been convicted of the subsequent offence, or

(ii) the jury have delivered their verdict on the charge of the subsequent offence.

When evidence of previous conviction may be given.

311. Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Evidence Act.

J-List of Jurors for High Court, and summoning Jurors for that Court

Number of special jurors.

312. The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors' list.

List of common and special jurors.

313. (1) The Clerk of the Court shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare-

(a) a list of all persons liable to serve as common jurors; and

(b) a list of persons liable to serve as special jurors only.

(2) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

(3A) Members of either Chamber of the Union Parliament shall be exempt from serving as jurors.

(4) The President of the Union may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

(5) The Clerk of the Court shall, subject to such rules as aforesaid, have full discretion to prepare the said list as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Publication of lists, preliminary and revised.

314. (1) Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Court, shall be published once in the Gazette before the fifteenth day of April next after their preparation.

(2) Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the Gazette before the first day of May next after their preparation.

(3) Copies of the said lists shall be affixed to some conspicuous part of the court-house.

Number of jurors to be summoned.

315. (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in Yangon as many of those who are liable to serve on special or common juries respectively as the Clerk of the Court considers necessary.

(2) No person shall be so sommoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the place of sitting of the High Court.

316. Whenever the High Court has given notice of its intention to hold sittings at any place outside Yangon for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. (1) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in (the Myanmar) Army of Air Force resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent official duty, or for any other special official reason.

Failure of jurors to attend.

318. Any person summoned under section 315, section 316 or section 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine as he thinks fit: and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

K.-List of Jurors [* * * *] for Court of Session, and summoning Jurors [* * * *] for that Court.

Liability to serve as jurors.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors [* * * *] at any trial held within the district in which they reside, or, if the President of the Union, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

Exemptions

320. The following persons are exempt from liability to serve as jurors [* * * *], namely:-

(a) officers in civil employ superior in rank to a District Magistrate;

(aa) members of either Chamber of the Union Parliament;

(b) salaried Judges;

(c) Commissioners and Collectors of Revenue or Customs;

(d) police-officers and persons engaged in the Preventive Service in the Customs Department;

(e) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(f) persons actually officiating as priests or ministers of their respective religions;

(g) persons in [the Myanmar] Army, Navy, or Air Force, except when, by any law in force for the time being, they are specially made liable to serve as jurors [* * * *];

(h) surgoens and others who openly and constantly practise the medical profession;

(i) legal practitioners (as defined by the Legal Practitioners' Act) in actual practice;

(j) persons employed in the Post-Office and Telegraph Departments;

(k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure;

(l) other persons exempted by the President of the Union from liability to serve as jurors [* * * *].

List of jurors.

321. (1) The Clerk of the Court shall prepare and make out in alphabetical order a list of persons liable to serve as jurors and qualified in his judgment to serve as such and not likely to be successfully objected to under section 278, clauses (b) to (h), both inclusive.

(2) The list shall contain the name, place of abode and quality or business of every such person.

Publication of list.

322. Copies of such list shall be stuck up [* * * *] in the court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

Objections to list.

323. To every such copy or extract shall be sub-joined a notice stating that objections to the list will be heard and determined by the Sessions Judge and [District Magistrate] at the sessions court-house, and at a time to be mentioned in the notice.

Revision of list.

324. (1) For the hearing of such objections the Sessions Judge shall sit with the [District Magistrate] and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror, [* * * *] or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the Sessions Judge and the [District Magistrate] the name of the proposed juror [* * * *] shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Sessions Judge and [District Magistrate] and sent to the [Clerk of the Court].

(4) Any order of the Sessions Judge and [District Magistrate] in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

(6) The list so prepared and revised shall be again revised once in every year.

(7) The list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Preparation of list of special jurors.

325. In the case of any district for which the President of the Union has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the [Clerk of the Court] shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list and are, [in his opinion], by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in case not tried by special jury.

Clerk of the Court to summon jurors.

326. (1) The Clerk of the Court shall ordinarily at least seven days before the date fixed for holding the sessions summon as many persons named in the said revised list or the said special list as seem to him to

be needed for trails by jury at the said sessions, the number to be summoned being not less than double the number required for any such trial.

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months unless the number cannot be made up without them: and the names so drawn shall be specified in the said letter.

(3)-(4)* * * *

Power to summon another set of jurors.

327. The [Clerk of the Court] may direct jurors [* * * *] to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors [* * * *] for a whole session oppressive or whenever for other reasons such direction is found to be necessary.

Form and contents of summons.

328. Every summons to a juror [* * * *] shall be in writing, and shall require his attendance as a juror [* * * *] at a time and place to be therein specified.

When Government or Railway servant may be excused.

329. When any person summoned to serve as a juror [* * * *] is in the service of the Government or of a Railway Administration the Court to serve in which he is so summoned may excuse his attendance if it appears on the representation of the head of the office in which he is employed that he cannot serve as a juror [* * * *] without inconvenience to the public.

Court may excuse attendance of juror.

330. (1) The Court of Session may for reasonable cause excuse any juror [* * * *] from attendance at any particular session.

Court may relieve special jurors from liability to serve again as jurors for twelve months.

(2) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

List of jurors attending.

331. (1) At each session the [Clerk of the Court] shall cause to be made a list of the names of those who have attended as jurors [* * * *] at such session.

(2) Such list shall be kept with the list of the jurors [* * * *] as revised under section 324.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror.

332. (1) Any person summoned to attened as a juror [* * * *] who without lawful excuse fails to attend as required by summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred kyats.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror [* * * *] within the local limits of the jurisdiction of the Court making the order.

(3) For good cause shown, the Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale, such juror [* * * *] may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine in paid before the end of the said term.

L.-Special Provisions for the High Court

Power of Attorney-General to stay prosecution.

333. At any stage of any trial before the High Court under this Code, before the return of the verdict, the Attorney-General may, if he thinks fit, inform the Court on behalf of [the Government] that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, the High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

335. (1) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the President of the Union may direct.

(2) But it may, from time to time, with the consent of the President of the Union, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

(3) [The Clerk of the Court] shall give notice beforehand in the Gazette of all sittings intended to be held for the exercise of the Original criminal jurisdiction of the High Court.

336. * * * *

CHAPTER XXIV

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

Tender of pardon to accomplice.

337. (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 ten years, or any offence punishable under section 211 of the Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Penal Code, namely sections 216A, 369, 401, 435 and 477A, the District Magistrate, a Sub-divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry 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 District 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 District Magistrate has been obtained to the exercise thereof.

(1A) Every magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing [* * * *].

(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.

(2A) 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.

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

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to , any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

339. (1) Where a pardon has been tendered under section 337 or section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter:

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to please at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the proscecution to prove that such conditions have not been complied with.

(2) The [deposition] made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such [deposition] shall be entertained without the sanction of a High Court of the Region or a High Court of the State.

Provided that, this sub-section shall not apply to such deposition made before the Supreme Court of the Union, or a High Court of the Region or a High Court of the State.

<Amendment 20.01.2016>

Procedure in trial of person under section 339.

339A. (1) The Court trying under section 339 a person who has accepted a tender of pardon shall,-

(a) if the Court is a High Court of the Region or a High Court of the State or Court of Session, before the charge is read out and explained to the accused under section 271, sub-section (1), and

(b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury, or the Court [* * * *] or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

<Amendment 20.01.2016>

Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

340. (1) Any person accused of an offence before a criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader,

(2) Any such person as aforesaid may offer himself as a witness on his own behalf at the inquiry into or trial of such offence or in such proceedings.

Procedure where accused does not understand proceedings.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court of the Region or a High Court of the State, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to a High Court of the Region or a High Court of the State with a report of the circumstances of the case, and a High Court of the Region or a High Court of the State shall pass thereon such order as it thinks fit.

<Amendment 20.01.2016>

Power to examine the accused

342. (1) Every person accused of an offence shall be a competent witness on his own behalf in any inquiry into or trial of the said offence, whether the person so accused is accused solely or jointly with any other person or persons, and his evidence may be used against any person or persons tried jointly with him: Provided as follows:-

(a) the accused shall not be examined as a witness except at his own desire;

(b) before giving evidence the accused shall be warned by the Court that he is not bound to give evidence, and that if he does so his evidence may be used against any person or persons tried jointly with him;

(c) the failure of the accused to give evidence shall not be made the subject of any comment by the prosecution, but the Court and the jury (if any) may draw such inference therefrom as it thinks just;

(d) the accused shall not be asked in cross-examination, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless-

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged: or

(ii) he has personally or by his pleader asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution: or

(iii) he has in his evidence made statements against any other person tried jointly with him;

(e) no prosecution for the offence of giving false evidence shall be instituted against the accused, except with the sanction of a High Court of the Region or a High Court of the State.

(2) (i) Notwithstanding anything contained in sub-section (1), for the purpose of enabling the accused to explain any circumstances appearing in evidence against him the Court may, at stage of any inquiry or trial without previously warning the accused put such questions to him as the Court considers necessary, and shall, when the accused declines to give evidence on his own behalf, for the purpose aforesaid question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(ii) The answers given by the accused to the questions put to him under the provisions of clause (i) may be taken into consideration in such inquiry or trial.

(iii) The accused shall not render himself liable to punishment by refusing to answer any questions put to him under clause (i) or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(iv) No oath shall be administered to the accused in connection with any examination under this sub-section.

(3) The deposition (if any) of the accused recorded under sub-section (1) and the answers given by him to questions put to him under sub-section (2), clause (i), may be put in evidence for or against him in any other inquiry into or trial for any other offence which such deposition or such answers may tend to show he has committed.

<Amendment 20.01.2016>

No influence to be used to induce disclosures.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Power to postpone or adjourn proceedings.

344. (1) If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such term as it thinks fit, for such times as it considers reasonable, and may by a warrant remand the accused if in custody:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than a High Court of the Region or a High Court of the State shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

Explanation.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

<Amendment 20.01.2016>

Compounding offences.

345. (1) The offences punishable under the sections of the 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 Penal Code applicable	Persons by whom offence may be compounded
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.
Causing hurt on grave and sudden provocation.	334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341,342	The person restrained or confined.
Assault or use of criminal force ...	352,355,358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
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.
Criminal trespass	447	The person in possession of the property trespassed upon.
House trespass	448	
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	
Defamation	500	The person defamed.
Printing or engraving matter knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
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.

(2) The offences punishable under the sections of the 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 the table:-

Offence	Sections of Penal Code applicable	Persons by whom offence may be compounded
Causing hurt	323	The person to whom hurt is caused.
* * * *	*	* * * *
Voluntarily causing grievous hurt on grave and	353	The person to whom hurt is

sudden provocation.					caused.
* * * *				*	* * * *
Wrongfully confining a person for three days or more.				343	The person confined.
Wrongfully confining a person in secret				346	Ditto.
Assault or criminal force in attempting wrongfuly to confine a person.				357	The person assaulted or to whom the force was used.
Dishonest misappropriation of property				403	The owner of the property misappropriated.
Cheating	…	…	…	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.				418	Ditto
Cheating by personation		…	…	419	Ditto
* * * *				*	* * * *
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 tres-passed upon.
* * * *				*	* * * *
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 ges-tures 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 is intended to insult or whose privacy is intruded upon.

(3) When any 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) 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.

(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.

(5A) The Supreme Court of the Union or a High Court of the Region or a High Court of the State or a District 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.

(6) 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.

<Amendment 20.01.2016>

Procedure of Magistrate in cases which he cannot dispose of.

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when, after commencement of inquiry or trial.

347. (1) If in any inquiry before a Magistrate, or in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or a High Court of the Region or a High Court of the State, and if he is empowered to commit for trial, he shall commit the accused under the provisions hereinbefore contained.

Magistrate finds case should be committed.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

<Amendment 20.01.2016>

Trial of persons previously convicted of offences against coinage, stamp-law or property.

348. (1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall, if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused, be committed to the Court of Session or a High Court of the Region or a High Court of the State, as the case may be, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted:

Provided that, if any Magistrate in the district has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.

(2) When any person is committed to the Court of Session or a High Court of the Region or a High Court of the State under sub- section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under section 209.

<Amendment 20.01.2016>

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law:

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the inquiry or trial:

Provided as follows:-

(a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;

(b) the Supreme Court of the Union or a High Court of the Region or a High Court of the State or, in cases tried by Magistrate subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrates before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346 or in which proceedings have been submitted to a superior Magistrate under section 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter within the meaning of sub-section (1).

<Amendment 20.01.2016>

Changes in constitution of Benches.

350A. No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred at any stage of the inquiry or trial in the number of Magistrates sitting on the Bench, if the Bench by which such order or judgment is passed is duly constituted under section 15 and the rules made under section 16 and the Magistrates constistuting the same have been present on the Bench throughout the proceedings.

Detention of offenders attending Court.

351. (1) Any person attending a criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2)When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

Courts to be open.

352. The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN

INQUIRIES AND TRIALS

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

354. * * * *

Record in summons-cases and in trials of certain offences by first and second class Magistrates.

355. (1) In summons-cases tried before a Magistrate, and in cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried by a Magistrate of the first or second class, and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

(2) Such memorandum shall be written by the Magistrate or from his dictation in open Court, [* * * *] in the language of the Court [* * * *] and shall be signed by him, and shall form part of the record.

(3) * * * *

Record in other cases.

356. In all other trials before Courts of Session and Magistrates, and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in open Court, in the language of the Court [* * * *], by the Judge or Magistrate or from his dictation and under his personal direction and superintendence, and shall be signed by the Judge or Magistrate.

357. * * * *

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356. [* * * *]

Mode of recording evidence under section 356.

359. (1) Evidence taken under section 356 [* * * *] shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or District Judge may, in his discretion, taken down, or cause to be taken down, any particular question and answer.

<Amendment 20.01.2016>

Procedure in regard to such evidence when completed.

360. (1) As the evidence of each witness taken under section 356 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary , be corrected and such evidence taken down shall be signed by the witness on every page.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or District Judge may, instead of correcting the evidence make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be intertpreted to him in the language in which it was given, or in a language which he understands.

<Amendment 20.01.2016>

Interpretation of evidence to accused or his pleader.

361. (1) Whenever an evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, if shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. * * * *

Remarks respecting demeanour of witness.

363. When a District Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

<Amendment 20.01.2016>

Examination of accused how recorded.

364. (1) Whenever the accused is examined by any Magistrate [under sub-section (2) of section 342], or by any Court other than a High Court of the Region or a High Court of the State the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court, [* * * *]: and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be singned by the accused and the Magistrate or Judge or such Court, and such Magistrate or Judge shall certify

under his own hand that the examination was taken in his persence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, [* * * *]; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

<Amendment 20.01.2016>

Record of evidence in High Court

365. The Supreme Court of the Union shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before a High Court of the Region or a High Court of the State, and the evidence shall be taken down in accordance with such rule.

<Amendment 20.01.2016>

CHAPTER XXVI

OF THE JUDGMENT

Mode of delivering judgement

366. (1) The judgment in every trial in any criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained:-

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, [* * * *] or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed

with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any ommission to serve, or defect in serving on the parties or their pleaders or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

Language of judgement Contents of judgement.

367. (1) Every such judgment shall except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, [* * * *]; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it, and where it is not written by the presiding officer with his own hand every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative.

(3) When the conviction is under the Penal Code and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) In trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

(6) For the purposes of this section, an order under section 118 or section 123, sub-section (3), shall be deemed to be a judgment.

Sentence of death.

368. (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation.

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Court not to alter judgment.

369. Save as otherwise provided by this Code or by any other law for the time being in force, [* * * *], no Court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error.

370. * * * *

Copy of judgment, etc., to be given to accused on application.

371. (1) On the application of the accused a copy of the judgment shall be given to him without delay. Such copy shall, in any case other than a summons case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

(3) When the accused is sentenced to death by a District Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

<Amendment 20.01.2016>

Judgment where to be filed.

372. The original judgment shall be filed with the record of proceedings. [* * * *]

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATIOIN

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the Supreme Court of the Union and the sentence shall not be executed unless it is confirmed by the Supreme Court of the Union.

<Amendment 20.01.2016>

Power to direct further inquiry to be made or additional evidence to be taken.

375. (1) If, when such proceedings are submitted, the Supreme Court of the Union thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt of innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made of taken by the Court of Session.

(2) Such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors, and, unless the Supreme Court of the Union otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the Supreme Court of the Union, the result of such inquiry and the evidence shall be certified to such Court.

<Amendment 20.01.2016>

Power of Supreme Court of the Union to confirm sentence or annul conviction.

376. In any case submitted under section 374, [* * * *] the Supreme Court of the Union-

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Session Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or , if an appeal is presented within such period, until such appeal is disposed of.

<Amendment 20.01.2016>

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence or any new sentence or any new sentence or order passed by the Supreme Court of the Union shall be made, passed and singned by at least two of the Judges of the Court.

<Amendment 20.01.2016>

Procedure in case of difference of opinion

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to Supreme Court of the Union for confirmation.

379. In cases submitted by the Court of Session to the Supreme Court of the Union for the confirmation of a sentence of death, the proper officer of the Supreme Court of the Union shall, without delay, after the order of confirmation or other order has been made by the Supreme Court of the Union, send a copy of the order under the seal of the Supreme Court of the Union and attested with his official signature to the Court of Session.

<Amendment 20.01.2016>

380. * * * *

CHAPTER XXVIII

OF EXECUTION

Execution of order passed under section 376.

381. When a sentence of death passed by a Court of Session is submitted to the Supreme Court of the Union for confirmation, such Court of Session shall, on receiving the order of confirmation, or other order of the Supreme Court of the Union thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

<Amendment 20.01.2016>

Postponement of capital sentence or pregnant woman.

382.If a woman sentenced to death is found to be pregnant, the Supreme Court of the Union shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to transportation for life or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law.

<Amendment 20.01.2016>

Execution of sentences of transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law or imprisonment in other cases.

383. Where the accused is sentenced to transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

<Amendment 20.01.2016>

Direction of warrant for execution.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail, or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

386. (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-.

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender,

(b) issue a warrant to the Collector of the District authorizing him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers that the offender is able to pay the whole or some part of the fine.

(2) The President of the Union may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, and the nearest civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

(4) Nothing in this section shall affect the provisions of section 388.

Effect of such warrant.

387. A warrant issued under section 386, sub-section (1), clause (a) by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the attachement and sale of any such

property without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. (1) When an offender has been sentenced to fine only [or to fine in addition to a sentence of imprisonment till the rising of the Court] and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may-.

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the installments thereof, as the case may be, is to be made; and if the amount of the fine or of any installment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by Judge or Magistrate who passed the sentence, or by his successor in office.

390. Repeal

<Amendment 20.01.2016>

391. Repeal

<Amendment 20.01.2016>

392. Repeal

<Amendment 20.01.2016>

393. Repeal

<Amendment 20.01.2016>

394. Repeal

<Amendment 20.01.2016>

395. Repeal

<Amendment 20.01.2016>

Execution of sentences on escaped convicts.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, shall, subject to the provisions herein before contained, take effect immediately, and if of imprisonment [* * * *] or transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law, shall take effect after he has suffered imprisonment[* * * *] or transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law, as the case may be, for a further period equal to that which at the time of his escape remained unexpired of his former sentence.

<Amendment 20.01.2016>

Sentence on offender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment [* * * *] or transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law is again sentenced to imprisonment [* * * *] or transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law, such subsequent imprisonment [* * * *] or transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law shall commence at the expiration of the imprisonment [* * * *] or transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law to which he has been previously sentenced, unless the Court directs that the sub-sequent sentence shall run concurrently with such previous sentence.

Explanation.- An order committing a person to prison under section 123 is not a sentence of imprisonment.

<Amendment 20.01.2016>

Saving as to sections 396 and 397.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annxed to a substantive sentence of imprisonment, or to a sentence of transportation, or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law [* * * *] and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, [or transportation], or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

<Amendment 20.01.2016>

399. * * * *

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES

Power to suspend or remit sentences.

401. (1) When any person has been sentenced to punishment for an offence, the President of the Union may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the President of the Union for the suspension or remission of a sentence, the President of the Union may require the presiding Judge of the Court before or by which

the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion, and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the President of the Union, not fulfilled, the President of the Union may cancel the suspension or remission, and there upon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police – officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4A) The provisions of the above sub-sections shall also apply to any order passed by a criminal Court under any section of this Court or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right [* * * *] of the President of the Union [* * * *] to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted [* * * *] by the President of the Union, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The President of the Union may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

Power to commute punishment.

402. (1) The President of the Union may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:-

death, transportation, or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law [* * * *] 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 Penal Code. <Amendment 20.01.2016>

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS

Person once convicted or acquitted not to be tried for same offence.

403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of the[Myanmar General Clauses Act] or section 188 of this Code.

Explanation.- The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or upon the same facts with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D.A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

PART VII

OF Appeal, Reference and Revision

CHAPTER XXXI

OF APPEALS

Unless otherwise provided, no appeal to lie.

404. No appeal shall lie from any judgment or order of a criminal Court except as provided for by this Code or by any other law for the time being in force.

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order requiring security for keeping the peace or for good behaviour.

406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order to the Court of Session:

Provided further, that nothing in this section shall apply to persons the proceedings against whom are laid before a District Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123.

<Amendment 20.01.2016>

Appeal from order made under section 488 or 489.

406A. Any person aggrieved by an order made under section 488, directing him to pay maintenance on account of his wife or child, or rejecting an application for maintenance for a wife or child, or by order made under section 489, rejecting or allowing an application for alteration of a maintenance allowance, may appeal against such order to the Court of Session.

Appeal from sentence of Magistrate of the second or third class.

407. (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentence under section 349 or in respect of whom an order has been made or a sentence has been passed under [sub-section (5) of section 562] by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

(2) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the President of the Union to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so persented or transferred.

408. Any Person convicted on a trail held by a Township Judge or an Additional Township Judge or a Deputy Township Judge may appeal to a Court of the Self-Administered Division or a Court of the Self-Administered Zone or a District Court.

<Amendment 20.01.2016>

409. An appeal to a Court of the Self-Administered Division or the Court of a Self-Administered Zone or a District Court shall be heard by the District Judge or by a Additional District Judge or Deputy District Judge as the District Judge may make over to him.

<Amendment 20.01.2016>

Appeal from sentence of Court of Session.

410. Any person convicted on a trial held by a District Judge, or an Additional District Judge or Deputy District Judge, may appeal to a High Court of the Region or a High Court of the State.

<Amendment 20.01.2016>

411. Any person convicted on a trail held by a High Court of the Region or a High Court of the State, may appeal to the Supreme Court of the Union.

<Amendment 20.01.2016>

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or any Magistrate of the first class on such plea, there shall be on appeal except as to the extent or legality of the sentence.

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding twenty thousand kyats only, or of whipping only, or in which a District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty thousand kyats only.

Explanation.- There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine.

<Amendment 20.01.2016>

No appeal from certain summary convictions.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding twenty thousand kyats only.

<Amendment 20.01.2016>

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Explanation.- A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Special right of appeal in certain cases.

415A. Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

416. * * * *

417. (a) An Advocate General of the Region or an Advocate General of the State may direct the Public Prosecutor to present an appeal to a High Court of the Region or a High Court of the State from an original or appellate order of acquittal, or order of acquittal in revision case passed by any subordinate Court of the said High Court.

(b) The Attorney General of the Union may direct the Public Prosecutor to present an appeal to the Supreme Court of the Union from any of the following orders passed by a High Court of the Region or a High Court of the State:-

(1) order of acquittal in original case or in appeal case;

(2) order of acquittal in revision case;

(3) dismissal order on appeal against acquittal.

<Amendment 20.01.2016>

Appeal on what matters admissible.

418. (1)An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

(2) Notwithstanding anything contained in sub-section (1) or in section 423, sub-section(2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.

Explanation.- The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied

by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper appellate Court.

Summary dismissal of appeal.

421. (1) On receiving the petition and copy under section 419 or section 420, the appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notice of appeal

422. If the appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the President of the Union may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the appellate Court shall cause a like notice to be given to the accused.

Powers of appellate Court in disposing of appeal.

423. (1) The appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in a appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retired or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction, (I) reverse the findings and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such appellate Court or committed for trial, or (2) alfter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence, or (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but subject to the provisions of section 106, sub-section (3), not so as to enhance the same;

(c) in an appeal from any other order alter or reverse such order;

(d) make any amendment or any consequential or incidental order that may be just or proper.

(2) Nothing herein contained shall authorize the Court to alter, reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Judgements of subordinate appellate Courts.

424. The rules contained in Chapter XXVI, as to the judgment of a criminal Court of original jurisdiction, shall apply, so far as may be practicable, to the judgment of any appellate Court other than the Supreme Court of the Union;

Provided that, unless the appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

<Amendment 20.01.2016>

Order by High Court on appeal to be certified to lower Court.

425. (1) Whenever a case is decided on appeal by the Supreme Court of the Union or a High Court of the Region or a High Court of the State under this Chapter, it shall certify its judgement or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate the certificate shall be sent through the District Magistrate.

(2) The Court to which the Supreme Court of the Union or a High Court of the Region or a High Court of the State certifies its Judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Supreme Court of the Union or a High Court of the Region or a High Court of the State, and, if necessary, the record shall be amended in accordance therewith.

<Amendment 20.01.2016>

Suspension of sentence pending appeal. Release of appellant on bail.

426. (1) Pending any appeal by a convicted person, the appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an appellate Court may be exercised also by the Supreme Court of the Union or a High Court of the Region or a High Court of the State in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment [* * * *] or transportation, or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law the time during which he is so released shall be excluded in computing the term for which he is so sentence.

<Amendment 20.01.2016>

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under section 417, the Supreme Court of the Union or a High Court of the Region or a High Court of the State may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

<Amendment 20.01.2016>

Appellate Court may take further evidence or direct it to be taken.

428. (1) In dealing with any appeal under this Chapter, the appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the appeallate Court is the Supreme Court of the Union or a High Court of the Region or a High Court of the State, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors[* * * *].

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were in inquiry.

<Amendment 20.01.2016>

Procedure where Judges of Court of Appeal are equally divided.

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII

OF REFERENCE AND REVISION

432-433. * * * *

Power to reserve questions arising in original jurisdiction of High Court.

434. (1) When any person has, in a trial before a Judge of the Supreme Court of the Union or a High Court of the Region or a High Court of the Statet acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

(2) If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit be admitted to bail, and the Supreme Court of the Union or a High Court of the Region or a High Court of the State shall have power to review the case or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the Supreme Court of the Union or a High Court of the Region or a High Court of the State thinks fit. <Amendment 20.01.2016>

Power to call for records of inferior Courts.

435. (1) The Supreme Court of the Union or a High Court of the Region or a High Court of the State or any District Court, may call for and examine the record of any proceeding before any inferior criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) * * * *

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

<Amendment 20.01.2016>

Power to order inquiry.

436. On examining any record under section 435 or otherwise, the Supreme Court of the Union or a High Court of the Region or a High Court of the State or the District Judge may direct the District Court by himself or by any of the Magistrates subordinate to him to make, and the District Court may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any person accused of an offence who has been discharged;

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

<Amendment 20.01.2016>

Power to order commitment.

437. When, on examining the record of any case under section 435 or otherwise, the District Judge considers that such case is triable exclusively by the District Court and that an accused person has been improperly discharged by the inferior Court, the District Judge may cause him to be arrested, and may thereupon,

instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the District Judge, improperly discharged:

Provided as follows:-

(a) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made;

(b) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

438. * * * *

High Court's powers of revision.

439. (1) In the case of any proceeding the record of which has been called for by itself [* * * *] or which otherwise comes to its knowledge, the Supreme Court of the Union or a High Court of the Region or a High Court of the State or a Court of the Self-Administered Division or a Court of the Self-Administered Zone or a District Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427, and 428 or on a Court by section 338, and may enhance the sentence; and when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by pleader [* * * *]

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize the Supreme Court of the Union or a High Court of the Region or a High Court of the State or a Court of the Self-Administered Division or a Court of the Self-Administered Zone or a District Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section(2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.

<Amendment 20.01.2016>

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision;

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

441. * * * *

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this Chapter by the Supreme Court of the Union or a High Court of the Region or a High Court of the State or a Court of the Self-Administered Division or a Court of the Self-Administered Zone or a District Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

<Amendment 20.01.2016>

PART VIII

Special Proceedings

CHAPTER XXXIII

443-449. * * * *

450-463. * * * *

CHAPTER XXXIV

LUNATICS

Procedure in case of accused being lunatic.

464. (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accued is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the President of the Union directs, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

(1A) 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.

Procedure in case of person committed before Court of Session or a High Court of the Region or a High Court of the State being lunatic.

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

(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.

<Amendment 20.01.2016>

Release of lunatic pending investigation or trial.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to

be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the President of the Union:

Provided that no order for the detention of accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the President of the Union may have made under the Lunacy Act.

Resumption of inquiry or trial.

467. (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466.

When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or a High Court of the Region or a High Court of the State, send him for trial before the Court of the Session or a High Court of the Region or a High Court of the State, as the case may be.

<Amendment 20.01.2016>

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Person acquitted on such ground to be detained in safe custody.

471. (1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to the President of the Union:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the President of the Union may have made under the Lunacy Act.

Power of President to relieve Inspector-General of certain functions.

(2) The President of the Union may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section to discharge all or any of the functions of the Inspector- General of Prisons under section 473 or section 474.

472. * * * *

Procedure where lunatic prisoner is reported capable of making his defence.

473. If such person is detained under the provisions of section 466, and in the case of a person detaind in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them, shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic detained under section 466 or 471 is declared fit to be released.

474. (1) If such person is detained under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the President of the Union may thereupon order him to be released or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been

already sent to such an asylum; and, in case he orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as in necessary, and shall report to the President of the Union who may order his release or detention as he thinks fit.

Delivery of lunatic to care of relative or friend.

475. (1) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the President of the Union may, upon the application of such relative or friend and on his giving security to the satisfaction of the President of the Union that the person delivered shall-

(a) be properly taken care of and prevented from doing injury to himself or to any other person, and

(b) be produced for the inspection of such officer, and at such times and places, as the President of the Union may direct, and

(c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspection officer referred to in sub-section (1), clause (b), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.

CHAPTER XXXV

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTION THE ADMINISTRATION OF JUSTICE

Procedure in cases mentioned in section 195.

476. (1) When any civil, revenue or criminal Courts, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to have

been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:

Provided that, where the Court making the complaint is a High Court of the Region or a High Court of the State, the complaint may be signed by such officer of the Court as the Court may appoint.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferrd, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

<Amendment 20.01.2016>

Superior Court may complain where subordinate Court has omitted to do so.

476A. The power conferred on civil, revenue and criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relating to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub – section (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the making of such complaint; and, where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.

Appeals.

476B. Any person on whose application any civil, revenue or cirminal Court has refused to make a complaint under section 476 or section 476A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have

made under section 476, and if it makes such complaint the provisions of that section shall apply accordingly.

477. * * * *

Power of civil and revenue Court to complete inquiry and commit to a High Court of the Region or a High Court of the State or Court of Session.

478. (1) When any such offence is committed before any civil or revenue Court, or brought under the notice of any civil or revenue Court in the course of a judicial proceeding, and the case is triable exclusively by a High Court of the Region or a High Court of the State or Court of Session, or such civil or revenue Court thinks that it ought to be tried by a High Court of the Region or a High Court of the State or Court of Session, such civil or revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before a High Court of the Region or a High Court of the State or Court of Session, as the case may be.

(2) For the purposes of an inquiry under this section the civil or revenue Court may exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII (* * * *) and shall be deemed to have held been by a Magistrate.

<Amendment 20.01.2016>

Procedure of civil or revenue Court in such cases.

479. When any such commitment is made by a civil or revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the District Magistrate or other Magistrate authorized to commit for trial, and such Magistrate shall bring the case before a High Court of the Region or a High Court of the State or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

<Amendment 20.01.2016>

Procedure in certain cases of contempt.

480. (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Penal Code is committed in the view or presence of any civil, criminal or revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not

exceeding twenty thousand kyats, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) * * * *

<Amendment 20.01.2016>

Record in such cases.

481. (1) In ever such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Procedure where Court considers that case should not be dealt with under section 480.

482. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding twenty thousand kyats should be imposed upon him, or such Court is for an other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

<Amendment 20.01.2016>

When Registrar or Sub-Registrar to be deemed a civil Court within sections 480 and 482.

483. When the President of the Union so directs, any Registrar or any Sub-Registrar appointed under the Registration Act shall be deemed to be a civil Court within the meaning of sections 480 and 482.

Discharge of offender on submission or apology.

484. When any Court has under section 480 or section 482 adjudged an offender to punishment or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or

remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness or person called to produce a document or thing before a criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and , in the case of a High Court of the Region or a High Court of the State, shall be deemed guilty or a contempt.

<Amendment 20.01.2016>

Appeals from convictions in contempt cases.

486. (1) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by [the Yangon City Civil Court] shall lie to the High Court, and an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. (1) Except as provided in sections 480 and 485, no Judge of a criminal Court or Magistrate, other than a Judge of a High Court of the Region or a High Court of the State, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or a High Court of the Region or a High Court of the State from himself committing any case to such Court.

<Amendment 20.01.2016>

CHAPTER XXXVI

OF THE MAINTENANCE OF WIVES AND CHILDREN

Order for maintenance of wives and children.

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty thousand kyats in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

Enforcement of order.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer if he is satisfied that there is just ground for so doing:

Provided further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons cases:

Provided that, if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case exparte. Any orders so made may be set aside for good cause shown on application made within three months from the date thereof.

(7) The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

(8) Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

<Amendment 20.01.2016>

Alternation in allowance.

489. (1) On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit; provided that if he increases the allowance the monthly rate of fifty thousand kyats in the whole be not exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, very the same accordingly.

<Amendment 20.01.2016>

Enforcement or order of maintenance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to identity of the parties and the non-payment of the allowance due.

CHAPTER XXXVII

DIRECTIIONS OF THE NATURE OF A HABEAS CORPUS

Power to issue directions of the nature of a habeas corpus.

491. (1) A High Court of the Region or a High Court of the State may, whenever it thinks fit, direct-

(a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the President of the Union for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial.

(2) The Supreme Court of the Union may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under the State Prisoners Regulation.

<Amendment 20.01.2016>

491A. * * * *

PART IX

Supplementary Provisions

CHAPTER XXXVIII

OF THE PUBLIC PROSECUTOR

Power to appoint Public Prosecutors.

492. (1) The President of the Union [or such officer, or authority as may be specified by him in this behalf] may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) The District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the President of the Union may prescribe in this behalf, to be Public Prosecutor for the purpose of any case.

Public Prosecutor may plead in all Court in cases under his charge Pleaders privately instructed to be under his direction.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Effect of withdrawl from prosecution.

494. Any Public Prosecuter may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any or more of the offences for which he is tried; and upon such withdrawal,-

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respecte of such offence or offences.

Permission to conduct prosecution.

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be perscribed by the President of the Union in this behalf, but no person, other than the Attorney-General, Public Prosecutor or other officer generally or specially empowered by the President of the Union in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

CHAPTER XXXIX

OF BAIL.

In what cases bail to be taken.

496. 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 by an investigating officer not below the rank of head constable, 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, sub-section (3).

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

497. (1) When any person accused 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 the 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 with transportation for life or with imprisonment for life or with imprisonment for a term of unlimited period or with imprisonment for a term of twenty years as provided in the relevant Law:

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

(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 ground, 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.

(3) 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 for so doing.

(4) 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.

(5) The Supreme Court of the Union or a High Court of the Region or a High Court of the State or Court of Session and, in the case or 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.

<Amendment 20.01.2016>

Power to direct admission to bail or reduction of bail.

498. (1) The Supreme Court of the Union or High Court of the Region or a High Court of the State 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 amount of every bond executed under this Chapter shall, having due regard to the circumstances of the case, not be excessive.

Provided that no person shall be admitted to bail under this section, unless the Attorney General of the Union or an Advocate-General of the Region or an Advocate-General of the State or Public Prosecutor, as the case may be, has had an opportunity of being heard.

<Amendment 20.01.2016>

Bond of accused and sureties.

499. (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 Supreme Court of the Union or a High Court of the Region or a High Court of the State, Court of Session or other Court to answer the charge.

<Amendment 20.01.2016>

Discharge from custody.

500. (1) As soon as the bond has been executed, the person for whose apperance 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.

Power to order sufficient bail when that first taken is insufficient.

501. (1) If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Discharge of sureties.

502. (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.

CHAPTER XL

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES

When attendace of witness may be dispensed with.

503. (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a District Magistrate, a Court of Session or the Supreme Court of the Union or a High Court of the Region or

a High Court of the State that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) * * * *

(2A) * * * *

(3) The Magistrate [* * * *] to whom the commission is issued, or if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

(4) If the witness is in a country or place outside the Union of Myanmar and arrangements have been made by the Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission, as the Government may, by notification, prescribe in this behalf.

<Amendment 20.01.2016>

504. * * * *

Parties may examine witnesses.

505. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate [* * * *] to whom the commission is directed, or to whom the duty of executing such commission has been delegated, shall examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate [* * * *] by pleader, or if not in custody in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Power of subordinate Magistrate to apply for issue of commission

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or incovenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

507. (1) After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Evidence Act, may also be received in evidence at any subsequent stage of the case before another Court.

Adjournment of inquiry of trial.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Execution of foreign commissions.

508A. The provisions of sub-section (3) of section 503, and so much of sections 505 and 507 as relates to the execution of a commission and its return by the Magistrate to whom the commission is directed shall apply in respect of commissions issued by any Court, Judge or Magistrate exercising jurisdiction in any such country or place outside the Union of Myanmar as the Government may, by notification, specify in this behalf, and having authority under the law in force in that country or place to issue commissions for the examination of witnesses in relation to criminal matters, as they apply to commissions issued under sub-section (1) of section 503 or section 506.

CHAPTER XLI

SPECIAL RULES OF EVIDENCE

Deposition of medical witness.

509. (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Power to summon medical witness.

(2) The Court may, if it thinks fit, summon and examine such deponent as to the subject- matter of his deposition.

Report of Chemical Examiner.

510. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Previous conviction or acquittal how proved.

511. In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force:-

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order, or,

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such case, evidence as to the indentity of the accused person with the person with the person so convicted or acquitted.

Record of evidence in absence of accused.

512. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Record of evidence when offender unknown.

(2) If it appears that an offence punishable with death or transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law has been committed by some person or persons unknown, the Supreme Court of the Union or a High Court of the Region or a High Court of the State may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of the Union of Myanmar.

<Amendment 20.01.2016>

CHAPTER XLII

PROVISIONS AS TO BONDS

Deposit instead of recognizance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government Promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Procedure on forfeiture of bond.

514. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Magistrate of the first class, or, when the bond is for appearance before a Court, to the satisfaction of such Court, that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the attachment and sale of any moveable property belonging to such person

without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 106 or section 118 or section 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 514B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

Procedure in case of insolvency or death of surety or when a bond is forfeited.

514A. When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court by whose order such bond was taken, or a Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

Bond required from a minor.

514B. When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

Appeal from, and revision of, orders under section 514.

515. All orders passed under section 514 by any Magistrate other than a District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

516. The Supreme Court of the Union or a High Court of the Region or a High Court of the State or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

<Amendment 20.01.2016>

CHAPTER XLIII

OF THE DISPOSAL OF PROPERTY

Order for custody and disposal of property pending trial in certain cases.

516A. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced or when a report and relevant documentary evidence is submitted, if such property is not physically and easily produceable before any criminal Court during any inquiry or trial the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

<Amendment 20.01.2016>

Order for disposal of property regarding which offence committed.

517. (1) When an inquiry or a trial in any criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before it or exhibit submitted to it under a report and other relevant documentary evidence, if such exhibit is not physically and easily produceable before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) When the Supreme Court of the Union or a High Court of the Region or a High Court of the State or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court, if the order made under this section is modified or set aside on appeal.

Explanation- In this section the term "property" includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

<Amendment 20.01.2016>

Order may take form of reference to District or Sub-divisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes or amounts to theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order under section 517, 518 or 519.

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

Destruction of libellous and other matter.

521. (1) On a conviction under the Penal Code, section 292, section 239, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Power to restore possession of immoveable property.

522. (1) Whenever a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, when convicting such person or at any time within one month from the date of the conviction, order the person dispossessed to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.

Procedure by police upon seizure of property taken under section 51 or stolen.

523. (1) The seizure by any police-officer of property taken under section 51 or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property:

Provided that any police-officer, who has made a seizure of cattle, paddy or rice or of a boat or any other bulky article, may, pending the order of the Magistrate, deliver such cattle or article to any person who may appear to be entitled to the possession of such cattle or article on his executing a bond, with or without sureties, to return or produce such cattle or article at a police-station whenever required.

Procedure where owner of property seized unknown.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall in such case issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where no claimant appears within six months.

524. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the President of the Union in this behalf.

(2) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than one thousand kyats, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

<Amendment 20.01.2016>

CHAPTER XLIV

OF THE TRANSFER OF CRIMINAL CASES

High Court may transfer case or itself try it.

526. (1) Whenever it is made to appear to the Supreme Court of the Union or a High Court of the Region or a High Court of the State:-

(a) that a fair and impartial inquiry or trial cannot be had in any criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses, or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code;

it may order-

(i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such criminal Court of equal or superior jurisdiction;

(iii) that any particular case or appeal be transferred to and tried before itself; or

(iv) that an accused person be committed for trial to itself or to a Court of Session.

(2) When the Supreme Court of the Union or a High Court of the Region or a High Court of the State withdraws for trial before itself any case from any Court it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The Supreme Court of the Union or a High Court of the Region or a High Court of the State may act either on the report of the lower court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Attorney-General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the Supreme Court of the Union or a High Court of the Region or a High Court of the State may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the Supreme Court of the Union or a High Court of the Region or a High Court of the State may under this section award by way of compensation to the person opposing the application.

Notice to Public Prosecutor of application under this section.

(6) Every accused person making any such application shall give to the public prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6A) Where any application for the exercise of the power conferred by this section is dismissed, the Supreme Court of the Union or a High Court of the Region or a High Court of the State may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding twenty-five thousand kyats as it may consider proper in the circumstances of the case.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

(8)-(10) * * * *

<Amendment 20.01.2016>

526A. * * * *

Power of President to transfer cases and appeals.

527. (1)The President of the Union may, by notification in the Gazette, direct the transfer of any particular case or appeal from one a High Court of the Region or a High Court of the State to another a High Court of the Region or a High Court of the State, or from any criminal Court subordinate to one a High Court of the Region or a High Court of the State to any other criminal Court of equal or superior jurisdiction subordinate to another a High Court of the Region or a High Court of the State, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

Explanation.- In this sub-section "a High Court of the Region or a High Court of the State" means the (a High Court of the Region or a High Court of the State) and includes the highest Court of criminal appeal or revision in any local area which is not included within the limits of the appellate criminal jurisdiction of the High Court.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

<Amendment 20.01.2016>

Session judge may withdraw cases from Assistant Sessions judge.

528. (1) Any Session Judge may withdraw any case from, or recall any case which he has made over to, any Assistant Sessions Judge subordinate to him.

District of Sub-divisional Magistrate may withdraw or refer cases.

(2) Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him,, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorize District Magistrate to withdraw classes of cases.

(3) The President of the Union may authorize the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.

(5) A Magistrate making an order under this section shall record in writing his reasons for making the same.

CHAPTER XLIVA

528A-528D. * * * *

CHAPTER XLV

OF IRREGULAR PROCEEDINGS

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely:-

(a) to issue a search-warrant under section 98;

(b) to order, under section 155, the police to investigate an offence;

(c) to hold an inquest under section 176;

(d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b);

(f) to transfer a case under section 192;

(g) to tender a pardon under section 337 or section 338;

(h) to sell property under section 524 or section 525; or

(i) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-

(a) attaches and sells property under section 88;

(b) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour;

(f) cancels a bond to keep the peace;

(g) makes an order under section 133 as to a local nuisance;

(h) prohibits, under section 143, the repetition or continuance of a public nuisance;

(i) issues an order under section 144;

(j) makes an order under Chapter XII;

(k) takes cognizance under section 190, sub-section (1), clause (c), of an offence;

(l) passes a sentence, under section 349, on proceedings recorded by another Magistrate;

(m) calls, under section 435, for proceedings;

(n) makes an order for maintenance;

(o) revises, under section 515, an order passed under section 514;

(p) tries an offender;

(q) tries an offender summarily; or

(r) decides an appeal;

his proceedings shall be void.

Proceedings in wrong place.

531. No finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed took place in a wrong district, or other local area, unless it appears that such error has in fact occasioned a failure of justice. <Amendment 20.01.2016>

When irregular commitments may be validated.

532. (1) If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or a High Court of the Region or a High Court of the State, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless during the inquiry and before the order of commitment objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

<Amendment 20.01.2016>

Non-compliance with provisions of section 164 or 364.

533. (1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Court of appeal, reference and revision.

534. * * * *

Effect of omission to prepare charge.

535. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Trial without jury, of offence triable by jury.

536. If an offence triable by a jury is tried without a jury the trial shall not on that ground only be invalid unless the objection is taken before the Court records its finding.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdction shall be reversed or altered under Chapter XXVII or on appeal or revision on account-

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) * * * *

(c) of the omission to revise any list of jurors [* * * *] in accordance with section 324, or

(d) of any misdirection in any charge to a jury,

unless such error, omission, irregularity, or misdirection has in fact occasioned a failure of justice.

Explanation. - In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Attachment not illegal, person making same not trespasser for defect or want of form in proceedings.

538. No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

CHAPTER XLVI

MISCELLANEOUS

Courts and persons before whom affidavits may be sworn.

539. Affidavits and affirmations to be used before a High Court of the Region or a High Court of the State or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Court or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in the Union of Myanmar.

<Amendment 20.01.2016>

Affidavit in proof of conduct of public servant.

539A. (1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High Court of the Region or a High Court of the State under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable grounds to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

<Amendment 20.01.2016>

Local inspection.

539B. (1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost;

Provided that, in the case of a trial by jury [* * * *], the Judge shall not act under this section unless such jury [* * * *] are also allowed a view under section 293.

Power to summon material witness or examine person present.

540. 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 re-examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Provision for inquiries and trials being held in the absence of accused in certain cases.

540A. (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

Power to appoint place of imprisonment.

541. (1) Unless when otherwise provided by any law for the time being in force, the President of the Union may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail and their return to the civil jail.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub-section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either-

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section (58) of the Code of Civil Procedure; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section (58) of the Code of Civil Procedure.

542. * * * *

Interpreter to be bound to interpret truthfully.

543. When the services of an interpreter are required by any criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Expenses of complainants and witnesses.

544. Subject to any rules made by the President of the Union, 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.

Power of Court to pay expense or compensation out of fine.

545. (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 a sentence 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;

(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;

(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 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.

Payments to be taken into account in subsequent suit.

546. 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 section 545.

Order of payment of certain fees paid by complainant in non-cognizable cases.

546A. (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant-

(a) the fee (if any) paid on the petition of complaint or for the examination of the complainant, and

(b) any fees paid by the complainant for serving processes on his witnesses or on the accused,

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an appellate Court or by a High Court of the Region or a High Court of the State when exercising its powers of revision.

<Amendment 20.01.2016>

Moneys ordered to be paid recoverable as fines.

547. Any money. (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine.

Copies of proceedings.

548. If any person affected by a judgment or order passed by a criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record he shall, on applying for such copy, be furnished therewith;

Provided that he pays for the same unless the Court, for some special reason, thinks fit to furnish it free of cost.

Delivery to military authorities of persons liable to be tried by Court-martial.

549. (1) The President of the Union may make rules consistent with this Code and the Army Act, the Naval Discipline Act [* * * *] and the Air Force Act and any similar law for the time being in force as to the case

in which persons subject to military, naval or air force law shall be tried by a Court to which this Code applies or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, ship or detachment, to which he belongs, or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for the purpose of being tried by Court-martial.

Apprehension of such persons.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Power to police to seize property suspected to be stolen.

550. 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.

Powers of superior officers of police.

551. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Power to compel restoration of abducted females.

552. Upon complaint made on oath to a District Magistrate of the abduction or unlawful detention of a woman, or of a child under the age sixteen years, for any unlawful purpose, the District Magistrate may, after such inquiry into the truth of the complaint as he may consider necessary, make an order for the immediate restoration of such woman to her liberty, or of such child to his parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

553. * * * *

Power of High Court to make rules for inspection of subordinate Courts.

554. (1) The Supreme Court of the Union may make rules for the inspection of subordinate Courts.

(2) * * * *

(3) All rules made under this section shall be published in the Gazette.

<Amendment 20.01.2016>

Forms.

555. Subject to the power conferred by section 554, [* * * *] the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned and if used shall be sufficient.

Case in which Judge or Magistrate is personally interested.

556. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.- A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

Illustration

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise laws. A is disqualified from trying this case as a Magistrate.

Practising pleader not to sit as Magistrate in certain Courts.

557. No pleader who practises in the Court of any Magistrate shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

Power to decide language of Courts.

558. The President of the Union may determine what, for the purposes of this Code, shall be deemed to be the language of each Court other than the Supreme Court of the Union.

<Amendment 20.01.2016>

Provision for powers of Judges and Magistrates being exercised by their successors in office.

559. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the District Magistrate shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional District Judge or Deputy District Judge, the District Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in officer or such Additional District Judge or Deputy District Judge.

<Amendment 20.01.2016>

Officers concerned in sales not to purchase or bid for property.

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provisions with respect to offence of rape by a husband.

561. (1) Notwithstanding anything in this code, no Magistrate except a District Magistrate shall-

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the man for trial for the offence.

(2) And, notwithstanding anything in this Code, if a District Magistrate deems it necessary to direct an investigation by a police-officer with respect to such an offence as is referred to in sub-section (1), no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

Saving of inherent power of High Court.

561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the Supreme Court of the Union or a High Court of the Region or a High Court of the State to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

<Amendment 20.01.2016>

First Offenders

Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.

562. (1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any

woman is convicted of an offence not punishable with death or transportation for life, or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law and no previous conviction is proved against the offender, if it appears to the Court before which, he is convicted, regard being had to the age, character of antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the President of the Union in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by [sub-section (5).]

Conviction and release with admonition.

(1A) In any case in which a person is convicted of [theft, theft in a building, theft by a clerk or servant, dishonest misappropriation, criminal breach of trust], cheating, or any offence under the Penal Code punishable with not more than two years' imprisonment, and no previous conviction is proved against him, the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(2) An order under this section may be made by any appellate Court or by a High Court of the Region or a High Court of the State when exercising its powers of revision.

(3) When an order has been made under this section in respect of any offender, a High Court of the Region or a High Court of the State may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that a High Court of the Region or a High Court of the State shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(4) The provisions of sections 122 (and 126A) shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(5) Where proceedings are submitted to a Magistrate of the first class or a Sub-divisional Magistrate under the proviso to sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken by the Magistrate who tried the case.

<Amendment 20.01.2016>

Provision in case of offender failing to observe conditions of his recognizances.

563. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

Conditions as to abode of offender.

564. (1) The Court, before directing the release of an offender under section 562, sub- section (1), shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(2) * * * *

Previously convicted offenders

Order for notifying address of previously convicted offender.

565. (1) When any person having been convicted-

(a) by a Court in the Union of Myanmar of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code with imprisonment of either description for a term of three years or upwards, (* * * *)

(b) * * * *

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years upwards by a High Court of the Region or a High Court of the State, Court of Session, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment for life or imprisonment for a term of unlimited period or imprisonment for a term of twenty years as provided in the relevant Law or imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The President of the Union may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

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

(5) Any person against whom an order has been made under this section and who refuses or neglects to comply with any rule so made shall be deemed within the meaning of section 176 of the Penal Code to have omitted to give a notice required for the purpose of preventing the commission of an offence.

(6) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

<Amendment 20.01.2016>

SCHEDULE I

* * * *

----- Footnote -----

Note: ပြည်ထောင်စုရှေ့နေချုပ်ရုံးက ၂၀၁၀ ခုနှစ်အထိ စိစစ်တည်းဖြတ်အတည်ပြုပြီးထုတ်ဝေသော Burma Code Volume VIII တွင် အမှတ်စဉ် (၂) ၌ Criminal Procedure Code ကို ဖော်ပြ ပြဋ္ဌာန်းခဲ့ရာ ယင်း Edition ကို မူရင်းအဖြစ် ရယူ၍တင်ပြထားပါသည်။

[ပင်ရင်း- The Burma Code Volume (VIII) မှ ကူးယူတင်ပြသည်။]

----- Attachment -----

[ATTACH LIST 1] 01 SCHEDULE II TABULAR STATEMENT OF OFFENCES [Subject to the proviso to clause (a) and the proviso to clause (f) of sub-section (1) of section 4.]

[ATTACH LIST 2] 02 SCHEDULE III (See section 36) ORDINARY POWERS OF MAGISTRATES I.- Ordinary Powers of a Magistrate of the Third Class

[ATTACH LIST 3] 03 SCHEDULE IV (See sections 37 and 38) ADDITIONAL POWERS WITH WHICH MAGISTRATES MAY BE INVESTED

[ATTACH LIST 4] 04 SCHEDULE V (See section 555) FORMS I.-SUMMONS TO AN ACCUSED PERSON (See section 68)