

# THE CODE OF CRIMINAL PROCEDURE

## PART I Preliminary

### CHAPTER I

#### Sections

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. \* \* \* \*

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

(a) "bail able offence" means an offence shown as bailable in the second schedule, or which is made bail able 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.

(Note) (b) \* \* \*

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

(d) \* \* \* \*

(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.

(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.

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

(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) \* \* \*

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

(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:

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

(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:

(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:

(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:

(q) "place" includes also a house, building,- tent and vessel:

(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 practice 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:

(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) \* \* \*

(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

(u) "sub-division " means a sub-division of a district:

(v) "summons-case" means a case relating to an offence, and not being a warrant-case and

(w) warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.

(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.

5. (1) All offences under the Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.
- (2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner 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 High Court and Courts constituted under any law other than this Code for the time being in force, there shall be four classes of criminal Courts in the Union of Myanmar, namely :-

I.- Courts of Session:

II.- Magistrates of the first class

III.- Magistrates of the second class

IV.- Magistrates of the third class.

*B. - Territorial Divisions*

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

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 hereinbefore.
- (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.

- 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 sections 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.
- 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.
- 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.
- (Note) \* \* \* \*
- (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 (Note) 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.
- 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 Magistrates.

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

- 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.

- 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.

(2) Except as otherwise provided by any order under this section, very 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.

- 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.

- 17.** (1) All Magistrates appointed under sections 12, 13 and 14 and all Benches constituted 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
- (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.
- (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.

#### *D.- Courts of Presidency Magistrate*

**18-21** \* \* \* \*

#### *E.- Justices of the Peace.*

**22.** \* \* \* \*

#### *F.- Suspension and Removal*

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 High Court, or
  - (b) by the Court of Session, or
  - (c) 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.

- 29.** (1) Subject to the other provisions of this Code, any offence under my 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 the High Court 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.

**29A.** \* \* \* \* (Note)

**29B.** \* \* \* \*

- 30.** The President of the Union may ( \* \* \* \* ) <sup>(Note)</sup> 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.*



- 31.** (1) The High Court may pass any sentence authorized by law.
- (2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law ., but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.
- (3) An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years.
- 32.** (1) The Courts of Magistrates may pass the following sentences, namely :-
- |   |  |
|---|--|
| (a) Courts of Magistrates of the first class  | Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Fine not exceeding one thousand rupees;Whipping. |
| (b) Courts of Magistrates of the second-class | Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law;Fine not exceeding fifty rupees.                 |
| (c) Courts of Magistrates of the third class; | Imprisonment for a term not exceeding one month;Fine not exceeding fifty rupees.   |
- (2) The Court of any Magistrate may pass any lawful sentence combining any of the sentences which it is authorized by law to pass.
- 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:
- 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.

- 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 transportation for a term exceeding seven years or 'imprisonment for a term exceeding seven years.

**34A.** \* \* \* \* (Note)

- 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 punishment, 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:

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.*

- 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."

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.
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.*

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.
40. Whenever any person holding an office in the service of the Government who has been invested with any powers under this Code throughout my 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.
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**

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.

- 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.
- 44.** (1) Every person aware of the commission of, or of the intention or any other person to commit, an offence punishable under any of the following sections of the Penal Code (namely), 121, 121A, 122, 123, 124, 124 A, 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 a offence if committed in the Union of Myanmar.
- 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 head-man 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-bail able 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 [ \* \* \* \* ]  
(Note) 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.

(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.*

**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.

(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 transpiration for life.

- 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.
- 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.

(Note) ( \* \* \* \* )

- 49.** Any police-officer or other person authorized to make an arrest may break open any outer or inner door or widow 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.
- 50.** The person arrested shall not be subjected to more restraint than is necessary to prevent his escape
- 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 article, other than necessary wearing apparel found upon him.

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.
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*

54. 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 Burma] (Note) 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 [ \* \* \* \* ] (Note) 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) \* \* \* \*

**55.** (1) Any [police-officer] (Note) 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] (Note) 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] (Note) 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 persons in fear of injury.

(2) \* \* \* \*

**56.** (Note) 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.

**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 he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

**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.

**59.** (1) Any private person may arrest any person who in his view commits a 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.

**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 [ \* \* \* \* ] (Note) before the officer in charge of a police-station.

**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].(Note)

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

### *A. - Summons.*

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

- 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.
- (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.
- 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 [ \* \* \* ] (Note) 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.
- 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.
- 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.
- 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.

- 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.*

- 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.

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

- 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.

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

- 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.

(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.

**78.** (1) A District Magistrate or Subdivisional Magistrate may direct a warrant to any landholder, [occupier] (Note) 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] (Note) 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 [\* \*] (Note) 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.

**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.

**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.

**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.

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

**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.

- 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.

- 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.

- 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.*

**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 can not 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.

**88.** (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immovable. 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 immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases.-

(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 liabilities 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 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 (64) 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.

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

*D. - Other Rules regarding Processes.*

- 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[ \* \* ] (Note), 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.

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.
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.
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.*

94. (1) Whenever any Court or any officer in charge of a police-station considers that the production of tiny document or other thing is necessary or desirable or 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 die postal or Telegraph authorities.

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

(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.

*B. - Search-warrants.*

- 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, subsection (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition.

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

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection.

it may issue a search-warrant and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall 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.

- 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.

- 98.** (1) If 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, seals, 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 of 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.

**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.

**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 prosperity of over throwing or destroying the organs of the Union or of its constituent units by force of violence] (Note) or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of [persons resident in Myanmar] (Note) 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] (Note) or section 153A or section 295 A 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] (Note) 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.

**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 the High Court 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.

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

**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 (1) 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.

**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.

**99F.** The High Court shall, as soon as conveniently may be, frame rules (Note) 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.

**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.*

**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*

**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.

**102.** (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in or being in charge of such place shall on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

**103.** (Note) (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 witness, 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.

(Note) (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*

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

- 106.** (1) Whenever any person accused of any offence punishable under Chapter VIII of the Penal Code, other than an offence punishable under [\* \*](Note) , section 149, [\* \*](Note) or section 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence before the High Court, 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



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 the High Court when exercising its powers of revision.

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

**107.** (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, the Magistrate Win 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 n~ 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.

(3) When any Magistrate not empowered to proceed under subsection (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 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.

**108.** Whenever a District Magistrate [a Sub-divisional Magistrate](Note) 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 (Note)(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.

**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' 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 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.

**110.** Whenever a District Magistrate or Subdivision at 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 that 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.** \* \* \* \*

**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.

**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.

- 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.

- 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.

- 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.

- 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.

- 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.

- 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*

- 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.
- 121.** The bond to be executed by any such person shall bind him to keep the peace on 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.
- 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.

**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.

(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 Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, 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 Sessions Judge under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge, and upon such transfer such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(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 wait the order of such Court or Magistrate.

(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.

**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 subsection (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.

**125.** The District Magistrate may at any time, for sufficient reason 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.



**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.

**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**

**127.** (1) Any Magistrate or officer in charge of a police-station [or police-officer not below the rank of sub-inspector] (Note) 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) \* \* \* \*

**128.** If, upon being so commanded, any such assembly does not disperse, or it, 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] (Note) 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 Burma] (Note) Army, Navy or Air Force or a member of either of the Forces constituted by the Burma Territorial Force Act or the Burma 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.

**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.

**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 Burma] (Note) Army, or of any members of either of the Forces constituted by the Burma 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 consistent with dispersing the assembly and arresting and detaining such persons.

**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] (Note) 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.

**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.

(2) \* \* \* \*

**CHAPTER X**  
**PUBLIC 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 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 owing, 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.

**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 (Note) 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.

**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

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

**136.** If such person does not perform such act or appear and show cause [\* \* \*] (Note) 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.

**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.** \* \* \* \* (Note)

**139.** \* \* \* \* (Note)

**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, flyer, 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 [\* \* \* \*] (Note), 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 or 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 [\* \* \* \*] (Note) 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 [\* \* \* \*] (Note)

**140.** (1) When an order has been made absolute under (section 136 or section 137) (Note), 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.

(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.** \* \* \* \* (Note)

**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 [ \* \* \* \* ] (Note) issue such an injunction to the person against whom the order was made as is required to obviolate or prevent such danger or injury pending the determination of the matter.

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

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

**143.** 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**

**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 ( \* \* \* \* ) (Note)

(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**

**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.

(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.

(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 subsection (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, 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.

- 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.

- 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 other wise), 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 order prohibiting any interference with the 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 month 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.

**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.

(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**

**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,

**150.** (Note) 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.

**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.

**152.** (Note) 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 unmoveable or the removal or injury of any public landmark or buoy or other mark used for navigation.

**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 POLICE AND THEIR POWERS TO INVESTIGATE**

### **CHAPTER XIV**

**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.

**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.

(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.

**156.** (1) Any officer in charge of 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.

- 157.** (1) If, from information received or otherwise, an officer in charge of 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 : -

(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;

(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.

- 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.

- 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.

**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.

**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 question 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.

**162.** (Note) (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 or 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 there for) 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.

**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.

**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.

(Signed) A.B.,  
Magistrate.

Explanation.-It is not necessary that Magistrate receiving and recording a

confession or statement should be a Magistrate having jurisdiction in the case.

**165.** (Note) (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.

**166.** (1) An officer in charge of a police-station or a police-officer [ \* \* \* ] (Note) 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, iii 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 send notice of the

search to 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 the list (if any) prepared under section 103 [ \* \* \* ] (Note)

(5) \* \* \* \*

- 167.** (1) Whenever any person is arrested and detained in custody, and if 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 ( \* \* \* ) (Note) 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.

(Note) (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 Subdivisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

- 168.** When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.
- 169.** 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 the there is not



sufficient evidence or reasonable ground of suspicion to justify 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 when, powered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

**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] (Note) 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] (Note) forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the 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.

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

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

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

- 172.** (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.

- 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 cognizance 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.

(Note) (4) \* \* \* \*

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

(2) The report shall be sired 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 Subdivisional 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.

**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 inquiry all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

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

**176.** (Note) (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 subsection (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.

(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**

### **Proceeding in Prosecutions**

#### **CHAPTER XV**

#### **OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS**

##### *A. - Place of Inquiry or Trial*

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

**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 sessions division:

Provided that such direction is not repugnant to any direction previously

issued by the High Court [\* \* \*] (Note) under this Code, section 526.

- 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 Y. The offence of the culpable homicide of A may be inquired into or tried by X or Y.

(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. hereby 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.

- 180.** When an act is an offence by reason of its relation to any other 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.

Illustration

(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.

**181.** (1) The offence of being a thug, of being a thug and committing murder, of dacoit, 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.

(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.

(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.

(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.

**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, 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.

**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.** \* \* \* \*

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

High Court.

(2) \* \* \* \*

**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 herein-before 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 Magistrate than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

**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 that same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

**188.** (Note) 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.

- 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 [ \* \* \* \* ] (Note) 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*

- 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.
- 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.

- 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.

- 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 Sessions Judges and Assistant Sessions 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 Sessions Judge of the division, by general or special order, may make over to them for trial.

- 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] (Note) or any other provision of this Code.

(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, information for all purposes for which His Majesty's Attorney-General may exhibit information on behalf of the Crown in the High Court of Justice in England.

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

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

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

section.

**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

(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

(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 situated

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.

**196.** (Note) No Court shall take cognizance of any offence punishable under Chapter **VI** or **VI B** or **IX A** of the Penal Code (except section 127, section 171 F. so far as it relates to the offence of personating, 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.

**196A.** (Note) 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 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 up complaint made by order of or under authority from the President 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 subsection (4) of section 195 apply no such consent shall be necessary.

**196B.** In the case of any offence in respect of which the provisions of section 96 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, subsection (3).

**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 Lot 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.

(2) The President of the Union may determine the person by whom, be 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.

- 198.** No Court shall take cognizance of an offence falling under Chapter 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.

- 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

- 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.