PART - A

GUIDELINES FOR THE NEW ENTRANTS IN THE MAGISTRACY AND THE LEGAL PROFESSION AS WELL AS FOR THE LAW STUDENTS.

JUDICIAL SYSTEM IN BANGLADESH

Part VI of the constitution of the People's Republic of Bangladesh deals with **"The Judiciary"**. It contains three chapters.

Chapter I deals with "The Supreme Court".

Chapter II deals with the "Subordinate Courts"

and Chapter III deals with the "Administrative Tribunals"

The Supreme Court

The Supreme Court is the highest judicial institution of Bangladesh. It comprises of two divisions:

(I) The Appellate Division.

and (II) The High Court Division

The Supreme Court consists of the Chief Justice, who is known as the "Chief Justice of Bangladesh" and of such number of other judges as the President may deem it necessary to appoint to each division.

Jurisdiction of the Appellate Division :

Among other functions the Appellate Division exercises the following jurisdiction:-

(1) The Appellate Division hears and determines appeals from judgements. decrees. orders or sentences of the High Court Division;

(2) It has power to REVIEW any judgement pronounced or order made by it.

Jurisdiction of the High Court Division :

Among other functions the High Court Division mainly exercises the following jurisdiction:

(1) The High Court Division exercises original jurisdiction with respect to Admiralty and company matters;

(2) In its writ jurisdiction High Court Division guarantees the fundamental rights of the people;

(3) The High Court Division hears appeal against the judgement and orders of the subordinate courts. And in Civil matters Revisional jurisdiction now exclusively lies with the High Court Division.

Binding effect of the Decisions :

(a) The decision of either division of the Supreme Court has the force of law and is binding on all courts subordinate to it. And similarly, the law declared by the Appellate Division is binding upon the High Court Division (as upon other subordinate Courts of Bangladesh).

(b) Decision of the Appellate Division is final on any matter and there is no other forum to sit over it.

SUBORDINATE COURTS

A. ***Dispensation of Civil Justice:-***

Article 114 of the constitution provides that there shall be in addition to the Supreme Court such courts subordinate thereto as may be established by law. There exists a broad distinction between CIVIL and CRIMINAL courts regarding their jurisdiction, power and function. Civil courts are the creation of the Civil Courts Act. 1887 and the Criminal Courts are the creation of the code of Criminal Procedure, 1898.

The court of the District judge exists at the top of the subordinate civil courts. In each district other than Rangamati, Khagrachari and Bandarban there is a court of the District Judge exercising jurisdiction over the territory of that district. Rangamati, Khagrachari and Bandarban districts are under the administrative jurisdiction of the Divisional Commissioner, Chittagong. District Judges are helped by such number of Additional District Judges as are sanctioned by the government in accordance with the work-load of a district. Immediately below the court of the District Judge there is the Court of the Subordinate Judge and in the lowest ebb is the court of the Assistant Judge. Among the Assistant Judges there are Senior Assistant Judges who exercise higher pecuniary jurisdiction. Subordinate Judges are commonly called 'Sub-Judges'. Assistant Judges used to be called as 'Munsifs' earlier.

Every suit is valued in terms of money having regard to its subject matter and the relief claimed according to the provisions of the Suit Valuation Act 1908. Assistant Judges are empowered to hear and dispose of suits valued upto Tk. 50,000/- (fifty thousand) which is Tk. 1,00,000/- (one lac) in case of the Senior Assistant

Judges. The Sub-Judges exercise unlimited pecuniary jurisdiction. The Court of District Judge has got no original jurisdiction; it exercises appellate jurisdiction. Appeal lies with the court of the District Judge as against all the appealable decisions of the Assistant Judges and Senior Assistant Judges and also of the decisions of the Sub-Judges, when the valuation of the suit is Tk. 1,30,000/- (one lac thirty thousand). If the Valuation of the suit is above Tk. 1,30,000/- (one lac thirty thousand) the appeal lies with the High Court Division of the Supreme Court.

B. Dispensation of Criminal justice : The Criminal Courts are the creation of the Code of Criminal Procedure, 1898. Criminal justice is being dispensed with through the Courts of Sessions and the Magistrates. The Court of Sessions Judge exists at the top of the Subordinate Criminal Courts.

Court of Sessions consists of :

(a) the Sessions Judge,

(b) the Additional Sessions judge and

(c) the Assistant Sessions Judge.

On being conferred with the Sessions power the District Judges, the Additional District Judges and the Sub-Judges act as the Sessions Judges, the Additional Sessions Judges and the Assistant Sessions Judges respectively.

The Court of Sessions for a Metropolitan Area is called the Metropolitan Court of Sessions.

Magistracy Consists of :

(a) the District Magistrates,

(b) the Additional District Magistrates and

(c) the Magistrates of the first, second and third class.

D.M. and A. D. M. are basically the Magistrates of the first class.

Metropolitan Magistracy consists of :

(a) the Chief Metropolitan Magistrate,

(b) the Additional Chief Metropolitan Magistrate and

(c) the Metropolitan Magistrate.

Some other courts and tribunals are also functioning in our country which are the creation of various special statutes. But these courts and tribunals do not stand as a tirer of judiciary.

Some of such other courts are : The village courts, the Family courts, the Artha Rin Adalat, the Drug courts, the Labour Courts, the Settlement Courts, the courts of the House Rent Controller, the court of Special Judges (under the Criminal Law (Amendment) Act, 1958, the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995, etc.), the Election Tribunals, the Special Tribunals (under the Special Powers Act, 1974), the Administrative Tribunals (under Article 117 of the Constitution and the Administrative Tribunals Act, 1980), etc.

(For detail information about the power, function and jurisdiction of the Criminal Courts the topic "Administration of Criminal justice" at page 5 may be gone into).

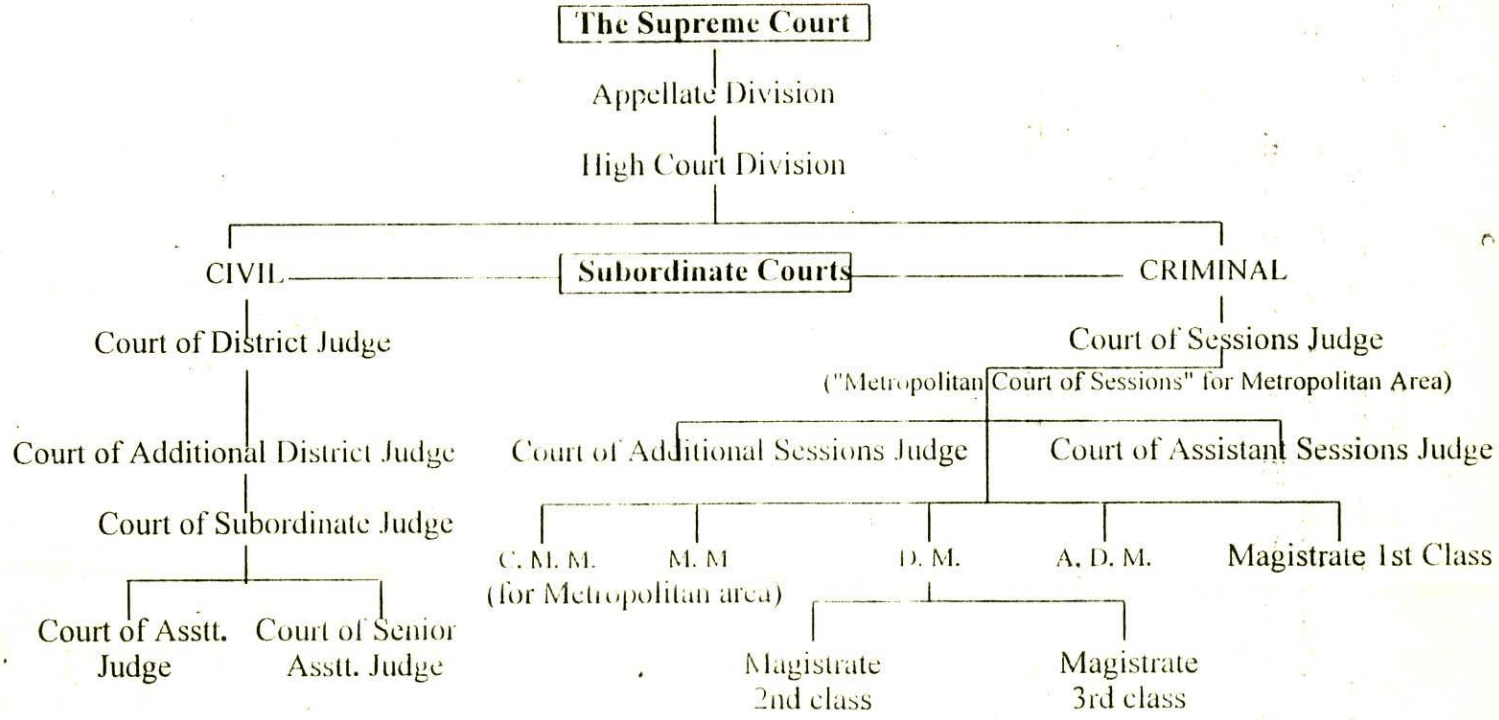
Administrative Tribunals

Article 117 of the constitution provides for establishment of the Administrative Tribunals which shall deal with the terms and conditions of persons in the service of the Republic. The Administrative Tribunals Act, 1980 regulates establishment and functions of the tribunals including the Appellate Tribunal.

There are at the present two Administrative Tribunals, one sits in Dhaka and the other at Bogra. Judges of the Tribunals are appointed from among the Senior District Judges.

There is an Administrative Appellate Tribunal which hears appeals as against the decisions of the Administrative Tribunals. The Appellate Tribunal consists of a chairman and two members. Chairman is appointed from among the judges of the High Court Division. With respect to the members one is appointed from among the District Judges and the other is appointed from among the officers of the Republic holding the rank and status of a joint Secretary.

Hierarchy of Judical System in Bangladesh



Note : Some other courts and tribunals are also functioning in this country on being created by special statutes. But these do not stand as a tier of judiciary, for, these will wither away with the abolition of the special statutes when the purpose will be over.

HISTORICAL BACKGROUND OF THE ACT :

The Code of Criminal Procedure which is in force in our country was passed nearly a century ago on 22nd March, 1898. The said Act (Act V of 1898) has, of course, under gone radical and massive changes in the meantime.

Before establishment of court of Criminal and Civil justice by the East India Company, the Muslim Powers had its own Criminal Law. In the beginning the courts were guided, in criminal matters, by the Muslim Criminal Law. In 1773 the British Parliament enacted the Regulation Act under which a Supreme Court was established in Calcutta and later on in other areas. In 1781 another statute was passed recognizing Provincial Courts independent of the Supreme Court, and investing the Governor General-in-Council with Appellate Jurisdiction and with power to frame Regulation for these courts and this system continued up to 1834. The Supreme Courts mostly applied English Law and Procedure in matters, Civil and Criminal. The Mofussil Courts were guided by the Regulations of the Government, and when there was no such Regulations, they proceeded according to justice, equity and good conscience.

In 1833 the Governor General-in-Council was empowered by a Will to legislate for the whole of British India. This statute provided for the appointment of the "Indian Law Commission" mainly with a view to condify Indian Laws and procedure. The most Prominent member of the indian Law Commission was its President, Lord Macaulay. The Commission dealt with substantive criminal Law and with procedure of courts. It made a series of reports which were transmitted to the Court of Directors. The Indian Penal Code (which has been adopted as the Penal Code of Bangladesh), which is a monument to the genious of Lord Macaulay, was prepared in 1837, though it came into operation on January 1,1862 (the date on which the Code of Criminal Procedure as Act XXV of 1861 also came into force). In 1847 the Indian Commissioners were instructed to prepare a scheme of pleading and procedure with forms of indictment adapted to the provisions of the Penal Code. It was prepared in 1848.

Owing to the great delay in examining the measures recommended by the Indian Law Commissioners, Royal Court was appointed in England in 1853 to examine and consider the

recommendations and the draft enactments of the Indian Law Commissioners and a Second Commission was appointed in 1854. The draft of the Criminal Procedure Code was examined and revised by the Commissioners appointed in 1854. They prepared a draft code which was presented to Parliament in 1856, and introduced into the Legislative Council of the Governor General by Sir Barnes Peacock in 1857. It appeared on the statute book as Act XXV of 1861. This Act was considerably amended by Act VIII of 1869 and both these Acts were subsequently repealed by the Criminal Procedure Code of 1872 (Act X of 1872). This Code was not applicable to the High Courts and some other Courts too. Act X of 1875 used to regulate the procedure of the High Courts in the exercise of their original criminal jurisdiction. The presidency Magistrates Act IV of 1877 was enacted to regulate the procedure of the courts of Magistrates in the Presidency Towns. Several provisions of these three Acts — X of 1872, X of 1875 and IV of 1877 — were similar though not couched in the same language. It was, therefore, thought desireable to consolidate the three Acts to one single Code of Criminal Procedure for the whole of British India. This was done by Act X of 1882 by repealing previous three Acts. The Criminal Procedure Code of 1882 remained in force for 16 years. It was however repealed and consolidated by Act V of 1898 and that Act has been in force till today though massive and drastic changes have taken place by innumerable amendments, remarkably, on the emergence of Bangladesh as an independent country, in the years 1979 & 1982**.

SALIENT FEATURES OF THE ACT

The code has been divided into IX Parts, XLVIII Chapters and five Schedules. Out of which four Chapters and one Schedule have been omitted by various amendments.

**(Relied upon "The Code of Criminal Procedure" by Ratan Lal).

Chapter XVIII which contained section 206 to 220 has been omitted by Law Reforms Ordinance, 1978 with effect from 1.6.79. By this omission inquiry by Magistrates into cases triable by the Courts of Sessions or High Court Division has been abolished. So, now a Magistrate taking cognizance of a case triable by the Court of Sessions High Court Division has been abolished. So, now a Magistrate taking cognizance of a case triable by the Court of Sessions "Sends" and not "commits" the case to the court of Sessions.

Chapter XXI which contained section 250A to 250L has recently been omitted by ordinance No XXIV of 1982 with effect from 21-8-82. This chapter dealt with trial of warrant cases by Magistrates. Since warrant procedure and Summons procedure in the trial of cases have been abolished, this ommission became necessary.

Chapters XXXII and XLIVA which contained old Sections 443 to 463 and 528A to 528D respectively have been omitted by the Criminal Law (Extinction of Discritionery Privileges) Act,1949 (Act II 1950).

Chapter XXIII contained seventyone sections running from section 266 to 336. But these have been substituted by twelve sections running from 265A to 265L by Law Reforms Ordinance. 1978.

Schedule I out of the five Schedules has been repealed by the Repearling and Amending Act, 1914 (Act X of 1914).

The substantive Criminal Law is contained in the Penal Code, which defines offences and provides for punishment. The Code of Criminal Procedure has been framed to supplement the Penal Code by rules and procedure for preventing offences and bringing offenders to justice. The Criminal Procedure Code specifies the jurisdiction of the several courts in which offenders may be prosecuted and explains the procedure which should be followed at various stages of inquiry, trial or any other proceeding. But the Code of Criminal Procedure is not a pure adjective law (i.e. Law of Procedure). There are several Chapters which partake of the nature of substantive law—Chapter VIII, IX, X. XI, XII and XXXVI.

Criminal Law of the land splits itself up into two broad sions, one for trial and punishment of criminals, and the other

for the prevention of crimes. A crime is an offence against society. Although the prosecutor in all criminal cases is the Government, the police takes up investigation into a cognizable offence only without an order of a Magistrate. Persons aggrieved may file a complaint in court with respect to all offences—congnizable and non-congnizable.

For the purpose of trial, having regard to the gravity of the offence and its punishment, crimes have been divided into various groups. Some cases are triable exclusively by the Court of Sessions and some are by the Magistrates of different classes and categories.

Again, there are courts and tribunals functioning in this country on being created by Special statutes. But these courts and tribunals do not stand as a tier of judiciary, for, these will wither away with the abolition of the enactment concerned. Some of such courts and tribunals are : —

(i) The Labour Appellate Tribunal,

(ii) The Administrative Appellate Tribunal,

(iii) The Court of settlement,

(iv) The Labour Court,

(v) The Administrative Tribunals,

(vi) The Income Tax Appellate Tribunals,

(vii) The Courts of Special Judges and the Divisonal Special Judges (when the offender is a public servant and the offence is one under the Prevention of Corruption Act, 1947 read with the Criminal Law Amendment Act, 1958).

(viii) The Courts of Special Judges (when the offences are triable under the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995)

(ix) The Special Tribunals (when the offences are triable under the Special Powers Act, 1974),

(x) The Election Tribunals,

(xi) The Drug courts,

(xii) The Village Courts,

(xiii) The Family Courts,

(xiv) The Artha Rin Adalat,

(xv) The Court of the House Rent Controller, etc.

Besides, there are offences, where prosecution cannot be initiated without the sanction of some specified authority, such as, in case of Government Servants, when the offence is one under the Prevention of Corruption Act, 1947 read with the Criminal Law Amendment Act, 1958.

The Law Reforms Ordinance, 1978 which came into force in 1979, has brought in significant changes in the Code simplifying the procedure of trial and abohishing trial with the aid of Assessors.

Ordinance XXIV of 1982 has made massive changes mainly with the intention to minimise collossal number of pending cases and to expedite disposal of cases without inordinate delay. Broad out lines of the epoch making amendments so brought in, by the said ordinance may be described as follows; —

(a) It has abolished "Warrant procedure" and "Summons Procedure" in the trial of cases by Magistrates keeping one procedure as laid down in chapter XX, of course, apart from summary trial as embodied in chapter XXII.

(b) It has enhanced powers of all the classes of Magistrates.

(c) Provisions have also been made for investing Magistrates of the first class with special powers. Consequently many cases which were previously triable exclusively by the Court of Sessions are now triable by the District Magistrates, the Additional District Magistrates or other Magistrates specially empowered in this behalf.

(d) It has enhanced power of the Assistant Sessions Judges too in juxtaposition with the increase of powers of the Magistrates.

(e) It has made provison for treating an Assistant Sessions Judge as deemed Additional Sessions Judge when Magistrates of that Sessions Division will be vested with special powers.

(f) An Assistant Sessions Judge who is deemed to have been appointed as Additional Sessions Judge can pass any sentence authorised by law except a sentence of death.

(g) it has made provison for trial in the absence of the accused.

(h) it has introduced time limit in the disposal of cases by the Magistrates as well as by the Court of Sessions.

(i) Time limit has also been introduced in the disposal of appeals and revisions by inserting a new Chapter XXIIA.

(j) Time has also been fixed up for completion of investigation of a case by police.

(k) Time limit with repsect to investigation as well as trial has been made directory vide Act. 42 of 1992. Earlier it was mandatory.

(l) It has substituted the institution of "Sub-Divisional Magistratiee" by "Thana Magistrate" (vide Act No.3 of 1994 with effect from 18-5-94). Earlier, it was "Upazila Magistrate" and initially "Thana Magistrate".

(m) provision has also been made empowering the District Magistrates and Additional District Magistrates to hear appeals from the sentence of conviction passed by the Magistrates of the Second and third class.

(n) It has made provision for prefering appeal with the sessions Judge from the order of Conviction passed by any Magistrate of the first class (including C.M.M, D.M. and A.D.M) irrespective of the term of sentence by ordinance No LXX of 1984.

(o) Provisions have also been made for prefering appeal by the public prosecutors against the original or appeallate order of acquittal passed by the Court of Sessions or any Magistrate, of course, on the direction of the Government.

(p) It has expanded the scope of compounding some of such offences which were non-compoundable.

(q) The system of trial with the aid of Assessors has been abolished by ordinance No. LX of 1982.

ADMINISTRATION OF CRIMINAL JUSTICE

Court, Judge and Justice are very sacred terms and are rooted with sacredness at the core of the heart of the people. So, those who are entrusted with the task of taking the offenders to book must have to see that this belief of the people is not shaken for any reason. No fear or favour and no dictation or allurement should be allowed to play any role in the matter of detection of crimes and crimials or whith regard to the punishment of the offenders.

Law is, it is taken to be, framed for the well-being of the people and so, to do law means to do justice and the courts are, as such, administering justice according to law. However, occasions are not rare when law and justice come in conflict. For the dispensation of criminal justice number of agencies are working in the detection of crimes and criminals and for the punishment of these criminals different categories of judges are presiding over various classes of courts. Chapter II of the Code of Criminal Procedure describes five classes of Criminal Courts besides the supreme Court, namely :-

1.Court of Sessions

2.Court of Metropolitan Magistrate

3.Court of Magistrate of the first class.

4. Court of Magistrate of the Second Class.

5.Court of Magistrate of the third class.

Constitution and Powers of the Courts.

Court of Sessions : The presiding officer of this court is called the Sessions Judge who is the principal judicial officer of a Sessions Division (consisting of a District) in respect of trial of Criminal cases. District Judges are appointed as Sessions Judges. A court of Sessions for a Metropolitan Area is Called the Metropolitan Court of Sessions.

A Sessions Division may have such number of Additional Sessions Judges and Assistant Sessions Judges as the Government may deem necessary. The Additional District Judges and the Sub-Judges are appointed as Additional Sessions Judges and Assistant Sessions Judges respectively. Additional Sessions Judges and the Assistant Sessions Judges hear such cases and appeals which are transferred to them by the Sessions Judge. Additional Sessions Judges also hear revisions which are made over to them by the Sessions Judge.

A Sessions Judge including an Additional Sessions Judge may pass any sentence authorised by law. But a sentence of death requires confirmation by the High Court Division. An Assistant Sessions Judge can pass a sentence of imprisonment for ten years. An Assistant Sessions Judge deemed to have been appointed as Additional Sessions Judge [under Section 9(3)] may pass any sentence authorised by law except a sentence of death.

Sessions Judges hear appeal against the order of conviction passed by the District Magistrate, Additional District Magistrates, Magistrates of the first class and also of the Metropolitan Magistrates. Orders of acquittal passed by any Magistrate including District Magistrate and Addintional District Magistrate in exercise of their original jurisdiction or by the District Magistrates or Additional District Magistrates in appeal are appealable with the Sessions Judge provided the Government direct the public prosecutor to present such appeal.

Court of Metropolitan Magistrate : Metropolitan Magistracy meant for Metropolitan areas and consists of a Chief Metropolitan Magistrate and such number of Metropolitan Magistrates as the Government may appoint. There may be one or more Additional Chief Metropolitan Magistrate according to the work load, of course, to be appointed by the Government.

All classes of trials as mentioned in the Code of Criminal procedure are tried by the Metropolitan Magistrates. A Metropolitan Magistrage may pass a sentence of imprisonment for five years and a fine not exceeding ten thousand taka.

Metropolitan Magistrates have no jurisdiction to act under section 133 and 144 Cr. P.C. Such matters are being dealt with by the Police Commissioners under the Metropolitan Police Ordinance.

Magistracy : We have noticed above that there are three classes of the Court of Magistrates, viz, Courts of Magistrate of the first, Second and third Class. But there are Courts of District Magistrates, Joint District Magistrates and Additional District Magistrates who are appointed in a District by the Goverment from among the Magistrates of the first class. The Deputy Commissioners are appointed as District Magistrates and the Additional Deputy Commissioners are appointed as Joint District Magistrates or Additional District Magistrates. The Joint District

Magistrates or Additional District Magistrates may exercise all or any of the powers of the District Magistrates. But the Additional District Magistrates or Joint District Magistrates are subordinate to the District Magistrate for the purpose of Sections 192(1), 407(2), 528(2) and (3) Cr. P.C.

All the Magistrates posted in a District are subordinate to the District Magistrate. District Magistrates exercise some additional powers with respect to investment and delegation of powers to other Magistrates as well as in the matter of transfer and withdrawal of cases to and from the courts of other Magistrates within his district. The District Magistrates and the Additional District Magistrates generally exercise power conferred to a Magistrate of the first class; but on being invested with special powers under section 29C Cr. P.C. a District Magistrate or an Additional District Magistrate may try all offences not punishable with death. But they cannot punish an offender for a term of imprisonment exceeding seven years (Section 33A). However, if they are of the opinion that an accused be punished for more than seven years of imprisonment, under the circumstances of the case, they will send the record of the case alongwith a memorandum justifying such severe punishment to the Sessions Judge.

District Magistrates or the Additional District Magistrates hear appeal against the order of conviction passed by any Magistrate of the second or third class.

Column 8 of the Second Schedule to the Cr. P.C. contains the names of the courts competent to try offences under the Penal Code. Apart from this, Magistrates may try such offences under any Special Law as would be assigned to them by that Special Law.

A Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding five years including such solitary confinement as authorised by law; fine not exceeding ten thousand taka and whipping.

If any Magistrate of the first class is vested with special power u/s 29C he may try offences which are punishable with imprisonment for a term not exceeding ten years; but cannot pass a sentence of imprisonment for more than seven years (Section 33A). If the Magistrate thinks under the evidence on record, that the accused be punished severely than seven years imprisonment, he shall forward the record of the case to the Sessions Judge.

A Magistrate of the Second class may pass a sentence of imprisonment for a term not exceeding three years including such solitary confinement as is authorised by law and fine not exceeding five thousand taka.

A Magistrate of the third class may pass a sentence of imprisonment for a term not exceeding two years and fine not exceeding two thousand taka.

Apart from the five classes of Criminal Courts there are other courts functioning in this country on being created by Special Laws and Statutes. They are :

(a) Labour Courts	Under the Industrial Dispute Ordinance, 1959 and the Employment of Labour (Standing Ordinance) Act, 1965.
(b) Labour Appellate Tribunal	

(c) Special Tribunal under the Special Powers Act, 1974.

(d) Courts of Special Judges under the Criminal Law Amendment Act, 1958.

(e) Drug Court under Drug (Control) Ordinance, 1982.

(f) Village Courts under the village Courts Ordinance, 1976.

(g) Juvenile Courts under the Children Act, 1974 and also under the Probation of Offenders Ordinance, 1960.

(h) Administrative Tribunals under the Administrative Tribunals Act, 1980.

(i) Conciliation Board under Conciliation of Disputes (Municipal Area) Ordinance, 1974.

(j) Family Courts under the Family Courts Ordinance, 1984.

(k) Special Courts under the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995, etc.

LEGAL MEANING OF SOME WORDS USED IN THE CODE OF CRIMINAL PROCEDURE

Bailable offence : It means an offence shown as bailable in column 5 of the Schedule II of the Criminal Procedure Code, or which has been made bailable by any other Law which is for the time being in force.

Non-bailable offence : It means an offence oher than a bailable one and this has also been shown in column 5 of the Second Schedule to the Code.

Bailable and non-bailable offences are not to be confused with bailable and non-bailable warrants, although the latter terms are not used in the Code. In appropriate cases, a non-bailable warrant may be issued for bailable offences. The matter is purely discretionary depending on the circumstances of each case.

Offence : It means any act or ommission punishable by any law for the time being in force. Provisions of the Code apply where an offence either under the Penal Code or under any other law is being investigated, enquired into or tried or otherwise dealt with.

A person called upon to furnish security under sections 107 to 110 of the Criminal Procedure Code is not charged with any offence and an order in such a case is not punishment. The acts complained of in proceedings under Sections 133, 144 and 145 of the Criminal Procedure Code are not offences.

Cognizable Offences : It means an offence for which a police officer may arrest without warrant. Cognizable case means a case in which a police officer may arrest without warrant. The offences of the Penal Code which are cognizable offences have been shown in column 3 of the Second Schedule to the Code.

Non-congnizable offences : It means an offence for, and non-congnizable case means a case in, which the police officer may not arrest a person without warrant.

Complaint : It means the allegation made orally or in writing to a Magistrate with a view to his taking action under the Criminal Procedure Code that some person whether known or unknown has committed an offence. The complaint must be made to a Magistrate with a prayer for taking action. A petition alleging an offence but expressing no desire to prosecute the offender is not a complaint. A complaint may be made by the person injured or by

anyone who has come to know the commission of the offence. If a police officer makes a reprot in a non-congnizable case, it is not a police report, it is a complaint.

Report of a police officer or a police Report : It means a report which is submitted by a police officer after investigation of the case under section 173 of the Code of Criminal procedure. This reprot may end in the Charge-sheet or the Final Report. "Charge-sheet" and "Final Report" are terms used very often though these have no mention in section 173.

Charge Sheet : It means report of the investigating police officer for presecution of the accused-persons named therein.

A Magistrate must not accept a charge-sheet sweepingly. On the receipt of the charge-sheet the Magistrate shall scrutinise the materials on record, such as, the F.I.R, the statements under section 161,164, the Dying Declaration, Post Mortem Report, Injury Report, Result of Test Identification parade, if any, etc. alongwith the whole Case Diary, to ascertain as to whether the facts disclosed and materials collected warrant issuance of process against the accused-persons. On his being satisfied that materials on record make out a prima facie case against the accuseds the Magistrate will accept the Charge-sheet, otherwise, he will reject the same. Acceptance of the Charge-sheet amounts to taking cognizance of the case and at this stage a case becomes a "pending case" (38 DLR 166+177).

Charge-sheet cannot be used as evidence at the time of trial. But, however, the court may look into it as a part of judicial record. Police may submit supplimentary charge-sheet in a case subsequently implicating more persons as accuseds. But once a Charge-sheet is submitted it cannot be withdrawn and final report cannot be submitted (36 DLR 63). But Magistrate can himself take cognizance against the accused not sent up in the charge-sheet if materials on record justify the same (47 DLR 478).

Final Report : It is the report of the investigating police officer to the effect that the persons shown in the F.I.R. as the accuseds have not committed the offence. The Magistrate may accept the same and drop the case. But the Magistrate reserves the propriety to disagree with the final report and to take cognizance of the case if materials on record justify it u/s 190(1)(b) Cr. P.C. or to direct further investigation (36 DLR (AD) 58).

As against a final report the aggrieved person may file a Naraji(Protest) petition and in that case such petition is to be treated as a complaint and on examining the complainant and the witnesses u/s 200 Cr. P.C. the Magistrate, if satisfied, may take cognizance u/s 190(1)(a) Cr.P.C. But once Magistrate takes congnizance on police report he can not direct further investigation. Again, Magistrate is not debarred from taking congnizance of a case on police report in a case in which he declined earlier to take cognizance on public report.

Inquiry : It includes every inquiry other than a trial by a Magistrate or a court. Inquiry is not limited to cases of offences or accused before the court.

Trial : It means proceeding after the charge is framed and when the accused is called upon to answer. Trial commences with the framing of charge. Proceedings under sections 117 and 145 are inquiries.

Whether "Trial" includes pronouncement of judgement gave rise to controversy. In the ruling reported in 35 DLR at page 422 it was held that trial commences on the framing of charge and ends with passing of judgement. But in subsequent rulings the same principle has been countered by holding that Trial of a case does not include pronouncement of judgement (38 DLR 233) and this view has been followed in the case of Hussain Mohammad Ershad..Vs....the State reported in 44 DLR at page 116 in the following terms:- Trial as appearing in various sections of the Cr. P.C. has not been specifically defined but considering the scheme of the law, it is found to be a 'drama' played in three successive acts i.e. investigation, inquiry and trial. Judgement is a seperate scene where the judge is the only player writing down his judgement on the basis of the last scene of the drama already played. Thus, trial does not include judgement.

Investigation : It includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. A clear distinction has been made by the Code between an inquiry and an investigation. An inquiry relates to a proceeding held by a court or Magistrate, while an investigation relates to steps taken by police officer. The object of the investigation is the collection of evidence and that of inquiry is taking of evidence in the case and determining truth or otherwise of the allegation.

Judicial Proceedings : It includes any proceeding in the course of which evidence is or may be legally taken on oath.

First Information Report : It is commonly termed in its abbreviated form as 'FIR'. Section 154 Cr. P. C. deals with FIR. It means the information which reaches the officer-in-charge of a police station first on the point of time about the commission of a congnizable offence. The information may be given orally or in writting. Oral information is to be reduced to writing by the police officer. The information requires to be signed by the informant. It is for this reason the informations which do not contain signature of the informant are not first informations (e.g. Telegram).

FIR being the earliest record of a case it has got much importance. It enables the court to see what the prosecution case was when it was started and to check up any subsequent embelishment or departure therefrom (31 DLR 16). But delay in lodging the FIR, which cannot be explained, cyphers the said importance and this is because, it gives the informant scope to concoct the story either by himself or at the instance of others and to implicate his or their enemies falsely.

FIR can be put in evidence on examination of the informant or the police officer who recorded the same. It can be used for the purpose of corroborating the informant (28 DLR 59). Discrepancies in the FIR can only discredit the testimony of the maker thereof. It can by no means be utilised for contradicting or discrediting the other witnesses. Omission in the FIR are not material if the informant is not an eye-witness of the occurrence. FIR is not a substantive evidence (35 DLR 243, 28 DLR 19). FIR lodged by the accused containing admission of guilt is not admissible in evidence (9 DLR[SC]11).

Judge : Section 19 of the Penal Code defines the word "judge" as follows :-

The word "Judge" denotes not only every person, who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

Who is one of a body of persons, which body of persons is empowered by law to give such a judgement.

Magistrate: the word finds enormous use in the code but it has not been defined either in the code of Criminal Proceedure or in the Penal Code. However, in section 3(32) of the General Clauses Act, 1897 it has been defined as follows: —

"Magistrate" shall include every person exercising all or any of the powers of a Magiatrate under the Code of criminal Proceedure for the time being in force;

Besides above, illustration (b) and (d) to section 19 of the Penal Code give some light as to when a Magistrate may be found acting as a "Judge".

Illustration (b): A Magistrate exercising jurisdiction in respect of a charge on which he has pwer to sentence to fine or imprisonment with or without appeal, is a judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a judge.

"Though magistrates now "Sends" and do not"Commit" cases to the Court of Sessions yet the illustration has remained in the Penal Code for understanding as to when a Magistrate is not a judge.

COGNIZANCE

Taking cognizance of an offence is the starting point of a case and it plays a very important role. Illegal taking of cognizance vitiates the whole proceeding. So, due care and attention is to be given to it.

'Taking cognizance of an offence' is merely the mental decision of a Magistrate or a Judge to take judicial notice of a case (30 DLR 124). When a Magistrate or a Judge applies his mind to the facts of a case and decides to proceed against the offender with a view to determining the guilt, it is the state where cognizance of the offence is taken.

A Magistrate may take cognizance of an offence on the basis of (a) a complaint, (b) police report or (c) upon information or upon his own knowledge or suspicion (section 190). If cognizance is taken upon information, knowledge or suspicion of the Magistrate himself then the accused be asked as to whether he wants to be tried by some other court or by the same court and the trial will be held in accordance with the desire of the accused (section 191). This provision has been made to impress upon the accused that the scale of justice was not tilted against him, as, it is universally recognized that justice should not only be done but should also manifestly be shown to have been done.

Metropolitan Magistrate, District Magistrate or Thana Magistrate invested with the power are competent to take cognizance of an offence. Other Magistrates may take cognizance of an offence only on being specially empowered in this behalf otherwise not. It is important to note here that if any Magistrate not being specially empowered takes cognizance of an offence under clause (c) of Section 190(1) his proceeding shall be void (section 530 Cr, P.C.).However, if any Magistrate not being specially empowered takes congnizance of an offence under clauses (a) or (b) of Section 190(1) erroneously on good faith his proceeding may not be set aside merely on the ground of his not being so empwered (Section 529 Cr. P.C.).

Upon taking cognizance of an offence the Magistrate may hold inquiry or trial of the case by himself or may transfer the case to any Magistrate subordinate to him for disposal of the same by holding inquiry or trial (Section 192). The Courts of Sessions are precluded from taking cognizance of an offence (Section 193). Court of Sessions simply tries the cases sent to it by the Magistrate, not optionally but as ordained by law.

Cognizance of certain offences cannot be taken unless some preconditions are fulfilled and these have been dealt with in sections 195 to 199A.

It is also important to mention here that when an act is an offence under the Penal Code as well as under a Special statute the said offence is to be tried by the Special Court or Tribunal as mentioned in the special statute and not by the ordinery Court. For instance, Section 376 of the Penal Code is ordinarily triable by the Chief Metropolitan Magistrate or the District Magistrate. But this offence of "Rape" has been embodied in the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995 with effect from 17-7-95. So, now if the C.M.M. or D. M. takes cognizance of the offence of rape or tries the same it would be an act beyond jurisdiction. This offence of rape is to be tried by the Special Judge in accordance with the provisions of the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995.This law came into force on 17-7-95 and earlier to that the offence of rape was triable by the Special Tribunal formed under the Special Powers act, 1974, as, the provisions of the Cruelty to Women (Deterent Punishment) Ordinance, 1985 inserted this offence to the schedule of the Special Powers Act, 1974 with effect from 3-10-83. Similarly, an offence which falls under the Drug (Control) Ordinance, 1982, is to be tried by the Drug Courts set up under the Ordinance and a court of Magistrate is not competent to take cognizance and try such case (37 DLR (AD)135). Cognizance under the Special Powers Act, 1974 cannot be taken by Magistrates (42 DLR 375,43 DLR 529 and 387).

CHARGE

"Charge" means an accusation against a person with respect to the commission of an offence.

Chapter XIX relates to 'Charge' which contains Sections 221 to 240.

Every charge shall state the Section of the law alongwith the name of the offence, if any, with which the accused is charge and

shall also state the time, place and the manner of the occurrence as well as the person against whom or the thing in respect of which the offence has been committed. Previous conviction of the person charged with, if any, may also be mentioned, because it directs severe punishment.

Any Court may alter or add to any charge at any time before the judgement is pronounced. Every such alteration or addition shall be read over and explained to the accused. The Court shall decide, according to the circumstances of the case, as to whether the trial should proceed immediately after alteration of the charge or some time is to be given to the parties.

Three offences of the same kind committed within the space of twelve months may be charged together (Section 234).

For every distinct offence there shall be a separate Charge and the said charge be tried separately except in the cases mentioned in sections 234, 235,236 and 239.

If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, the said person may be charged with and tried at one trial for every such offence. Again, if more than one person commit the same offence, all of them be tried together under the same charge.

If, the offence so committed falls within two definitions the accused may be charged with both the offences and tried at one trial for each of such offences.

On framing of the charge the same be read over and explained to the accused and his reply shall have to be recorded in the prescribed form and the Magistrate shall sign the same.

Charge also have to be framed in case of trial in absentia u/s 339B Cr. P.C .

The matter of framing of the charge may also be noted in the order sheet of the case.

A Magistrate of the Second class may pass a sentence of imprisonment for a term not exceeding three years including such solitary confinement as is authorised by law and fine not exceeding five thousand taka.

A Magistrate of the third class may pass a sentence of imprisonment for a term not exceeding two years and fine not exceeding two thousand taka.

Apart from the five classes of Criminal Courts there are other courts functioning in this country on being created by Special Laws and Statutes. They are :

(a) Labour Courts (b) Labour Appellate Tribunal	Under the Industrial Dispute Ordinance, 1959 and the Employment of Labour (Standing Ordinance) Act, 1965.

(c) Special Tribunal under the Special Powers Act, 1974.

(d) Courts of Special Judges under the Criminal Law Amendment Act, 1958.

(e) Drug Court under Drug (Control) Ordinance, 1982.

(f) Village Courts under the village Courts Ordinance, 1976.

(g) Juvenile Courts under the Children Act, 1974 and also under the Probation of Offenders Ordinance, 1960.

(h) Administrative Tribunals under the Administrative Tribunals Act, 1980.

(i) Conciliation Board under Conciliation of Disputes (Municipal Area) Ordinance, 1974.

(j) Family Courts under the Family Courts Ordinance, 1984.

(k) Special Courts under the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995, etc.

Magistrates or Additional District Magistrates may exercise all or any of the powers of the District Magistrates. But the Additional District Magistrates or Joint District Magistrates are subordinate to the District Magistrate for the purpose of Sections 192(1), 407(2), 528(2) and (3) Cr. P.C.

All the Magistrates posted in a District are subordinate to the District Magistrate. District Magistrates exercise some additional powers with respect to investment and delegation of powers to other Magistrates as well as in the matter of transfer and withdrawal of cases to and from the courts of other Magistrates within his district. The District Magistrates and the Additional District Magistrates generally exercise power conferred to a Magistrate of the first class; but on being invested with special powers under section 29C Cr. P.C. a District Magistrate or an Additional District Magistrate may try all offences not punishable with death. But they cannot punish an offender for a term of imprisonment exceeding seven years (Section 33A). However, if they are of the opinion that an accused be punished for more than seven years of imprisonment, under the circumstances of the case, they will send the record of the case alongwith a memorandum justifying such severe punishment to the Sessions Judge.

District Magistrates or the Additional District Magistrates hear appeal against the order of conviction passed by any Magistrate of the second or third class.

Column 8 of the Second Schedule to the Cr. P.C. contains the names of the courts competent to try offences under the Penal Code. Apart from this, Magistrates may try such offences under any Special Law as would be assigned to them by that Special Law.

A Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding five years including such solitary confinement as authorised by law; fine not exceeding ten thousand taka and whipping.

If any Magistrate of the first class is vested with special power u/s 29C he may try offences which are punishable with imprisonment for a term not exceeding ten years; but cannot pass a sentence of imprisonment for more than seven years (Section 33A). If the Magistrate thinks under the evidence on record, that the accused be punished severely than seven years imprisonment, he shall forward the record of the case to the Sessions Judge.

PROCEDURE TO BE FOLLOWED IN THE REGULAR TRIAL OF CASES BY MAGISTRATES.

A. Complaint Case:

A case initiated on the basis of a complaint petition is generally classed as C.R case i.e. Complaint Register case and a case initiated on the lodging of an Ejahar/FIR is classed as G.R. case, i.e. General Register case.

Complaint petition is filed in court and with the Magistrate having power to take cognizance of an offence. On receipt of a complaint petition two courses are open to the Magistrate for being satisfied as to whether he should issue process against the alleged offender: he may at once examine the complainant and the witnesses present u/s 200 or may direct a judicial inquiry into the matter for ascertaining the truth or falsehood of the complaint u/s 202. If the Magistrate decides to procees u/s 202, he shall have to pass an order giving reasons for so preferring this course instead of the one laid down in section 200. Before directing an inquiry u/s 202 the complinant is to be examined on oath u/s 200. Non-examination of the complinant is highly illegal (37 DLR(com) 355 : 28 DLR 389 and Ref. 17 DLR (sc) 626).

The primary consideration of the Magistrate shall be that the process of the court is not abused and that an innocent person is not harassed, it should be remenibered that this decision to issue process against the alleged offender amounts to taking cognizance of the case.

Procedure under Section 200 : A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and such of the witnesses present, if any, as he may consider necessary. The substance of such examination shall be reduced to writing and shall be signed by the complainant or witnesses so examined, and also by the Magistrate. On examination of the complainant or the witnesses if the Magistrate is satisfied that the complaint bears substance he will issue summons or warrant as the case may be as per column 4 of Schedule II of the Code for appearance or for production on arrest of the accused. When the complaint is made in writing by a Court or a public servant in his official capacity no such examination is necessary.The purpose of examinaion of the complainant under section 200 is to see whether there is sufficient ground for

proceeding and not whether there is sufficient ground for conviction. Conviction can only be determined at the trial and not at the stage of enquiry (44 DLR (AD) 139 + 42 DLR 240).

If the complaint is presented to a Magistrate not competent to take cognizance of the case he shall return the complaint for presentation in the proper Court (Sedtion 201).

Procedure under section 202 :- The first duty of the Magistrate with whom complaint petition is filed is to examine the complainant and on his being satisfied prima facic he will decide whether the enquiry be held by him u/s 200 or get the same done u/s 202. If he decides to get the inquiry done u/s 200 he may, for the ends of justice, pestpone issuance of precess against the alleged offender and may himself held inquiry for ascertaining the truth or falsehood of the complaint or may direct such inquiry or investigation to be held by a Magistrate subordinate to him (the Magistrate taking cognizance of the offence) or by a Police Officer or by such other person as the Magistrate thinks fit. A Magistrate of the Third class cannot direct such inquiry into complaints involving offences triable by the Court of Sessions. In holding such inquiry of an offence triable exclusively by the Court of Sessions, the Magistrate shall call upon the complainant to produce all his witnesses and shall examine them on oath.

When the inquiry or investigation is held by someone other than the Magistrate authorised to take cognizance of the offence a report requires to be given by such inquiry officer. The Magistrate may place reliance upon such report in the matter of taking cognizance. However, he may disregard the said report if materials on record dictate otherwise.

The Magistrate may dismiss the complaint if after consideration of the statement of the complainant and witnesses or of the result of the inquiry or investigation, he is of the opinion that the complaint bears no substance. In such cases the Magistrate shall briefly record his reasons for so dismissing the complaint (Section 203). On the other hand if the Magistrate is of the opinion that the complaint bears substance, he shall issue summons or warrant as the case may be according to the 4th column of the Second Schedule for appearance or for production of the accused under arrest before the court (Section 204).

B. Police Case :

If the case initiates on the lodging of the FIR with the officer-in-charge of a police station a copy of the same is forwarded to the court whereupon a G.R. case starts. The police immediately takes up investigation of the case and in the event any person is arrested he is produced before the court within twenty four hours exclusive of the time consumed in the journey from the place of arrest to the Magistrate's Court (Section 61 and 167). At this stage the court deals with bail matter of the person or persons arrested and may hold Test Identification Parade, if any, of the accused or the stolen properties and may also record confessional statements, etc. The Court shall wait for the result of the investigation which may come by way of a Police Report in the form of "charge-sheet" for prosecution or "Final Report" for release of the accused persons.

On receipt of the Police Report the Court sets really on motion. At this stage the Magistrate is to perform the most important task of scrutinising the said report. Magistrate is quite competent to accept the Final Report and to discharge the accused(under sub-section (2B) of Section 202). But if from statements on record the Magistrate finds materials to warrant prosecution, he may take cognizance of the offence under clause(b) of section 190(1) (36 DLR(AD)58). If any Naraji petition is filed against the Final Report the said petition is to be treated as a complaint and the Magistrate shall proceed according to Section 200 or 202 and may warrant prosecution under clause (a) of Section 190(1) on the basis of the result of such examination or inquiry. If the police submits charge-sheet the Magistrate shall look over the materials on record and on being satisfied shall accept the same. This acceptance of the charge-sheet amounts to taking cognizaance of the case. Proceeding before a court starts on the acceptance of the charge-sheet (36 DLR (AD) 14).

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions or by the Chief Metropolitan Magistrate or the District Magistrate or Additional District Magistratge, he shall send the same to the proper Court for trial (Sections 205C and 205CC).

In so sending the case the accused may be enlarged on bail or remanded to custody. Generally bail is not granted in respect of offences triable by the Court of Sessions or by the other superior Courts. If, however, for any cogent reason bail is granted the accused be given a direction to appear before the Court where trial will take place within such a period as the Magistrate thinks reasonable.

Framing of Charge and Discharge: Charge is framed by the Court competant to try the case. After taking of cognizance on the acceptance of the charge-sheet or the complaint if the Magistrate taking cognizance finds that the case is triable by a Magistrate, he shall pass an order transferring the case for trial either to his file or to the file of any other Magistrate and thereafter shall fix a date for framing of charge, if any. The Magistrate on taking cognizance of an offence if decides to try the case by himself, he shall pass an order transferring the case to his file. This order is essential for determining the date from which time for disposal of the case is to be counted. On that date after hearing both the prosecution and the accused and upon consideration of all relevant documents the Magistrate may discharge the accused if he considers that the charge is groundless (Section 241A). But if the Magistrate finds that there is ground for presuming that the accused has committed an offence, he shall frame a formal charge having regard to the matters on record (Section 242). The charge shall be read over and explained to the accused. The reply of the accused to the charge framed should be obtained and recorded in the prescribed form. Where charge is framed in the absence of the accused it be recorded that charge framed in absentia u/s 339B. Cr. P.C. However, all formalities to proceed against an accused in absconsion need be observed before charge is framed.

If the accused in reply to the charge so read over and explained PLEADS GUILTY VOLUNTARILY he may be convicted without proceeding any furhter. Such pleading of guilt be recorded as nearly as possible in the words of the accused (Section 243). But if the pleads not guilty and claims to be tried, a date he fixed for examination of prosecution witnesses and simultaneously summons be issued upon the witnesses intimating the date so fixed for their examination. On that day witnesses for the prosecution will be examined. Attempts should be made to examine all the witnesses in one or two consecutive days so that they may not get the chance to be tutored.

As soon as the prosecution evidence is closed on the examination of p,ws and on admission of the documents and alamats into evidence, the accused is to be examined uneer Section 342. This examination is so much important that non-examination u/s 342 vitiates the whole proceeding. In so examining the accused he be apprised of the implicating evidence which have come forth against him and his reply is to be recorded in a prescribed form and the matter of this examination be noted in the ordersheet. The accused may also file a written reply. If the accused wants to examine witnesses a date be fixed for this purpose and summons be issued upon those witnesses and on that day the D.ws be examined.

Last of all, arguments of both sides be heard on a fixed date and another short date be fixed for delivery of judgement and on that date judgement be delivered in open court. Generally, the date for delivery of judgementg is given within seven days from the date of hearing of argument.

Trial of cross cases: The usual practice of trial of cross cases is that both should be tried by the same judge simultaneously, that is, one after another and judgements therein should be delivered after concluding the hearing of both (44 DLR (AD) 169).

SOME IMPORTANT MATTERS TO BE TAKEN NOTE OF BEFORE TRIAL OF A CASE IS TAKEN UP

A. (1) Has the court jurisdiction to try the offence as well as the case?

(2) Is the offence one which falls under Section 260 Cr. P.C. to be tried summarily? If so, has the Magistrate special power in this respect?

(3) Is the accused a child or a military personnel ?

(a child is a person who is under 16 years of age).

(4) Is the accused a first offender ?

(5) Is the offence triable by any special court or tribunal created by any special statute, such as, by the village court, the Special Tribunal (under the Special Powers Act, 1974), the Special Judge (under the Criminal Law (Amendment) Act, 1958 or under the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995), etc. etc.

B. Irregularities which vitiates proceedings:

There are some actions under the Code which a Magistrate cannot take up unless specially empowered by law in this behalf; If he does so without being specially empowered his proceedings becomes void. So, attention need be given to the same . The following are those things as laid down in Section 530 Cr. P.C :

(a) attaches and sells property under sectioon 88;

(b) issues a search - warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department ;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour;

(f) cancels a bond to keep the peace;

(g) makes an order under section 133 as to a local nuisance;

(h) prohibits, under section 143, the repetition or continuance of a public nuisance;

(i) issues an order under section 144;

(j) makes an order under Chapter XII;

(k) takes cognizance, under section 190, sub-section(1) clause (c), of an offence;

(l) passes a sentence, under section 349, on proceedings recorded by another Magistrate;

(m) calls, under section 435, for proceeding;

(n) makes on order for maintenance;

(o) revises, under section 515, an order passed under section 514;

(p) tries an offender;

(q) tries an offender summarily ; or

(r) decides an appeal ;

AGE OF THE OFFENDER OR THE VICTIM

Answer to the question as to who is a minor or a child cannot be given in one word. Age of minority is not same in all the laws. However, age is very important to decide whether an act is an offence or not. There are many acts which are otherwise offences in the eye of law but are not offences if committed by a minor or a child or an insane person.

The following are some of the offences of the PENAL CODE which are dependent upon the age either of the offender or of the victim and as such the same deserves special attention before trial of the case is taken up:—

Section 82 : Nothing is an offence which is done by a child who is under Seven years of age.

Section 83 : Nothing is an offence if committed by a Child who is above Seven years of age and under twelve provided he lacks in understanding about the nature and consequences of his conduct.

Section 89: Anything done in good faith for the benefit of a child who is under twelve years of age is not an offence if harm is caused to such child in the course of such act.

Section 90 : In the matter of consent a child is a person who is under twelve years of age.

Section 305 : Abetment of suicide of a child is a serious offence. Under this section a child means any person under eighteen years of age.

Section 317 : For the purpose of this section a child who is abandoned by the father or mother or by a guardian shall have to be under the age of twelve years.

Section 361: Kidnapping of a minor from lawful guardianship. Here minor is one who is under fourteen years of age in case of a male and under sixteen years of age in case of a female.

Section 364A: To constitute an offence under this section the age of the person requires to be under ten years.

Section 366A: To constitute an offence under this Section a minor girl procured for immoral purpose shall have to be under eighteen years age.

Section 372: Under this section buying of a minor for the purpose of prostitution shall have to be under the age of eighteen years.

Section 375 : Offence of rape is committed when the woman is under fourteen years of age even though she had consent in the mixing (now under sixteen years vide the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995).

It is interesting that sexual intercourse by a husband with his own wife amounts to rape if the wife is under thirteen years of age (now under sixteen years vide the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995.

"Nari" (Woman) means a female human being of any age under clause (gha) of Section 2 of the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995.

"Child" means a person under sixteen years of age under the Children Act, 1974.

Section 497 Cr. P.C.: This section provides that an accused under the age of sixteen years may be enlarged on bail even in the cases of non-bailable offences.

The following are some of the important Acts and Ordinances which have fixed up different ages to be a minor or a child keeping in view the purposes of the legislations and as such the said laws are to be gone through before taking any decision on them ;

1. The Majority Act, 1875.
2. The Child Marriage Restraint Act, 1929.
3. The Children Act, 1974.
4. The Employment of Children Act, 1938.
5. The Minimum Wages Oridnance, 1961.
6. The Mines Act, 1923.
7. The Motor Vehicles (Drivers) Ordinance, 1942.
8. The Christian Marrage Act, 1872.
9. The Contract Act, 1872, etc.

HOW TO MEET SOME EXCEPTIONAL CIRCUMSTANCES IN TRYING A CASE :

1. Things to be scrutinised when accused pleads guilty :- In a case where the accused pleads guilty the thing that remains for the court to scrutinise is whether the accused is pleading guilty voluntarily and whether by so admitting the accusation he is trying to save the real offender. Another important matter to be looked into by the court is whether the facts brought on record amounts to an offence in law (22 DLR 124). Result of these scrutiny will dictate whether the accused be convicted or not. Again, the admission of guilt is to be recorded as nearly as possible in the words of the acused (Section 243) (40 DLR 398).

2. Silence to the accusation amonts to pleading not-guilty :- If the accused does not reply and remains silent to the accusation when stated to him under section 242, the proper course in that circumstance would be to hold that the accused has pleaded innocence and that he claims to be tried.

3. Procedure when accused is insane:- If the accused is found to be insane and incapable of making the defence, in that case trial cannot be initiated against him. Proper couse to be followed in that case has been laid down in details under Chapter XXXIV and in sections 464 to 475.

4. Proceedure when accused is deaf and dumb:- If the accused though not insane, cannot be made to understand the proceedings (i.e. where the accused is DEAF and DUMB) the court may proceed with the inquiry or trial and if such proceeding results in a conviction the proceeding shall be forwarded to the High Court Division with a report of the circumstances of the case and the High Court Division shall pass thereon such order as it thinks fit(Sections 341).

5. Procedure when there is a complaint case as well as police investigation in respect of the same offence :- If it appears to a Magistrate during inquiry or trial of a complaint case that police investigation over the same matter is in progress, the Magistrate shall stay further proceeding of the inquiry or trial and shall call for a report on the matter from the police.

If the police submits charge-sheet against the person who is an accused in the complaint petition, the court shall try the cases together as if both the case were instituted on a police report.

If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence of the police report, he shall proceed with the inquiry of trial, which was stayed by him (Section 205D).

If the police submits charge sheet against a person who is not an accused in the complaint petition, the rule is that there should be two separate trials in respect of the two cases and for dispensation of justice the complaint case be taken first (18 DLR (SC)) 474).

*6. **Proceedure when the accused is a child:*** If the accused is under sixteen years of age his case be seperated from those of the others and sent to the juvenile Court for trial. Trial of a child alongwith adults is highly illegal (42 DLR (AD) 89).

*7. **Proceedure when the accused is a military personnel:*** His commanding Officer need be informed and trial will be held either by the Court Martial or by Ordinary court according to the decision of the Officer Commanding. However, if the offence is murder or rape trial will be held by the Ordinary Criminal court with information to the Officer Commanding. (See note u / s 549 of part B).

JUDGMENT

Chapter XXVI of the Code and more particularly section 367 deals with judgement and the requirements thereof.

A judgement is the final decision of the court intimated to the parties and to the world at large by formal pronouncement or delivery in open court.

Judgement is to be pronounced in open court either immediately after the termination of the trial or at some subsequent time on a fixed date.

Generally, the order portion of the judgement is declared ; but the whole judgement is to be read out if the presiding judge is so requested either by the prosecution or the defence.

While writing a judgement the following order shall be maintained :

(i) Prosecution case in brief.

(ii) Defence case, if any.

(iii) Charge, with sections and specific name of the offence, if any.

(iv) points for Determination.

(v) Discussion of evidence.

(vi) Findings on each point.

(vii) Order.

The order portion shall specify the offence, if any, of which, and the section of the Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.

In case of conviction where trial held in absentia it is to be mentioned in the order portion that the accused being in abscondance he be apprehended soon for serving out the sentence and a copy of the judgement or the memorandum of the order may be sent to the Superintendent of Police of the district and the Officer-in-charge of the concerned Police Station for securing arrest of the convict. It should also be mentioned therein that the sentence will run from the date of arrest of the convict.

If it be a judgement of acquittal it shall state the offence of which the accused is acquitted and direct that he be set at liberty at once if not wanted in connection with any other case' and if the

accused is in custody a Release Order be issued forthwith. If the accused is on bail it be stated that 'the accused and his sureties are discharged from their respective liabilities of the bail bonds'.

The judgement shall be dated and signed by the presiding officer in open court at the time of pronouncing it.

The judgement of a subordinate appellate court shall be written in the same way as that of the judgement of a Criminal Court of original jurisdiction (section 424).

PUNISHMENT

The main object of punishment is to prevent the commission of offences. The measure of punishment must therefore, vary according to the circumstances of each case.

Punishment to which offenders are liable under the provisions of the Penal Code are:

1. Death

2. Imprisonment for life.

The words "Transportation" and "Transportation for life" have been substituted by the words "Imprisonment" and "Imprisonment for life" vide ordinance No. XLI of 1985 with effect from 5.8.85. Further, the period of Imprisonment for life has been raised to "Rigorous Imprisonment for thirty years" from Transportation for twenty years" by the the same ordinance.

3. Imprisonment : This is of two descriptions, namely,

(a) Rigorous, that is, with hard labour and (b) Simple, that is, without any work. In case of simple imprisonment the offender is just confined in jail.

Imprisonment may also be associated with solitary confinement (Sections 73 and 74).

4. Forfeiture of property.

5. Fine.

6. Whipping.

This form of sentence is awarded under the Whipping Act, 1909.

7. Detention in Reformatories.

Juvenile offenders (child) are detained in Reformatory or Borstal Schools.

Chapter III of the Penal Code may be gone into in this connection.

Before passing a sentence of conviction it would be profitable for the Presiding Judge to go through the relevant section or sections under which the accused is being tried to ascertain the type and the extent of punishment that can be awarded.

Sentence of imprisonment in default of the payment of fine shall not exceed one fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence is punishable with imprisonment as well as fine (section 65 of the Penal Code and section 33 of the Cr. P.C.)

Imprisonment in default of payment of fine may be in excess of the power of the Magistrate with respect to awarding of imprisonment as a substantive sentence (Sub-section (2) of section 32).

Imprisonment in default of payment of fine may be of either descriptions (R.I. or S.I.) where the offence is punishable with imprisonment as well as fine (section 66 of the Penal Code).

Imprisonment for non-payment of fine, when the offence is punishable with fine only, shall be simple. It is bad in law to award R.I. in such cases (26 DLR 350).

Imprisonment in default of payment of fine shall maintain the following scale:

(i) When the amount of fine does not exceed fifty taka the imprisonment shall be for a term not exceeding two months;

(ii) When the amount of fine does not exceed one hundred taka the imprisonment shall be for a term not exceeding 4 months; and

(iii) In any other case the imprisonment shall be for any term not exceeding six months (Section 67 of the Penal Code).

Realisation of fine: Under section 70 of the Penal Code imprisonment in default of payment of fine does not liberate the offender from his liability to pay the full amont of fine imposed on him. Such imprisonment is not a discharge or satisfaction of the fine. Fine so imposed may be realised within six years after passing of the sentence; but if the accused be liable to imprisonment for longer period than six years, then the fine may be realised at any time previous to the expiration of that period.

However, section 70 of the Penal Code requires to be read with Section 386 of the Cr. P. C. Section 386 embodies the methods of realisation of fine and contains a proviso to take a cautious view in the realisation of fine when the accused serves out the entire period of imprisonment imposed by the court in default for payment of fine. But it is very significant that in the last portion of the proviso the court has been given the discretion to realise fine in appropriate cases even though the accused serves out the imprisonment. This imprisonment in default to the payment of fine is punitive in nature for non-compliance with court's order to pay fine and not in discharge of the fine.

It will not, I think, be beyond scope to observe here that execution of a money-decree incidental to an order of maintenance, dower, etc. passed by Family Courts must not be treated as fine and as such the satisfaction of the decree will lie in the realisation of the decreetal-money and not in the imprisonment of the judgment - debtor.

Sentence in case of conviction of several offences at one trial : Section 35 of the Code of Criminal Procedure provides that in case of conviction of several offences at one trial the court will be competent to inflict separate sentence for each of such offence which shall run consecutively unless the court directs that they shall run concurrently.

A Magistrate can pass separate sentences on each of the offences with which the accused is tried for any term within his power even though the aggregate of such punishment may exceed the power of the Magistrate. But there is an exception to it; - the aggregate of the punishment cannot be for more than twice the power of the Magistrate (Sub-section (2) of Section 35).

Lump sentence be avoided as far as possible.

"Release with admonition" as a form of conviction has been repealed under section 16 of the Probation of Offenders Ordinance, 1960 (XLV of 1960).

(Section 562 to 564 deal with First offenders and Section 565 deals with previously convicted offenders).

BAIL

The basic conception of the word 'Bail is release of a person from the custody of the police or court and delivery into the hands of sureties who undertake to produce him in court whenever required to do so.

Chapter XXXIX which contains Section 496 to 502 deals with Bail. Offences have been divided into two classes - "Bailable" and "Non-Bailable" under clause (b) of Sub-section (1) of Section 4 of the Cr. P.C. and the same has been laid down in column 5 of Schedule II thereof.

The powers of the Magistrate relating to the grant of bail are not unfettered. Section 496 of the Code provides that a person accused of a bailable offence shall be enlarged on bail. In bailable offence the person accused has the indefeasible right to the grant of bail subject to satisfactory sureties being offered, if necessary (15 DLR (SC) 429). However, in case of non-bailable offences bail is a matter of discretion of the Court. But such discretion is to be exercised judiciously and not arbitrarily or capriciously.

Section 497 provides that a person accused of a non-bailable offence may also be released on bail while materials so far available on record cast any doubt as to the involvement of the accused in the offence. But in the case of offences punishable with

death or imprisonment for life the Magistrate be reluctant to grant bail unless the materials on record succeed to convince them that the accused has falsely been implicated in the case.

However, Section 497 provides that any person under the age of sixteen, years any woman or any sick or infirm person may be released on bail even though they are accused of offences punishable with death or imprisonment for life.

The amount of bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. If it is excessive it amounts to denial of bail.

The role of the prosecution is to satisfy the court that under the materials on record, prima facie it appears, that the accused has involvement in the offence.

It be noted with importance that Sub-Section (3) of Section 497 has made it mandatory for the courts to pass order in writing giving reasons for either allowing or rejecting the bail prayer.

Order of conditional bail is illegal and not proper 45 DLR (AD) 8.

Bail by Police : An officer-in-charge of a police station is bound to grant bail in bailable cases, and an improper refusal to do so will amount to a violation of duty. A person arrested by the police under S. 55 of the Code should be given the option of release on reasonable bail being furnished. The bail should not be excessive, and no needless impediment should be placed in the way of being admitted to bail.

Anticipatory Bail :- It means bail before arrest of an alleged accused. The Law Reforms Ordinance, 1978 introduced a new section being section 497A in the Code of Criminal Procedure making provision for grant of bail to a person apprehending arrest. But because of its lavish and improper use the same has been omitted by Ordinance No. IX of 1982 with effect from 15.6.82. This omission has apparently left the Code without any provision to shield one from being disgraced by one's rivals. However, the necessity of anticipatory bail has been felt and by way of interpretation of section 498 it has been held in different rulings that an accused may be favoured with pre-arrest bail in exceptional circumstances.

The distinction between an ordinary bail and an anticipatory bail is that the former being after arrest means release from the

custody of the police or the court, the latter being in anticipation of arrest is effective at the very moment of arrest. In such case the accused shall have to appear physically in the court. This extraordinary power is exercised by the Court of Sessions or the High Court Division. A Full Bench decision of the Supreme Court of Pakistan reported in 19 DLR(SC) 38 may be gone into in this connection which deals with the subject elaborately.

Principles for grant of anticipatory bail : In order to justify the grant of anticipatory bail the petitioner must show that he apprehends his arrest on account of ulterior motives, or the prosecution is motivated by malice so as to cause irreparable injury to the petitioner's reputation and liberty or the police was motivated on political consideration or other ulterior reasons (PLD(1983)SC 32).

A Full Bench of the Supreme Court of Bangladesh has granted Anticipatory Bail in the case of Golam Sarwar Kamal .. VS .. The State reported in 5 BLD (1985)(AD) at page 110 on the following grounds:-

From the facts and circumstances as stated in the petition 'it appears that the appellant may reasonably apprehend that the police might arrest him to prevent his participation in the election— this arrest would dim or even destroy the chances of his wining the election — political activities cannot be restrained even by the possibility resorting to criminal prosecution — Bail granted to the appellant till one week after the postponed election — u/s 498 of the Cr. P.C.

The criterion for anticipatory bail, specially in a capital offence is different than the bail after arrest. In bail before arrest the malafides, false involvement to arrest with the purpose of humiliation and malicious prosecution, are some of the very strong grounds.

However, in granting anticipatory bail precaution should be taken so that the petitioner does not leave the country and that if need be he should submit to the interrogation by the police and to appear before the court when called for.

This extraordinary jurisdiction of anticipatory bail which has the effect of diverting normal course of law should be exercised sparingly and with caution. The court should seriously apply its mind before passing the order of pre-arrest bail.

Latest rulings on anticipatory bail are given below for guidance: — 47 DLR(AD)33 — Anticipatory Bail — The spouses are at logger-heads both having taken recourse to court. There is possibility of the respondent husband being harassed. It is therefore difficult to held that the High court Division has granted him bail unreasonably or unfairly.

48 DLR 18 : The accused-petitioner appears to have been enlarged on anticipatory bail as it appears from the facts of the case that the apprehension of harassment cannot be ruled out.

Cancellation of Bail : Bail so granted to a person may be cancelled on any of the following grounds:

(i) When the person on bail commits the very same offence for which he is being tried;

(ii) If he hampers the investigation;

(iii) If he tampers with the evidence or obstructs the production of witnesses by the prosecution;

(iv) If he runs away to a foreign country, or goes under-ground or beyond the control of his sureties; or

(v) If he commits acts of violence in revenge.

Bail once granted is not lightly cancelled. One seeking cancellation of bail has to prove to the satisfaction of the court that the accused on bail comes within the purview of one or more of the grounds stated above.

SUMMARY TRIAL

Chapter XXII deals with Summary Trial. Although the object of summary procedure is to shorten the course of trial, it is nevertheless incumbent on the Magistrate to put on record sufficient evidence to justify his order. There is no section of the Cr. P.C. which expressly sanctions a change of procedure from a regular trial to a summary trial, but there is also no section which prohibits such change and in fact a tradition has grown partaking of the nature of law requiring the substance of the deposition of the witnesses to be recorded and also to write out a short judgement. But even so doing the requirement of law regarding the writing of judgement is to be followed.

However, Section 262 Cr. P.C. provides that in trying a case summarily procedure laid down in chapter XX (procedure for trial of regular cases) shall have to be followed. This section further lays down that in a summary trial maximum punishment that can be awarded is two years imprisonment.

With respect to procedure section 355 provides that in a summary trial the Magistrate shall make a memorandum of the substances of the evidence of each witness and such memorandum shall be written and signed by the Magistrate in his own hand and shall form part of the record.

Ordinance XXIV of 1982 has amended section 260 Cr. P.C. by substituting "shall" for the word "may" and thereby it has been made mandatory to try summarily the offences falling under that section. The Metropolitan Magistrate, the District Magistrate or any Magistrate of the first class specially empowered in this behalf by the Government are competent to hold summary trial of Offences laid down in section 260 Cr. P.C.

The Government may confer on any Bench of Magistrates of the second or third class with powers to try summerily all or any of the offences mentioned in section 261 Cr. P.C.

For the procedure to be followed in the summary trial there are two divisions, namely:-

(i) Non-appealable cases, and (ii) Appealable cases.

Non-appealable cases are those where the sentence will only be of fine not exceeding Tk.200.00 (Section 414 Cr. P.C.).

Appealable cases are those where the sentence will be of fine exceeding Tk.200.00 or of imprisonment.

If the Magistrate considers that the sentence will be a non-appealable one, he need not record the depositions of the witnesses or frame a formal charge. But the Magistrate shall write a judgement though not in details yet the same should contain the following particulars: as per Section 263 Cr. P. C. : —

(a) the serial nuber:

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

(c) the date of the report or complainat;

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

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

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

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

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

(i) the sentence or other final order; and

(j) the date on which the proceedings terminated.

But in appealable cases, the procedure of chapter XX is to be followed, of course, as briefly as possible. The Magistrate shall record judgment embodying the substance of the evidence and also the particulars as stated in section 263 Cr. P.C. (section 264 Cr. P.C.).

Time Limit: In view of the recent amendment vide Act 42 of 1992 a summary trial is also to be concluded within 180 days. The provision is directory and not mandatory in nature since non-completion of the case within the stipulated period does not follow with any judicial consequence.

Provision of section 242 and 342 Cr. P.C. shall have to be complied with in summary trials also (28 DLR 242).

Under section 242 an accused is intimated of the accusations which have been brought against him by his advesary; whereas under section 342 the accused is apprised of the implicating evidence which have come forth against him during trial.

Examination of the accused under section 242 is made at the time of opening of the case and framing of the charge; whereas under section 342 accused is examined when prosecution closes its evidence on examination of witnesses and is asked whether he will examine any witness in defence.

A statement under section 342 Cr. P.C. is not evidence within the meaning of section 3 of the evidence Act (42 DLR (AD)31).

PROCEEDING UNDER SECTION 107 Cr. P.C.

Action u/s 107 Cr. P.C. is very often sought for in our country and as such some significant aspect of the section need be kept in mind before one is advised to resort to this section or before proceeding against a person under this section:-

1. The object of this section is preventive and not penal.

2. The person against whom the proceeding is drawn is not an accused, because, he has not yet done any act causing breach of peace or public tranquility. Such person is as such termed as opposite parety (or "O.P." in its abbreviated form).

3. Action under this section cannot be taken by a Magistrate of the second or third class.

Metropolitan Magistrate, District Magistrate, Sub-Divisional Magistrate, i.e. Thana Magistrate and Magistrate of the first class are competent to act under this Section.

4. Magistrate shall initiate action on receipt of an information. The information may be oral, sworn or not sworn and need not be in writing and it may be received from any source.

5. No process in the form of warrant of arrest can be issued against the opposite party, warrant may be issued for compelling

attendance of the opposite party in Court and that is to be done when the court will be satisfied that summons in this respect has been disregarded.

However, under the proviso to section 114 warrant of arrest may be issued only when the Magistrate believes that the breach of the peace cannot be prevented otherwise than by the immediate arrest of such person (34 DLR AD352).

b. On proof of the accusation the opposite party is not punished by inflicting imprisonment or fine, rather he is ordered to execute a bond, with or without sureties, for keeping peace for a period not exceeding one year.

Procedure:

In cases where parties come to the Magistrate direct with their grievance or apprehension, the facts of the case are generally set out in brief in a petition. On receipt of such petition the Magistrate may examine the petitioner (such examination is not mandatory) for being satisfied that the persons against whom the allegation has been brought is likely (a) to commit a breach of the peace or disturb the public tranquility, or (b) to do any wrongful act that may probably occassion a breach of the peace or disturb the public tranquility.

If the Magistrate decides to proceed against the opposite party, in that case he shall direct him in writing to show cause why he should not be ordered to execute a bond (with or without sureties). This showcause order be made as per section 112 Cr. P.C. setting forth (i) the substance of the accusation, (ii) the amount of bond to be executed, (iii) the term for wich it is to be in force, and (iv) the number, character and class of sureties (if any) required.

The Magistrate shall then compel attendance of the opposite party in court by issuing summons. The summons must accompany a copy of order u/s 112 Cr. P.C. When the opposite party appears or is brought before the court the Magistrate shall proceed to inquire into the truth of the information under section 117 Cr. P.C. In holding such inquiry the Magistrate shall follow the procedure as laid down in Chapter XX for trial of a case, that means, the Magistrate shall examine witnesses of both sides, peruse documents, if any and then he shall pass the final order under section 118.

It should be noted with importance that no ad-interim bond can be obtained from the opposite party nor he can be detained in custody during the pendency of the inquiry under Sub-Section (3) of Section 117 Cr. P.C. These measures are taken in a proceeding under section 108, 109 and 110 Cr. P.C.

So, to **sum up**, it stands to this that on receipt of a petition u/s 107 the Magistrate shall ask the opposite party to show cause as per section 112, of course, on being satisfied by examining the petitioner and then shall make an inquiry under section 117 and thereafter shall pass a final order under section 118 or 119. Where the case is proved the O.P. is ordered to execute a bond for keeping of peace for a period not exceeding one year u/s 118. If the accusations are found to be not proved, the O.P. will be discharged u/s 119.

Where the O.P. is directed to execute bond the terms of the bond must npt be in excess of the conditions mentioned in the show cause notice u/s 112. This amount of bond must not be unreasonable in consideration of the financial ability of the O.P. and the accusation levelled. When the O.P. is a minor the bond shall be executed by his sureties.

It has time and again been asserted that in the absence of a show cause notice as per section 112 an inquiry under section 117 is illegal and void.

PROCEEDING UNDER SECTION 133 Cr. P.C.

Part IV of the Code deals with "PREVENTION OF OFFENCES" and it contains five Chapters ranging from Chapter VIII to XII.

Chapter X deals with "PUBLIC NUISANCE". It is important to note here that the provisions to this Chapter are not applicable in a Metropolitan Area.

A District Magistrate, a Sub-Divisional Magistrate or a Thana Magistrate (in view of Sub-Section (2) of Section 13A Cr. P.C.and Section 3(2) of Act 3 of 1994) or a Magistrate of the first class may make a conditional order requiring a person causing public nuisance;

(i) to remove such obstruction or nuisance; or

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

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

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

(v) to remove or support such tree; or

(vi) to alter the disposal of such substance; or

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

(viii) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order.

The order shall contain the renderings that the said person, if he wants, may raise lawful objection to such removal and for that reason he may appear before the Magistrate passing the order or before some other Magistrate of the first or second class on a date to be fixed up in that order.

Such order may be made on the basis of police report or on other information and on taking such evidence, if any, as he thinks fit. In passing the said order the following six matters to be considered;

(a) 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

(b) 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 or such goods or merchandise should be removed or the keeping thereof regulated, or

(c) 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

(d) 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

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

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of.

There are provisions in the Penal Code (sections 268 and 294) which provides for punishment of offences relating to public nuisance but this provision lays down the procedure for speedy removal of the obstruction or the nuisance.

Section 133 should be sparingly used. This section has no application to anticipated obstruction or nuisance. The Magistrate who holds local enquiry should not initiate proceeding under Section 133 Cr. P.C.

Under Section 133 the Magistrate has sufficient power to direct a municipality to abate a public nuisance in a locality due to open drains, heaps of diet, pits and public excretion by humans. In complying with such direction the municipality cannot take the plea of financial inability to obey the order of the Magistrate (IR 1980 SC 1622).

By notification No. CD/CJ/6(8) 82-2(300) dt. 15.12.1982 of the Cabinet Division it has been notified that powers under section 133 and 145 Cr. P.C. will normally be exercised by the Thana Magistrate.

PROCEEDING UNDER SECTION 144

Chapter XI deals with "Temporary Orders in Urgent Cases of Nuisance or Apprehenced Danger" and contains only the section 144.

Whenever it appears to a District Magistrate, Thana Magistrate or to any other Magistrate not being a Magistrate of the third class specially empowered by the Government or by the District Magistrate to act under this Section, that;- (a) immediate prevention of a public nuisance, or (b) speedy remedy of an apprehended danger is desirable, may issue a written order in this regard. The order must set forth the material facts of the case and be served as a summons.

It must either direct any person (a) to abstain from a certain act, or (b) to take certain order with certain property in his possession or under his management. The direction can be given only in three cases specified in the Section, namely, to prevent (1) obstruction, annoyance or injury to any person lawfully empowered; (2) danger to human life, health or safety; or (3) disturbance of the public tranquility or a riot, or any affray.

Such order can be passed exparte, i.e. before notifying the otherside only under two circumstances:- (1) in cases of emergency; and (2) where the circumstances do not admit of personal service. But, ordinarily, an order under the section should not be made without an opportunity being afforded to the person against whom it is proposed to make it, to show cause why it should not be passed.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place. The Magistrate may rescind or alter the order either on his own motion or on the application of the person aggrieved. In such case the applicant be given the opportunity to be heard. If the application is rejected, reasons for such rejection be recorded in writing.

An order under this section remains in force for two months.

It is important to note here that the provisions of this section are not applicable to a Metropolitan Area.

Distinction between Section 144 and 145:- Section 144 applies only where the possession of party is not in dispute; but

where a dispute exists concerning possession with respect to immovable property, the question of actual possession (not title) should be decided by taking evidence in a proceeding under section 145. In such circumstances a proceeding under section 144 be converted into that of a proceeding under section 145 and thereafter on compliance of the requirements of section 145 necessary order be passed.

Curfew : It can be imposed under section 144. "ADM and SDM were competent to impose curfew under the provisions of Section 144" (PLD 1969 Dhaka 961=21DLR (DB) 225). Now Curfew is being imposed under Section 24 of the Special Powers Act, 1974 by the DM or the Police Commissioner (in Metropolitan Area).

Disobedience of the order: A person disobeying an order under this Section is liable to be punished under Section 188 of the Penal Code. The prosecution in such a case, has to be launched under the provisions of Section 195 or Section 476 Cr. P.C. (40 DLR (AD) 226).

Revision: Ordinarily a person feeling aggrieved by an order under this section may seek his remedy under sub-section (4) of the Sectioin. However, he may prefer Revision under Section 439A or 439 Cr. P.C.. The High Court Division may also in exercise of its writ jurisdiction (when this jurisdiction is available) grant relief to an aggrieved party.

PROCEEDING UNDER SECTION 145

This is the last branch of the preventive jurisdiction of the Magistrate as laid down in part IX of the Code. This has been captioned as " Disputes As To Immovable Property" under Chapter XII which contains Sections 145 to 148.

The Section is self contained and self explanatory and the Magistrate has to confine himself to the section only. Where a District Magistrate, Sub-Divisional Magistrate (also Thana Magistrate in view of sub-section (2) of Section 13A) or a Magistrate of the first class is satisfied that a dispute as mentioned in the Section exists he must pass a preliminary order under sub-section (1) and afterwards make an inquiry under sub-section (4). The elements necessary for the foundation of jurisdiction under section 145 are that Magistrate must be satisfied;- (a) that a dispute likely to cause breach of the peace exists, (b) that the dispute refers to land or water or the boundaries thereof, and (c) that such land or water is situated within the limits of his territorial jurisdiction. If these elements exist, they are sufficient to vest a Magistrate with the jurisdiction to make a preliminary order under sub-section (1) —(13DLR 138 SC).

The basis of the preliminary order may be a police report or other information (including submissions made by the parties) and the same shall be passed in writing stating the grounds of Magistrate's being so satisfied and shall direct the parties to attend court on a given date and to put in written statements in support of their respective claims with regard to the fact of actual possession of the subject of dispute.

On receipt of the written statements the Magistrate shall (i) peruse the same, (ii) receive all such evidence as may be produced by the parties, (iii) Consider the said evidence and may take further evidence if he so thinks necessary and (iv) shall decide which of the parties was in possession of the disputed property at the date of the passing of the preliminary oder and shall retain possession of that party restraining the other from interfering with such possession. If that party is found to have been dispossessed forcibly within two months before the date of passing the preliminary order shall put that party in possessison. The party whose possession is declared by the Magistrate shall retain the same until evicted by a civil court.

A party may take recourse to section 145 within two months from the date of his being forcibly dispossessed. In case of grave emergency the Magistrate may attach the property pending his final decision.

The expression "land and water" in sub-section (4) includes buildings, markets, fisheries, crops or other produce of land and the rents or profits of any such property.

On the death of a party his legal representatives are to be substituted and the dispute be set at rest.

Magistrate can attach the disputed property when he cannot find which party is in possession and can appoint a Receiver thereof (section 146). However, if any Receiver is subsequently appointed by the civil court the Receiver so appointed (u/s 146) will hand over possession to that receiver and shall therefrom be discharged.

The object of the proceedings under section 145 is to enable the executive authorities to maintain statusquo before flaring up of a dispute and to leave it to the parties to obtain a final decision from a civil court. A proceeding under this section constitutes "inquiry" within the meaning of section 4 (1)(k). The proceedings are of a summary nature and it is essential that they should be disposed of as expeditiously as possible.

Civil Suit and Proceeding u/s 145: Pendency of a civil suit is no bar to the institution of proceeding u/s 145 if the Magistrate is satisfied that there exists immediate apprehension of breach of peace (35 DLR 180). But when the Civil Court is already in seisin of the subject matter in dispute and has passed an order regulating its possession, etc. Criminal Courts Jurisdiction u/s 145 is ousted and as such any order, if passed, would be illegal (36 DLR [AD] 44).

47 DLR 480 : Serajul Islam & others vs. Fazlul Huque and others - Filing of case under section 145 of the Cr. P. C. during pendency of a civil suit between the same parties cannot be said to be proper - A party to a civil suit if threatened in his possession, can seek remedy from the civil court and should not seek such remedy from a criminal court as civil court is final arbiter of land dispute.

APPEAL

Chapter XXXI which contains sections 404 to 431 deals with appeal.

Any party to a case feeling aggrieved by any judgement or order of a Criminal Court may prefer appeal by a petition setting forth the grounds on which he wants to assail the impugned judgement or order. Alongwith the petition certified copy of the said judgement or order is to be filed (Section 419).

An appeal may lie on a matter of facts as well as a matter of law (Section 418).

Hearing for admission of the appeal: On receipt of such petition which is known as memorandum of appeal the appellate court shall hear the appellant or his advocate and may dismiss the appeal summarily if it finds nothing to interfere therewith. But if it finds sufficient grounds for interference the appeal will be admitted. In that case lower court's record will be called for and the Respondants will be notified fixing a date for hearing (Sections 421 & 422).

Further, if the appeal is against a sentence of conviction it may enlarge the appellant on bail and if the sentence contains fine, the execution of the same may be suspended pending disposal of the appeal (Section 426). If it is against an order of acquittal the accused shall have to be brought before the court and may either commit him to prison till disposal of the appeal or admit him to bail (Section 427).

At the time of admission of the appeal the appellate court shall also see as to whether the impugned order or sentence is appealable, because, there are orders and sentences which are not appealable. For example:-

(i) An order of maintenance u/s 488 Cr.P.C. is not appealable;

(ii) A sentence of fine upto Tk.50.00 when passed by a court of Sessions or by a Magistrate of the first class is not appealable;

(iii) A sentence of fine upto Tk.200.00 when passed by a Magistrate duly empowered u/s 260 Cr.P.C. in a summary trial is not appealable;

(iv) A sentence of imprisonment not exceeding one month when passed by a Court of Sessions is not appealable;

(v) A sentence of imprisonment when passed on accused's pleading guilty is not appealable except as to the extent or legality of the sentence: etc.

Very often either mistakenly or with ulterior motive appeals are directed against such non-appealable orders or sentences. Appellate Court must screen those appeals at the initial stage by refusing admission.

Forum of apeal : As against a sentence of conviction by a Magistrate of the Second or Third class appeal lies with the District Magistrate. The District Magistrate may transfer the said appeal to the Additional District Magistrate who is duly empowered in this regard for hearing and disposal of the appeal (section 407).

As against a sentence of conviction passed by a Chief Metropolitan Magistrate, a Metropolitan Magistrate, a District Magistrate or other Magistrates of the first class appeal lies with the Sessions Judge. When an Assistant Sessions Judge passes any sentence of imprisonment for a term exceeding five years, appeal lies with the High Court Division and if it is upto five years appeal lies with the Court of Sessions (Section 408). The rulings reported in 36 DLR 93 and 37 DLR 18 holding the view that appeal lies with the High Court Division as against an order of the Assistant Sessions Judge deemed to have been appointed as Additional Sessions Judge irrespective of the term of imprisonment have been overruled by the subsequent ruling of the Full Bench of the High Court Division reported in 41 DLR 395. So, now appeal lies with the Sessions Judge when the deemed Additional Sessions Judge passes a sentence of imprisonment upto five years.

As against a sentence of conviction by a Sessions Judge or an Additional Sessions Judge appeal lies with the High Court Division.

As against an original or appellate order of acquittal when passed by any court of Sessions appeal lies with the High Court Division and when passed by any Magistrate it lies with the court of Sessions. This relates to police case and the Government shall have to direct the public prosecutor to present such appeal. Without such direction appeal is not tenable in law. If such order

of acquital is passed in a complaint case the complainant may prefer appeal to the High Court Division and such appeal shall have to be filed within sixty days from the date of acquittal (Section 417).

Hearing of the appeal and power of the appellate Court: At the outset, before entering into the scrutiny on merit of the appeal, it is to be looked into as to whether the Court which passed the impugned judgement or order had jurisdiction to pass the same. Offences exclusively triable by a Magistrate of the first class if tried by a Magistrate of the Second class the trial vitiates. Similarly, Magistrates very often fall into the error of trying cases which are exclusively triable by; (a) the village Court (under the provisions of village courts ordinance, 1976), (b) the Special Judge (under the provisions of the criminal Law Amendment Act, 1958, the Nari-O-Shishu Nirjatan (Bishesh Biddan) Ain, 1995), and (c) the Special Tribunal (under the provisions of the Special Powers Act, 1974), etc. So, a scrutiny is to be made in this regard and if it appears that the Magistrate in passing the impugned judgement or order has acted beyong jurisdiction, the judgement or order appealed against is to be set aside and retrial may be asked for by a proper Court. This retrial will not amount to vexing one twice for the same offence. The appellate Court shall have to spell out the stage from which retrial should take place.

Thereafter, it is to be considered as to whether the court has committed any gross irregularity which vitiates the trial; such as, non-examiantion of the accused u/s 342 Cr.P.C.; non-framing of charge causing failure of justice, non-publishing of notice in case of an accused in absecondance, etc. If any such defect is found out the Court shall set aside the judgement or order appealed against and shall send back the case to the trial Court for removing the defect and either to rewrite the judgement on the evidence already on record or to write a fresh judgement on taking such evidence as would be necessary under the changed circumstances.

It is to be noted with importance that if territorial jurisdiction is assumed wrongly, i.e. proceedings are initiated in a wrong place the same is not an illegality but an irregularity curable u/s 529 read with section 531 Cr.P.C.and as such do not vitiate the proceeding (35 DLR 118A) of course, if objection is raised before trial commences the case is to be sent to the proper Court having territorial jurisdiction to try the same.

If the judgement or order appealed against stands to the above tests then the Court will enter into the scrutiny on merit of the appeal and shall see whether the facts, circumstances and evidence (both oral and documentary) and other materials on record justify the same or deserves any interference. The Court will hear the appellant or his advocate and the public prosecutor and the accused in cases of appeal by government for enhancement of sentence in cases of appeal from acquittal) and may dismiss the appeal if no sufficient ground for interference is there and in that case will affirm the judgement or order appealed against.

The court may, in an appeal from an order of acquittal,

(a) reverse such order, and direct

(i) further inquiry, or

(ii) re-trial of the accused, or

(iii) send for trial, or

(b) find the accused guilty and pass sentence on him.

It may, in an appeal from an order of conviction,

(a) reverse the finding and sentence, and

(i) acquit or discharge the accused, or

(ii) order him to be retried by a court of competent jurisdiction or sent for trial; or

(b) alter the finding maintaining the sentence; or

(c) alter the nature and/or the extent of the sentence but not so as to enhance the same.

It may, in an appeal for enhancement of sentence,

(a) reverse the finding and sentence, and

(i) acquit or discharge the accused, or

(ii) order him to be retried by a Court of competent jurisdiction, or

(b) alter the finding maintaining the sentence, or

(c) alter the nature and/or extent of the sentence so as to enhance or reduce the same.

It may make any amendment or any consequential or incidental order that may be just or proper.

It may not enhance the sentence unless the accused has had an opportunity of showing cause against such enhancement.

Appellate Court does not inflict greater punishment for an offence, than that which might have been inflicted by the Court from whose order or sentence the appeal has been made (S. 423).

It may, after recording its reasons, take additional evidence or direct it to be taken by a Magistrate. The High Court may direct the court of Sessions or a Magistrate to take evidence.

Abatement of appeal :

1. Appeal u/s 417 or 417A abates on the death of the accused; and

2. Other appeals abate on the death of the appellant.

3. An Appeal against a sentence of fine does not abate on the death of the accused or appellant (Section 431 and (22 DLR 244).

Limitation for appeal:

(i) In case of death sentence passed by a Court of Sessions appeal is to be preferred within 7 days from the date of sentence under Article 150 of the Limitation Act.

(ii) The period of limitation is 30 days from the date of sentence or order in case of appeal to any court other than the High Court Division under Article 154 of the Limitation Act.

(iii) The period of limitation is 60 days from the date of sentence or order in case of appeal to the High Court Division under Article 155 of the Limitation Act.

(iv)The period of limitation for filing appeal by the Government under sub-section (1) of section 417 is six months under Article 157 of the Limitation Act.

(v) In case of appeal to the High Court Division under sub-section (2) of section 417 by a complainant against an order of acquittal the period of limitation is sixty days under section 417 (3) Cr.P.C. In such cases the provision of limitation Act. 1908. with respect to condonation of delay is not applicable (38 DLR(ctg)26).

(vi) In cases under the Special Powers Act. 1974 limitation for appeal u/s 30 is thirty days from the date of passing of the order, judgement or sentence. Delay cannot be condoned u/s 5 of the Limitation Act, 1908 (43 DLR 247 and 209).

When an appeal is filed after the period of limitation the same cannot be entertained. But in cases of trial held in absentia the delay may be condoned on reasonable grounds for the ends of justice.

with both. The accused-contemnor may be discharged or punishment may be remitted, on apology being made to the satisfaction of the court. The apology shall have to be unconditional and must precede any defence. Justification of the conduct of the contemnor by resort to argument not an unconditional apology (37 DLR 26).

Dignity and authority of the court trampled and transgressed—court cannot be a silent spectator. (44 DLR 21).

Freedom of press is recognised in our constitution. A Court is to suffer criticism made against it. Only in exceptional cases of bad faith or ill motive it will resort to law of contempt. Responsibility of a reporter who is also a practising advocate will be a little more onerous than one who acts as a mere journalist. 44 DLR (AD) 309.

Reference to High Court Division:

In making reference to the High Court Division the following procedure is to be followed:

1. It should be addressed to the Registrar of the Supreme Court of Bangladesh, Dhaka.

2. It shall contain the following headings with precise note thereof:-

(a) **Subject:** It be expressed in the following terms, 'Reference for action under Section 3 of the contempt of Courts Act, 1926 (Act XII of 1926) against the persons whose particulars are given in the schedule below'.

(b) **Reference** : Time, place and manner of the Contumacious act complained of be mentioned here in a few lines.

(c) **Statement of facts** : This shall start with the following wordings:-

"..... Thana Magistrate, ... have the honour to state that a question of taking motion under the contempt of courts Act, 1926, has arisen with respect to my court out of the following facts and circumstances: -

(State here the facts of the case. The contumacious comments shall have to be quoted word by word alongwith the circumstances under which and the manner (including gesture and posture if any) in which the same is made).

(d) **Prayer:** This be made in the following terms:-

"In the facts and circumstances I most humbly pray that the matter of this reference may kindly be laid before the Hon'ble Court for drawing up of proceedings under the Contempt of Courts Act, 1926 against the persons named below and also for taking such action or actions as the Hon'ble Court deems fit and proper."

Your obedient servant.

(.....)

Thana Magistrate

Schedule

Names with particulars of the contemnors:

1.....

2.....

CONTEMPT OF COURT UNDER THE PENAL CODE AND THE CODE OF CRIMINAL PROCEDURE

When a party, witness or counsel obstructs a judicial proceeding and commits contempt in the view or presence of a court subordinate to the High Court Division the later court has power to take immediate action under Section 228 of the Penal Code read with Section 480 of the Cr. P.C.

Section 228 is the only section under the Penal Code which deals directly with contempt of Court. But there are other four sections, viz. Sections 175, 178, 179 and 180 of the Penal Code which also deal with contempt of Court if the said offences are committed in relation to a public servant while working as a judge. These offences alongwith section 228 are to be read with Section 480 of the Cr. P.C. The following five circumstances constitute offences of the contempt of Court under the Penal Code to be tried u/s 480 of the Cr. P.C. -

(i) Whoever declines to produce a document, being legally bound to produce the same, on being asked by the Court (Section 175 P.C.);

(ii) Whoever refuses to take oath on being asked by the Court, for instance, a witness is legally bound to take oath but if he refuses (Section 178);

(iii) Whoever refuses to answer to questions on being legally asked in Court, for instance, a witness is legally bound to answer to question put to him during trial (Section 179);

(iv) Whoever refuses to sign any statement which he is legally bound to sign, e.g., signing of the deposition by the witness (Section 180 P.C.); or

(v) Whoever intentionally insults or causes any interruption to any judge while sitting in any stage of a Judicial proceeding (Section 228 P.C.).

Under any of these circumstances the Court may instantaneously take action against the said offender under Section 480 Cr.P.C.

Section 480 contemplates following steps:-

(i) The offender be taken to custody immediately;

(ii) A contempt proceeding be drawn up at once writing out in the order sheet the facts constituting the offence with name and particulars of the offender;

(iii) Issue a show cause notice directing the offender to explain his conduct within a reasonable time;

(iv) On receipt of the reply, if any, to the show cause notice the Magistrate may take cognizance of the offence;

If such reply is not submitted the Magistrate shall not wait for the reply.

If any prayer for time is made the same may not be entertained, because, the court shall have to pass the final order on the same day.

At this stage the court shall decide whether the case be tried by it or that the same be tried by some other court. If the court decides to try the case itself then. —

(v) Pass sentence of fine not exceeding two hundred take, in default of payment, simple imprisonment for a term not exceeding one month. On payment of the fine the offender be released forthwith from the jail:

(vi) The court shall conclude the proceeding at any time till rising of the court on the same day.

'Rising of the Court' means rising for the day and not for the recess (AIR 1922 Bom 261).

(vii) The court may, in its discretion, discharge the offender or remit the punishment on the offender's submission to the order or requisition of the court or on apology being tendered to its satisfaction (Section 484).

In the judgement of such cases the court shall record:-

(a) The facts constituting the offences,

(b) The statement of the offender, i.e., the reply to the show cause notice, if any, submitted by the offender,

(c) The findings of the court and

(d) The sentence passed (Section 481).

If the offence is u/s 228 P.C. the record shall also show the nature and stage of the judicial proceeding in which the court interrupted or insulted was sitting and the nature of the interruption or insult (Section 481). The 'interruption' shall have to be actual disturbance to Court's work and the 'insult' must have to be an intentional insult. However, in cases coming under this section, the court is both prosecutor and judge and so, the power is to be exercised only in extreme circumstances. The Courts should not be unduly sensitive or touchy about their dignity.

Under Section 480 any Civil, Criminal or Revenue Court is competent to take the action provided the offences are committed in the view or presence of the court. Here, the most important point is that the offences shall have to be committed in the view and presence of the Magistrate while engaged in judicial work. If the offender runs away from the court after committing the offence in that event the case may be transferred to another Magistrate who shall secure attendance, if necessary by arrest and shall try the offender.

An offender may be tried in absentia u/s 339B Cr.P.C. and in that event transfer of the cases for the reason of offender's absence only, may not be necessary. Action u/s 480 cannot be taken if the contemptuous act is done beyond the view or presence of the court by making statements, speeches, writings publications through leaflets, posters newspapers, etc. Under these circumstances action is taken under the provisions of the Contempt of Courts Act, 1926 by referring the matter to the High Court Division.

Section 175, 178, 179, 180 and 228 of the Penal Code prescribe punishments severe than the one laid down in section 480. So, if the court considers that the offender be punished severely than that of the fine of Tk.200.00 or if for any other reason the court is of opinion that the case should not be tried u/s 480, the case may be forwarded to another Magistrate having local jurisdiction for trial of the offender. In so forwarding, the court shall record the facts constituting the offence and the statement of the offender, if any, so submitted to the show cause notice. The offender may be enlarged on bail or if he declines to execute any bond he be kept in custody and may be placed to the jurisdiction of the transferee court.

On receipt of the case the Magistrate shall treat the forwarding memorandum as a complaint and shall try the offender maintaining the requirements of Section 481 Cr. P.C. The Magistrate may inflict such punishment as provided in the Section of the Penal Code with which the offender is charged. Further, the said Magistrate shall not be bound to conclude the case within the day (Section 482). The matter of taking-cognizance lies with the prosecuting Court. The trying Court shall frame charge, examine witnesses, examine the ofeender and shall pass the judgement as quickly as possible. The case may be tried by any Magistrate.

With respect to offences for non-production of document or refusal to answer any question (u/s 175 and 179 P.C.) a separate treatment of the offender has been laid down in Section 485. In such cases the court, before proceeding u/s 480, may sentence the offender to simple imprisonment for a period not exceeding seven days and he may be kept in the custody of an officer of the court. This measure is taken with the expectation that the offender may concede to produce the document or to answer the question. If the offender persists in his refusal he may be dealt with u/s 480 or 482.

CONTEMPT OF FAMILY COURTS

Section 19 of the Family Courts Ordinance, 1985 is almost akin to that of Section 480 of the code of Criminal Procedure.

A Judge of the Family Court has been empowered to punish a person guilty of contempt of the said court if he, without lawful excuse;

(a) Offers any insult to the Family Court;

(b) Causes an interruption in the work of the Family Court;

(c) Refuses to answer any question put by the Family Court, which is bound to answer;

(d) Refuses to take oath to state the truth or to sign any statement made by him in the Family Court.

. Punishment : A person found guilty of the contempt of Family Court may be sentenced to pay a fine not exceeding Two hundred Taka. But in default of payment of fine the contemnor cannot be imprisoned. Fine is to be realised as per law (see Section 25 of the General Clauses Act., 1897).

The judge can pass the sentence of fine forthwith without resorting to lengthy procedure of trial. But the wordings "without lawful excuse" contemplate a chance to be given to the offender enabling him to explain his conduct.

THE CONTEMPT OF COURTS ACT. 1926
ACT XII OF 1926

Preamble :

(An Act to define and limit the powers of certain Courts in punishing contempts of Court;

Whereas doubts have arisen as to the powers of a High Court of Judicature to punish contempts of courts);

And whereas it is expedient to resolve these doubts and define and limit the powers exercised by High Courts in punishing contempts of courts, it is hereby enacted as follows:

1. Short title, extent and commencement :- This Act may be called the Contempt of Courts Act, 1926. It shall come into force on such date as the Government by notification in the official Gazette appoints.

[The Act came into force on 1st May, 1926 (Gazette of India, Part-I P422)]

2. Power of Superior Courts to punish contempts of Court — (i) Subject to the provisions of sub-section (iii) the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of contempt of Courts subordinate to them as they have and exercise in respect of contempt of themselves.

(ii) Omitted.

(iii) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

3. Limit of punishment for contempt of Court — Save as otherwise provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand taka, or with both.

Provided that the accused may be discharged or the punishment awardable may be remitted on apology being made to the satisfaction of the Court:

Provided further that notwithstanding anything elsewhere contained in any law, no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.

OFFENCES UNDER THE PENAL CODE WHICH ARE EXCLUSIVELY TRIABLE BY A SPECIAL JUDGE

Magistrates often fall into the error of trying offences under some sections of the Penal Code which are triable exclusively by a Special Judge as amended by section 5 of the Criminal Law Amendment Act, 1958, (Act No. XL of 1958).

Sub section (1) of Section 5 of the said Act runs as follows:-

Notwithstanding any thing contained in the Code of Criminal Procedure, 1898, or any other law, the offences specified in the *schedule shall be triable exclusively by a Special Judge (This section has got six other sub-sections).

*The Schedule

(a) Offences punishable under sections 161 to 166, 168, 217 and 218 of the Penal Code, and attempts, abetments and conspiracies in relation thereto or connected therewith.

(b) Offences punishable under sections 403 to 409; 417 to 420, 465 to 468, 471 and 477A of the Penal Code and attempts, abetments and conspiracies in relation thereto or connected therewith, when committed by any public servant as such or by any person acting jointly with or abeting or attempting to abet in conspiracy with any public servant as such.

(c) Offences punishable under the Prevention of Corruption Act, 1947 and attempts, abetments and conspiracies in relation thereto or connected therewith.

Note:- Trial of the aforenoted offences by Magistrates or by any other Court is without jurisdiction and as such illegal.

It is important to note here that cognizance of such cases are taken by the Special Judge and not by the Magistrates.

Before framing of charge sanction of the Government shall have to be obtained (35 DLR(AD) 324).

OFFENCES UNDER THE PENAL CODE WHICH ARE EXCLUSIVELY TRIABLE BY VILLAGE COURTS

Section 3 of the Village Courts Ordinance, 1976 (Ordinance No. LXI OF 1976) runs as follows:-

Cases triable by Village Court: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, (Act V of 1898) all cases relating to offences specified in *Part I of the Schedule shall, save as otherwise provided hereinafter be traible by Village Courts and no Criminal Court shall have jurisdiction to try any such case.

(2) A Village Court shall not try a case relating to an offence specified in Part I of the Schedule if the accused had previously been convicted of a cognizable offence.

*SCHEDULE

PART - 1

Criminal Cases

1. Sections 143 and 147 of the Penal Code (Act XLV 1860) read with the third or the fourth clause of section 141 of the Code, when the common object of the unlawful assembly is to commit an offence under section 323 or 426 or 447 of that Code, and when not more than ten persons are involved in the unlawful assembly.

2. Sections 160, 323, 334, 341, 342, 352, 358, 426, 447, 504, 506 (first part), 508, 509 and 510 of the Penal Code (Act XLV of 1860).

3. Sections 379, 380 and 381 of the Penal Code (Act XLV of 1860), when the offence committed is in respect of Cattle.

4. Section 379 of the Penal Code (Act XLV of 1860), when the offence committed is in respect of any property other than cattle, and the value of such property does not exceed five thousand taka.

4A. Sections 380 and 381 of the Penal Code (Act XLV of 1860), when the offence committed is in respect of any property other than cattle, and the value of such property does not exceed five thousand taka.

5. Sections 403, 406, 417 and 420 of the Penal Code (Act XLV of 1860), when the amount in respect of which the offence is committed does not exceed five thousand taka.

6. Section 427 of the Penal Code (Act XLV of 1860), when the value of the property involved does not exceed five thousand taka.

7. Sections 428 and 429 of the Penal Code (Act XLV of 1860), when the value of the animal does not exceed five thousand taka.

8. Sections 24, 26 and 27 of the Cattle Trespass Act, 1871 (Act I of 1871).

9. Attempts to commit or the abetment of the commission of any of the above offences.

Note:- Sub-section (1) of section 3 has ousted the jurisdiction of any Magistrate or any other court to try any offence as are exclusively triable by the village courts.

Pecuniary jurisdiction of the Village Courts has been raised to five thousand taka by the Village Courts (Amendment) Ordinance, 1979, (Ordinance No. IV of 1979) with effect from 29th January, 1979.

The Ordinance came into force on the 3rd August, 1976 and pecuniary jurisdiction of the court with respect to items 4 (which was then item 3) was one thousand taka and with respect to other items five hundred taka.

Be it noted here that original items 3 and 4 of Part I of the Schedule have been substituted by item no. 3,4 and 4A by Ordinance No. VIII of 1978 with effect from 13th February, 1978 (of course without changing the pecuniary jurisdiction).

Sections 15 and 16 of the said Ordinance run as follows:

Transfer of certain cases: — (1) Where the Sub-Divisional Magistrate is of the opinion that the circumstances of a case relating to a matter falling under Part I of the Schedule and pending before a Village Court are such that the public interest and the ends of justice demands its trial in a Criminal Court, he may, notwithstanding anything contained in this Ordinance, withdraw the same from the Village Court and forward it to the Criminal Court for trial and disposal.

(2) A Village Court may, if it is of the opinion that in a case relating to a matter as aforesaid and pending before it and the ends of justice demand a punishment for the accused forward the case to the Criminal Court for trial and disposal.

Section 16 :- Investigation by Police — Nothing in this Ordinance shall prevent the police from investigating a cognizable case by reason of the fact that the case relates to an offence specified in Part I of the Schedule, but if any such case is taken to a Criminal Court, such Court may, if it thinks fit, direct that it be referred to a Village Court under this Ordinance.

PROCEDURE TO DEAL WITH AN ACCUSED WHO IS A MILITARY PERSONNEL:

Police as well as Magistrates are often found in a fix about an accused who is a Military personnel. Military authorities have also complained of wrong application of the laws in this connection. Government and police authorities have also come up with instructions to follow the laws. So this subject is very important. The laws relevant in this connection are; The Army Act, 1952, The Criminal Procedure (Military Offenders) Rules, 1970, Section 549 of the Cr. P.C., P.R.B. Rules 438 and Appendix XXVI).

The Army personnels who commit an offence like (i) Murder, (ii) Culpable homicide or (iii) Rape while not on active service shall exclusively be tried by civil courts and the Army offender shall remain in civil custody. The Court Martial will have no jurisdiction in these cases. But all other criminal offences committed by Army Personnels, no matter whether they are on active service or not, are triable both by the Court Martial and the Civil Court. The Army Personnel, if arrested by the Police during commission of the crime or immediately after the commission, should be forwarded to the court and the Magistrate concerned shall make a reference to the Officer Commanding the troops / Prescribed Officer of the Army asking to know whether the accused will be tried by the court Martial or by the Criminal Court.

If decision is taken in favour of court Martial, the offender should be made over to the concerned Army Officer under proper escort. In such concurrent jurisdiction, if the Magistrate, however, feels that the case should be tried by a Criminal Court but the Officer Commanding the troops / Prescribed Officer differs, a reference shall be made to the Govt. for decision.

It should be clearly understood that in cases of concurrent jurisdiction, the discretion lies with the Officer Commanding the troops/Prescribed Officer as to whether an Army offender shall be tried by Court Martial or by a Criminal Court. In case of trial by Court Martial, arrest of Army Personnel by Police (at subsequent stages) without written requisition from Army authority is absolutely irregular and contrary to the Army Act. It is essential that whenever any Army Personnel is arrested in connection with a criminal case, the Army authority should be kept informed forthwith by the Superintindent of Police of the district and their cases in Criminal Court shall not commence unless it is so decided on a reference by the Magistrate to the Officer Commanding Prescribed Officer.

Sections 76, 77, 94 and 95 of the Army Act, 1952 directly deal with the subject and so these sections are quoted below ;

Section 76. Arrest by civil authorities: Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by that person's commanding officer.

Section 77. Capture of deserters : (1) Whenever any person subject to this Act deserts, his commanding officer shall give written information of the desertion to such civil authorities as in his opinion may be able to afford assistance towards the capture of the deserter. Such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate and shall deliver the deserter, when apprehended, into military custody.

(2) It shall be lawful for any police officer to arrest without warrant any person whom he reasonably believes to be subject to

this Act, and to be a deserter or absentee without leave, and to bring him without delay before the nearest magistrate, to be dealt with according to law.

Section 94. Order in case of concurrent jurisdiction of court martial and criminal court: When a criminal court and a court martial have each jurisdiction in respect of a civil offence, it shall be in the discretion of the prescribed officer to decide before which court the proceedings shall be instituted and, if that officer decides that they shall be instituted before a court martial, to direct that the accused person shall be detained in military custody.

Section 95. Power of criminal court to require delivery of offender: (1) When a criminal court having jurisdiction is of the opinion that proceedings ought to be instituted before itself in respect of any civil offence, it may, by written notice, require the prescribed officer, at his opinion, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case, the said officer shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the central Government, whose order upon such reference shall be final.

For better understanding of the above provisions definitions of some terms as given in the Army Act, 1952 are quoted below:-

(1) *"active service"*, as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is attached to or forms part of a force which is in military occupation of a foreign country.

(2) *"civil offence"* means an offence which, if committed in Pakistan, would be triable by a criminal court.

(3) *"court martial"* means a court martial held under this Act.

(4) *"criminal court"* means a court of ordinary criminal justice in Pakistan, or established elsewhere by the authority of the Central Government.

(5) *"offence"* means any act or omission punishable under this Act and includes a civil offence as hereinbefore defined.

Further, Rules 2 to 7 of the Criminal Procedure (Military Offenders) Rules, 1970 are given below for dealing with the subject properly.

Rule 2. Where a person subject to Military, Naval or Air Force Law is brought before a Magistrate and charged with an offence for which he is liable, under Pakistan Army Act, 1952 (XXXII of 1952), the Pakistan Navy Ordinance, 1961 (XXXV of 1961), or the Pakistan Air Force Act, 1953 (VI of 1953), to be tried by a court martial, such Magistrate, unless he is moved by the competent Military, Naval or Air Force authority, as the case may be, to proceed against the accused under the Code, shall before so proceeding give notice to such authority and, until the expiry of a period of fifteen days from the date of service of such notice, shall not —

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

(b) frame a charge against the accused under Sec.241 of the Code, or

(c) make an order committing the accused for trial by the High Court or the Court of Sessions under Sec. 213 of the Code, or

(d) transfer the case for enquiry or trial under Sec. 192 of the Code.

Rule 3. Where, within the period of fifteen days mentioned in rule 2 or at any time thereafter before the Magistrate has done any act or issued any order referred to in that rule, the competent Military, Naval or Air Force authority, as the case may be, gives notice to the Magistrate that the accused should be tried by Court Martial, the Magistrate shall stay proceedings and, if the accused is in his power or under his control, shall deliver him, with the Statement prescribed by Sec. 549 of the Code, to the authority specified in the said section.

Rule 4. Where a Magistrate has been moved by competent Military, Naval or Air Force authority, as the case may be, under rule 3 and such an authority subsequently, gives notice to such Magistrate that, in the opinion of such authority, the accused

should be tried by court-martial, such Magistrate if he has not, before receiving such notices, done any act or issued any order referred to in rule 2 shall stay proceedings and, if the accused is in his power or under his control, shall in the like manner deliver him, with the statement preseribed in Sec. 549 of the Code, to the authority specified in the said section.

Rule 5. Where an accused person, having been delivered by the Magistrate under rule 3 or 4 is not tried by a court martial for the offence of which he is accused, or effectual proceedings are not taken, or ordered to be taken, against him, the Magistrate shall report the circumstances to the Provincial Government.

Rule 6. (1) Notwithstanding anything to the contrary contained in rule 2,3 or 4, where it comes to the notice of a Magistrate that a person subject to Military, Naval or Air Force law has committed an offence proceedings in respect of which ought to be instituted before him, the Magistrate may, by a written notice require the competent Military, Naval or Air Force authority, at the option of such authority , either to deliver such person, if in its custody, to the nearest Magistrate for being proceeded against according to law, or to stay the proceedings against such person before the court martial, if since instituted, and to make a reference to the Federal Government for determination as to the Court before which proceedings should be instituted.

(2) The competent Military, Naval or Air Force authority to whom a notice is issued under sub-rule (1) shall either deliver the offender in accordance with the notice or refer the question of the trial to the Federal Government, whose order upon such a reference shall be final.

Rule 7. In these rules, unless there is anything repugnant in the subject or context :-

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

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

(c) "Competent naval authority" means the administrative authority whose command the accused is serving or is attached or any superior authority, provided that where death has resulted, the competent authority shall be the Chief of the Army Staff;

(d) "Competent Air Force authority" means the officer commanding the Station to which the accused person belongs or is attached, or any superior authority, provided that where death resulted, the competent authority shall be the Chief of the Army Staff;

(e) "Court Martial" includes -

(i) an officer exercising authority under Sec. 23 of the Pakistan Army Act, 1952 (XXXIX of 1952); or

(ii) a naval tribunal as defined in Sec. 95 of the Pakistan Navy Ordinance, 1961 (XXXV of 1961); or

(iii) an officer exercising authority under Sec. 82 or Sec. 86 of the Pakistan Air Force Act, 1953 (VI of 1953);

(f) "person subject to Military, Naval or Air Force Law" includes a person not otherwise subject to any law who is brought before a Magistrate and is accused of an offence mentioned in clause (d) of Sec.2 of the Pakistan Army Act, 1952 (XXXIX of 1952), or sub-section (3) of Sec. 2 of the Pakistan Navy Ordinance, 1961 (XXXV of 1961), or clause (d) of Sec. 2 of the Pakistan Air Force Act, 1953 (VI of 1953). (See Section 549 Cr. P. C.)

Glimpse at the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995.

(Act 18 of 1995)

This is the latest legislation regulating heinous crimes committed to Women and Children. It came into force on 17th July, 1995.

In this Ain 'woman' means a femal being of of any age and a "child" means a person under sixteen years of age. Punishment has been made severe and harsher to the offences brought under this Ain when committed to a child or a woman. The purpose of the law is to help check commission of awful and gruesome offences often found being committed to children and women and the scheme has been chalked out greatly enhancing the punishment and by introducing special courts for their trial within a stipulated time and without allowing bail for a certain period.

The following are the offences which are exclusively triable under this Ain ;-

1. Causing of death by means of erosive, poisonous or corrosive substance (Section 4).

2. Causing of grievous hurt to some specific organs of the body by means of erosive, poisonous or corrosive subtances (Section 5).

3. Rape to a child or a woman.

'Child' means both male and female child under the age of sixteen years. Now, rape to a male child is unknown in the Penal Code. However, we get an offence by the name unnatural offence under section 377 of the Penal Code and may it be that by the expression rape to a male child commission of such unnatural offences have been meant. The confusion requires to be removed by amendment of the law (Section 6).

4. Attempt to cause death or hurt by committing rape (Section 7).

5. Trafficking in women, etc. (Section 8).

6. Kidnapping or abduction for the purpose of prostitution, illicit intercourse, marriage, against the will, etc. (Section 9).

7. Causing of death, etc. for dowry (Section 10).

8. Causing of grievous hurt for dowry(Section 11).

9. Trafficking in children (Section 12).

10. Kidnapping or wrongful confinement of a child for realisation of ransom (Section 13).

11. Abetment of any of the above offences (Section 14).

Here, just a touch is given to the offences with a view to keep alive the courts and the members of the Bar: but in dealing with any of the offences one must go through the same minutely, for, many new changes have been brought in by this law in the nature of the offences and the punishment thereof.

District and Sessions Judges including Additional District and Sessions Judges have by now been vested with the power to try the offences under this Ain.

It deserves to be mentioned here that the Cruelty to Women (Deterrent Punishement) Ordinance, 1983 has been repealed by this Ain and paragraph 4B and 4C of the Schedule to the Special Powers Act, 1974 have been omitted meaning thereby that section 376, 385 and 387 of the Penal code will go back to their parent law, i.e. to the Penal Code, 1860. However, the offence of rape to a child or a woman with greater punishment has been embodied in this Ain for its trial by this law.

PART - B

THE CODE OF CRIMINA PROCEDURE, 1898

(Act No. V of 1898) [22nd March, 1898]

An Act to consolidate and amend the law relating to the Criminal Procedure.

Whereas it isexpedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows :

PART I
PRELIMINARY
CHAPTER - I

1. Short title, commencement. — (1) This Act may be called the Code of Criminal Procedure, 1898; and it shall come into force on the first day of July, 1898.

Extent.— (2) It extends to the whole of Bangladesh; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special 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. [Repeal of enactments, notifications, etc., under repealed Acts. Pending cases.] Rep. by the Repealing and Amending Act, 1914 (X of 1914).

3.(1) Omitted by Act VIII of 1973.

Expressions in former Acts. — (2) In every enactment passed before this Code comes into force the expressions "Officer exercising (or "having") the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge".

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

"Advocate".— (a) "advocate", used with reference to any proceeding in any court, means an advocate or a mukhtar

authorised under any law for the time being in force to practise in any such court and includes any other person appointed with the permission of the court to act in such proceeding ;

"Attorny-General".— (aa)"Attorney-General" means the Attorney-General for Bangladesh, and includes also the Additional Attorney-General, the Deputy Attorney-General or the Assistant Attorney-General for Bangladesh, or, a Government advocate or such officer as the Government may, from time to time, appoint in this behalf;

"Bailable offence" "Non-bailable offence".— (b) "bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;

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

(d) Repealed by Act XI of 1923.

'Clerk of the state".— (e) Clerk of the State includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the State;

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

(g) Omitted by Act, A.O. 1949

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

(i) Omitted by act, (ii of 1950)

"High Court Division".— (j) "High Court Division" means the High Court Division for criminal appeal or revision;

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

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

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

"**Non Cognizable offence.**" "**Non cognizable case**".— (n) "non-cognizable offence" means an offence for. and "non-cognizable case" means a case in. which a police-officer. may not arrest without warrant:

"**Offence**".— (o) "offence" means any act or omission made punishable by any law for the time being in force: it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-tresspass Act. 1871:

"**Officer in charge of a police station**".— (p) "officer in charge of a police-station" includes. when the officer in charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties. the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or. when the Government so directs. any other police-officer so present:

"**Place**".— (q) "place" includes also a house. building. tent and vessel:

(r) Omitted.

"**Police-station**".— (s) 'police-station" means any post or place declared. generally or specially. by the 2[Government] to be a police-station. and includes any local area specified by the Government in this behalf:

"**Public prosecutor**".— (t) "Public Prosecutor" means any person appointed under section 492. and includes any person acting under the directions of a Public Prosecutor

"**Sub-division**".— (u) "Sub-division" means a sub-division of a district:

Note

This country is no more having any Sub-Division with the introduction of Upazila system. And at the present the Upazila system has also been abolished and the Upazilas have been renamed as Thanas. However, in section 13A it has

been laid down that a Upazila Magistrate (*Note under section 13A may be gone into*) shall have all the powers of a Sub-Divisional Magistrate. So, there ocours no confusion in the functioning of the courts, regarding taking of congizance and other matter. But the Code of Criminal Procedcure 1898 must have been amended in accordance with the changes which are brought about.

(V)
(W) | Omitted vide Ordinance No. XXIV of 1982; w.e.f. from 21-8-82.

Note

This omission has brought in a significant change in the procedure of Criminal trial. By this omission the distinction between summons procedure and warrant procedure in trying a criminal case has been done away with and now only one procedure will be followed in the trial of all the criminal cases and it is the procedure which used to be followed in the trial of summos cases under Chapter XX.

Words referring to acts. — (2) Words which refer to acts done, extend also to illegal omission; and

Words to have same meaning as in Penal Code. — 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. **Trial of offences under Penal Code.** — (1) All offences under the Penal Code shall be investigated, inquired into, tried, and otherwise deatn with according to the provisions hereinafter contained.

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