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CHAPTER 1
GENERAL

1. Office Hours :-

The hours of work in offices of Criminal Courts except the Courts of Session, Ahmedabad City, shall be from 11-00 a.m. to 6-00 p.m. (except on Sundays, Holidays and second and fourth Saturdays of each calendar month). The offices will remain closed on the second and fourth Saturdays of each calendar month and on the remaining Saturdays working hours shall be the same as prescribed above. The official may, however, be ordered by the Presiding Officer to attend early or sit late or attend on Sunday, holiday or second or fourth Saturday of the month, if the exigencies of service so require. An official should not, except in exceptional cases, be made to attend on a holiday pertaining to his religion. The Chief Ministerial Officer of the Court shall maintain an attendance register and shall put it before the Judicial Officer, every day. The Judicial Officer may give a recess upto half an hour on all working days to those members of the ministerial staff who require it, at suitable hours, so that the office routine is not substantially affected.

2. Court hours :-

(a) On all working days the Courts will sit for disposal of the judicial work from 11-30 a.m. to 5-30 p.m. with a recess for an hour between 2-30 p.m. and 3-30 p.m.

(b) The Judicial Officers will attend to administrative and other miscellaneous work from 11-00 a.m. to 11-30 a.m. and 5-30 p.m. to 6-00 p.m. and should be available in the Court precincts from 11- 00 a.m. to 6-00 p.m.

(c) The Sessions Judges, except the Sessions Judge, Ahmedabad City and the Chief Metropolitan Magistrate may, with the previous permission of the High Court, after the hours prescribed above for any Court under their control but so as not to reduce the total number of working hours in the week.

(d) The Court hours and the office hours for the Court of Session, Ahmedabad City, shall be as per the Court and office hours prescribed in the Ahmedabad City Civil Court Rules, 1961.

3. Judicial Work on Sundays and Holidays :-

Save in cases of absolute urgency no case shall be heard, no judicial order be passed and no judicial order formally announced on Sundays and Holidays. However, a Judge and or a Magistrate shall receive prisoners (if any), entertain application for bail or remand or any application of urgent nature and pass such orders as may be necessary in this behalf on any day including Sundays, closed Saturdays, Holidays, etc.

4. Cases to be heard in open Court :-

Judicial work so far as it relates to trials and inquiries shall ordinarily be done in open Court.

5. Holidays :-

The provisions contained in Civil Manual, regarding holidays shall mutatis mutandis apply to all the Criminal Courts.

6. . :-

The Judges, the Chief Metropolitan Magistrate, the Metropolitan Magistrates, the Chief Judicial Magistrates and the Judicial Magistrates shall close the Courts and Offices in the event of death of any of the Dignitaries viz., the President of India, Vice President of India, Prime Minister of India, Governor of the State of Gujarat and the Chief Minister of the State of Gujarat, on receipt of the information from the Collector or in the case of Taluka-town from the highest revenue officer that the death has occurred and that he is closing his office for that purpose, or on announcement made on the All India Radio, whichever is earlier. In the event of death of the Chief Justice of India or any sitting Judge of the High Court of Gujarat, they shall act on receipt of information from the High Court.

7. Suspension of Sittings :-

The Presiding Officer of the Court may suspend work for about half an hour or observe for a minute or two after a suitable reference has been made when a local advocate passes away

and when a request for suspension of work is made to the Court.

8. Costumes to be worn by Judicial Officers :-
The following dress shall be worn by Judicial Officers presiding Criminal Courts;

(1) Judicial Officers other than lady officers;

(a) Black buttoned up coat (Chapkan, achakan or Sherwani) or

(b) Black open collar coat, white shirt, white collar, stiff or soft and necktie.

(2) Lady Judicial Officers: Regional dress of subdued colour or colours and blouse buttoned up to neck with sleeves.

9. Costumes to be worn by Legal Practitioners :-
The following dress shall beworn by the lawyer appearing before the Court:-

(1) Lawyers other than lady lawyers:-

(a) Black buttoned up coat (chapkan, achakan or Sherwani) or

(b) Black open collar coat, white shirt, white collar, stiff or soft and necktie.

(2) Lady Lawyers: Regional dress of subdued colour or colours and blouse buttoned up to neck with sleeves.

10. Dress of Police Officers appearing before Criminal Courts :-
The following extracts (rules 239, 241 and 244) from the Bombay Police Manual, 1959, Volumes I and III respectively, in regard to the uniform to be worn by the Police Officers when attending the Courts, are reproduced for the information of the Courts.

Uniform to be worn on, various occasions by Superior Gazetted Police Officers. (1) Indian Police and Indian Police Service Officers shall wear such Uniform as prescribed in the Indian Police Service (Uniform) Rules, 1954, vide Hand Book of Rules and Regulations for all India Services, Vol. I, issued by the Government of India, Ministry of Home Affairs, on various occasions as specified therein.

(2) Working dress will be worn by other superior Gazetted Officers belonging to the State Police Service when giving evidence in the Court.

Uniform to be worn on various occasions by Subordinate Police Officers (3) Inspectors of Police and Police Officers of lower rank will always appear in uniform, while giving evidence and prosecuting cases in the Courts. The Police Officers and men of the State Criminal Investigation Department Branches, Local Crime Branchesand Local Intelligence Branches, are, however, allowed to appear in their ordinary dress in the Courts.

11. Foot Wear Permitted :-
Persons attending Court and even witnesses taking the oath shall ordinarily be allowed to keep their foot wears on.

Note.-All paragraphs of this Chapter are applicable to the Courts of the Metropolitan Magistrate also.

CHAPTER 2
ARREST AND INVESTIGATION

12. . :-
The Constitution of India requires that persons arrested and detained in custody should be produced before the nearest Magistrate within 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of Magistrate, and that no such person should be detained beyond such period without the authority of the Magistrate. In the Criminal Procedure Code also a similar provision in respect of persons arrested without warrant is there. In case of a complaint of violation of said provisions, the

Magistrate should check the time of arrest by questioning the person arrested, and see that this important constitutional safeguard for the personal liberty of the subject is not violated. Attempts are sometimes made to evade the law by describing custody or detention of any kind as nazarkaid or surveillance. Surveillance is one thing, and detention in any kind of custody is another. It is a mere evasion of the law to keep a suspected person in any kind of custody and then by calling such detention nazarkaid to say that he is not under arrest. Such practice is still more objectionable when applied to witnesses. If the Magistrate finds that a person arrested and produced before him has been unlawfully detained he shall hold an enquiry into the matter and submit a report with the papers of inquiry to the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, who shall take appropriate action in the matter.

13. . :-
Women accused of any offence, if arrested so soon after child birth that they cannot at once be taken before the Magistrate without personal suffering and risk to health, should not ordinarily be removed until they are into proper condition to travel. They should be allowed to remain under proper charge in the care of their relations, or to be sent to the nearest dispensary, and suffered to remain there until the officer in charge of the dispensary certifies that they are sufficiently recovered. In such cases, sanction must be obtained by the Police from the nearest Magistrate for their detention at their homes, or in the dispensary, beyond the period of 24 hours allowed by section 57 of the Code of Criminal Procedure, 1973. The same procedure should be followed in the case of other accused persons who are too ill to travel.

14. . :-

(1) If any allegation of ill-treatment is made by a prisoner, the Magistrate shall then and there examine the prisoner's body, if the prisoner consents, to see if there are any marks of injuries as alleged and shall place on record the result of his examination. If the prisoner refuses to permit such examination, the refusal and the reason therefor shall be recorded. If the Magistrate finds that there is a reason to suspect that the allegation is well founded, he shall at once record the complaint and cause the prisoner to be examined by a Medical Officer, if possible, and shall make a report to the Sessions Judge, through the Chief Judicial Magistrate or to the Chief Metropolitan Magistrate, as the case may be. If he has no jurisdiction to hold a necessary inquiry himself or he is not empowered to take cognizance of the offence, he should forward the prisoner with the record to the Judicial Magistrate or the Metropolitan Magistrate having jurisdiction to hold the inquiry and empowered to take the cognizance of the offence.

(2) A Medical Officer, to whom a person in police custody is brought for examination, should examine the person or the prisoner, and even though no suspicious marks of injury are found, should at once report to the Magistrate authorising police custody that he has done so.

(3)

(i) Medical Officer in charge of jail must carefully examine the body of the every under-trial prisoner on the day of his arrival in jail, or at least on the day following.

(ii) Similarly, in the case of third class subsidiary jails, if there is a Sub-Assistant Surgeon or other Medical Officer in local charge of the place, every under-trial prisoner should be examined by him, if present at the station, within 24 hours of admission.

(iii) In the case of lockups and subsidiary jails at places where there is no Medical Officer, the Officer in charge in all suspicious cases should send under-trial prisoners in custody to the nearest Medical Officer for examination.

(4) In all such cases the Medical Officer should record the result of the examination.

(5) If any marks or symptoms at all indicative of recent violence or ill-treatment are found, the Medical Officer concerned should immediately make a report to the concerned Judicial Magistrate or the Metropolitan Magistrate and to the Sessions Judge orto the Chief Metropolitan Magistrate, as the case may be. The report should specify the nature of the injuries and their position, together with the opinion of the Medical Officer as to their causation, and should state whether the prisoner makes any allegations in regard to them against the Police or others responsible for his arrest or custody.

(6) If such allegations have been made, the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should arrange for an imme- diate Magisterial inquiry into the complaint through such Magistrate as he may deem most convenient, unless he is satisfied by the Magistrate's report under sub-paragraph (1) above, that adequate inquiry is proceeding.

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(7) The result of the inquiry, so far as it ascertains the truth or falsehood of the allegations made, must be communicated as soon as possible to the Court seized of the substantive case. If it considers it desirable or necessary, the Court may summon the Medical Officer to give evidence in the case.

15. Remand :-

(1) The provisions of section 167, Code of Criminal Procedure, 1973, require that the Magistrate should not allow remand in police custody without being satisfied that there are really good grounds for it. The Magistrates should not, therefore, authorise the detention of accused in police custody as a matter of course, but should allow remand only after being satisfied that further time is really necessary for the purpose of investigation and there are good grounds for believing that the accusation or information is well founded.

(2) In this connection, attention of the Magistrate is drawn to the provisions of section 167(1) of the Code of Criminal Procedure, 1973, which make it obligatory, in certain cases, on the Police to send copies of entries in the diary relating to the case when forwarding the accused for the purposes of remand. Magistrates should invariably insist upon copies of such entries and other relevant material being produced by the Police and such entries and material should be carefully examined by the Magistrates in order to satisfy themselves that there are good grounds for remand.

16. . :-
While it is not intended to fetter the discretion of the Magistrate in matter of remand, the following general principles are stated for their guidance:

(i) A remand to Police custody of an accused person should not ordinarily be granted unless there is reason to believe that material and valuable information would thereby be obtained, which cannot be obtained except by his remand to police custody.

(ii) Where a remand is required, merely for the purpose of verifying a statement made by the accused, the Magistrate should ordinarily remand the accused person to Judicial custody.

(iii) If the Magistrate thinks that it is not necessary for purpose of investigation to remand the accused to Police custody, he should place the accused person in Judicial custody; and i n case he has no jurisdiction to try the offence charged, he should issue orders for forwarding the accused person to a Magistrate having jurisdiction.

(iv) If the Magistrate thinks that the Police not only require more time for investigation but that for some good reason they require the accused person to be present with them in that investigation, the Magistrate may remand him to Police custody, but while doing so he must record the reasons for his order.

(v) When the accused person is remanded to Police custody the period of remand should be as short as possible to meet the requirements of such remand.

(vi) No order under section 167, Code of Criminal Procedure, 1973, for remand of an accused person should be made unless the accused is produced before the Magistrate making the order, and he has been heard on any objection he may have to offer to the proposed order of remand. The signature of accused should be taken on order authorizing the detention in police custody.

17. . :-
When the accused person is remanded either to Police custody or to some safe custody for the purpose of further investigation by the Police, it must be born in mind that, however, incomplete an investigation may be, an accused person in every case must be produced before a Magistrate having jurisdiction within a maximum period of 15 days.

18. . :-
A Magistrate making an order of remand to Police custody, shall forward a copy of his order with his reasons for making it, to the Chief Judicial Magistrate or to the Chief Metropolitan Magistrate, as the case may be.

19. . :-
The original Police remand order passed by the Magistrate forms part of the record of the Court and it should always remain in the Court. The proper practice is that the original remand application and the order should remain in the Court and the order of remand should be communicated to the police by a separate letter.

20. . :-

(1) The provisions of section 167(2) of the Code of Criminal Procedure, 1973, require that the Magistrate may allow remand of accused person in judicial custody if he is satisfied about adequate grounds for that. The Magistrate should not, therefore, allow remand, as a matter of course, but should allow remand only after being satisfied that the further time is really necessary for the purpose of investigation. In no case the accused person should be, remanded to custody under section 167(2) of the Code of Criminal Procedure, for a period exceeding fifteen days at a time and for total period of more than sixty days, during the investigation. If the charge sheet is not submitted or the investigation is not completed within 60 days, the Magistrate shall act according to the provisions of section 167, Code of Criminal Procedure, 1973.

(2) After taking the cognizance of an offence the Court may, from time to time, remand the accused in custody, in accordance with the provisions of section 309 of Code of Criminal Procedure, 1973, but the period of remand should not exceed fifteen days at a time. When the accused is in custody and the witnesses are present the Court should give preference to the case and examine witnesses. If witnesses are not examined Court should write reasons for that.

21. Facilities to accused in Police Custody or Jail to Interview Relatives and Legal Advisers :-
Complaints are sometimes made that accused persons in police custody are not accorded necessary facilities to interview their relatives and legal advisers. Article 22(1) of the Constitution provides that no person, who is arrested or who is in custody, shall be denied the right to be defended by a Legal Practitioner of his choice. An accused person, who is remanded into Police custody, has a right to claim a reasonable opportunity of getting into communication with his legal adviser for the purpose of preparing his defense, and the police cannot legitimately claim that in no circumstances should he be allowed to see his legal adviser until they choose to permit it.

22. . :-

The Magistrate or the Judge should give sufficient notice to the under-trial accused person in jail about the subsequent case pending against the accused person so that he may got sufficient opportunity of defending himself. On production of accused from the jail, the Magistrate or the Judge concerned should ascertain as to whether sufficient opportunity is given to accused to get in touch with his relatives or his advocate. The Magistrate or Judge should commence hearing only after accused person had sufficient opportunity for that.

23. . :-
Under section 157, Code of Criminal Procedure, 1973, it is obligatory on the part of the officer in charge of a Police Station to send a report forthwith to the Magistrate empowered to take cognizance of an offence on a police report regarding information received by him about the commission of a cognizable offence. In case the Magistrate finds that proper steps are not being taken by the Police, he may take such action under Section 159 of the Criminal Procedure Code as he may deem fit.

24. . :-
Section 165(5) of the Criminal Procedure Code provides that copies of any record made under sub-sections (1) or (3) relating to search of places should be sent by the Investigating Officer to the nearest Magistrate empowered to take cognizance of the offence. This provision lays down a very salutary safeguard so far as the right of a citizen is concerned.

25. Bail :-
The power of admitting a prisoner to bail in non-bailable offences is a matter of judicial discretion and not a ministerial act; and the main or prime consideration in the exercise of that discretion should be the likelihood of the prisoner failing to appear at the trial. Other factors requiring consideration are the seriousness of the offence, previous conviction, if any, of the accused, abnormal conditions and necessity to take special precautions in particular cases. Interim bail is, however, permissible, but in non-bail able cases the prosecution should be heard. Bail should not be refused nor prohibitive bail insisted upon, merely on the ground that the police desire it, as such a decision may lead to grave injustice. A Magistrate may, however, take into consideration the information supplied and the reports made by the police. The provisions of section 437,439 and 440, Code of Criminal Procedure, 1973, should be strictly adhered to for the purpose of bail.

26. . :-
The provision of anticipatory bail is in section 438, Code of Criminal Procedure, 1973. This new provision empowers High Court and Court of Session to grant anticipatory bail. The Sessions Judges, while exercising powers under this section may impose the conditions as provided in the section.

27. Practicing lawyers shall not be accepted as sureties :-
Practicing lawyers shall not be accepted as sureties.

28. Verification of Solvency of Sureties :-

(1) The responsibility for accepting the surety as solvent for the required amount is primarily that of the Presiding Officer of the Court and in ordinary cases he should discharge it himself by making such summary enquiry as in the circumstances of the case may think fit.

(2) The production of a solvency certificate from the Revenue Authorities is not always essential and may be insisted upon only in cases of doubt and cases involving large sums.

(3) For the purpose of determining whether the surety is solvent, the Court may, if it thinks fit, accept affidavits in proof of the facts contained therein relating to the solvency of the sureties, or may make such further inquiry as it deems necessary.

(4) Insistence upon the possession of immovable property by surety for bond of small

amounts not exceeding [Rs. 5,000/-] would cause serious inconvenience to the accused in procuring a surety. The Judge or Magistrate may, therefore, in suitable cases, where the amount of bond does not exceed [Rs. 5,000/-] assess the solvency of the surety even upon the basis of his movable property and assets. The intending surety should present his application for surety ship in the model form No. 33. The Clerk of the Court or Criminal Superintendent or the Nazir in the Sessions Court or Nazir or Senior Clerk in the Court of Magistrate, or the Sheristedar in the Court of the Metropolitan Magistrate, should check the proofs accompanying the applications, and thereafter place the matter before the Judge or Magistrate with his remarks. However, in the Court of the Metropolitan Magistrate, if the amount of bond exceeds [Rs. 5,000/-] the Registrar should check proofs and submit report to the concerned Magistrate. The Judge or Magistrate should consider the application in the light of the proofs produced and, if necessary, examine the surety personally and may also call for further and better proof. The Judge or Magistrate, after holding a summary enquiry, may pass an order either accepting the surety or rejecting the application.

29. . :-
The notice to the surety under section 446, Code of Criminal Procedure 1973, should be issued in the prescribed form No. 34.

30. . :-
Rules regarding execution of warrants for levy of penalty of Bonds, issued by Government of Gujarat are reproduced for reference. The rules are saved under section 484, Code of Criminal Procedure, 1973.

31. . :-
The following instructions are issued by Government regarding issue of solvency certificates for production in Criminal Courts.

(1) Revenue Officers not below the rank of a Mamlatdar or Mahalkari are authorised to issue certificates of solvency to the parties for production in the Criminal Courts on payment of fees of Rs. 2 per certificate. The fees should be recovered in the shape of Court fee stamps. Every application for a solvency certificate should be affixed with a Court fee stamp of 62 Ps. and accompanied by an affidavit showing reasons why the certificate is sought and by the following documents which should be obtained by the parties at their costs from the officers concerned:

(a) In the case of agricultural lands: Khata Utara and Extracts from Records of Rights;

(b) In the case of non-agricultural lands and immovable properties: A statement regarding the details of the property and its estimated price. Revenue Officers concerned should on receipt of the application, after holding the necessary enquiry and in the case of agricultural lands, after obtaining a Panch valuation, issue the certificate as expeditiously as possible.

(2) The Adivasis are exempted from the payment of prescribed fee of Rs. 2 for the issue of Solvency Certificate required for production in Criminal Courts and also from the stamp duty chargeable on affidavits executed by them for the purpose of obtaining Solvency Certificates. The term "Adivasis" means and includes all the members belonging to the Scheduled Tribes specified in section II of the Schedule accompanying Government Resolution, Political and Services Department No. 490/46, dated the 1st November, 1950, as amended from time to time.

32. Identification Parade :-
It is not desirable that Judicial Officers should associate themselves with identification parades. The Civil Judges, Judicial Magistrates and the Metropolitan Magistrates are, therefore, directed that they should not participate in identification parades which are conducted by the Police for investigation purposes. In this connection, order in the Government Circular, Home Department, No. MIS-1053/84588, dated the 22nd April, 1955, is reproduced below for the information of the Civil Judges and Judicial Magistrates

and Metropolitan Magistrates. In the judgment by the Supreme Court in Ramkishan versus Bombay State, AIR 1955, SC 104, it has been held thatstatements made before Police Officers by witnesses at the time of identification parade are statements to the Police, and as such are hit by section 162 of the Code of Criminal Procedure, 1898. In view of that ruling, it is necessary that such parades are not conducted in the presence of Police Officers. The alternative is to take the help of the Magistrates or leave the matter in the hands of Panch witnesses. There would be serious difficulties in Panch witnesses conducting parades successfully. In regard to Magistrates, it is not feasible to associate Judicial Magistrates with such parades. The only practicable course, therefore, is to conduct the parades under Executive Magistrates and Honorary Magistrates (not doing Judicial work). Government is accordingly pleased to direct that the Police Officers concerned should obtain the help of Executive Magistrates and Honorary Magistrates in holding identification parades.

33. Confession :-
Accused person willing to make a confession or a person willing to make statement under section 164, Code of Criminal Procedure, 1973, should be taken for the purpose before the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the Judicial Magistrate, as the case maybe, and as far as possible, before the Magistrate who will not eventually try the case. The Chief Metropolitan Magistrate or the Chief Judicial Magistrate may record the confession or statement, himself or would assign for the purpose a Metropolitan Magistrate or Judicial Magistrate at district headquarters, as the case may be, who would not eventually try the case. The Judicial Magistrates in taluka towns or outside district headquarters should not record confession or statement under section 164, Code of Criminal Procedure, in cases arising within their respective jurisdiction and in such cases the police should be directed to approach the Judicial Magistrate of the nearby Court.

34. . :-
The following instructions are issued for the guidance of the Magistrates recording confession and statement under section 164, Code of Criminal Procedure, 1973. They are not intended to fetter the discretion given by the law to Magistrates. The only object with which they are issued is to indicate generally the manner in which the discretion may be exercised:

(i) In the absence of exceptional reasons, confession should ordinarily be recorded in open Court and during Court hours.

(ii) The examination of the accused person immediately after the Police bring him into Court, is deprecated. When the accused is produced before the Magistrate, the Police Officers should be removed from the Court-room unless in the opinion of the Magistrate, the duty of ensuring their safe custody cannot safely be left to other attendants. In that case only the minimum number of Police Officers necessary to secure the safe custody of the accused person should be allowed to remain in the Court-room.

(iii) It should be impressed upon the accused person that he is no longer in police custody.

(iv) The Magistrate should then question the accused person whether he has any complaint to make of ill-treatment against the police or others , responsible for his arrest or custody, and shall place on record the questions put and the answers given.

(v) If the accused person makes an allegation of ill-treatment, the Magistrate shall follow the same procedure as is laid down in paragraph 14(1) above.

(vi) If the accused does not complain of any ill-treatment or improper conduct or inducement on the part of the Police, or if inspite of the alleged ill-treatment, misconduct or inducement, he adheres to his intention of making a confessional statement, the Magistrate should give the accused a warning that he is not bound to make the confession and that, if he does so, it will be taken down and may thereafter be used as evidence against him. A

note of the warning given to the accused should be kept on record.

(vii) Thereafter the Magistrate should give the accused a reasonable time, which should ordinarily not be less than 24 hours, for reflection in circumstances in which he would be free from the influence of the Police and any other person interested in having the confession recorded. The accused should be told that he is no longer in police custody and he is being sent to Magisterial custody.

(viii) After the accused is produced before the Magistrate again, it should be ascertained from him whether he is willing to make a confession. If he expresses his desire to confess, all Police Officers should be removed from the Court-room, unless in the opinion of the Magistrate the duty of ensuring his safe custody cannot safely be entrusted to other attendants. In that case only the minimum number of Police Officers necessary to secure the safe custody of the accused person should be allowed to remain in the court-room. In any case, it is not desirable that the Police Officer making the investigation should be present.

(ix) The Magistrate should then question the accused person as to the length of time during which he has been in the custody of the Police. It is not sufficient to note the date and hour mentioned in the police papers, at which the accused person is said to have been formally arrested.

(x) The provisions of Section 163 and 164 of the Code of Criminal Procedure, 1973, should be carefully adhered to. The first clause of Section 163 read with Section 24 of the Indian Evidence Act, provides that if a confession is caused by any inducement, threat or promise, offered or made, or caused to be offered or made by any Police Officer or person in authority in reference to the charge against the accused person, then, if in the opinion of the Court the inducement, threat or promise was sufficient to give the accused person grounds, which would appear to him reasonable, for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him and unless in the opinion of the Court the impression caused by any such inducement, threat or promise, has been fully removed, such confession is irrelevant, that is, it can not be used as evidence in any criminal proceeding.

(xi) Under clause (2) of Section 163, for a confession of an accused person made in the course of a police investigation to have any value, it must be one which the accused person was disposed to make of his own free will. Before recording any such confession, the Magistrate is bound to question the accused person, and unless upon that questioning he has reason to believe that the confession is voluntary, he should not make the memorandum at the foot of the record. He cannot make the memorandum, "I believe that this confession was voluntarily made" unless he has questioned the accused person, and from that questioning has formed the belief not a doubtful attitude of mind, but a positive belief, that the confession is a statement which the accused person was disposed to make of his own free will.

(xii) Before recording a confession, the Magistrate should question the accused with a view to ascertain the exact circumstances in which his confession is being made and the connection of Police with it, under clauses (iv), (vi), (x) and (xi) above. In particular, where more than one accused is involved in the case, he should question the accused whether he has been induced to make a confession by promises to make him an approver in the case. Anything in the nature of cross-examination of the accused is to be deprecated. It should, however, be the behavior of the Magistrate, without having recourse to heckling or attempts to entrap the accused, to record the statement with as much details as possible regarding the circumstances under which the confession was being made, the extent to which the police had anything to do with the accused prior to his offer to make a confession, as well as the fullest possible particulars of the incidents to which the confession relates. These details are important as they furnish the material on which the value of the

confession is to be estimated, and the greater the detail, the greater the chances of a correct estimate. The confession should be recorded in the manner provided in section 281, Code of Criminal Procedure, 1973, for recording the examination of the accused person. Every answer given by the accused should be recorded as far as possible in his own language, and if that is not practicable, in the language of the Court.

(xiii) The Magistrate should add to the certificate required by Section 164, Code of Criminal Procedure, a statement in his own hand, of the grounds on which he believes that the confession is genuine, the precautions which he took to remove the accused from the influence of the police, and the time, if any, given to the accused for reflection.

(xiv) The confession should be recorded in Form No. 35.

35. . :-

(a) After an accused person has made a confession, he should ordinarily be committed to jail, and the Magistrate should note on the warrant, for the information of the Superintendent of the Jail concerned, that the accused person has made a confession.

(b) The accused person who refuses to make a confession should not be authorised to be detained in Police custody.

36. . :-
It is not feasible absolutely to prohibit the return of an accused person to Police custody after he has made a confession. An absolute prohibition of remand to police custody in such cases is impracticable, as the accused person may be required to identify persons or property, to assist the discovery of property or, generally, to be present while his statement is being verified. However, it is desirable that discretion should be used in the exercise of the power to remand, and the following principles are accordingly laid down for the guidance of the Magistrates:-

(a) A remand to Police custody should not be made unless the officer making the application is able to show good and satisfactory grounds for it; a general statement that the accused may be able to give further information should not be accepted as being in itself a sufficient reason for remand.

(b) If the object of the remand is the verification of the prisoner's statement, he should ordinarily be remanded to Judicial custody.

(c) The period of remand should always be as short as possible.

37. . :-
The police may be permitted to take copy of confession recorded by the Magistrate.

38. . :-
Any instance of misconduct or abuse of authority by a Police Officer, which may come to the notice of the Magistrate, shall be reported to the Sessions Judge through the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, to whom the Magistrate is subordinate. The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, on receipt of such report, should bring the matter to the notice of the District Magistrate or to the Commissioner of Police, Ahmedabad, respectively, for such action as he may deem fit. In cases of gross misconduct, if the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, finds that appropriate action has not been taken against the officer concerned, he may bring the matter to the notice of the High Court.

39. . :-
A Magistrate recording a confession or a statement under section 164 of the Code shall forward the same to the Magistrate by whom the case is to be inquired or tried.

40. Summaries of Final Orders :-

The following rule 246 of the Bombay Police Manual, 1959, has been reproduced for the information and guidance of the Judges and Magistrates:

(1) Each Magistrate shall, immediately after disposing of a cognizable case, forward through the Police Station from which the case came, to the Superintendent or Sub-Divisional Police Officer concerned, a summary of a final order in Form E. It should be sent in all cases, whether disposed of by trial or otherwise brought to an end by the death, lunacy or escape of the accused or in other way whatever. When a case has been tried by a Magistrate he will issue the summary. In cases tried by the Court of Session, the Committing Magistrate will forward the required summary after the disposal of that case by that court or by the High Court. When the result of a case is changed on appeal or revision, the Magistrate who sent the original summary will send a summary of the amendment in Form F.

(2) If an accused in a case dies after a charge sheet has been sent up against him but before any evidence is recorded by the trying Magistrate, the Magistrate should be requested to issue an "A" summary.

(3) Summaries in cases not sent up for trial but disposed of on final reports should be issued by a Magistrate who is empowered to take cognizance of the offence on a Police report.

(4) To reports in cases in which investigation has been refused by the Police under section 157(l)(b). Code of Criminal Procedure, a Magistrate's reply is necessary. It is sufficient to enter in question 4 of the summary (Form E) that the case is "not investigated by the Police acting under section 157(l)(b), Code of Criminal Procedure,, with Magistrate's approval." The Magistrate should also include in his summary the value of property alleged to have been stolen in such cases, unless investigation was refused on the ground that the complaint was of a Civil nature.

(5) If the case is "true" it should be classed as "A". This applies even where an accused is tried and, in the absence of conclusive evidence, is acquitted. The classes "B" and "C" are reserved for cases in which it is found that no offence has been committed at all either by the accused or by any one else. In such cases, if the complaint is found to be "false and maliciously false", the case should be classed as "B". If the case is found to be "neither true nor false" or "false but not maliciously false", it should be classed as "C". If the case ends in a conviction for a non-cognizable offence, it should be classed as "non-cognizable". A case where Police report made under rule 203 reveals commission of only a non-cognizable offence may also be classed as "Non-cognizable".

(6) If the case has been compounded, Magistrates should make no attempt to characterize the complaint, but should simply record against entry No. 3 of the summary (Form 3) that the case has been compounded. Similarly, when an accused person dies, or becomes a lunatic or escapes, this fact should be mentioned against entry No. 3 of the summary form.

(7) Magistrates should send direct to the officer-in-charge of the Police Station for record summaries of their final orders in the prescribed form in cases referred to the Police for enquiry under Sections 156 and 202, Code of Criminal Procedure.

(8) Section 6 of the Criminal Law Amendment Act, 1952 provides for the appointment of Special Judge for trying the following offences:

(a) An offence punishable under section 161, section 165, or 165- A of the Indian Penal Code or sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947;

(b) Any conspiracy to commit or any attempt to commit or any abatement of any of the offences specified in clause (a); and

(c) Any other offence connected with any of the offences specified at (a) and (b) above

with which the accused may, under the Criminal Procedure Code, be charged at the same trial.

(9) In cases in which Government has ordered prosecution the further orders of the Government should invariably be obtained, if for lack of evidence etc., no prosecution can be launched and "C" summary has to be asked for.

Note 1.-It may, however, be noted that the provisions referred to above do not, in anyway, affect the discretion of the Magistrates to take cognizance of offences under Section 190, Code of Criminal Procedure, or to take any action prescribed under Section 204 of the said Code.

Note 2.-Rule 246 of the Bombay Police Manual, 1959, Vol. III, regarding summaries of final orders has no application to the Courts of the Metropolitan Magistrates.

Note: All the paragraphs of this chapter except paragraph 40 are applicable to the Courts of the Metropolitan Magistrates also.

CHAPTER 3
PROCESS AND ATTENDANCE OF PRISONERS AND WITNESSES

41. . :-
In exercise of the powers under Section 32 of the Bombay Court Fees Act, 1959 (XXXVI of l959) and with the previous confirmation of the Government of Gujarat, the High Court of Gujarat is pleased to make the following rules :-

1. The fees chargeable for serving and executing processes issued by the Court of any Magistrate in the case of offences other than offences for which Police Officers may arrest without a warrant, shall be as shown in the table appended hereto:

Provided (i) that no fee shall be levied on any process issued upon the complaint of any Police Officer acting as such Police Officer.

(ii) that fresh fee shall not be chargeable in the case of re- issue or when a warrant is issued under Section 90(b) of the Code of Criminal Procedure.

2. Notwithstanding anything contained in proviso (i) to Rule I above, process fees shall be leviable from Municipalities in respect of summons and warrants issued in cases falling under Section 246(2) of the Gujarat Municipalities Act, 1963.

3. The Court may remit the process fees, in whole or in part, in cases other than those falling under chapters XIX, XX and XXI of the Indian Penal Code, whenever the Court is satisfied that the complainant or the accused has not the means of paying them.

42. . :-
Fees recovered on account of process in Magisterial Courts should be entered in a separate Register to be maintained for the purpose in Form No. 39.

43. . :-
In exercise of the powers conferred by Section 32 of the Bombay Court Fees Act, 1959, in its application to the State of Gujarat, the Honorable the Chief Justice and Judges of the High Court of Gujarat are pleased to direct that the members of such tribes or tribal communities or parts of, or groups within such tribes or tribal communities as are deemed to be the scheduled Tribes in relation to the State of Gujarat under Article 342 of the Constitution of India, shall be exempted from payment of process fees. This rule shall remain in force upto and inclusive of the [12th day of September, 1981] (Notification No. CH-HC-98- C. 1005/61 dated June 28, 1979 published in the Gujarat Government Gazette Part IV-C, page 395 dated July 12,1979). The tribes or tribal communities, or parts of, or groups within tribes or tribal communities, specified in the schedule are deemed to be the Scheduled Tribes for the State of Gujarat, as specified in the Constitution "Scheduled Tribes" Order, 1950, issued under Article 342 of the Constitution of India.

44. . :-
The following rules for the payment, on the part of the State Government, of the reasonable expenses of complainants and witnesses attending any Criminal Court in the State for the purposes of any inquiry, trial or other proceeding before such Court, have been made by the Government of Gujarat, under Section 312 of the Code of Criminal Procedure, 1973 (2 of 1974), in its application to the State of Gujarat, and in supersession of the Government of Bombay, Judicial Department Notification No. 7051 dated October 6, 1913, and Government Notification, Legal Department No. GK/76/66/CRM/10641 1145-D, dated December 10, 1976, and of all other rules in force in any part of the State in so far as they relate to payment on the part of Government of reasonable expenses of complainants and witnesses, vide Government Notification, Legal Department No. GK/78/32/MIS/ 1064/1570-D, dated May 5, 1978, the Gujarat Payment by Government of Expenses of Complainants and Witnesses (Attending Criminal Courts) Rules, 1978.

45. . :-
Whenever the expenses of a Government Officer to whom the Bombay Civil Services Rules apply and who is summoned as a witness in his official capacity, have to be deposited in advance in a Criminal case, the term "expenses" should be interpreted to mean the travelling and halting allowances admissible under the Bombay Civil Services Rules.

46. . :-
Subject to the conditions hereinafter contained Sessions Judge, Additional Sessions Judge, Assistant Sessions Judge, Special Judge, Executive Magistrate, Metropolitan Magistrate and Judicial Magistrate may, on recording reasons in writing, give from funds supplied for the purpose on the part of Government, to pay accused acquitted or discharged by him, money for the railway fare, steamer fare, or daily expenses. The conditions hereinafter referred to are:

(a) "That the Court is satisfied that the accused on his discharge or acquittal will be under the necessity of proceeding to some place not less than fifteen miles distant from the Court.

(b) That the accused is unprovided with means sufficient for the expenses of his journey to such place and his maintenance on such journey.

(c) That the amount given on account of daily expenses shall not exceed the rate of 25 p. a day for the number of days which in the opinion of the Court will necessarily be occupied in such journey, except that in the case of an accused person acquitted or discharged by a Metropolitan Magistrate the rates shall not ordinarily exceed 25 p. a day provided the Magistrate may in his discretion allow the rates not exceeding two rupees a day, having regard to the class to which the accused belongs (Vide classification of witnesses in paragraph No. 44) for the number of days which in the opinion of the Court will necessarily be occupied in such journey.

(d) That if a portion of the journey can be made by railway or steam-boat, a ticket of the lowest class shall be given in addition to the sum allowed for daily expenses.

47. . :-
In exercise of the powers conferred by section 544 of the Code of Criminal Procedure, 1898 (5 of 1898), in its application to the State of Gujarat and in supersession of the Government of Bombay Notification, Home Department No. PAL-2354, dated the 2nd May, 1956 and all other notifications on the subject the Government of Gujarat hereby makes the following rules namely the Gujarat Payment of Expenses to witnesses (Officers of other Governments) Rules, 1963.

48. Language of Commissions and Processes :-
Commissions or other processes issued for execution or service at any place where the language is different from that of the Court issuing them, should be accompanied by translation in the language of such place or in English. In case of Commissions or Processes

from Court's subordinate to other High Courts, the return of execution or service shall be accompanied by an English translation.

49. Summonses :-

(1) Summons issued under the Code of Criminal Procedure by the Court of Session except Court of Session, Ahmedabad City, may be signed and sealed by the Clerk of the Court or such other officer as the Sessions Judge may by general or special order authorise in that behalf.

(2) Summons issued by the Judicial Magistrates, First Class, may be signed and sealed by the Clerk of the Court and where there is no Clerk of the Court, by the Senior Clerk orthe Clerk performing the duties of the Senior Clerk subject to the orders of the Presiding Officer of the Court, or where there is no Senior Clerk, by the Clerk specially assigned the work by order in writing by the Presiding Officer of the Court.

(3) Summons issued by the Court of Metropolitan Magistrate may be signed and sealed by the officer for the time being performing the duties of Sherivstedar in such Court.

(4) Summonses issued by the Executive Magistrates may be signed and sealed by the Clerks subject to their orders.

50. . :-
In the case of men of high position, a letter signed by the Judge or Magistrate and to the same effect as Form I or XXXIII of theSecond Schedule, Code of Criminal Procedure, 1973, as the case may be, may be substituted for the ordinary summon

51. . :-

(i) No summons or other legal process issued against a member of any House of Parliament or Legislature of any State shall be sent for service to the Presiding Officer of the House or Legislature concerned.

NOTE.-It is not necessary for a Judge or a Magistrate issuing summons or other process requiring the attendance of a member of any House of Parliament or Legislature of any State in Court to request the Speaker or Presiding Officer of the House to obtain leave of absence from the House for enabling the member to attend the Court.

(ii) No such Summons or other process shall be served within the precincts of any House of Parliament or Legislature of any State without obtaining the permission of the Presiding Officer concerned.

Note.-

(a) To enable the Presiding Officer to decide whether he should grant or refuse permission for the service of the process within the precincts of the House, the Court concerned when making such a request shall attach a letter of request to the process containing a concise statement setting out the grounds for the request and explaining why it is desired that process should be served within the precincts of the House and why the matter cannot wait till the House adjourns for the day.

(b) These provisions also apply to the service of a process on a person other than a member of the Parliament or Legislature of a State irrespective of the fact whether the House is in session or not.

52. . :-
When the complaint is filed against a worker of the Destitute Institution in capacity as such worker, the Magistrates should, subject to the judicial discretion, normally issue notice instead of the process and as far possible, should avoid issuing bailable or non-bailable warrant.

53. . :-
The summons to an Officer or soldier or other person in military employ, should be sent for service to the head of the Officer or of soldier or to the head of the Department in which he is serving or to the Officer commanding the regiment or unit in which such Officer, soldier or other person is serving.

54. Summonses to Medical Officers :-

(1) Court summoning Medical Officer as witness should be careful to fix such a date for attendance as will enable the Officer summoned to attend in time. Whenever the attendance as a witness of a Medical Officer in charge of a dispensary is likely to entail a prolonged absence from his duties, the Court summoning the witness should make a communication to the Civil Surgeon in order that Officer may, if possible, make arrangements for carrying on the duties of the witness during his absence.

(2) Ordinarily the doctor personally familiar with the facts of the case and the condition of the patient at the relevant time, should be summoned for evidence in the Court, irrespective of his status in the hospital. Subject to this consideration, a lower Medical Officer should ordinarily be preferred to a higher one, and a stipendiary Medical Officer to an honorary Medical Officer, for evidence, but this must be done with due regard to the inadmissibility of hearsay evidence and the provisions of the Evidence Act. The Court should mention in the summons issued to a Medical Officer the name of the patient examined, the date of the examination and if available the medico legal case register number in respect of the patient examined. The time when the medical witness is required to be present in the Court for giving evidence should be mentioned in the summonses.

(3) The evidence of Medical Officer under orders of transfer should whenever possible be taken before he hands over charge.

(4) The Court should, if practicable, give priority to examine, the Medical Officer so as not to detain such Officer any longer than is necessary.

(5) It is not desirable that the Medical Officers in the districts should be summoned or called from their respective dispensaries more frequently for longer period than is absolutely necessary. In fixing the time and date care should be taken that the medical witnesses can be examined at the time stated in the summons.

55. Summonses to Revenue Officers :-
In summoning Revenue Officers of any description or Treasury Officers due consideration shall be had to the loss and inconvenience the public service may suffer from the absence of those Officers from their duties. When their evidence is required, they should be dispensed with whenever it can be, consistently with the requirements of justice. Travelling Allowance Bills of Government Servants appearing as Witnesses

56. . :-
In order to facilitate the checking of travelling allowance bills preferred by Government servants, summoned to appear as witnesses before the Courts, the Judges and Magistrates shall maintain clear and accurate records regarding the issue of summonses to such Government servants.

57. Hand Writing Expert :-
The authority of the Courts to issue summonses for the appearance of the Government Expert in hand-writing should be exercised with due discrimination, and he should not be called upon to appear in cases which are of a comparatively unimportant nature, or in which his evidence is likely to be of doubtful utility.

58. Examiner of Questioned Documents :-
The Criminal Investigation Department of the Gujarat State has attached to it 2 hand-writing and photographic Bureaux at Ahmedabad and Rajkot. The Bureaux are under the

general administrative control and supervision of the Deputy Inspector General of Police, Criminal Investigation Department, Gujarat State. Thejurisdiction allotted to these Bureaux are as follows: Ahmedabad Bureau: Districts: (1) Ahmedabad City, (2) Ahmedabad (rural), (3) Sabarkantha, (4) Surat (including Bulsar), (5) Kaira, (6) Panch mahals, (7) Baroda, (8) Bharuch. Rajkot Bureau: District: (1) Bhavnagar, (2) Rajkot, (3) Amreli, (4) Surendranagar, (5) Junagadh, (6) Jamnagar, (7) Kutch, (8) Mehsana, (9) Banaskantha. These Bureau also deal with the paid cases sent by the Civil Courts in the State by Criminal Courts in Criminal Cases for the opinion on the application of the accused and by the Criminal Courts for the opinion on the application of the party in a private prosecution. The letter for the opinion of the Examiner of the Document at Ahmedabad Bureau should be addressed to "the State Examiner of Documents, Criminal Investigation Department, Gujarat State, Ahmedabad-1" and the letter addressed to the Rajkot Bureau should be addressed to "the State Examiner of Documents, Criminal Investigation Department, Gujarat State, Rajkot." The examination of the documents in paid cases will not be undertaken, unless the Court or the party calling for the opinion of the examiner guarantees the payment of the photographic charges and of the opinion and evidence fees. The charges for supplying the photographs of documents are mentioned in Schedule B Appendix 18 of the Bombay Police Manual, 1959, Vol. III. The rates offees charged for the service of the examiners of documents in the State Criminal Investigation Department as provided in Schedule C, Appendix 18 of the Bombay Police Manual, 1959, Vol. III are as follows:-

59. . :-

In cases of doubt in which the opinion of an expert may be required on the question whether any stamps are genuine or forged or about the date of, and differences between stamps, a reference maybe made to the General Manager, India Security Press, Nasik Road, Central Rly. for his or his nominee's report. The information regarding the stamps can only be given by the General Manager to and at the request of the Police, Reserve Bank of India, or the Magistrate or Officer of the Court before whom the case is to be tried. The date on which the document purports to have been executed should be noted in the letter of inquiry and the fee for examination, determined in accord- ance with rate given below (excluding the Commission), should accompany the enquiry together with the document. If the evidence is required in connection with the dates of and differences between the stamps, etc., such evidence is taken in the office of the General Manager, India Security Press, Nasik Road, Central Rly., by one of the local Courts on commission issued by the Court before whom the case is being tried. The prescribed fee for examination on commission is as given below. The fees are payable in cash in advance. If State is one of the parties in the case, no fees will be charged by that department. The fee for each stamp examined is Rs. 20 but where the stamps to be examined consist of a block or blocks from the same sheet, the fee will be charged for the examination of each block, as any one of the stamps is representative of the whole block. Fees for the stamps examined on Commission are Rs. 40/- per document, irrespective of the number of stamps requiring examination on each docu- ment, provided that where more than one document relating to the same case is to be examined on the same day, the charge will be Rs, 40/- for the first and Rs. 20/- for each subsequent document.

60. . :-

When the evidence of an officer connected with the Mint the Indian Security Press, the Currency Note Press or the Central Stamps Stores, Nasik Road, is required as to the genuineness or spuriousness of a coin, currency note etc., the Court should send such coin or currency note, etc. to the Mint Master or the other appropriate Heads of the Department con- cerned by registered post under cover of its Court seal or by a messenger whose evidence can afterwards be taken. If it is considered necessary to take the evidence of such officer, he should ordinarily be examined on commission under the provisions of Section 503 of the Code of Criminal Procedure. This will prevent the great inconvenience of such

officers being called away from their duties in Special Cases, the Court may summon such officer to give evidence before it.

61. Evidence of Chartered Accountant :-

(a) The following rule in respect of fees of Chartered Accountant or his qualified Assistant for giving expert evidence in Criminal Courts, under Government Notification, Home Department No. 3923/7, dated 3rd July, 1954, is reproduced:

(1) The fee to be paid to Chartered Account or his qualified Assistant for each day spent in attending a Court or in travelling for the purpose of attending a Court as a witness shall be as specified in column 2 or 3, as the case may be, of the Schedule appended hereto in accordance with the professional standing for the years as specified in column I thereof.

NOTE.-The expression 'expert evidence' includes evidence which an accountant is called upon to give by virtue of his having conducted audits or investigation.

(b) A Chartered Accountant and his qualified Assistant should not ordinarily be summoned except when their evidence is absolutely necessary. Whenever they are required in Courts as witnesses, they should not, as far as possible, be asked to be present on days on which their evidence is not likely to be recorded.

62. Report of Finger Print Bureau :-
The Finger Print Bureau will not supply written reports on impressions submitted to it except at the request of a Criminal Court. Such reports will be supplied to it free, unless they are called for at the instance of a party in a private casein which case a fee of Rs. 20/- should be levied and forwarded to the Bureau alongwith the request. Levy of a fee of Rs. 30/-per day from private persons for the evidence of an Export from the Finger Print Bureau in non- cognizable cases is sanctioned. No fee should, however, be charged for the attendance of an export from the Finger Print Bureau in such cases in which the expenses of complainants and witnesses have been ordered to be paid by Government under paragraph 44.

63. . :-
The Chief Inspector of Explosive to the Central Governmenthas drawn attention to the fact that the number of summonses he receives for personal attendance before the Courts all over India interferes with his legitimate duties and he has suggested that it would be of very great assistance if the issue of summonses on him and his Inspectors for appearance in Magistrate's Courts would be restricted to the minimum consistent with the requirements of a case. In bringing this to the notice of State Government, the Central Government have observed that where it is necessary to have the evidence of the Chief Inspector or his subordinate taken in Magistrate/s Courts which are at a great distance from their headquarters and the cases are such as would normally be committed to the Courts of Sessions, a great deal of inconvenience may be avoided by having resort to section 284 and section 287 of Criminal Procedure Code, as the case may be.

64. . :-
Where it is considered necessary to summon a Government Inspector of Railways as an Expert witness, reasonable notice should be given to the Government Inspector concerned and the summons should be served on him through the Chief Government Inspector of Railways, Departments of Posts and Air (Railway Inspectorate), Government of India, who will make himself responsible that the summons is served on the Government Inspector.

65. . :-
The following instructions may be observed in cases where summonses are issued to the Additional Commissioners of Railway Safety:-

1. Judges and Magistrates should, as far as possible, avoid issuing summonses requiring the personal attendance of the Additional Commissioner of Railway Safety in Courts unless

it is found necessary to do so.

2. Where personal attendance of the Additional Commissioner of Railway Safety is considered necessary, sufficient margin of time of at least one month between the date of dispatch of the summons or notice and the date on which his presence in the Court is required should be given.

66. Service of Summons on Regional Passport Officers :-
For the service of summons to the Regional Passport Officer and the staff working under them, the following instructions should be followed by the Criminal Courts:-

(1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of office in which such person is employed and the head of the office shall thereupon cause the summons to be served in the manner provided by section 62 of the Code.

(2) The Chief Passport Officer of the Ministry of External Affairs is the head of the office so far as the Regional Passport Officers are concerned and the Regional Passport Officers are the "Head of Office" in respect of the staff working under them and the service of summons on the Regional Passport Officers should be effected through the Chief Passport Office and on the staff working under the Regional Passport Officers through the Regional Passport Officers.

(3) Usually summonses are issued to the Regional Passport Officers by name which makes it obligatory on the Regional Passport Officers to present themselves in person in Court. The main purposes for which the Regional Passport Officers are summoned are usually to produce and to prove some official documents in connection with the trial of pending cases in Courts. If the summonses are sent by designation it will not only facilitate compliance but will also be economical and conducive to efficiency as the dealing assistant can be deputed to produce the required documents. If, however, a Regional Passport Officer is personally required to give evidence, the summons can be issued in his name. (Vide letter No. F(12)(10)PV-111-50, dated 18-2-1960, of the Government of India, Ministry of External Affairs).

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

68. Summonses for production of documents in custody of Houses of Parliament or State Legislature or for Examination of Officers :-
Summonses for the production of documents in the custody of the House of Parliament or of the House of State Legislatures or the examination of the officers of the house of Parliament or of the State Legislature, should not be issued in the ordinary form. A letter requesting the production of the documents or requesting to direct Officers to appear as witness should be substituted therefor in the Form No. 38 addressed to the Speaker of the House of People or the Legislative Assembly of the State, or the Chairman of the Council of States or the Legislative Council of the State, as the case may be.

69. . :-
Original documents in the custody of the House of Parliament or of the State Legislature should not be called for if certified copies thereof would serve the purpose. It is only in case where strict proof of the original document is necessary, the Court should call for the original documents. Section 78(2) of the Indian Evidence Act indicates the mode in which

the proceedings of the Legislature can be proved.

70. Production in Evidence of documents of Courts :-
A Magistrate requiring the production in evidence of documents, recorded in a Court of Justice, or in the custody of any public Officer shall, in his communication to such Court or Officer, state clearly whether he requires the entire record of any particular paper or papers; also at what time and place the papers, if not previously sent by post, must be produced, and whether any subordinate Officer will be required to attend for the purpose of proving them. The communication shall be signed and sealed in the same way as a summons. As a rule, it is not desirable that a Magistrate should send for original papers, in cases in which certified copies will serve the purpose, and in which the person requiring the production of the papers is in a position to obtain certified copies.

71. Return of Warrants of Arrest, Notices, etc :-
Warrants of arrest should be made returnable on execution, or alternatively after a given time, e.g. three months. In the latter case they should be accompanied on return by a Police report as to whether the accused has been heard of, and is likely to come within reach. After reissue for a certain number of times, the warrant thus returned should be put on a dormant file in capital cases after seven years; in cases subject to imprisonment for not less than seven years, after three years in less important cases, after a year. In the event of information reaching the Magistrate that the accused has been in the district, or where he could be arrested, the warrant may be reissued.

72. . :-
Notices calling upon accused persons to show cause why they should not be retried or committed to the Court of Session, or why a sentence should not be enhanced, or why imprisonment should not be awarded in addition to or in lieu of a mere sentence of fine, and notices calling upon persons to show cause why they should not execute a bond for good behavior or for keeping the peace, other notices of a like nature and summonses in cases under Motor Vehicles Act, 1939, and Bombay Police Act, 1951, should be returned served, as soon as possible. If service cannot be effected for a period of one month in the matters of the Court of the Metropolitan Magistrates and for the period of four months in the matters of other Courts, after receipt of the notice, it should be returned accompanied by a police report stating in detail the efforts made for effecting service and why such efforts failed and whether the accused is or is not likely to come within reach. The notice will then be re-issued three times, in all, and fresh efforts will be made for serving it. If such a notice is ultimately returned unserved, it shall be put on the dormant file in cases of offences punishable with imprisonment for a period exceeding seven years after the expiry of three years from the date of the original notice and after one year in less important cases. Such notice should be immediately re-issued, as soon as intimation is received, that there is likelyhood of service being effected.

73. Procedure for Securing Attendance of Persons Confined in Prisons :-
The provisions for the attendance of the prisoner confined or detained in the prison, in the Court, for answering the charge against him or as a witness, are incorporated in sections 266 to 270 of the Criminal Procedure Code, 1973. The Court should make an order according to the provisions of said sections requiring the Officer-in-charge of the prison to produce such prisoner before the Court for answering the charge or for the purpose of such proceedings or, as the case may be, for giving evidence. Where attendance of the prisoner is required to give evidence, the Court should make an order in Form No. 36 directed to the Officer-in-charge of the prison. Where attendance of the prisoner is required in respect of the charge of an offence against him pending before the Court, the Court should make an order in Form No. 37 directed to the officer-in-charge of the prison.

Note.-All paragraphs of this Chapter are applicable to the Courts of Metropolitan Magistrate also.

74. Complaints :-

(1) When the Magistrate takes cognizance of an offence on complaint, the examination of the complainant and his witnesses, if any, should as far as possible, be taken immediately, as prescribed in Section 200 of the Criminal Procedure Code.

(2) Except in cases contemplated in proviso (a) of section 200 of the Code of Criminal Procedure, 1973 care should be taken by the Magistrate, in conducting the examination of a complainant and the witnesses present, if any, under Section 200, to make the enquiry sufficiently full to enable him to judge whether there are any grounds for proceeding. No reasons are required to be recorded for postponing the issue of process. The Magistrate must record his reasons for dismissing a complaint under Section 203.

(3) In petty cases of assault, hurt, insult, simple tresspass etc., and in non-cognizable cases, which are of private rather than of public interest the Magistrate should not ordinarily direct the Police to make an inquiry or investigation.

(4) In cases of complaints of facts constituting an offence, the Court should at the initial stage take care to see whether the offence disclosed is one out of which the Nyaya Panchayat can take cognizance and if so, follow the procedure indicated in section 241 of the Gujarat Panchayats Act, 1961.

75. . :-
Under sub-section (2) of Section 204 of the Code of Criminal Procedure, 1973, no summons or warrant under sub-section (1) should be issued until a list of the prosecution witnesses is filed. In proceedings under sub-section (3), instituted upon a complaint made in writing, the copy of the complaint should accompany the summons or the warrant issued under sub-section (1). The necessary copy or copies shall be supplied by the complainant.

76. Roznama :-
The proceeding sheet (Roznama) in Form No. 41 be kept in English or in Gujarati in Sessions Cases and in special cases in the Court of Session and in Gujarati in other Criminal Courts in all inquiries, trials and other proceedings. It is meant only as a guide and not intended to be exhaustive. The object of the Roznama is to show in concise form the proceedings taken in each case with the date of each proceeding. It is to be a faithful history of the case and correct list and description of the exhibits; and at the same time it should be so drawn up as to show all the details of the case and yet be as concise as possible. It is not to include a record of ministerial acts, such as receipt of bhatta or process fees, the preparation of summonses and the like. It must be kept from day to day as an original document. It may be written by a Clerk but must be initialed or signed by the Magistrate at the end of the proceeding recorded every day. All the papers in the case, including application, vakalatnamas, etc., should as far as possible, be arranged in the manner in which papers in a civil suit are arranged. Each document should bear an exhibit number and be given a serial number as it comes before the Court.

77. . :-
If an accused pleads guilty in the Court of any Metropolitan Magistrate in Ahmedabad and in the Court of Magistrate in a district town, in a traffic case, the Magistrate may, in lieu of a roznama, enter the details as to how the complaint was proceeded with, either on the complaint itself or on a separate sheet of paper.

78. . :-

(1) The Chief Metropolitan Magistrate, Chief Judicial Magistrate, Metropolitan Magistrate or the Judicial Magistrate, First Class, empowered to try case summarily may, if the accused admits offence, in the minor cases, under the Acts and rules specified below or convict the

accused in petty cases under Section 206 Code of Criminal Procedure, 1973, record the plea of guilty and final order on the same sheet on which the complaint is written or if required on a separate sheet to be attached to the complaint. All such complaints with sheets, if any, attached thereto, shall be bound in file, month-wise according to date of disposal.

(2) In cases referred to in sub-paragraph (1), in lieu of Roznama, the details as to how the complaint was proceeded with and details of sentence shall be written on the complaint or on the sheet of the paper attached to it.

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(3) Government of India Acts.

1. The Cattle Trespass Act, 1871.

2. The Prevention of Cruelty to Animals Act, 1890.

3. The Provident Funds Act (and Rules), 1925.

4. The Indian Forest Act, 1927.

5. The Child Marriage Restraint Act, 1929.

6. The Indian Wireless Telegraphy Act, 1933.

7. The Motor Vehicles Act, 1939.

8. The Factories Act, 1948.

9. The Minimum Wages Act, 1948.

10. The Untouchability (Offences) Act, 1955.

(4) Bombay Acts.

11. The Bombay Ferries and Inland Vessels Act, 1868.

12. The Bombay Vaccination Act, 1877.

13. The Bombay Public Conveyance Act, 1920.

14. The Bombay Weights and Measures Act, 1932.

15. The Bombay Money-Lenders Act, 1946.

16. The Bombay Primary Education Act, 1947.

17. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

18. The Bombay Shops and Establishment Act, 1948.

19. The Bombay Provincial Municipal Corporations Act, 1949.

20. The Bombay Police Act, 1951.

21. The Bombay Wild Animals and Wild Birds Protection Act, 1951.

22. The Bombay Prevention of Begging Act, 1959.

(5) Gujarat Acts.

23. The Gujarat Panchayats Act, 1961.

24. The Gujarat Municipalities Act, 1963.

25. The Gujarat Agricultural Produce Markets Act, 1964.

26. The Gujarat Sales Tax Act, 1969.

27. The cases under the Minor Acts (Central and State) triable in a Summary manner.

79. . :-
In all the contested cases after recording of the evidence is over, the statement in Performa No. 42 should be attached alongwith the Roznama. All the required entries should be made in that statement over and above the Roznama.

80. . :-

(1) When charge sheet i.e. report under Section 173, Criminal Procedure Code, 1973, is produced in the Court, the Police Officer has to forward all documents or relevant extract thereof on which prosecution wants to rely and also the police statements, as provided in Section 173 of the Code. The Officer of the Court receiving such documents should carefully verify them and keep them in proper and safe custody. The Officer receiving such documents should not part with them except they are given to copying clerks of Court. The copying clerk should copy them under the direct control and the supervision of such Officer. Such Officer should never give the original documents or statements to the Clerk of Pleader or to anybody else except Court clerk for the purpose of copying. The Inspection of such document to advocate representing party should only be given on order by the Court on application for the purpose. The entry should be made in the register for inspection for that. When the original documents are returned to the Police Officer or Assistant Public Prosecutor, the signature should be secured on copy of the first showing the serial number of such documents or statements and page number.

(2) Any mutilated condition of document or statement and any uninstalled erasures, etc., in documents or statements should be immediately brought to the notice of the Presiding Officer of the Court just after they are received.

(3) A register should be maintained in the prescribed form No. 43. Supply of Copies of Documents to the Accused.

81. . :-
Section 207, Criminal Procedure Code, 1973, provides for supplying the copies of police report, first information report, statements recorded under Section 161, Criminal Procedure Code of all the persons whom the prosecution proposes to examine as witnesses excluding some part of the statement as provided under that Section, confessions and statements under Section 164, Criminal Procedure Code, 1973 and any other document or relevant extract thereof on which the prosecution wants to rely. Similarly Section 208 of the Code provides for supplying copies of statements recorded under Section 200 or under Section 202 of the Code, of statements and confessions and of the documents produced before the Magistrate on which the prosecution proposes to rely. The Magistrate should invariably satisfy himself, when the accused appears or is brought before him at commencement of the committal proceedings or trial that the copies of the documents referred to in Section 207 or Section 208 of the Code, as the case may be, are furnished to the accused. If he finds that the accused is not furnished with such copies, he should cause them to be furnished immediately, and if this is not possible, within such time not exceeding one week as the Magistrate may allow. The next date of hearing should be fixed so as to allow sufficient time to the accused to study the copies supplied to him and to prepare his defense. An entry should be made in the Roznama by the Magistrate about the action taken by him for supplying the copies to the accused.

82. Committal Proceedings :-
When it appears to the Magistrate that the offence is exclusively triable by the Court of Session, the Magistrate shall-

(1) Cause the copies of the statements and other documents furnished to the accused as provided in Section 207 or Section 208, Criminal Procedure Code, 1973. After the Magistrate is personally satisfied that all the copies of statements and other documents as

specified in above referred sections are supplied, the Magistrate shall commit the accused to the Court of Session under Section 209 of the Code.

(2) No preliminary inquiry is required to be held and no charge is to be framed by the Magistrate, while committing the accused to the Court of Session under Section 209, Criminal Procedure Code, 1973.

(3) It is not necessary to give the reasons for committing the case to he Court of Session, however, the formal order should be passed by the Magistrate committing the case to the Court of Session under Section 209 of the Criminal Procedure Code.

(4) If the Magistrate commits the case to the Court of Session under Section 323, Code of Criminal Procedure, 1973, the Magistrate shall record reasons for such commitment.

(5) Subject to provisions of bail in Code of Criminal Procedure, 1973, the accused may be released on bail by the Magistrate committing the case to the Court of Session.

(6) Immediately after the case is committed to the Court of Session, the Court should notify the Public Prosecutor of the commitment of the case to the Court of Session.

(7) The record of the case and documents should be properly arranged and should be sent to the Court of Session.

(8) All Muddamal articles should be serially numbered and sent to this Court of Session along with the record of the case or just after the record is sent. If any article is not sent, the reasons for that should be mentioned.

83. . :-
In order to avoid harassment to the accused it should be the endeavor of every Magistrate to dispose of committal proceedings as expeditiously as possible, and in any event within a period not exceeding two months from the date of submission of the charge-sheet. Magistrates should report to Chief Metropolitan Magistrate or Chief Judicial Magistrate, as the case may be, the reasons for not disposing of the committal proceedings within the period of two months. The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, should then satisfy himself as to whether the reasons stated are satisfactory and whether the Magistrate should be allowed extension of time. He should then issue such instructions to the Magistrate as he deems proper.

84. . :-

(a) When a Magistrate commits the accused to the Court of Session, he should question the accused as to whether he desires to make his own arrangement for his defense in the Session Court, or whether arrangement should be made by the Sessions Court to engage a pleader on his behalf. In the latter case, the Magistrate should, when committing the case for trial, intimate the Sessions Court accordingly.

(b) If the accused is not to be represented by pleader, the Magistrate should inquire from the authorities or from other source as to whether the accused has sufficient means to engage pleader. The Magistrate should report the result of his inquiry to the Court of Session, as early as possible after the commitment to enable the Court of Session to assign a defense pleader at the expense of State under Section 304, Criminal Procedure Code.

85. . :-
When two or more persons are accused of the same offence or of offences arising out of the same transaction, the Magistrate should not convict some and commit others to the Court of Session. If any one of the accused is charged with an offence beyond the jurisdiction of the Magistrate, or with one which, in the opinion of the Magistrate, ought to be tried by the Court of Session, all the accused persons implicated, against whom there is prima fade evidence, should be committed for trial.

86. . :-
A Magistrate should not postpone the committal of an accused person to the Sessions Court merely on the ground that the report of the Chemical Analyzer in regard to articles sent to him for examination has not been received. In such cases the committing Magistrate shall forward along with the committal order the list of the articles sent to the Chemical Analyzer stating the date on which they were sent.

87. . :-
The Judicial Magistrates should submit to the Sessions Judge and the Metropolitan Magistrates should submit through the Chief Metropolitan Magistrate to Sessions Judge, Ahmedabad, before 5th of each month the list, in Form No. 44 of the cases likely to be committed to the Court of Session during the month.

88. Medical Witnesses :-

(1) Section 291 of the Code of Criminal Procedure, 1973, requires that for the purpose of making evidence admissible in other inquiry, trial or proceeding the deposition of a medical witness except deposition taken on commission, should be taken and attested in the presence of the accused by the Magistrate and in order to remove any argument regarding its admissibility in other proceedings an attestation in the following form should, therefore, always be appended to such depositions in addition to endorsement "Read over to the witness and admitted by him to be correct." "Taken before me and signed by me in the presence of the accused, to whom the deposition was explained and opportunity given to cross-examine. Date: (Signature of Magistrate)."

(2) The Medical evidence should be recorded fully and intelligently on all the salient points so that a second examination by another Court may not be necessary. The evidence should be fully interpreted to the accused, if necessary, and he should be allowed opportunity to cross-examine the medical witness.

89. Hearing and Adjournment :-

(1) The Magistrates should give priority to criminal work over other work and that, every effort should be made to reduce, as far as possible, the hardship to parties and witnesses which the proceedings entail.

(2) The Magistrate should settle his Board personally and should not leave it to be done by his Bench Clerk. The Magistrate should fix on his board only such number of matters as he feels confident of being able to take up during the course of that particular day, keeping only exceptionally few more for contingency, and that, if the Magistrate feels that his file being heavy, he would not be able to take up the case fixed for hearing he should inform the advocates and parties concerned in advance that they need not remain present on the fixed date and also intimate the adjourned date.

(3) The Magistrates should always sit punctually at the appointed hour so as not to keep people waiting. If the Magistrate finds that, owing to his absence from the Court or his being busy with other cases, it is not possible for him to hear any case on the date fixed for its hearing, he should, so far as possible, intimate to the parties in advance, so that parties and witnesses do not have to attend the Court unnecessarily.

90. . :-
Though no hard and fast rule may be laid down regarding the precedence in hearing cases, it will be useful to bear the following principles in mind:-

(i) Cases in which Juvenile Offenders are involved should normally be disposed of with the utmost expedition and as soon as possible after the offender is brought before the Magistrate.

(ii) Custody cases should take precedence over non-custody cases.

(iii) Cases in which Government servants and Panchayats servants are involved as accused should be disposed of as expeditiously as possible.

(iv) Cases under the Indian Railways Act, and other petty non- cognizable cases, should be disposed of as soon as possible after the accused is produced before the Court.

(v) Part-heard cases and cases which are standing over from previous dates of hearing should take precedence over the cases to be heard for the first time.

(vi) Cases in which parties and witnesses come from a distance should, as far as possible, be given due preference.

91. . :-
In order to minimize the hardship caused by unnecessary detention of parties and witnesses in cases which have to be adjourned for want of time, the Magistrate should, at the commencement of work on any day, consider applications for adjournment of cases in the day's list. Thereafter he should assess the number of cases he would be able to take during the course of the day. For this purpose, he should consider the position in regard to the part-heard and new cases on the Board, due regard being given to the principles as to priorities indicated above. He should then discharge the cases which are not likely to be heard on that day so that the parties and the witnesses may not have unnecessarily to remain present in the Court. Before rising for the afternoon recess, the Magistrate may again assess the position, and if he be of the opinion that any cases, which were not discharged earlier are not likely to be taken up, he may discharge such cases after giving suitable dates for the next hearing.

92. . :-
Section 309, Code of Criminal Procedure, 1973, provides, "in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. "The hearing of a case should, therefore, go on from day, and this practice should be strictly followed. Exception may be made only where an insistence on it would defeat the ends of justice or is required by law.

93. . :-

(1) Under the second proviso to sub-section (2) of Section 309, no adjournment shall be granted when witnesses are in attendance, without examining them except for special reasons to be recorded in writing. So far as possible, all witnesses who are present on any day, would be examined.

(2) The reasons for not hearing a part heard case, and the adjournment of any case where the witnesses are in attendance, should be recorded by the Magistrate.

(3) No case should be adjourned on the ground that all the witnesses, who have been summoned, are not present.

94. . :-
Adjournments should not ordinarily exceed seven days when the accused is in custody, and 15 days when he is on bail. Adjournments for longer periods should be granted only for special reasons which should be recorded.

95. . :-
The convenience of lawyers shall not ordinarily be regarded as a good ground for adjourning the case.

96. . :-
Cases should not ordinarily be adjourned for the personal convenience of the Assistant

Public Prosecutor. Frequent absence of the Assistant Public Prosecutor should be reported by the Magistrate to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be. The Chief Metropolitan Magistrate shall communicate it to the Commissioner of Police. Ordinarily, when an Assistant Public Prosecutor consents to be present on a particular date, the Magistrate should not adjourn the case, unless the absence of the Assistant Public Prosecutor is due to reasons beyond his control or unless the Magistrate otherwise deems it proper to do so in the interest of justice.

97. . :-
In view of the provisions of proviso to Section 256 and of section 317 Code of Criminal Procedure, 1973, the mere absence of either the complainant or the accused is not a sufficient cause for adjournment. The Magistrate should, whenever possible, proceed with the hearing of the case in their absence.

98. . :-
It is noticed that the trial of cases is often delayed by the absence of witnesses and that some of the Magistrates fail to take action when witnesses though duly served, do not attend without sufficient cause. Magistrate may in proper cases take action under Section 350, Code of Criminal Procedure, 1973, against witnesses who fail to appear on a summons or a bond, unless satisfactory reasons are given for their absence.

99. Warrant Cases :-

(1) Sections 238 to 243 and 248, Code of Criminal Procedure, 1973, provide for the expedited procedure for the trial of warrant cases instituted on police reports. The procedure prescribed in Sections 244 to 248 applies only to warrant cases instituted otherwise than on police report.

(2) Section 246 provides that, in warrant cases instituted otherwise than on a police report, after the plea of not guilty to the charge,

(i) an accused shall be asked which (if any) of the prosecution witnesses already examined he wishes to have recalled for cross examination, and that

(ii) this question shall be put to him at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith.

(3) To avoid needless harassment of witnesses by being recalled for cross-examination after the charge has been framed, Magistrates will usually find it convenient not to wait for the completion of the evidence for the prosecution, but to frame the charge as permitted by section 246, at an earlier stage, as soon as, from the examination of the complainant or otherwise, the Magistrate is of the opinion that there is ground for presuming that the accused has committed offence.

100. . :-
It is obligatory under Section 248, Criminal Procedure Code, 1973, upon the Magistrate to hear the accused on the question of sentence. If the Magistrate finds the accused guilty, the order for the sentence should be passed only after the accused is heard on the point of sentence.

101. Summary Trials :-

(1) Under Section 260, Code of Criminal Procedure, 1973, the offences punishable with the imprisonment for two years and other offences specified in that section can be tried summarily. But no sentence for imprisonment for a term exceeding three months shall be passed in such cases.

(2) In all summary trials the procedure for trial of summons cases is require to be followed.

102. . :-

(1) Before commencing the trials of offences which can be tried summarily Magistrates should consider the appropriateness and desirability of following the summary procedure.

(2) Summary procedure in the following cases, though strictly legal, is not appropriate and should not ordinarily be followed:

(i) Cases which are prima fade likely, in the event of a conviction to call for more severe punishment than can be awarded on summary trial e.g. cases against previously convicted offenders;

(ii) Cases which are prima facie likely to be long and complicated.

(iii) Cases arising out of disputed title; and

(iv) Serious case in which for any particular reason, it is desirable that there should be a full record of the evidence for future reference e.g. cases in which Government servants are concerned as accused persons.

103. . :-
Though it is not necessary to frame a formal charge in cases tried summarily it is always desirable that the ingredients of the offence as also the particulars thereof with which accused is charged are clearly stated to him. In case the accused pleads guilty the Magistrate should question the accused, in respect of each particular of the offence and record in full his answer to the same.

104. . :-
In all cases tried summarily in which the accused does not plead guilty it is obligatory for the Magistrate to record the substance of the evidence. It is also obligatory to record the judgment containing the brief statements of the reasons for the findings by the Magistrate.

105. Examination of Accused and Written Statement :-

(1) Under Section 243 and Section 247 the Criminal Procedure Code, the accused may put in a written statement which should be filed with the record. The written statement cannot, however, be allowed to take the place of the examination of the accused prescribed under clause (b) of sub-section (1) of Section 313 which is mandatory.

(2) The object of the examination of the accused under Section 313 is to enable him to explain any circumstances appearing in the evidence against him. The examination should strictly be limited to this object. The examination of the accused cannot be used for the purpose of adding to the evidence against him and no attempt should be made to cross-examine the accused and to elicit damaging or incriminating admissions. A general question, "what do you wish to say with regard to the evidence in the case" may not be regarded as sufficient compliance with law. Every circumstance which incriminates or tends to incriminate the accused and the material evidence against him should be brought to the notice of the accused and he should be asked whether he wishes to furnish any explanation in regard thereto.

(3) The accused, should at the end of the examination, be specifically asked whether he desires to examine himself on oath as a witness and whether he wants to examine other witnesses.

(4) In order to show that the accused has been given the opportunity of giving such further explanation as he may want to make, it is desirable that the examination of the accused should conclude with a question whether he has anything else to say.

106. Local Inspection :-
Local inspection should be rarely undertaken by the Judge or Magistrate and particularly by appellate Courts. Whenever necessary, the prosecution should put in evidence lucid plans of such details and accuracy as to render the inspection unnecessary, and it is for the Judge or

Magistrate to see that such duty is discharged by the prosecution and it does not seek to escape it by suggesting inspection. However, for understanding the evidence and when found necessary the Judge or Magistrate may personally visit the scene of offence or any other place either before or during the inquiry or trial, for the purpose of properly appreciating the evidence of the witnesses. When such inspection involves absence, from Court or from headquarters the Judicial Magistrate should inform the Sessions Judge and Metropolitan Magistrate should inform Chief Metropolitan Magistrate of the circumstances which render such inspection necessary. The Judicial Magistrate shall obtain previous sanction of the Sessions Judge and Metropolitan Magistrate shall obtain permission of Chief Metropolitan Magistrate to his absence from headquarters on any particular day. Such inspection should not be ordinarily undertaken during Court hours. The provisions of Section 310 of the Code of Criminal Procedure, 1973, should be strictly complied with. A memcrandum of any relevant facts observed at such inspection should invariably be made without unnecessary delay and it should be shown to the advocates appearing in the case and should form part of the record of the case.

Note.-All paragraphs of this Chapter are applicable to the Courts of Metropolitan Magistrates also.

CHAPTER 5
TRIALS BY COURTS OF SESSION

107. . :-
Subject to orders of the High Court and subject to the provision of Section 9(6), Criminal Procedure Code, 1973, Court of Session shall ordinarily, hold its sitting at the headquarters of the Sessions Judge.

108. . :-
Sessions work should usually be given preference over Civil work and should never be unnecessarily interrupted, but the Sessions Judge should arrange, as he finds most convenient, for the disposal of urgent Civil and Criminal work.

109. . :-
On receiving the record of the case by the Sessions Court from the committing Court, the Senior Clerk or the Criminal Superintendent should carefully examine the record and should ascertain as to whether the copies required to be furnished to the accused are furnished or not. This should be done immediately on receiving the record by Sessions Court.

110. . :-
The procedure for trial before Court of Sessions is contained in Sections 225 to 237. The Sessions Judge on consideration of record may discharge the accused under section 227 but it is obligatory to write reasons for that.

111. . :-
The Sessions Judge should record the reasons if the case is transferred to the Chief Judicial Magistrate under Section 228 of the Code of Criminal Procedure, 1973.

112. . :-
The evidence of the prosecution witnesses should, as far as possible, be recorded day to day, till the evidence on side of prosecution is over.

113. . :-
It is obligatory to put questions to accused after prosecution evidence is over, to enable the accused to explain each of the circumstances appearing against him from evidence on record as provided under Section 313, Code of Criminal Procedure, 1973. Each circumstance so appearing should form part of a separate question.

114. . :-
The accused should be called upon to enter his defense only if he is not acquitted under

section 233, Code of Criminal Procedure, 1973.

115. . :-
It is obligatory to hear the accused on the point of sentence under Section 235, Code of Criminal Procedure, 1973 and submissions made on the question of sentence should be dealt with in the judgment.

116. Record and Proceedings :-
In cases tried by Sessions Court, the diary of the proceedings may be maintained in English or in Gujarati in Form No. 22.

117. . :-
In all trials by Courts of Sessions, the Presiding Judge shall record briefly, in writing in English, the substance of the arguments of the Public Prosecutor and the lawyer for the defense, if any, and the notes so made shall be included as exhibits in the record of the case.

118. . :-
The Sessions Judge should put on the record the letters written by the investigating officer to the Chemical Analyzer so that the identity of each article sent to the Chemical Analyzer can be established.

119. Police and Medical Witnesses :-
Whenever a Medical Officer is questioned about the result of his examination of any person, corpse or substance evidence should always be taken to prove that the person, corpse or substance examined by him and to the examination of which he testifies, is the person, corpse or substance in question in the case. For this purpose the evidence of the person who conveyed the corpse to the Medical Officer should be taken and this fact may also be proved by affidavit under Section 296 of the Code of Criminal Procedure, 1973.

120. . :-
The Sessions Judge should endeavor to bring on record, in the medical evidence, the details about the nature and dimensions of the injury. It should be clearly brought on record as to whether the injury was antemorten or post morten and as to whether it was possible by a particular internal injury and as to whether the injury or injuries either individually or cumulatively were sufficient in the ordinary course of nature to cause death.

121. . :-
In acase in which aperson is sentenced to death the Sessions Judge should put on record the fact that he has informed him that if he wishes to appeal his appeal should be preferred within thirty days.

122. Arrangement during vacation :-

(1) The Sessions Courts must be kept open during the annual vacation for six weeks of the District Court. The Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges may, however, be permitted by the High Court to absent themselves from their respective districts during the vacation provided the arrangement is made for the disposal of all criminal work received before and pending at the commencement of the vacation. No vacation concession should be availed of by them without fulfilling this condition.

(2)

(a) The Sessions Judge, Ahmedabad City (Principle Judge) may be permitted by the High Court to absent himself from the Court during the vacation provided the arrangement is made for the disposal of all the Criminal work received before and pending at the commencement of the vacation. No vacation concession should be availed of by him without fulfilling this condition.

(b) Sufficient number of Additional Sessions Judges, Ahmedabad City, may be prevented

by the Sessions Judge, from enjoying the vacation to enable to dispose of criminal work received before ana pending at the commencement of the vacation.

(3) All the criminal work received before the vacation and pending at the beginning of the vacation should be disposed of during the vacation.

(4) The Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges should obtain the permission of the High Court in advance before availing of vacation concession.

(5) The vacation concession exceeding to weeks shall not be permitted.

(6) During the months of March and April, the City Civil Court Judges, District Judges and Assistant Judges should concentrate on Civil file and take only the Sessions cases and criminal appeals in which the accused are injail and fix practically all the Sessions Cases during the vacation.

123. . :-
The Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges should submit the statement regarding the Sessions work and other criminal work disposed of during the vacation in the proforma No. 23 within 15 days after the end of the vacation. The Additional Sessions Judges and Assistant Sessions Judges should submitthe statement to the Sessions Judge, who shall submit the statement in consolidated form to the High Court in the Proforma No. 23.

124. . :-
During the summer vacation, top priority should be given to the preparation of the paper books and the Section-Writers and other necessary number of clerks should not be allowed to avail of the summer vacation indiscriminately.

125. Legal aid to Accused and Engaging the Pleader for the Accused :-
Section 304, Code of Criminal Procedure, 1973, provides for legal aid to accused who is unrepresented in trial before Court of Session and who has no sufficient means to engage pleader. The expenses are to be borne by the State for that. The rules framed for the purpose should be properly followed by the concerned Courts.

126. . :-
In exercise of the powers conferred by sub-section (2) of Section 304 of the Code of Criminal Procedure, 1973 (2 of 1974), the High Court of Gujarat, hereby makes, with the previous approval ofthe Government of Gujarat, the Rules for providing Legal aid to accused at State expenses in trials before the Court of Session, under section 304(2) of the Code of Criminal Procedure, 1973, the Gujarat Legal Aid to Accused at State Expense Rules, 1976.

127. . :-
The following orders have been issued in regard to employment of pleader for the defense of persons accused of offences punishable with death:-

(1) In all confirmation cases, Appeals from acquittals and enhancement proceedings in which any person is liable to be sentenced to death the accused shall be informed by the trial Court that unless he intends to make his own arrangement for legal assistance, the higher Court will engage a pleader at the Government expense to appear before it on his behalf if it is ascertained that he does not intend to engage a pleader at his own expense, a pleader shall be engaged by the higher Court concerned to undertake the defense, and his remuneration shall be paid by the Government.

(2) The fee of the pleader for the defense will be, on the appellate side of the High Court, on the same scale as is laid down in the Law Officer's Rules for the Government Pleader or the Public Prosecutor appearing for the prosecution in such cases. Such fee will be calculated according to the number of the accused persons for whom the pleader is

engaged.

(3) The pleader should always be appointed in sufficient time to enable him to take copies of the depositions and other necessary papers which should be furnished free of costs before the commencement of the trial. He should also be allowed to make copies of the depositions of witnesses and other necessary papers during the trial in sessions case without charging any fees, if he applies for the same. If after the appointment of such pleader, the accused appoints another pleader, the pleader appointed by the Court may still in the discretion of the Court, be allowed his fee for the case and the copies already prepared will be available upon payment for the use of the pleader privately appointed by the accused.

(4) In those Sessions Courts in which the District Public Prosecutors have an establishment of one or more copyist under them, the copies required by the pleader for the defense should be prepared by those copyists under the orders of the District Public Prosecutors. If in urgent cases this is found impossible, the District Public Prosecutor is authorised to employ temporarily an extra copyist, or, if that is not possible, to obtain the necessary copies from the Court's Sectioners and in such instance, the District Public Prosecutors should report the circumstances and the cause of emergency to the Remembrancer of Legal Affairs. In the case of District Public Prosecutors, who have no copying Clerks under them, the copies needed for the pleader for the defense must be obtained by the Public Prosecutors, in the same way in which they obtain copies for themselves namely, through the Court's sectioners and they should charge for such copies in their monthly bills, which are sent to the Remembrancer of Legal Affairs for countersignature. In small cases, the District Government Pleader might often be able to save the expense of a double set of copies by allowing the pleader for the accused to use his own copies.

(5) The fee chargeable under the Court Fees Act, VII of 1870, on the copies have been remitted by the Government of India.

128. Legal Aid to undefended accused persons with income not exceeding Rs. 4,000/- :-

The following rules issued by the State Government for the grant of free legal assistance to the undefended accused persons whose annual income does not exceed Rs. 4,000/-in Sessions Cases and cases triable by the Special Judges under the Prevention of Corruption Act, 1947, are produced for the information and guidance of the Sessions Courts in the mofussil:

(1) Definitions.-

(a) "Legal Aid" means the aid given by the State to a person for meeting the fee of the pleader as may be prescribed from time to time and includes [supply free of costs copies of depositions and] any other aid given in connection with the litigation for which a pleader is engaged, as the Government may decide upon:

Provided that the legal aid is restricted to:-

(i) Sessions cases committed for trial Courts of Sessions other than murder cases in which defense is available to pauper accused in the mofussil, and

(ii) to the undefended accused person charged with offence of corruption under the Prevention of Corruption Act 1947, other than the accused person charged with the offence of being found to be living beyond known means under section 5(1)(e) of the said Act.

(b) "Poor person" means a person certified to be so poor by the Court as not having the means to engage a pleader of his own for the conduct of the case, before the Court of answering such other conditions, if any, as Govern- ment may prescribe.

EXPLANATION: A person whose average yearlyincome is not more than Rs. 4,000/-(Four

Thousand Rupees) shall be considered to be poor for the purpose of these rules.

(c) "Court" means a Court of Session whether presided over by a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge.

(2) Authority to decide capacity of person to engage Pleader:

(i) Every Sessions Judge or Additional Sessions Judge or Assistant Sessions Judge is authorised to certify or report whether the person applying for legal aid is poor or not.

(ii) Every application for legal aid shall be made to the Court to which a Sessions case is committed for trial and shall be in Form No. 45. No Court See shall be payable an such application.

(iii) Panel of Pleader for legal aid.

(a) The appointment of the Counsel for the poor under these rules shall be made from a Panel of Legal Practitioners for each Court constituted each year by the Presiding Officer of the Court in consultation with the President of the Bar Association, if any, (who may consult its executive committee). The Panel should include the President of the Bar Association or at least one Senior Pleader who may be called upon to be the Pleader in any importance case where legal aid is given. The persons included in the panel should have at least a standing of five years as practising Pleaders. Normally the Sessions Judge should not make an appointment from outside the panel but he may do so for any exceptional reason to be recorded in writing.

(b) Notwithstanding anything to the contrary, in the case of Criminal Proceedings pending on the date of promulgation of these Rules and to which a poor person is a party, on application in that behalf to the Court, the Pleader engaged by him shall be recognised to be the Pleader engaged by the court under these rules and shall be paid the fees admissible under these Rules.

(3)

(i) The Panel shall be constituted every year normally for the period- 1st January to 31st December:

Provided that a Pleader shall continue in a case for which he is engaged till its completion even if the case is not closed in that year.

(ii) All persons included in the panel shall express in writing to the Presiding Officer of the Court, as the case may be, their willingness to serve in the panel and thereupon such persons shall accept engagement in any case and to appear in Court when so engaged.

(iii) Any person in the panel may tender his resignation in writing to the authority constituting the panel.

(iv) Any vacancy in the panel caused by resignation or otherwise may be filled up by the Presiding Officer of the Court from the Pleader practising in the Court, but the term of the person so appointed will expire on the 31st December succeeding the date of appointment.

(v) If any person after having agreed to serve on a panel neglects or refuses to accept an engagement, he shall forthwith cease to be a member of the panel and shall be debarred from being reappointed to a panel.

(vi) If any pleader after accepting an engagement neglects or refuses to discharge his duties properly, the authority which sanctioned the engagement may remove the pleader after obtaining approval from the High Court and appoint another in his place. Such removal will entail the consequences mentioned in sub-rule (v).

(vii) Any person serving on a panel shall be eligible for reappointment.

(viii) Cases in which legal aid is sanctioned may be distributed among the members of the panel equitably at the discretion of the Presiding Officer of the Court.

(ix) Deleted vide Government Resolution, Home department No. DFS- 1058/791-111, dated the 28th December, 1959.

(4) Fees-In Criminal cases before the Sessions Court and Additional and Assistant Sessions Courts, the Pleader shall be entitled to a fee payable in accordance with the Gujarat Law Officers (Appointment and Conditions of Service) Rules, 1965, for the Public Prosecutor, subject to a maximum of Rs. 225/- in the aggregate.

(5) Disbursement of Fees.-The fee for the Pleader engaged for the poor in the Court should be disbursed by the Presiding Officer of the Court on the pleader passing a receipt to the Court accompanied by a certificate as per rule (6).

(6) Certificate.-The certificate to be submitted to the Court shall contain the following details:-

(a) The number of days on which actual work is done;

(b) the duration of work for each day;

(c) deleted vide Government Resolution, Home Department No. DFS 1 10581791-III, dated the 28th December, 1959;

(d) the fee payable to him as per these rules;

(e) the Pleader has not received any fees from the poor accused person.

(7) Courts to maintain Accounts .-The Courts shall maintain accounts of the Pleader's fee paid under these rules.

(8) Pleader not to receive any fee from party.-The Pleader to whom fee is due or paid under this scheme shall not be entitled to nor shall he receive any fee from the party.

(9) Saving.-Notwithstanding anything contained in these rules, it shall be competent for the Government to issue from time to time any direction or instruction with a view to implementing the scheme for legal aid to the poor having regard to the special circumstances of any case.

129. . :-

The Government of Gujarat, vide resolution No. LAC-1070-D, dated 31st January, 1972, accepted the recommendations of the Legal Aid Committee and decided to grant legal aid to certain classes of persons mentioned in the said Government Resolution, for instituting and defending proceedings in civil, criminal, revenue, labour and other courts or tribunals in certain talukas. By Resolution No. LAC-1070-D, dated 10th July, 1973, the Government has widened the scope of the Pilot Project of the legal aid scheme and has extended it to other classes of persons also. The scheme provides for the legal aid to the persons who have income less than Rs. 2400/- per annum and immovable property less than Rs. 5,000/- in value and to the widows and Jawans, ex- servicemen having income upto Rs. 2400/- per annum, Bhangis and Scavengers and unorganised labourers whose income is less than Rs. 2400/- per annum. The Government has also extended the legal aid to all the persons of defense personnel (i.e. Soldiers, Sailors and Airmen) domiciled in the State of Gujarat. The said scheme provides for the legal aid to the above referred classes of persons for the court fees, process fees, copying charges and witness bhatta which they may have to pay in connection with the institution or defense of the proceedings in the civil, criminal, revenue, labour and other courts or tribunals, not only at the taluka level, but also at the district level and even at the higher level, i.e., for instituting and defending the proceedings in the courts or tribunals to which appeals, revisions, references or applications may lie from the decision, judgment, decree or order, etc., of the courts or tribunals at the taluka and

District levels. The question of eligibility of the grant of the legal aid and advice at the district level and at the higher level is to be decided by the concerned District Legal Aid Committee or the High Court Legal Aid Committee, asthe case may be. At the taluka level, the question of eligibility to the grant of the legal aid and advice is to be decided by the Taluka Legal Aid Committee. The said scheme is made applicable to certain talukas in the State of Gujarat in which the Pilot Project is declared to have come in force. The above referred persons are entitled to the legal aid in criminal cases and, therefore, the Magistrates and Judges should direct the persons who are eligible for the legal aid to the Legal Aid Committee and should see that the benefit of the said scheme is properly taken by the persons for whom the scheme is framed.

130. . :-

The Government ofGujarat, vide Legal Department Resolution No. LAC-1070-D, dated 1st November, 1972, decided that the persons eligible to the legalaid under ResolutionNo. LAC-1970- D, dated 31stJanuary, 1972 and 18th May, 1972, should also be given the legal advice. By the said Resolution, the scheme was applied to 17 talukas in the State of Gujarat. By the said Resolution, the Government also decided that the legal advice shall be granted in the entire State ofGujarat to all members of the defense personnel, (i.e. Soldiers, Sailors and Airmen) domiciled in the State of Gujarat. By Resolution No. OAC/1070/D, dated 10th July, 1973, the Government has widened the scope of the scheme of legal advice and has extended it to other classes of persons also. The scheme provides for the legal advice to the persons who have income less than Rs. 2400/- per annum and immovable property less than Rs. 5000/- in value and to the widows of Jawans, Ex-servicemen having income upto Rs. 2400/- per annum, Bhangis and Scavengers and unorganised labourers whose income is less than Rs. 2400/- per annum. The said scheme provides for the legal advice to the above referred classes of persons in connection with the institution or defense of the proceedings in civil, criminal, revenue, labour and other courts or tribunals, not only at the taluka level but also at the District level and even at the higher level, i.e. for instituting and defending proceedings in courts or tribunals to which appeals, revisions, references or applications may lie from the decision, judgment, decree or order etc. of the courts or tribunals at the taluka and districtlevels. The question of eligibility of giving the legal advice at the District level and at the higher level is to be decided by the concerned District Legal Aid Committee or the High Court Legal AidCommittee, as the case may be. At the taluka level, the question of eligibility of giving legal advice is to be decided by the Taluka Legal Aid Committee. The above referred persons are entitled to the legal advice in criminal cases and, therefore, the Magistrates and Judges should direct the persons who are eligible for the legal advice to the Legal Aid Committee and should see that the benefit of the said scheme is properly taken by the persons for whom the scheme is framed.

131. . :-

In all criminal cases where the accused is sentenced to imprisonment for more than three years by Court of Session and in all cases tried by the Special Judges for offences under the provisions of Prevention of Corruption Act, 1947, irrespective of the period of sentence, the Sessions Judge shall get prepared two more copies of the judgment in addition to the copy supplied to the accused and forward the same to the High Court immediately on receipt of the communication from the High Court in that behalf.

132. . :-

The Court of Session shall send to the District Magistrate, a copy of its finding and sentence (if any) as provided under section 365, Code of Criminal Procedure, 1973. The Court of Session may also send to the committing Magistrate or District Magistrate, should either of them require a copy of the judgment.

133. Procedure and Expeditious Disposal of Murder Cases :-
Sessions Judges and Magistrates should give precedence to murder cases over all other cases and should dispose of them as expeditiously as possible.

134. Completion of Part-Heard Cases by Magistrates under Orders of Transfer :-
Whenever an order of transfer or an advance intimation of the transfer is received by a Judge or Magistrate, he should endeavor to dispose of all part-heard cases before handing over charge. The Magistrate should submit report to the High Court through the Sessions Judge showing details of part-heard cases of under trial prisoners and the reasons of leaving them part-heard.

135. Vakalatnama :-
Vakalatnamas shall be filed by all Pleaders, as defined in the Code of Criminal Procedure, appearing on behalf of any party in all classes of cases, including appeals and revisional or miscellaneous applications, in all criminal Courts in the State of Gujarat, provided that no Vakalatnama shall be necessary in the case of-

(i) A Public Prosecutor appearing on behalf of Government;

(ii) A Pleader appointed by the Court in any case to defend accused person who has no sufficient means to engage pleader;

(iii) A Pleader appearing as 'amicus curie'.

(iv) A Pleader engaged to plead on behalf of any party by any other Pleader who has been duly appointed to act as a Pleader on behalf of such party.

136. Compliance with Special Requirements of Special and Local Acts to be examined :-
Certain Special and Local Acts require the previous sanction of or a complaint from the prescribed authority or some other condition being satisfied for giving jurisdiction for the trial of certain offences, e.g. section 39 of the Arms Act, 1959 (54 of 1959). Judges and Magistrates should study the Special or Local Act, under which a prosecution has been commenced and satisfy themselves, before commencing the trial, that the prescribed previous sanction or other precedent for giving jurisdiction for the trial has been given or complied with. The following list of special provisions, which is not exhaustive, is given for ready reference.

India Acts. (Arranged alphabetically)

1. Section 266 of the Cantonments Act, II of 1924.

2. Section 11 of the Cotton and Ginning and Pressing Factories Act, XII of 1925.

3. Section 10 of the Dock Labourers Act, XIX of 1934.

4. Section 7 of the Explosive Substances Act, VI of 1908.

5. Section 105 of the Factories Act, LXIII of 1948.

6. Section 2 of the Foreign Relations Act, XII of 1932.

7. Sections 26 and 27 of the Indian Boilers Act, V of 1923.

8. Section 50 of the Indian Electricity Act, IX of 1910.

9. Section 28 of the Indian Emigration Act, VII of 1922.

10. Section 72 of the Indian Post Office Act, VI of 1898.

11. Section 16-A of the Press and Registration of Books Act, XXV of 1867.

12. Section 70 of the Indian Stamp Act, II of 1899.

13. Section 6 of the Prevention of Corruption Act, II of 1947.

14. Section 20 of the Prevention of Food Adulteration Act, 37 of 1954.

15. Section 8 of the Prevention of Seditious Meetings Act, X of 1911.

Bombay Acts and Gujarat Acts. (Arranged alphabetically)

1. Section 28 of the Bombay District Vaccination Act, I of 1892.

2. Section 12 of the Bombay Maternity Benefit Act, VII of 1929.

3. Section 151 of the Bombay Police Act, XXII of 1951.

4. Section 83 of the Bombay Public Trusts Act, XXIX of 1950.

5. Section 44 of the Bombay Weights and Measures Act, XV of 1932.

6. Section 42 of the Gujarat Agricultural Produce Markets Act, 1963 XX of 1964.

7. Section 149 of the Gujarat Co-operative Societies Act, 1961, X of 1962.

8. Section 322-A of the Gujarat Panchayats Act, 1961, VI of 1962.

137. Framing of Charge :-

(1) The correct framing of the charge is of considerable importance as it enables the prosecution to know precisely what facts they have to prove and also gives notice to the accused of the allegations which he has to meet. Judges and Magistrates should devote personal attention to this matter and see that the charge is framed correctly and give all the necessary particulars as prescribed in Sections 211 to 213 and 218 to 221 of the Criminal Procedure Code, 1973. The form in which the charge should be framed is form No. 32 in second schedule of the Code.

(2) Where an accused person is charged with a number of offences, there should be a separate head of charge for each separate offence alleged to have been committed by him.

(3) Where several persons are tried together for different offences committed in the course of the same transaction, there should be a separate head of charge for each of those offences.

(4) Where five persons or more are charged with committing an offence, it would ordinarily be desirable to frame charges in the alternative, both under section 34 and section 149, Indian Penal Code. An alternative charge may also be framed against the accused, who is or who are alleged to have committed the particular act constituting the offence.

(5) In prosecutions for giving false evidence under sections 193, 194 and 195 of the Indian Penal Code, the particular statements alleged to be false should invariably be set out in the charge, to enable the accused to understand fully the offence with which he stands charged.

138. . :-

When juvenile offenders are charged with an offence or against whom security proceedings are instituted, special care should be taken that they are not deprived of the benefits under the Bombay Children Act, (Act No. LXXI of 1948) or the Saurashtra Children Act,(Act No. XXIX of 1956), the Borstal School Act, (Act XVIII of 1929) andthe Probation of Offenders Act, 1958. It is highly undesirable that young offenders should be made to associate with confirmed criminals. If the accused is less than 16 years old or in places where the Saurashtra Children Act is applicable, less than 18 years old, he cannot be committed to the Sessions Court for trial, but should be tried by a Juvenile Court as provided in the Bombay Children Act, 1948 or under the Saurashtra Children Act, as the case may be. The courts should, whenever ajuvenile offender or a party is produced before them, take steps to ascertain his age. If the age given by the police does not appear to be correct from the

appearance of the offender or party and if the police cannot produce satisfactory evidence regarding his age, the court should consider the desirability of sending the offender or party to the medical officer for the verification of his age before proceeding with the case. The court should insist upon the production of school certificate or an extract from a birth register or birth certificate, if available.

139. . :-

(1) When any person above 21 years of age or any woman is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less or when any person under 21 years of age or any women is convicted of an offence not punishable with death or imprisonment for life and no previous conviction is proved against them, such persons can be released on probation of good conduct as provided in sub-section (1) of section 360, Code of Criminal Procedure, 1973. The Judges and Magistrates may extend the benefit of that section in deserving cases, on considering circumstances mentioned in that section.

(2) Where any person is convicted of theft, theft in building, dishonest misappropriation, cheating or any offence under the Indian Penal Code, punishable with imprisonment not more than two years or any offence punishable with fine only and no previous conviction is proved against him, such person may be released after due admonition as provided in sub-section (3) of section 360, Code of Criminal Procedure, 1973. The Judges and Magistrates may extend the benefit of that section in deserving cases on considering the circumstances mentioned in that section.

140. . :-
The question of the age of an accused person is frequently of importance in other cases also. Mercy petitions are often presented on the ground of youthfulness of the condemned prisoners. At the time of the examination of the accused the Judge or Magistrate should, therefore, specifically ask each accused person his or her age for the purpose of recording it. If the Judge or Magistrate suspects that the age stated by the accused, having regard to his or her general appearance or some other reason, has not been correctly stated, then the Judge or Magistrate should make a note of his estimate. The Court may also, when it so deems fit or proper, order a medical examination of the accused for the purpose of ascertaining his correct age. If any documentary evidence on the point of age is readily available, the prosecution may be asked to produce it. The Court in such cases also, should insist upon the production of a school certificate and extract from the birth register or birth certificate, if available.

141. Permission to Accused to sit :-

(i) The accused person should be informed by the Court at the beginning of every trial that he may sit, if he desires to do so, and chairs or benches should, whenever available, be provided for this purpose. The accused must however, stand up, whenever he is addressed by the Court.

(ii) At the time of hearing of the criminal case against the accused who are on bail the accused may ordinarily, instead of being made to sit in the dock, be allowed to sit at a convenient place set apart in the Court room, at a distance from the dais where the Judge or Magistrate sits.

142. Open and in Camera Hearing :-

(1) The attention of all the Judges and Magistrates is invited to section 327, Criminal Procedure Code, 1973, which provides that public should have access to, or remain in the room or building used by a Court, except when the presiding Judge or Magistrate thinks it fit to exclude either the public generally or any particular person, in any particular case.

(2) In cases relating to sexual offences, the Court should, while keeping in view the

principle of administering justice openly, consider the ad- visability of excluding persons unconnected with the case from the Court room during the trial and in particular, when evidence to be given pertains to indecent details.

143. Oaths and Affirmations :-
Oaths and affirmations to witnesses should, as required by section 4 of Act X of 1873, be administered by the Courts themselves or by an Officer empowered by them in that behalf. Under the provisions of section 7 of the aforesaid Act, the Honourable the Chief Justice and Judges are pleased to prescribe the following forms for the administration of oaths and affirmations:- Witness's Oaths Christian (on New Testament)- "I swear that what I shall state shall be the truth, the whole truth and nothing but the truth. So help me God." Note.-In the case of Quakers substitute for "swear" "being one of the people called Quakers do solemnly, sincerely and truly declare and affirm. Hindu and Mohomedan "I solemnly affinn in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth." Jew (on the Hebrew Testament) "I swear that what I shall state shall be the truth, the whole truth and nothing but the truth. So help me God." Parsi (The witness, with his shoes on and placing his right hand on the open Zend Avesta, shall say) "I swear in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth Manasni Gavasni, Kunasni." Affirmations "I solemnly affirm that what I shall state be the truth, the whole truth and nothing but the truth."

144. Form of Deposition :-

(1) Form No. 46 should be used by Criminal Courts in recording the evidence of witnesses. It is not permissible to record that a "witness deposes as the last did." The deposition of each witness must be taken down separately and every deposition should be commenced on a separate page or half page. If the accused declines to cross examine, it should be so stated.

(2) If the witness cannot tell his or her age, the Presiding Officer should state how old he or she appears to be.

145. Evidence to be given from Witness Box :-
The witness should give evidence from the witness box. A witness while giving the evidence, should normally stand but a chair should be provided in the witness box, upon which any witness may sit on receiving the permission of the Presiding Judge or the Magistrate. The permission should be given on valid grounds, such as health of the witness or the likelihood that the evidence of the witness will occupy a long time.

146. . :-
Persons attending courts and witnesses taking oath should be allowed to keep their foot wear.

147. Recording of Evidence :-

(1) All Judges and Magistrates shall, in the examination of complainants, witnesses and accused persons, record, in each deposition, statement or defense, the following particulars which are indispensably necessary for the further identification of Àthe parties examined, viz., the name of the person examined, the name of his or her father, and, if a married woman, the name of her husband, his or her surname, age, his or her profession and the village and district in which he or she resides.

(2) The particulars of the religion, caste of the person concerned should, however, not be mentioned, even if the person concerned wishes to make such a mention, unless such reference is necessary for the purposes of administering the oath, or for determining the law by which the person concerned is governed or for determining any of the issues or points involved in the proceeding.

148. . :-

(1) In all the summons cases and cases tried summarily, the Chief Metropolitan Magistrate, the Chief Judicial Magistrates, Metropolitan Magistrates and the JudiciaMagistrates should, as the examination of the witness proceeds make a memorandum of substance of evidence in the language of the court i.e. Gujarati, as provided in section 274 of the Code of Criminal Procedure, 1973.

(2) In all the warrant cases, if the witness given evidence in the language of the Court, the Chief Metropolitan Magistrate, the Chief Judicial Magistrates, Metropolitan Magistrates and the Judicial Magistrates should, as the examination of the witnesses proceeds, take down the evidence of the witness in the form of a narrative in the language of the Court i.e. Gujarati, as provided in section 275 and section 277, Criminal Procedure Code, 1973. All the relevant and admissible answers given by the witness should be recorded in the language of the Court. It is not necessary for the Magistrates to make the memorandum of evidence in English. If the evidence is given by the witness in language other than the language of the Court, the Magistrate should follow the procedure provided in section 277 of the Code of Criminal Procedure, 1973.

149. . :-
In all the trials before the court of session, if the witness gives the evidence in the language of the court, the Judge should, as the examination of witness proceeds take down by himself or by his dictation in the open court or under his direction or supervision by an officer of the court appointed by him in this behalf. Ordinarily, such evidence be taken down in the form of question and answer, but the Presiding Judge may, in his discretion, take down or cause to be taken down, the whole or any part of such evidence in the form of a narrative, in the language of the court i.e. Gujarati, as provided in sections 276 and 277, Code of Criminal Procedure, 1973. All the relevant and admissible answers given by the witness should be recorded in the language of the Court. It is not necessary for the Judge to make memorandum of evidence in English. If the evidence is given by the witness in the language other than the language of the court, the Judge should follow the procedure provided in section 277 of the Criminal Procedure Code, 1973.

150. . :-

(1) The memorandum should be made and the depositions should be recorded, so as to leave a quarter margin on each page so as to facilitate the binding of the record.

(2) The deposition of every witness should be read over to him in the presence of accused if in attendance or his pleader if he appears by pleader and shall if necessary, be corrected. If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or the Judge may instead of correcting the evidence make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary. "The Magistrate or the Judge should also note the fact of having read over the deposition to the witness, at the end of each deposition thus recorded by him, and should also make an endorsement that the witness admits the correctness thereof.

151. . :-
It is important that the whole of the evidence given by each witness should appear in one place, and should not be a scattered at intervals through the record. Therefore, when a witness is, for any reason, recalled and further examined after the close of his original deposition, such further examination should appear as a continuation of the original deposition.

152. . :-
The practice of making remarks about demeanour of witness in Judgment without making note of it is not proper. The attention of the Judges and Magistrates is drawn to section 280, Code of Criminal Procedure, 1973, according to which it is obligatory for them to make such remarks (if any), as they think material, respecting the demeanour of such witness

whilst under examination.

153. . :-

(1) While recording the evidence of a witness with reference to a map or plan, the evidence should be recorded in such a manner that the places mentioned by the witness can be easily identified on the map or plan.

(2) In the cases of accident, it is desirable that court should insist on prosecuting agency that the detailed map or plan is brought on record, after necessary formal proof.

154. . :-
In cases where extracts of account books are sought to be produced by the parties in evidence the following instructions should be followed:-

(1) Generally there should be separate consolidated extract for each block of account containing the date of transaction, page number of the book and the narration of the transaction. However, if the Court thinks it fit it may direct the party to produce separate copies of different entries and such copies may be separately exhibited.

(2) Generally, in cases the entry or the entries are proved by different persons or if there is some specific contest for any entry, sub-exhibit numbers such as exhibits 15/1, 15/2 should be given and mention about the same should be made in the Roznama. If the Court thinks it fit it may direct such copies to be separately exhibited.

155. Typed Record :-
Judges and Magistrates may use a typewriter, instead of a pen, for the purpose of recording Judgment, deposition and memorandum of evidence; but every sheet of any Judgment, deposition or memorandum so recorded must be initialled or signed by the Judges or Magistrate recording it.

156. Arrangement of the Record in Files :-

(1) The record of every case shall be kept in three parts.

(2) Part I shall contain: (1) the Roznama or the record of the proceedings; (2) the memorandum of evidence or deposition of witnesses; (3) all documents which have been exhibited; (4) Confessions; (5) Statement of accused; (6) Written statement, if any, filed by the accused; (7) Memorandum of arguments; (8) the Judgment and the final order, including the order with regard to the disposal of property and (9) the warrant of commitment, if any, issued to the Jailor.

(3) Part II shall contain copies of statements recorded by the Police and all documents referred to in section 173, Criminal Procedure Code, 1973, which have not been exhibited, and the report of the Police Officer, sub- mitted after investigation directed by a Magistrate under section 202, Criminal Procedure Code, 1973.

(4) Part III shall contain miscellaneous papers, which have not been exhibited, such as charge sheet if not exhibited, summons, warrants, applications for bail, remand orders etc.

(5) All papers which are exhibited shall be filed serially in relevant part of the record.

157. Investigating Officer :-
In all important criminal cases, and especially in cases of murder and dacoity, the Police Officer by whom the investigation was conducted, should ordinarily be examined, as a witness in regard to the circumstances of the investigation. The Police Officer should bring with him his diary of the case and also the statements of the witnesses taken down by him under Section 161 of the Code of Criminal Procedure.

158. . :-
It is desirable in judicial proceedings to prevent, as much as possible doubt as to the

identity of the persons referred to therein. It frequently happens that the same individual is known by more name than one. Thus sometimes only the surname, sometimes only the name of the caste, or occupation or the village of the individual is mentioned or he as spoken of by a nickname. Such variations in description require explanation to render them intelligible to an appellate Court. A Court of first instance should, therefore, take care not only to ascertain but to make clear by evidence duly recorded the identity of any individual who is so referred to under varying applications and if such an individual is an accused person, his name and serial number according to the charge sheet should be cited in any passage in which he is otherwise designated.

159. Proof of Statements under Section 161, Criminal Procedure Code :-

(1) When the statement recordedunder Section 161 of the Criminal Procedure Code, 1973, is used in a manner indicated in section 162 of the Code, to contradict the witness, the specific statement put to the witness should be set out accurately verbatim (to be put in inverted comas), in the record ofthe deposition ofthe said witness. When that statement is to be proved, it should be recorded in the same manner as above in the evidence of Officer who recorded the statement.

(2) Omission in the statement recorded under section 161 amounting to contradiction should, if denied by the witness, be proved by questioning the police officer as to whether the witness had made the statement which he says he had. In case in which the omission suggested to be implied in an express statement made under Section 161, that express statement should be brought on record in the same manner as under sub-paragraph (1) for the purpose of finding out whether the omission is significant or otherwise relevant as contemplated by Explanation to section 161, Code of Criminal Procedure, 1973.

160. Examination of Public Servants :-
Judges and Magistrates should take particular care to see that public servants generally and doctors in particular, who are summoned to give evidence are examined on the dates for which they are summoned and are relieved as soon as possible after their examination is over.

161. Exhibiting of Documents :-

(1) Attention of the Magistrates is invited to the provisions of section 294 of Criminal Procedure Code, 1973, which provide that when any document is filed before the court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) When a witness proves any document or when the genuineness of a document is not disputed and the document can be read in evidence under section 294, Code of Criminal Procedure, 1973, the correct exhibit number should immediately be noted (i) on the document itself, and/or (ii) in the body of the deposition against the description of the document. Similarly, when another witness who has already been examined is referred to by any witness in his deposition, the exhibit number of the deposition of such other witness should invariably be noted in the deposition immediately after the reference to the witness.

162. . :-
When only a portion of a document is admissible, a note should be made as soon as the document has been proved and admitted into evidence stating the part admitted into evidence. The exclusion of the inadmissible portion of such documents should not be left over for consideration at the time of writing judgment.

163. Production of Official Document by Government Servants :-
Under Government Resolution Home Department No. 8996/6, dated the 28th April, 1954, certain instructions have been issued for the guidance of Government Servants when they

are summoned by a Court to produce official documents. The following relevant instructions are reproduced for the guidance of Courts:-

(1) The law relating to the production of unpublished records as evidence in Court is contained in Section 123, 124 and 162 of the Indian Evidence Act, 1872 (Act 1 of 1872).

(2) A Government servant other than the Head of a Department who is summoned to produce an official document should first determine whether the document is in his custody and he is in a position to produce it. In this connection, it may be stated that all official records are normally in the custody of the Head of the Department and it is only under special circumstances that an official document can be said to be in the custody of an individual Government servant. If the document is not in the custody of the Government servant summoned, he should inform the Court accordingly. If under any special circumstances, the document is in the custody of the Government servant summoned, he should next determine whether the document is an unpublished official record relating to affairs of state and privilege under section 123 should be claimed in respect of it, if he is of the view that such privilege should be claimed or if he is doubtful of the position, he should refer the matter to the Head of the Department, who will issue necessary instructions and will also furnish the affidavit in Form 47 in suitable cases. If the document is such that privilege under Section 123 could not be claimed but if the Government servant considers that the document is a communication made to him in official confidence and that the public interest would suffer by its disclosure, he should claim privilege under section 124 in Form No. 48. In case of doubt, he should seek the advice of the Head of the Department.

(3) The Government servant who is to attend a Court as a witness with the official document should, when permission under section 123 has been withheld, be given an affidavit in form No. 47 duly signed by the Head of the Department. He should produce it when he is called upon to give evidence and should explain that he is not at liberty to produce the documents before the Court, or to give any evidence derived from them. He should, however, take with him the papers which he has been summoned to produce.

(4) The Government servant who is summoned to produce official documents in respect of which privilege under section 124 has to be claimed, will make an affidavit in Form No. 48. When he is not attending the Court himself to give evidence he shall have it sent to the Court along with the documents. The person through whom the documents are sent to Court should submit the affidavit to the Court when called upon to produce the documents. He should take with him the documents which he has been called upon to produce but should not hand over to the Court unless the Court directs him to do so. They should not be shown to the opposite party.

(5) The Head of the Department should abstain from entering into correspondence with the Presiding Officer of the Court concerned in regard to the grounds on which the documents have been called for. He should obey the Court's orders and should appear personally, or arrange for the appearance of another officer in the Court concerned, with the documents and act as indicated in paragraph 3 above, and produce the necessary affidavit, if he claims privilege.

164. Opinion of Professors of Anatomy as to the Sex and the Age :-
The cases involving the questions about the sex and the age at death of person suspected to have been murdered, whose bones or skeleton are found may be referred to the professor of Anatomy, the Medical Colleges at Ahmedabad, Baroda, Jamnagar and Surat, for the purpose of obtaining expert evidence on those questions.

165. Certificate under section 13(2) of the Prevention of Food Adulteration Act, 1954 :-
Sub-section (2) of section 13 of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954) entitles the accused vendor or the complainant in a prosecution under the Act to

make an application to the Court for sending part of the sample mentioned in Sub-clause (i) or Sub-clause (iii) of Clause (c) of sub-section (1) of section II to the Director of the Central Food Laboratory for a certificate on payment of the fee of Rs. 40/- per sample prescribed by sub-rule (6) or Rule 4 of the Prevention of Food Adulteration Rules, 1955. Presiding Officers of the Courts should, therefore, see that the chalan for the fee paid is invariably forwarded with the sample to be analysed, to the Director of the Central Food Laboratory, Calcutta, to enable him to realise the amount without undue delay.

166. Evidence on Commission :-

(1) The attention of courts is invited to sections 284 to 288, Code of Criminal Procedure, 1973, in which provision is made for taking evidence on commission.

(2) Whenever occasion arises for taking evidence of officers of the Foreign Consulate office, as far as possible, they should be examined on commission. Courts should take all possible steps to avoid causing unnecessary inconvenience to officers of the Foreign Consulate office who may be called upon to give evidence.

(3) The proviso to section 284, Code of Criminal Procedure, 1973, requires that where the examination of the President or the Vice President of India or the Governor of a State or the Administrator of the Union Territory as a witness, is necessary for the ends of justice, a commission shall be issued for examination of such witnesses.

(4) The Court has power under sub-section (2) of section 284, Criminal Procedure Code, 1973, to award cost to the accused when the order is passed to examine the witness for the prosecution, on commission. It is discretionary powers of the Court. However, the discretion should be used judicially and in deserving cases the court should pass the order directing the prosecution to pay expenses of the accused including the pleader's fees. The Court should fix the reasonable amount for that purpose.

167. . :-
Commission for the examination of witnesses residing in the State ofJammu and Kashmir, to be issued under the Code of Criminal Procedure, should be issued to the following Courts, within the local limits of whose jurisdiction the witnesses reside-

1. The Court of the District Magistrate, Shrinagar.

2. The Court of the District Magistrate, Jammu.

3. The Court of the District Magistrate, Baramulla.

4. The Court of the District Magistrate, Anantnag.

5. The Court of the District Magistrate, Doda.

6. The Court of the District Magistrate, Udhanpur.

7. The Court of the District Magistrate, Kathua.

8. The Court of the District Magistrate, Poonch.

9. The Court of the District Magistrate, Ladakh.

(Vide G. N. Ministry of Home Affairs No. A.R.O. 847, dated 13th May, 1952).

168. . :-

(1) In pursuance of clause (a) of sub-section (2) of section 508-A of the Criminal Procedure Code, V of 1898, the Central Government has specified for the purpose of sub-section (1) of the said section the following courts:-

1. The Court of Deputy Commissioner of the United Khasi-Jaintia Hills District, Shillong.

2. The Court of Deputy Commissioner of the Garo Hills, District Tura.

3. The Court of Deputy Commissioner of the United District of Mikir and North Cachar-Hills, Diphu.

(2) In pursuance of sub-section (2) of section 504 of the Code of criminal Procedure, 1898 (Act V of 1898) the Central Government has specified the following officers in the autonomous districts in the State of Assam specified in Part A of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution, to which the said Code does not extend, as the Officers to whom commissions for the examination of witnesses residing within the local limits of their respective jurisdiction shall be directed, namely:-

1. Deputy Commissioner, United Khasi and Jaintia Hills, Shillong.

2. Deputy Commissioner, Garo Hills, Tura.

3. Deputy Commissioner, United Districts of Mikir and North Cachar Hills, Diphu.

169. . :-

(a) Commissions for the examination of witnesses residing in the country specified in column I of the schedule annexed hereto to be issued under the Code of Criminal Procedure, 1973, should be issued to the Courts or Judges or Magistrates specified in the corresponding entry in column 2 of the said Schedule as having authority in this behalf in that country.

(b) Form 40 should be used for the issue of commissions in respect of all the countries mentioned in the preceding sub- paragraph. The commission should be issued through the Ministry of External Affairs, Government of India.

170. . :-
In respect of the countries specified in column I of the Schedule annexed hereto, the Government of India have notified the following Courts, Judges and Magistrates in the corresponding entries in column 2 of the said Schedule by whom commissions for the examination of witnesses residing in India may be issued:-

171. Payment to Interpreters :-
Sessions Judges, District Magistrates and Chief Metropolitan Magistrates are authorised to pay to an interpreter, employed to interpret evidence given in a language not understood by the accused or the Court, any reasonable sum for his service not exceeding Rs. 10/-per diem. Sessions Judges, District Magistrates and the Chief Metropolitan Magistrates are also empowered within the limit prescribed to sanction similar charges incurred by Magistrates subordinate to them.

172. Judgments :-
The arguments should be heard and Judgment should be delivered, as soon as possible, after the evidence is recorded. Not hearing the argu- ments promptly and not delivering the judgment promptly, has the un- desirable effect of wiping out the impressions gained at the trial and during the course of arguments. There should, therefore, be prompt hearing of arguments after the recording of evidence is over and Judgment should be delivered soon thereafter.

173. . :-

(1) Judgments should be temperately worded.

(2) If a Judge or Magistrate finds it necessary to criticise the conduct of an official of another department in a judgment, the criticism must be worded with the utmost care having regard to the fact that in many cases the official has had no opportunity to refute the criticism or explain the action criticised. Personal imputations should not be made. A copy of the judgment should be supplied to the official superior to the official criticised.

(3) Instances of abuse of authority or misconduct by the police coming to the notice of

Presiding Officers of the Courts except the courts of the Metropolitan Magistrates, Ahmedabad, should be reported through Sessions Judge to the Magistrate and by the Metropolitan Magistrates, Ahmedabad, through the Chief Metropolitan Magistrate, to the Commissioner of Police by supplying a copy of the judgment or otherwise as may be convenient. When such report is made by a Sessions Judge or the Chief Metropolitan Magistrate, the District Magistrate or the Commissioner of Police respectively, should report to the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, the action taken. If the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, is not satisfied with the action taken, he may refer the matter to the Registrar of the High Court.

174. . :-

(1) The judgment shall be written in the language of the court in accordance with the provisions of section 354, Code of Criminal Procedure, 1973. The Government ofGujarat, exercise of the powers under section 272, Code of Criminal Procedure, has determined Gujarati and English to be the languages of the Criminal Courts within the State ofGujarat, subordinate to the High Court, for the period of three years from 7th June, 1974, for the purpose of writing judgments and orders under the Code of Criminal Procedure, 1973. (Vide Government Order No. OLA-107412288-D, dated 7th June, 1974).

(2) During the period of three years referred above, the Judges and the Magistrates should acquire proficiency in writing judgments in Gujarati and should be prepared to write the judgment in Gujarati language only.

(3) Even though the Judges and the Magistrates have powers to write the judgments and orders in English or Gujarati for the period of three years, they should ordinarily write the judgments and orders in Gujarati in non-appealable cases.

Note.-The period has been extended for two years from 14th June, 1977 vide Government order, Legal Department No. GK/77/29/OLA- 1074/2288- D, dated 14th June, 1977.

175. . :-

(1) In contentious matters, tried summarily, the Judicial Magistrates and the Chief Judicial Magistrates should record the judgment containing the brief statement of the reasons for findings, irrespective of the fact that the non-appealable sentence is inflicted on the accused.

(2) In Sessions trial by the court of Session and in warrant trials by the Judicial Magistrates and the Chief Judicial Magistrates and Judges the judgment shall be written in the language of the Court and shall comply with all the requirements of section 354, Criminal Procedure Code, 1973. The judgment shall contain the points for determination and the decision thereof and the reasons for the decision.

(3) The judgment shall be written by the Metropolitan Magistrates and the Chief Metropolitan Magistrate, in accordance with the provisions of section 355, Code of Criminal Procedure, 1973. It is not necessary for the Metropolitan Magistrates and the Chief Metropolitan Magistrate to record the Judgment in accordance with the provisions of section 264 and section 354, Criminal Procedure Code, 1973 but all the particulars as shown in section 355, Criminal Procedure Code, 1973 should be recorded. It is necessary, in the cases in which the appeal lies from the final order to record the brief statement of the reasons for the decision,

176. . :-

For the purpose of delivering the judgment the Judges and the Magistrates should strictly follow the provisions of section 354, Criminal Procedure Code, 1973. If the accused is in custody he should be called for hearing the judgment.

177. . :-
The Executive Magistrate should write judgment in the language of the Court.

178. . :-
At the head of every written judgment, the names of all the accused persons shall always be set out, together with the numbers by which they may, respectively, be referred to by the court in the course of the judgment.

179. . :-

(1) Ajudgment should be divided into consequitively numbered paragraphs of a reasonable length and their division into sub-paragraphs should be avoided. This is mainly to facilitate reference to any particular portion of the judgment during the arguments in the appellate or revisional Court.

(2) The opening paragraph should state briefly the nature of the offence with which the accused is charged.

(3) The next paragraph or paragraphs should state briefly the prosecution case and defense, clearly distinguishing between what is admitted and what is not. Matters like the relative position of places and villages and distances between them and how the parties and witnesses are related to each other should be indicated, where such details are necessary, for a clear understanding of the case.

(4) The points that arise for decision should then be dealt with one by one, marshalling the evidence for and against and considering the arguments, and giving a clear finding on each point. Witnesses should not be referred to by number alone. The accused persons, where there are two or more, should ordinarily be referred to by their numbers. The various points should be dealt with in separate paragraphs, but some points may require more than one paragraph.

(5) Judgments should not be prolix and repetition should, as far as possible be avoided.

(6) The paragraphs in every judgment, deposition, report or other paper containing more than two paragraphs should be numbered.

180. . :-
Whenever an enhanced sentenced is passed on account of the previous convictions of the accused, the court shall set forth in its judgment each previous conviction proved against the accused or admitted by him, specifying the date of the conviction, the section under which it was made and the sentence imposed.

181. . :-
In all cases in which sentences of exceptional severity or unusual leniency are passed, or in which varying degrees of punishment are awarded to different persons convicted of the same offence in one trial, the judgment should contain the reasons which guided the Court in the determination of the punishment.

182. . :-
It is obligatory under section 361 of the Code of Criminal Procedure, 1973, that when the benefit of the provision of section 360, Code of Criminal Procedure, 1972, or of the provisions of the Probation of Offenders Act, 1958, or of the Bombay Children Act, 1948, Saurashtra Children Act, 1956, Bombay Borstal School Act, 1929, or such allied Acts, providing the treatment, training and rehabilitation of the youthful offenders are not extended, the Judge or the Magistrate should record special reasons in the judgment for that.

183. . :-
Attention of Judges is drawn to section 354(3) which in particular makes it obligatory on the courts that when the conviction is for an offence punishable with death or in the

alternative for the imprisonment for life or imprisonment for a term exceeding one year, the Judge should record reasons for the sentence awarded.

184. . :-

(1) The judgment should contain clear orders as to the disposal of property produced in the case, unless the court defers the order of disposal of muddamal property. In that case reasons in brief should be stated.

(2) When a Criminal Court under the provisions of sections 452, 457 or 458 of the Code, is required to pass an order in regard to the disposal of a counterfeit coin, the order should direct that the counterfeit coin be forwarded to the Treasury Officer, or to the Mint, as the case may be.

185. . :-
In case of conviction under the provisions of the Motor Vehicles Act, the Courts should bear in mind the requirements of section 20(4) of the said Act, read with Rule 18(3) of the Bombay Motor Vehicles Rules, 1959 and scrupulously follow the provision for sending intimation to the licensing authority by whom the driving licence has been issued and also by whom the same has been last renewed, in all cases where the driving licence is endorsed or an order of endorsement is made by the Courts.

186. . :-
All references in judgments to Rulings of superior Courts should be cited both by the names of the parties as well as by the number of the volume and the page of the Report e.g. Sadanand v. Parashram. I.L.R. 52 Bombay, 336.

187. . :-

(1) Section 206, Code of Criminal Procedure, 1973 makes it obligatory for the Magistrate, taking cognizance of the petty offences as defined in sub-section (2) of the said section, which can be summarily disposed of, to issue summons to the accused either to appear in person or by pleader before the Magistrate on a specified date or if the accused desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in summons or if he desires to appear by pleader and to plead guilty to the charge on his behalf and to pay the fine through such pleader.

(2) While issuing the summons under section 206, Code of Criminal Procedure, 1973, the Magistrate should himself apply his mind to the facts of each case and determine the amount of fine which shall not exceed Rs. 100. This amount of fine should be specified in the summons and in the carbon copy of the summons, both in figures and words.

(3) The purpose of section 206, Code of Criminal Procedure, 1973 is that in case where the plea is made as per the provisions of this section, the amount of fine as specified in the summons is required to be paid. The carbon copy of the summons should be kept in the record. Such summons should be signed by the Magistrate and the office copy should also be signed by him. The address as to the place at which the fine is to be paid should be specified in the summons.

188. . :-
The Magistrates should scrupulously follow the amended provisions of section 130^ of the Motor Vehicles Act, 1939, which are as follows:- "130. SUMMARY DISPOSAL OF CASES

(1) The court taking cognizance of an offence under this Act.-

(i) may, if the offence is an offence punishable with imprisonment under this Act, and,

(ii) shall, in any other case, state upon the summons to be served on the accused person that he

(a) may appear by pleader and not in person, or

(b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the . court such sum (not exceeding the maximum fine that may be imposed for the offence) as the court may specify:

Provided that nothing in this sub-section shall apply to any offence specified in Part A of the Fifth Schedule.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty."

In this connection attention of the Magistrates is drawn to the observations of the Supreme Court in the case of Puransingh and another v. the State of Madhya Pradesh, A.I.R. 1965 S C 1583. The instructions contained in paragraph 186 should, to the extent applicable be followed in dealing with the cases under section 130, Motor Vehicles Act, 1939.

189. Previous Convictions :-
When accused is liable to enhance punishment or punishments of different kind by the specified provisions of law, the court while framing charge should specify previous conviction in the charge as required by sub-paragraph (7) of section 211 but such particulars of charge about the previous conviction should not be readover to the accused and plea on that should not be taken till the accused is convicted under section 248 or under section 236, as the case may be. The previous convictions must also be proved in the manner provided under the Code, 1973, if they are not admitted. The Court should follow the procedure as laid down in section 236 or under section 248, Criminal Procedure Code, as the case may be, and to award sentence after recording findings contemplated under section 236 or section 248, Criminal Procedure Code, 1973.

190. Judgment of Conviction :-
While it is not necessary to lay down any hard and fast rules, Magistrates should avoid, as far as possible, pronouncing a judgment convicting an accused in bailable cases at the very close of the day's sitting or immediately before a holiday or series of holidays unless the accused can be furnished with a copy of the judgment in time to enable him to apply for bail before the holiday or holidays commence. When a Magistrate decides to impose a sentence of imprisonment, he should arrange to supply a copy of the judgment to the accused as soon as possible after or, in any event, within 7 days from the date of the pronouncement of the judgment.

191. Compounding of Offences :-
Before granting permission to compound an offence, the Court should take into consideration all the circumstances of the case bearing in mind that the offence is punishable not only for the satisfaction of the injured persons but also to protect society by deterring others from committing similar offences. The relationship between the parties, the stage at which the composition is sought, the prevalence of crimes of the nature sought to be compounded, are other circumstances which should be taken into consideration.

192. . :-
While granting permission to compound offences of the categories mentioned in section 320(2) of the Code, the Judges and Magistrates should not make suggestion to the accused or to the parties concerned to give money by way of charity to public or such other institutions.

193. Sentence :-

(1) The discretion granted to the Courts as to the amount and kind of punishment is extremely wide and Courts should exercise their discretion after careful consideration of all the facts and circumstances of the case.

(2) Short sentences of imprisonment are seldom suitable. They do not act as deterrent and the period is not long enough or the reformatory influences to work or for the offenders' learning any useful trade or occupation. They are also likely to cause harm by bringing first or casual offenders into contact with habitual offenders. Such sentences may, however, serve a useful purpose in the case of offences against taxation laws, Food Adulteration Act and other laws enacted to promote social welfare.

(3) It is obligatory under section 354(4), Code of Criminal Procedure, 1973 that in trials other than summary trials, when the sentence of imprisonment for more than rising of the court and less than three months is passed for conviction of an offence punishable with imprisonment of one year or more, the Judge or the Magistrate should record reasons for awarding such sentence. In such cases, the proper reasons should be written in judgment.

(4) Cases in which injuries have been caused with axes, spears or other deadly weapons, should not, in the absence of special circumstances, be dealt with leniently.

(5) The existence of previous convictions is not by itself a proper ground for passing a severe sentence for petty offence. The Court should consider the lapse of time after the expiry of the last sentence and pass a severe sentence if only it comes to the conclusion that the accused is a habitual offender.

(6) In fit cases, the provisions of the probation of Offenders Act, 1958 (Act XX of 1958) the Borstal School Act, 1929, section 360, Criminal Procedure Code, 1973 and other similar provisions should be availed of.

(7) If the Court does not give a young offender the benefit of any of the above provisions, it should direct that he should undergo sentence in the Juvenile Section of the Jail.

194. Fines :-

The amount of fine should be fixed after consideration of the pecuniary circumstances of the offender and the character and magnitude of the offence; unless otherwise provided by the law, fines for amounts which are not likely to be realized should not ordinarily be imposed.

195. . :-

Section 65, Indian Penal Code, provides for sentence of imprisonment in default of fine. The accused persons should not be awarded term of imprisonment in default of payment of fine in excess of the maximum limit prescribed under the Code. The imprisonment in default of payment of fine should not exceed 1/4 of the term of the imprisonment which is maximum fixed for the offence, if the offence is punishable with the imprisonment as well as with the fine.

196. . :-

Payment of compensation under section 357, Code of Criminal Procedure, 1973, shall not be made unless the period allowed for presenting anappeal has elapsed or, if an appeal has been filed, after the decision of the appeal.

197. Sentence of fine Awarded to Military Personnel :-

(1) Military personnel who have to undergo imprisonment injail, however, short the period of imprisonment may be, are after release from jail discharged or dismissed from service although the imprisonment may be merely in default of the payment of fine. The inability of the military personnel, sentenced merely to fines in respect of petty offences, to pay the fine would, in cases where a sentence of imprisonment in default of the payment of fine is

imposed involve the very serious consequence of dismissal from service after the period of imprisonment in default of the payment of fine is undergone. The penalty in such cases would, therefore, be too severe.

(2) Magistrates and Judges should in such cases take the above circumstances into consideration when exercising discretion in the matter of imposing a sentence of imprisonment in default of the payment of fine, which is discretionary under section 64 of the Indian Penal Code.

(3) When military personnel are unable to pay the amount ordered to be recovered, the Magistrate may, instead of imposing sentence of imprisonment in default of the payment of fine, ascertain from the individual concerned his name, identity, particulars of his regiment and Commanding Officer, and other particulars and communicate the same to the Collector of the District with a warrant under section 421 of the Code of Criminal Procedure, 1973, for the recovery of the fine or dues. The Collector should then forward the warrant to the Commanding Officer concerned for recovery of the amount of fine or dues from the pay or allowances of the individual concerned as prescribed under section 90(f) or 91(h) of the Army Act, 1950. The Magistrate or Judge may resort to provisions of section 421, Code of Criminal Procedure, 1973 in such cases.

198. . :-

(1) The Magistrates should bear in mind the provisions of sections 119 and 122, Code of Criminal Procedure, 1973, and direct that when a person ordered to furnish security or to undergo imprisonment in default of furnishing security is undergoing a sentence of imprisonment passed by any Court, the period for which security is required and the period of imprisonment in default of security shall commence after the expiry of the sentence which the person is undergoing.

(2) Before the expiry of his sentence a prisoner may offer security, which the Magistrate may reject or accept. If the security has not been offered or has been rejected, the Magistrate should fix a date immediately after the expiry of the sentence, for furnishing security and for determining in cases under section 109 or 110 [vide section 122 (7) and (8)] whether imprisonment in default should be simple or rigorous. All proper facilities for furnishing security should be given to the prisoner, but he need not be brought before the Magistrate if he intimates that security will not be offered.

199. . :-

It has been observed that orders for imprisonment for failure to furnish security under Chapter VIII of the Criminal ProcedureCode are frequently passed against youths below the age of 21, and that such Magistrates do not consider the alternative of passing orders of detention in a Borstal School in fit cases instead of imprisonment in jail. The attention of the Magistrate is, therefore, drawn to section 6 and 9 of the Bombay Borstal Schools Act, XVIII of 1929, which provide for the passing of orders of detention in Borstal School. The Magistrate should carefully consider in the case of a youthful person, the advisability of passing an order of detention in Borstal School instead of an order .of imprisonment. When the Executive Magistrate, having regard to the provisions of Section 6, clauses (a) and (b) is of the opinion that the person who has failed to furnish the security ordered by him is a proper person to be detained in the Borstal School, he should without passing any order, record such opinion and submit his proceedings and forward the offender to the Judicial Magistrate exercising jurisdiction in the area for passing the appropriate orders in the case as prescribed in section 9 of the Borstal School Act, XVIII of 1929.

200. . :-

The provisions of section 70 of the Bombay Children Act and section 68 of the Saurashtra Children Act prohibit institution of any proceedings or passing of any orders under Chapter VIII of the Code of Criminal Procedure against a child. The Magistrates should satisfy themselves by medical or other evidence as to the age of any person against whom

proceedings under the same Chapter are instituted, if they have reason to believe that such person is, or such a person appears to be a child as defined in the said Act. Police reports or private complaints some time do not state the age of the person. The Magistrate shall invariably insist the age being stated in the proceedings and shall delete the name of such person who is a child under the said Acts.

201. . :-
The object of proceedings under Chapter VIII of the CriminalProcedure Code, 1973, is to prevent, a crime or the breach of the peace. Delay may defeat the very object of these proceedings and therefore proceedings under that Chapter should be disposed of with the utmost expedition and the least possible harassment and trouble to the parties. It should be the endeavor of Magistrates to dispose of such proceedings within a period not exceeding two months. In no case it should exceed period of six months. If under unusual circumstances it exceeds the period of six months and if the accused is not in detention then the Magistrate should record reasons in writing if he is of the opinion that it should not stand terminated under section 116(6) of the Code of Criminal Procedure, 1973. The special reasons for that should be written before the expiry of the period of six months.

202. . :-
The Registration of Births and Deaths Act, 1969, is applicable to the State of Gujarat from 1-4-1970 and the Gujarat Registration of Births and Deaths Rules, 1973, have come in force with effect from 18-4-1973. Section 13(3) of the said Act provides for registration of any birth or death which has not been registered within one year of its occurrence, only on an order made by a Magistrate of the First Class or a Metropolitan Magistrate after verifying the correctness of the birth or death, and on payment of the prescribed fee. Rule 10(3) of the Rules provides for registration of such birth or death, as has not been registered within one year of its occurrence, only on an order of a Magistrate of the First Class or a Metropolitan Magistrate and on payment of a late fee of Rs. 5. The Judicial Magistrate, First Class or the Metropolitan Magistrate, should not refuse to perform the above statutory function cast upon him under the provisions of the said Act and Rules and no inconvenience or hardship should be caused to the general public in that behalf.

203. . :-
The Executive Magistrate should, as far as possible, hear case at their headquarters.

204. Classification of Prisoners :-
The following extracts from the Bombay Jail Manual, 1955 Edition regarding classification of prisoners are reproduced for the information of Criminal Courts:-

"746. The following Criminal prisoners shall be classed as "habitual" namely:-

(i) any person convicted of an offence whose previous conviction or convictions under Chapters XII, XVI, XVII orXVIII of the Indian Penal Code taken by themselves or with the facts of the present case show that he habitually commits an offence or offences punishable under any or all of those Chapters.

(ii) any person committed to or detained in prison under section 123 (read with section 109 or section 110) of the Code of Criminal Procedure, 1898.

(iii) any person convicted of any of the offences specified in (i) above when it appears from the facts of the case, even though no previous conviction has been proved, that he is by habit a cheat or a member of a gang of dacoits or of thieves or a dealer in slaves or in stolen property.

EXPLANATION.-For the purpose of thisdefinition the word "conviction" shall include an order made under Section 118, and with section 110 of the Criminal Procedure Code, 1898. 748. The classification of a convicted person as "habitual" shall ordinarily be made by the convicting Court, but if the convicting Court omits to do so, such classification may be made

by the District Magistrate. 750. The convicting Court or the District Magistrate may, for reasons to be recorded in writing direct that any convicted person or any person committed to or detained in prison under section 123 read with section 109 or section 110 of the Code of Criminal Procedure, 1898, shall not be classed as a "habitual" and may revise such direction. 751. Convicting Courts or District Magistrates, as the case may be, may revise their own classifications and the District Magistrate may alter any classification of a prisoner made by the convicting Court or any other authority provided that the alteration is made on the basis of facts which were not before such Court or authority. Note.-(1) The Magistrates and Judges are directed to exercise the powers of classification under paragraph 748 and should not omit to classify the convicted prisoners. (2) It is desirable that before classifying the accused as "habitual", the accused should be given opportunity to be heard. B Classification of Prisoners in Class I or Class II Convicted753. For the purpose of grant of prison amenities and privileges, convicted prisoners shall be classified as Class I or Class II by the sentencing Court based on social status, mode of living, etc. 754. Cases of prisoners recommended for Class I require confirmation of Government. If no orders about classification are passed by the sentencing Court, it should be assumed that prisoners belong to Class II. Undertrial 756. There shall be two classes of undertrial prisoners viz. I and II based on social status, mode of living, education, etc. 757. The classifying authority is the Magistrate or Court which commits the prisoner to Prison and the classification made by the Magistrate is subject to the approval of the District Magistrate."

205. Details in Warrant Committing Convict to Jail :-

(1) The Criminal Court passing the sentence of imprisonment, except imprisonment till rising of the court, shall fill in all the details in the prescribed Jail Warrant No. 50 with which under the provision of section 418, Code of Criminal Procedure, 1973, it forwards the convict to the Jail. When the period of imprisonment awarded is less than or equal to the period of detention to be set offunder Section 428, Criminal Procedure Code, 1973, it is not necessary to send the accused person to jail. This section is also applicable to sentence of imprisonment in default of payment of fine. The attention is invited to Supreme Court judgment in B.P. Andre v. Superintendent, Central Jail, Tihar, AIR 1975 SC 164.

(2) The Court shall specify the Court Case number in which convicted, the surname, name, father's name, age, caste, place of residence, marks of identification of the convict as mentioned in the charge-sheet submitted by the Police and plea of the convict, in the requisite columns of the prescribed Jail Warrant.

(3) The Court shall also specify the total period of detention with specific date of detention of the accused, if any, during the investigation, inquiry or trial of the same case before the date of conviction so that the period of detention required to be set offunder section 428, Code of Criminal Procedure, 1973, can be ascertained. The Court shall endorse in the Jail Warrant the following particulars:- Particulars as to the period of set off in the case in which convicted under section 428, Code of Criminal Procedure, 1973-

(i) Date of arrest of accused in the case in which convicted.

(ii) Whether released on bail? If so, by which Court and the date on which he was released from the detention.

(iii) Date on which released on cancellation of bail or on conviction by the Court.

(iv) Total period of detention during investigation, inquiry or trial in the Court in which convicted.

(4) When the Court has decided upon the classification of the convict as "habitual" or "non-habitual" or "Class I" and "Class II" Vide paragraph 204, particulars in regard to the classification made by it shall be given.

(5) The conviction slip (Form 50-A), duly filled, shall be attached to Jail Warrant.

(6) In cases where an accused is sentenced to pay a fine in addition to a sentence of imprisonment the fact whether the fine is paid or not shall be intimated to the jail authorities in the warrant.

206. . :-
The Magistrates and Judges should decide the classification as per the instructions in the above referred paragraphs of the Bombay Jail Manual.

207. . :-

(1) In order to facilitate the proceedings of the Prisons Advisory Committee, an additional typed copy of the judgment of Sessions Court should be attached to the warrant of commitment in every case in which a sentence of imprisonment of five years or more is passed. If the judgment is delivered under clause (a) of sub-section (1) of section 353, the copy of the judgment should be sent to the jail authority immediately after it is ready. In cases where more than one accused are so convicted at one trial the copy of the judgment shall be attached to the warrant or sent in respect of each such accused, whenever they are called for.

(2) Even in cases, where a lesser sentence has been passed, Criminal Court concerned should supply a copy of the judgment, free of cost, whenever a request in that behalf is made by the Superintendent of Jail on the ground that the same is necessary to facilitate the proceedings of the Prison Advisory Committee.

208. Return or Disposal of Bhatta or Muddamal :-
Bhatta money to be paid to witnesses or to be returned to the depositors, if not claimed in person within fifteen days from the final disposal of the case, should be remitted to the person concerned by money order. If the amount remitted is returned undelivered by the Post Office because the payee could not be traced, it should be brought on the Criminal Deposit Register for disposal according to the usual rules or credited to Government.

209. . :-
Money awarded by the Court under section 357, Code of Criminal Procedure, 1973, should be paid to the person concerned as soon as possible after the expiry of the period of limitation of appeal or revision and if the appeal or revision is filed then in that case after the disposal of the appeal or revision. It may be paid to him personally if he is present or sent to him by money order at his costs. If the amount is returned by the post office, because the payee could not be traced, it should be kept in deposit, till it lapses under ordinary rules.

210. . :-

(i) The procedure to be followed in sending articles to the Chemical Analyzer are contained in paragraph 167 of the Police Manual, Volume III, 1959 edition. Delay should be avoided by an early decision as to whether there should be a reference to the Chemical Analyzer and an immediate dispatch of the articles. The Magistrate should personally see that the procedure mentioned in the above rules is strictly followed when dispatching the articles.

(ii) The following extract of paragraph 167 is reproduced for information:-

"167. Identity of articles to be preserved -It is essential that the identity of each article attached by the Police in the course of investigation of medicolegal as well as other cases should be preserved unmistakably from the commencement of attachment and writing the panchnama upto its production in the trying Court and identification by witnesses and through all its intermediate stages, if any, such as while in the custody of the Civil Surgeon and the Chemical Analyzer. With this end in view, the following instructions should be followed by the investigating officers.

(1) In describing in the panchnamas the articles attached, they should be serially

numbered. Separate serial numbers should be given to the articles described in each panchnama in cases where simultaneous searches are carried out at different places in connection with one and the same registered offence, or where more than one panchnama in connection with the same offence have to be drawn up because of property being recovered at different times.

(2) Large and distinctive labels, showing the names of and the numbers given to, the articles attached in the panchnama and the names of the persons from whom, and dates on which they are attached should be securely fastened to the articles, as soon as they are attached.

(3) Receptacles containing small articles of value should be sealed, in addition to being labeled.

(4) In cases where it is not possible to fasten tie-on-labels, the articles should be packed in paper or cloth as may be convenient, unless they are very bulky, labels bearing the number and, name of articles being put on the covering.

(5) It is not necessary to label live stock. In such cases it will be enough if a full description of the animal or animals attached has been given in the panchnama, for auction being taken under sections 516A, 517 or 523 of the Criminal Procedure Code. It may be necessary to attach, in the course of investigation such articles as fodder, grain, etc., which cannot be labeled. In such cases, labels need not be attached.

(6) xx xx xx xx

(7) Whenever any such article is attached which may have to be sent to the Chemical Analyzer to Government, the investigating officer must see that it is enclosed in a proper receptacle or covering, so far as possible, on the spot and in any case in his presence and in that of the panch and that the cover is sealed by him in such a way as to preclude tampering.

(8) The labels on articles sent to the Medical Officers should be attached in such a manner as to permit of their being detached without damage being done to them and used again by Medical Officers in repacking and transmitting the articles to the Chemical Analyzer.

(9) The investigating officer should be careful to see that such articles are sent in proper custody to the Medical Officer. The numbers given to such articles in the panchnama should be quoted in the forwarding report. The number of seals put on the receptacle or covering should also be stated in the body of the report. A receipt acknowledging these articles with seals intact should be obtained from the Medical Officer.

(10)

(a) A statement containing the following particulars, in a tabulated form, should invariably be furnished to trying Courts by investigating Police and Prosecuting Officers and Public Prosecutors with regard to the articles to be produced in Courts, in all cases in which articles have been sent to the Chemical Analyzer for examination:

(1) Number of the article sent for examination to the Chemical Analyzer.

(2) Corresponding numbers of the articles in the list of property submitted to the Court,

(3) Corresponding numbers of the articles in the certificate of the Chemical Analyzer.

(4) Corresponding numbers of the articles in the panchnama bearing on the point and dates of the panchnamas.

(5) Names and numbers of the accused persons connected with the respective articles.

(6) Names of deceased persons (if any) connected with the respective articles. The statement should, as far as possible, be submitted by the Station House Officer prior to the

provisional date fixed by the Magistrate or the Judge trying the case.

(b) In other cases in which there are many accused persons and a mass of exhibits, the list of property submitted to Courts should be arranged according to the serial numbers of the accused persons connected with the particular articles.

211. Dormant File :-

(1) All cases, in which the accused are of unsound mind and are consequently unable to make a defense, or are absconding and cannot be traced or served with warrant, summonses or notices for a period of one year or more from the date of receipt of the charge-sheet, should be placed on the dormant file. A separate register (in the form No. 54) should be maintained, showing all cases which are put on dormant file. Such cases need not be shown in the monthly Criminal returns.

(2) The Judicial Magistrates and the Metropolitan Magistrates should submit separate returns in form No. 55 showing the number of (i) cases pending on the dormant files for more than one year and (ii) those pending on such files for one year or less than one year, to the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, every year by the 15th January. The Judicial Magistrate should also send copies of the annual return to the District Magistrate, Superintendent of Police, Chief Officer of the Municipalities and the Administrative Department concerned. The Metropolitan Magistrates should also send copies of this annual return to the Commissioner of Police, Ahmedabad, District Magistrate, Commissioners of Municipal Corporation, Regional Transport Officer and the Heads of the concerned Administrative Departments.

(3) On receipt of annual returns from the Magistrates, the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should send the information regarding cases on the dormant file in each such court, in the prescribed form (No. 55), in the consolidated manner, to the High Court, by the end of January every year, and should also approach the authority concerned, for withdrawal of such cases from the dormant file, as the Sessions Judge or the Chief metropolitan Magistrate, may deem fit to suggest.

212. Members of the Parliament and the State Legislatures :-

(i) No arrest of any person shall be made with the precincts of any House of the Parliament or Legislature of any State, whether such House or Legislature is in Sessions or not, without obtaining the permission of the Presiding Officer concerned.

Note.-To enable the Presiding Officer to decide whether he should grant or refuse permission for arrest within the precincts of the House, the Court concerned when making such a request shall attach a letter of request to the warrant containing a concise statement setting out the grounds for the request and explaining why it is desired that arrest be made within the precincts of the House and why the matter cannot wait till the House adjourns for the day.

(ii) When a member of any House of Parliament or Legislature of any State is arrested or re-arrested on canceling the bail on the criminal charge or for criminal offence or is sentenced to imprisonment by a Court or is detained under an Executive Order, the Judge/Magistrate or Executive Authority, as the case may be, shall immediately intimate such fact to the Presiding Officer of the House or the Legislature concerned, indicating the reasons for the arrest, detention or conviction, as the case may be, as also the place of detention or imprisonment of the member, in the appropriate form No. 57. He shall also send immediately a telegram to the Speaker/Chairman of the House concerned and simultaneously send a copy of the telegram in confirmation thereof.

(iii) When a member of any House of Parliament or Legislature of any State is released from Jail or custody on any ground e.g. on bail pending prosecution, the trial or an appeal or on the sentence being set aside on appeal the fact of such release shall be communicated

immediately to the Presiding Officer of the House or the Legislature concerned in Form No. 57.

(iv) A copy of the intimation prescribed in the preceding sub- paragraph (ii) and (iii) shall invariably be sent to the Chief Secretary to the Government of State concerned in the case of members of the State Legislature and to the Secretary to the Government of India, Ministry of Home Affairs in the case of members of any House of Parliament.

213. Hand Cuffing of Prisoners :-

(1) Unless a Court otherwise directs, no prisoner shall be handcuffed or bound while being taken from the Court premises to a Jail or a Borstal School:

Provided that if a Police Officer escorting each prisoner from the Court premises to a Jail or a Borstal School, considers it necessary to do so in exceptional circumstances, such as violence on the part of the prisoner after leaving the Court premises, and cannot get the direction of the Court, he may handcuff or bind such prisoner after leaving the premises.

(2) No prisoner shall be handcuffed or bound when being taken from a Jail or a Borstal School to the Court premises, unless the Jailor of the Jail or the Superintendent of the Borstal School otherwise, directs in writing. If the Jailor of a Jail or the Superintendent of a Borstal School from which a prisoner is being taken to the Court, considers in the circumstances stated in (1) above necessary to bind or hand cuff the prisoner, he may direct in writing the officer in charge of the escort to do so and the Officer shall obey such directions:

Provided that the Officer in charge of the escort may handcuff and/or bind the prisoner when he considers it necessary to do so in exceptional circumstances arising after leaving the Jail or the Borstal School premises and it is not possible to obtain a direction from the Jailor or the Superintendent of the Borstal School or the Court.

214. Rules for trial of persons subject to Military, Naval or Air Force Law or any other Law relating to the Armed Forces of the Union :-
The following Rules made by the Central Government are reproduced-These rules may be called the Criminal Courts and Court- Martial (Adjustment of Jurisdiction) Rules, 1978.

214A. . :-
Rule 4 of the Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules 1978, provide that where a person subject to a Military, Naval or Air Force law is brought before the Magistrate and charged with an offence for which he is liable to be tried by Court-martial, the Magistrate shall give written notice of the same to the commanding Officer or competent authority of the accused person. Section 25 of the Navy Act, 1957, provides that where a criminal Court, before which any proceedings have been taken against a person in the naval service while subject to naval law shall, on application by the Chief of the Naval Staff or the Commanding Officer of that person, grant copies of the judgment and final orders in the case free of costs and without delay. The above requirements shall be followed scrupulously by the Courts.]

215. Vacation For Judicial Magistrates :-

(1) By Government Resolution, Home Department No. CJL-5155- A, dated 15th December, 1965, the Civil Judges-cum-Judicial Magistrates and the Judicial Magistrates, First Class, are treated as belonging to the vacation department. Even though the Civil Judges-cum-Judicial Magistrates, First Class and the Judicial Magistrates, First Class, belong to the vacation department, they should be available during the vacation, not only to take up the urgent matters but also the pending cases and may be permitted to enjoy vacation in full or in part of it if alternative arrangement can be made for the disposal of the criminal work during the vacation without causing undue inconvenience to the parties and the witnesses and to the under trial prisoners. Unless in a particular place, there are more than one

Magistrate or a Magistrate and the Civil Judge and the work can be so adjusted that one of them can do the criminal work and the other can enjoy the vacation, or both of them can be permitted to take part of the vacation by turns, or a Magistrate of a neighboring Court can be conveniently asked to take up the work the Magistrates should not be permitted to enjoy the vacation. It is open to the District Judges to cancel under rule 741 of the Bombay Civil Services Rules, Volume I wherever necessary the vacation of Civil Judges who are not entrusted with the Criminal work and are entitled to enjoy the vacation automatically, in order to allow as many Civil Judges-cum- Judicial Magistrates and Judicial Magistrates as possible, to enjoy the vacation. (Vide Circular No. Y 0204/63, dated the 5th April 1954).

(2) The District and Sessions Judges, while following the instructions contained in the Circular referred to above, should follow the following instructions while granting the vacation to the Judicial Magistrates:-

(i) As far as possible, no Civil Judge-cum-Magistrate or Judicial Magistrate should be permitted to enjoy any part of summer vacation so long as any criminal case in which the accused is in custody for more than three months, is not disposed of.

(ii) Similarly, while granting permission to enjoy a part of the vacation the District and Sessions Judges should see that all cases which may fall in the above category are disposed of during the vacation and on the opening of the Courts after summer vacation, no case in which the accused is in custody for more than three months remains pending in any of the Courts because of the Presiding Officers of these Courts having been permitted to enjoy summer vacation.

(iii) It should be impressed upon the Civil Judges-cum- Magistrates and Judicial Magistrates, that the fact that the Magistrate was on vacation shall not be considered as a valid explanation for delay in the disposal of cases in which under trial prisoners have been in custody for more than three months, for the purpose of paragraph 459 relating to quarterly return of under trial prisoners.

(iv) No Court should be without a Judicial Magistrate for more than three weeks during summer vacation.

(v) With a view to see that, custody cases are disposed of during the summer vacation and that the Judicial Magistrates are permitted to conveniently enjoy a part of the summer vacation, the Civil Judges who are otherwise permitted to enjoy full summer vacation should, if necessary, be prevented from enjoying the whole of the summer vacation and asked to work as Judicial Magistrates during the whole of the summer vacation or any part thereof according to the exigencies of the case, under rule 741 of the Bombay Civil Services Rules, Volume I.

(vi) If, in any Court, the number of custody cases, in which the accused are in jail for more than three months, is large, Civil Judges and Judicial Magistrates should be asked to work by rotation in that Court, so that work of actually trying cases would go on for all the six weeks. (Vide Circular No. D. 2907160, dated 19th December, 1960).

(3) With a view that the above instructions are observed and the Civil Judges-cum-Judicial Magistrates, First Class, and the Judicial Magistrates, First Class, are also allowed vacation, the District and Sessions Judges should ascertain from them early in March, every year, about the state of the file in each Court and issue necessary instructions for the disposal of the pending cases specially in custody cases and should pass appropriate orders as regards the granting or not granting the permission to enjoy the summer vacation early in April after taking into consideration the situation of the file of each Court.

(4) The District Judges should notify in the Gujarat Government Gazette every year, the names of the Civil Judges-cum-Judicial Magistrates, First Class, the Judicial Magistrates, First Class, who are prevented from enjoying the summer vacation or part thereof as the case may be, and should send the copy of the same notification to the Accountant General

and also to the High Court of Gujarat.

Note.-All paragraphs of this chapter except paragraphs Nos. 149, 177, 203 and 215 shall be applicable to the Court of the Metropolitan Magistrates.

CHAPTER 7
MUDDAMAL PROPERTY

216. . :-
Muddamal and other property received in the Court should be entered in the Property Register to be maintained in Form No. 51 immediately after the receipt thereof. The primary responsibility of preparing and signing the Register shall ordinarily be of the Nazir in the Sessions Court, Sheristedar in the Court of the Metropolitan Magistrate and of Senior Clerk in the Court of a Magistrate. The entries made in the Register should be countersigned by the Magistrate or in the Sessions Court by the Clerk of the Court, to indicate that the property produced in the court is actually so entered.

217. . :-
The Magistrate or Clerk of the Court of the Court of Session or Deputy Registrar of Sessions Court, Ahmedabad City, as the case may be, should verify personally, at least every three months, the muddamal property with reference to the Property Register, and make an endorsement with the date of the verification in the remarks column of the Register. The Metropolitan Magistrate should submit report to the Chief Metropolitan Magistrate and the Chief Judicial Magistrates and Judicial Magistrates should submit the report to the Sessions Judge, every three months, of having verified the muddamal property.

218. . :-
The Sessions Judge or the Chief Metropolitan Magistrate, asthe case may be, should see that the reports and also the report mentioned at the para hereunder, are received by them, regularly. They should scrutinize the reports and whenever necessary, should issue instructions to the Magistrate concerned.

219. . :-

(1) When the muddamal is produced before the Court by the police in a criminal case, the police shall produce Pavti or Yadi in duplicate showing full description i.e. measurement or weight, etc., of each kind of muddamal produced in the Court.

(2) The Nazir of Sessions Court, the Senior Clerk in the Court of the Chief Judicial Magistrate and Judicial Magistrate or the Sheristedar in the Court of Metropolitan Magistrate, as the case may be, should verify each article shown in the Yadi or Pavti and immediately enter the same after verification, in the Muddamal Register and return the duplicate to the police in token of having received the muddamal. The serial number, date, etc., of the Muddamal Register of the Court in which the said articles have been entered should be written on the original Pavti and Yadi and its duplicate, and such duplicate should be returned to the police in token of having received the muddamal. The Nazir, Senior Clerk or Sheristedar, as the case may be, should affix the seal of the Court on the Pavtis or Yadis.

(3) Some responsible officer of the police department should be deputed to the Court to verify the duplicate Pavti or Yadi in his possession with the original Pavti or Yadi kept in the Court at the end of each month and every facility should be accorded to him in carrying out the verification of the said Pavti or Yadi.

(4) At place of sittings of Court at linked stations, where there is no senior clerk but only a junior clerk is posted, such duties shall be performed by him.

220. . :-

(1) When property is produced before a Court with a list, the list should be exhibited and

each article should be separately marked and numbered for identification.

(2) Where any of the articles mentioned in the list have been sent to the Chemical Analyzer for examination, the corresponding numbers given to those articles by the Police while forwarding the article to the Chemical Analyzer, as well as the numbers given to them by the Chemical Analyzer, should also be shown in the list.

(3) If the property is seized without a list, a list of it should be prepared and exhibited. This list should also give, where necessary, the particulars referred to in sub-paragraph (2).

221. . :-
When death or hurt has been caused by a blow from a stick or other weapon, or when any person is convicted of the offence of being in illegal possession thereof, the description and dimensions of the weapon should be stated in the proceedings with such particularity as may enable the appellate or revisional Court to form an opinion as to the description or nature of the weapon and the intention with which it was probably used, and to enable such Court to judge the gravity of the offence and the appropriateness of the sentence. The mere entry, e.g., a stick or a stone in the list is not sufficient to enable the higher Court to judge whether the stick or the stone was deadly or a comparatively less harmful weapon or to judge the gravity of the offence and the appropriateness of the sentence passed.

222. Valuable Muddamal :-
A separate Register for valuable properties in the same form as the property Register shall be maintained to facilitate constant check and supervision by the Magistrate over the valuable muddamal. Such checking and inspection should be done by the Magistrate personally at least once a month, and he should make a report of his having so checked the valuable muddamal to the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, on or before the 5th of each month.

223. . :-

(1) In regard to the muddamal and other valuable properties lying in the custody of criminal courts, other than the Courts of Metropolitan Magistrates, the presiding Magistrate, should arrange to lodge, for safe custody in the Treasury or Sub- Treasury, a box or boxes containing such property of which he holds charge.

(2) In the Courts of the Metropolitan Magistrates the valuable properties, including valuable documents, taken charge of by the Metropolitan Magistrate or exhibited in Court, the Sheristedar of that Court shall, as soon as may be on the same day, personally lodge them in custody in the Court safe and have an entry made about them in the Valuable Muddamal Register.

(3) Any specially valuable property and boxes containing cash and valuables, which it is considered would not sufficiently be protected, if left in the Court safe or strong room, when the Court is closed, should be deposited by the Magistrate concerned in the Treasury or Sub-Treasury for safe custody during the night. The Treasury Officer or Sub-Treasury Officer concerned should be requested to receive such property and cash boxes upto the closing hour every working day.

(4) The Presiding Magistrate should obtain, in advance, the general permission of the Collector of the District for depositing the muddamal or the valuable property in the Treasury or the Sub-Treasury for safe custody.

224. . :-
Two boxes should be maintained in every Court for keeping the valuable muddamal property, one for the muddamal of disposed of cases and of cases taken on the dormant file and the other for the muddamal of current cases which is often required to be brought to the Court and taken back to the Treasury or the strong room.

225. . :-
When any property is sent to the Sessions Court, it should be sealed in a bundle or bundles and labeled with the number of the case and a list should accompany showing each item and its identifying mark, a corresponding mark being attached to each item.

226. . :-
The Judicial Officers in the State should send the confiscated articles of Gold to the Master of the Mint India Government Mint, Bombay- 1. If the confiscated articles of Gold are a few and of a small value, they should be sent by the Registered Insured Post with a separate advance information to the Mint Master and if the articles are more or more valuable they should be sent under suitable invoice through the responsible officer of the Court to the aforesaid Mint at Bombay by prior arrangement. If the articles are more and more valuable and sent with an officer of the Court, the name of the dispatching Court and the name of the officer who will be accompanying such property, should be communicated in advance to the Master of the Mint who will assess the value of the articles and arrange to make the payment for the same. The payment made by the Master of the Mint to the Court for such transaction should be entered in the cash book and the amount be deposited in the treasury in due course. Return or Disposal of Muddamal.

227. . :-

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(a) In cases where appeal or revision lies to the Sessions Court, the trial Court should not dispose of the muddamal for one month after the expiry of the period of limitation for appeal or revision; and if intimation regarding filing of appeal or revision is received, till the disposal of the appeal or revision by the Sessions Court. In cases, where appeal or revision lies to the High Court, the trial Court should not dispose of the muddamal lying in its custody and the Sessions Court should not send the muddamal for disposal to the lower Court, before completion of four months from the date of disposal of the case under appeal or revision and the lower Court should not dispose of it for a month after its receipt and if an intimation regarding filing of appeal or revision is received by the Trial Court or the lower Court, as the case may be, it should not dispose of muddamal until the appeal or revision is decided by the High Court. The Sessions Court should intimate to the lower Court about the filing and disposal of the appeal or revision within 2 days from the date of receipt of information in that regard. The above directions as regards the disposal of muddamal in cases where appeal or revision lies to the High Court would apply, mutatis mutandis to the disposal of muddamal in cases where appeal lies to the Supreme Court.

(b) As the scope for loss of muddamal property is greater in the case of disposal of cases, the Presiding Officer should see that the property is disposed of as soon as possible after the period indicated above.

(2) Notwithstanding anything contained in sub-Para (1) above, the Court may dispose of immediately after the disposal of the case any muddamal article consisting of livestock or property subject to speedy and natural decay or muddamal property in respect of which a bond is passed under sub-section (4) of section 452 of the Code of Criminal Procedure, 1973.

(3) In other cases the person concerned should, as soon as possible after the expiry of the period indicated in paragraph l(a) above be asked by post card to appear before the trying Court to receive the muddamal. If he fails to do so, within fifteen days from the date of intimation, the property should be sold at his cost by public auction and the amount so realized credited to Criminal Deposits. If such property is valueless, the Presiding Officer may pass order for destroying it if ordered to return and not taken away in reasonable time. If the cash amount is not taken away for the period of three months, after the intimation as above, it should be deposited as Criminal Deposit in the Treasury.

228. . :-
A quarterly report should be submitted by the Judicial Magistrates and the Chief Judicial Magistrate to the Sessions Judge and by the Metropolitan Magistrate to the Chief Metropolitan Magistrate, as the case may be, to the effect that the muddamal property in cases decided six months prior to the date of the report has been disposed of. The report should also state the number of cases in which the muddamal property remained to be disposed of, with the necessary explanation therefor.

229. . :-
Attention is also invited to Rule 20 of the Gujarat Financial Rules, 1971 which requires that a report should be made to the next higher authority and to the Audit Officer, as soon as a loss or defalcation occurs. Disposal of Forged Coins and Currency Notes.

230. . :-
Courts should transmit to Treasuries coins coming before them under sections 452, 457 and 458 of the Code of Criminal Procedure, 1973, together with a short description of the case and any implements, such as dies, moulds, etc. which may have been found, for being sent on by the Treasuries to the Mint through the Deputy Inspector General of Police, Criminal Investigation Department.

231. . :-
In cases of forgery of currency notes, all moulds, dies and other instruments produced in the case should be delivered after the case, final appeal or revision is disposed of, to the District Superintendent of Police by Courts in the Metropolitan area.

232. . :-
Section 98 of the Bombay Prohibition Act, 1949, provides for the confiscation of any intoxicant, hemp, mhowra flowers, molasses, materials, still utensils, implements or apparatus, etc. in respect of which the offence has been committed and also for the confiscation of their receptacle, package or covering etc. in which any of the articles liable to confiscation are found. The Bombay Prohibition, Confiscated or Forfeited Articles (Disposal) Regulations, 1953, provides as to in what manner the confiscated or forfeited articles under the provisions of the Bombay Prohibition Act should be disposed of, Regulation (2) of the said Regulations provides that subject to the provisions of the Bombay Prohibition Act, 1949, when any article, animal or thing is duly confiscated or forfeited either by order of a Court or otherwise, such articles, animals or things shall be made over to the Collector for disposal or to be disposed of under orders of the Collector, in accordance with the said Regulations. The said Regulations provides for the manner of the disposal of potable foreign liquor denatured spirit, ethyl alcohol, medical and toilet preparation containing alcohol, perfumed spirits and Alcoholic Essences, country liquor, Toddy Intoxicating Drugs like hemp, ganja, bhang and also the opium, mhowra flowers and molasses. Regulation 12, provides for the disposal of other articles by auction or destruction. Under section 98(2) of the Bombay Prohibition Act, receptacle, package or covering etc. which include the non-excisable articles like containers, handbags, trunks, utensils etc. can be confiscated. Such articles should also be sent to the Collector for the disposal and should not be disposed of by public auction by the Court.

233. . :-
The muddamal property ordered to be destroyed by the Judicial Magistrates or directed to be destroyed by them by the higher Court, should be destroyed in the presence of such Magistrate and the muddamal property ordered to be destroyed by the Metropolitan Magistrates or directed to be destroyed by them by the higher Court, should be destroyed in the presence of the Registrar of the Court of the Metropolitan Magistrates, Ahmedabad. The valuable muddamal ordered to be returned should be returned in the presence of the Judicial Magistrate and in the Court of the Metropolitan Magistrates, it should be returned in the presence of the Registrar of the Courts of the Metropolitan Magistrate, Ahmedabad.

234. . :-

In the State of Gujarat two State Police Museums, one at Ahmedabad and another at Junagadh, are established with the object of giving the police" trainees an insight into the types of crime, criminals and the weapons used by them. The Magistrates and the Courts dealing with the criminal cases should, at their own initiative or on the request of the Assistant Public Prosecutor or the Public Prosecutor, make available to the State Police Museums useful articles and criminal exhibits which are ordered to be confiscated under section 452, Code of Criminal Procedure, 1973, or any other provision of law. Such articles should, for the said purpose, be sent to the District Superintendent of Police in Ahmedabad, who should arrange to hand it over to the Museum authorities. The note should be made on the record of the case about sending of such articles to the museums. Before sending the articles the Court concerned should pass the order to the effect that instead of confiscation or destruction the said articles are ordered to be sent to the State Police Museums.

235. Rules For The Conduct of Sales of Confiscated Property :-

I. Sales when to take place.-Confiscated moveable property shall be sold as soon as possible after the expiry of the period indicated in sub-paragraph 1(a) of paragraph 227. The Magistrate concerned shall make proper inquiry and ascertain the fact that neither appeal nor revision is filed in the matter before the property is put to auction.

II. Sales by whom to be conducted and how to be made.-

(i) The sales should be conducted by the Magistrate or by such other responsible person as the Magistrate may appoint in this behalf. The Magistrate shall cause a proclamation of the intended sale to be made in the language of such court in the prescribed form No. 52.

(ii) Such proclamation shall state the date, time and place of sale, and specify as fairly and accurately as possible the description of the property to be sold.

(iii) It shall also state that the bidders will have to pay the price immediately.

(iv) It shall be incumbent upon the Magistrate to fix the upset price of the articles to be sold. Valuables should be got assessed through experts.

III. Mode of publishing proclamation.-The proclamation shall be published by affixing a copy thereof upon the Notice Board of the District and Sessions Court, of the Court concerned and of the Collector and the Mamlatdar and in such other manner or mode as the Magistrate may think fit. Where the property to be sold is worth more than Rs. 500/- and if the Magistrate so directs, such proclamation shall also be published in a local newspaper after obtaining the sanction of the Sessions Judge for the cost of such publication.

IV. Time and place of sale.-

(i) The sale shall not take place until after the expiration of at least 15 days from the date on which the copy of the proclamation has been affixed on the Court Notice Board of the Magistrate holding the sale.

(ii) Auction sale should be held during the Court hours and within the Court premises.

V. Adjournment or stoppage of sale.-The Magistrate may in his discretion adjourn the sale of a specified date and hour recording his reasons for adjournment.

VI. Restriction or bidding or purchase by public servant or by officers.-No public servant and no officer or other person having any duty to perform in connection with any sale shall either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold.

VII. Sale how to be conducted.-

(i) Proceedings of the sale shall be written in the prescribed form No. 53.

(ii) If convenient, the property may be sold by lots. Valuable articles, however, should not, as far as possible, be auctioned in lots.

(iii) Sale shall be confirmed in the name of the highest bidder unless the Magistrate thinks that the bid offered is grossly inadequate, in which case the property shall be put to sale again.

(iv) The price of the articles shall be paid at the time of sale.

(v) The officer conducting the sale shall pass a receipt for the price paid and then handover the property to the purchaser.

(vi) if the price is not paid, the property shall be re-sold.

VIII. Defaulting purchaser answerable for loss on a resale.-Any deficiency in the price resulting upon such resale shall be recovered from the defaulting bidder, and if he fails to make good the same, the same may be recovered by issuing distress warrant against him.

CHAPTER 8
AFFIDAVITS

236. . :-

(1) The heading of every affidavit to be used in a Court of Law shall be "In the Court ..... at ....." naming such Court.

(2) If there be a case pending in Court, the affidavit in support of, or opposition to, an application respecting it, must also begin with the heading "In the matter of case of....." in the case.

(3) If there be no. case pending in Court, the heading shall be "In the matter of the application of....."

237. . :-
Every affidavit shall be drawn up clearly and legibly and, as far as possible, in the language which the person making it understands. It shall be drawn up in the first person and divided into paragraphs numbered consecutively, and each paragraph, as far as may be, shall be confined to a distinct subject or portion thereof.

238. . :-

(1) Every person making any affidavit shall state his full name, father's name, surname, age, profession or trade and place of residence and shall give such other particulars as will make it possible to identify him clearly.

(2) The affidavit shall be signed by him in his own hand or he shall make his thumb impression thereon.

239. . :-
Unless it is otherwise provided, an affidavit may be made by any person having knowledge of the facts deposed to.

240. . :-

(1) Every affidavit should clearly specify what portion of the statement is made on the declarant's own knowledge and what portion of the statement is made on his information or belief.

(2) When a particular portion is not within the declarant's own knowledge but it is stated from information obtained from others, the declarant must use the expression "I am informed" and, if it is made on belief, should add "I verily believe it to be true". He must

also state the source or ground of the information or belief, and give the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he had received such information.

(3) When the statement rests in facts disclosed in documents or copies of documents procured from any Court or other person, the declarant shall state the source, from which they were procured and his information, or belief, as to the truth of the facts disclosed in such documents.

241. . :-
Documents or copies thereof (other than those on the record of the case) referred to in the affidavit shall so far as possible be annexed to it.

242. . :-
All erasures, errors, interlineations, etc. in the affidavit shall be legibly initialed and dated by the declarant.

243. . :-

(1) The Officer authorised in this behalf shall, before administering the oath, ask the declarant if he has read the affidavit and understood the contents thereof, and if the latter states that he has not read it, or appears not to understand fully the contents thereof, or appears to be blind, illiterate or ignorant of the language in which it is written, the Officer administering the oath shall read and explain or cause some other competent person to read and explain in his presence the affidavit to the declarant in the language which both the declarant and the officer administering the oath understand.

(2) When an affidavit is read, translated or explained as herein provided the Officer administering the oath shall certify in writing at the foot of the affidavit that it has been so read, translated or explained in his presence and that the declarant understood the same at the time of making the affidavit and made his signature or finger impression in the presence of the Officer.

244. . :-
The Court may order any scandalous or irrelevant matter in an affidavit to be struck out or amended.

245. Attestation of Affidavits, power of attorney, etc :-
The application to the High Court in its Civil, Criminal or Writ Jurisdiction, to be supported by affidavit or statement on solemn affirmation or an affidavit to be used before any court under the Code may be sworn or affirmed before the Registrar, Clerk of the Court, Deputy Registrar, Nazir, Sheristedar Senior Clerk or any other Clerk in the Court, as the case may be, duly empowered under section 297, Criminal Procedure Code, 1898, or appointed as Commissioner of oaths and empowered under section 297, Code of Criminal Procedure, 1973, by the Court of Session or the High Court, as the case may be. Such Officershall on application, take such affidavit or statement on solemn affirmation and on payment, by the affixed stamp of the prescribed fees.

246. . :-

(1) Every affidavit signed in the presence of any Officer (authorised to administer an oath) by a person not known to such Officer, should be attested in his presence by a person known and identifying the declarant before him, e.g. a lawyer or lawyer's clerk, etc. The Officer administering the oath should add the following words after the words "solemnly affirmed before me", namely, "by..... who is identified before me by ..... whom I personally know.

(2) The Metropolitan Magistrates, Judicial Magistrates or Officer appointed as Commissioner of Oaths and authorised to administer oath should not accept the identification of the

declarant by the pleader or any person identifying the declarant unless such pleader or person also certifies under his own hand that the declarant whom he is identifying is personally known to him.

247. . :-
The powers of Officers mentioned in paragraph 245 to administer oaths or to take affidavits extend to all affidavits which are to be filed in any Civil or Criminal Court or in the High Court. The practice of taking affidavits, which are not to be filed in any Court, by such Officers other than the Judicial Officers is irregular and should be discontinued.

248. . :-

(1) In all instances in which affidavits are sworn or statements on solemn affirmation are made before a Magistrate or Judge, a fee of Re. 1/- should be taken in the form of stamp, which should be affixed to the affidavit or the document, as the case may be, and obliterated. The Judge or Magistrate shall not receive any fee for attesting an affidavit but a fee of 25 paise shall be added to the fee of Re. 1/- referred above, except for affidavits to be immediately used in the Court.

(2) The Officers empowered under paragraph 245 to take affidavits or statements on solemn affirmation or any Officer of a Court duly appointed in this behalf by the Sessions Judge, or the High Court, may charge a fee of 50 paise in Court-fee stamps which should be affixed to the document and obliterated, except in the case of affidavits which are made for immediate use in the Court in which the Officer is employed.

249. . :-
The attestation by Judicial Officers referred to above should only be made when the affidavits mentioned are brought to the Court. Parties who require affidavits to be attested at their own houses, should have recourse to other Officers.

CHAPTER 9
CHILD AND YOUNG OFFENDERS

250. . :-
It is necessary and desirable that Judge and Magistrates make themselves fully acquainted with their powers and duties for dealing suitably with child and young or adolescent offenders. In the Bombay area of the State of Gujarat, the provisions of the Bombay Children Act, 1948 and the Bombay Borstal Schools Act, 1929, are applicable. In the Saurashtra area, the Saurashtra Children Act (Act No. 299 of 1956) is applicable. In the Kutch area, the Bombay Children Act, 1948, is applicable. In the State of Gujarat, the provisions of the Probation of the Offenders Act, 1958 (Central Act XX of 1958) are applicable.

251. . :-

(1) Method of treatment.-The Bombay Children Act provides for young persons who have not attained the age of 16 years. The Saurashtra Children Act provides for a boy or girl who has not attained the age of 18 years.

(2) The Bombay Borstal Schools Act provides for adolescent offenders of the age between 16 and 21 years, who are likely to benefit by training in an institution like the Borstal School.

252. Age to be ascertained :-
The correct determination of the age of young offenders is essential. As soon as such an offender is produced before a Magistrate, he should take steps to ascertain his age. The statement made by the accused person himself is not sufficient. The Magistrate should, therefore, ask the police to state his age and to produce evidence in support of their statement. The best evidence of age is the entry in the Births and Deaths Register. Where this is not available, the accused person should be got medically examined and a medical

certificate obtained in regard to his age. A definite finding with regard to his age should be recorded in every case.

253. Enquiries to be made :-

(1) The successful administration of the above Acts will largely depend upon the care exercised by the Courts in selecting the right method of treatment. For this purpose, it is necessary to find out all possible details about the offender, his age, character, his physical and mental state of health, his surroundings, his home conditions and the circumstances in which he came to commit the crime. Before a charge is framed, or where summary procedure is being followed, at the earliest possible moment, the Court should cause inquiries to be made regarding the offender's antecedents, his character, his physical and mental conditions, the environments and the conditions in which he lives, the circumstances in which the offence was committed by him and his fitness for institutional and vocational training. The inquiries may be made through the Probation Officer or in place where there is no such Officer through the District After-Care Associations, wherever such associations exist. Where such associations do not exist, the Court should cause necessary preliminary inquiries to be made through any suitable official or non-official organization or any other source of information, which may be suggested by the District Magistrate. The result of such inquiry more particularly the circumstances under which the offence was committed should not be used as evidence in the case.

(2) In some cases it may appear desirable, with a view to passing the most appropriate order, to have the offender examined as to his mental and physical conditions. In such cases a medical examination should be arranged.

(3) Such preliminary inquiries are unnecessary in the case of offenders, who are charged with minor offences and who can be let off with admonition under section 4 of the Probation of Offenders Act or punished with fine.

254. . :-

(1) Selection of method of treatment.-The offenders who have not attained the age of 16 years cannot be sent to Jail vide section 68 of the Bombay Children Act. Similarly, in the area where the Saurashtra Children Act, 1956, is applicable, the offenders who have not attained the age of 18 years cannot be sent to the Jail under section 67 of the said Act.

(2) If the offender is not protected under the Bombay Children Act or the Saurashtra Children Act and is also not over 21 years of age, the Court should consider whether he should be dealt with under the provisions of the Probation of Offenders Act or under the Borstal Schools Act.

(3) Borstal training is based on the principle that a young offender's character is still plastic and that the tendency to crime can be corrected by proper treatment. Persons who have developed a tendency or leaning towards crime or who have fallen in bad company or acquired evil habits are ordinarily suitable for Borstal treatment. A person who has no previous convictions, may also be sent to the Borstal School, if the Court after making enquiries finds that he possesses criminal tendencies.

(4) The first offender, who has no evil habits or association, is ordinarily not, suitable for detention in a Borstal School, in as much as he does not require the education and training provided therein. The desirability of using the Probation of Offenders Act should be considered in such cases.

(5) A youth, who is convicted of a single act of violence committed in a moment of passion or who is guilty of sexual offence, should not, as a rule, be sent to the Borstal School.

(6) Where the offence committed is such that it cannot suitably be dealt with under the provisions of the above Acts, and where it cannot adequately be punished except by

imprisonment, the offender should be sent to the Juvenile Section of the Jail.

(7) As it is not desirable to keep a youth idle in Jail, it is ordinarily not desirable to sentence him to simple imprisonment.

255. . :-
The provisions of section 360, Code of Criminal Procedure, 1973, to the extent applicable, should be used in proper cases in which youthful offenders are convicted.

256. . :-
Further instructions in regard to the use of the provisions of the above Acts are contained in Chapters X, XI and XII.

CHAPTER 10
BOMBAY CHILDREN ACT (ACT 71 OF 1948), THE SAURASHTRA CHILDREN ACT (ACT 29 OF 1956)

257. . :-

(1) The following are the important provisions of the Bombay Children Act, 1948.

(a) Under section 4 of the Act, "Child" means a boy or a girl who has not at tamed the age of sixteen years and "youthful offender" means any child who has been found to have committed an offence.

(b) Section 6 of the Act provides that with the introduction of parts II to XI of the Bombay Children Act, 1948, in any area the provisions of the Reformatory Schools Act, 1897, and of Section 27 of he Code of Criminal Procedure, 1973, shall cease to apply thereto. Section 7 provides for the establishment of Juvenile Courts by Government for any area. Section 8 gives a list of the additional criminal Courts empowered to exercise the powers of a Juvenile Court. Section 10 provides that there shall not be any joint trial of a child and an adult person in any area where a Juvenile Court is established under the Act. Section 11 provides that the procedure, to be followed by the Juvenile Court and the Magistrates empowered under section 8 is the one prescribed for summary trial in summons cases in which an appeal lies under the Criminal Procedure Code as far as practicable and subject to the provisions of the Act. Section 13 requires the Magistrate to separate the trial of child from that of an adult person in a case fit for.being committed to the Sessions and to proceed with the trial of the case in respect of the child alone after committing the case of the adult to the Court of Sessions. Section 17 empowers the Juvenile Courts to dispense with the attendance of a child at the trial under certain circumstances. Section 21 details the factors to be taken into consideration such as the character and the age of the child, the circumstances in which the child is living, the reports made by the Probation Officer, and such other factors, before the Court passes order. Section 23 prohibits publication of names and addresses of children involved in cases or proceedings under the Act. It is, however, open to the Court to allow disclosure, if in its opinion such disclosure is in the interest of child welfare and is not likely to affect adversely the interest of the child concerned. The Court has to give its reasons in writing whenever it permits such disclosure. Section 24 lays down that the provisions of the Criminal Procedure Code, shall govern all proceedings under the Act, subject to the special provisions of the Act or rules made thereunder.

(c) Section 40 empowers a Police officer or other duly authorised person to bring before a Juvenile Court established for the area or a Magistrate empowered under section 8 or where there is no such Court or Magistrate, before any other Magistrate, a child who has no home or is destitute, etc. Section 41 provides that when any Magistrate not empowered to exercise the powers of a Juvenile Court is of the opinion that a person brought before him is a child, he shall record such opinion and submit the proceedings and forward the child to the nearest Juvenile Court having jurisdiction in the case, and if there is no such Court, to the Sessions Judge to whom he is subordinate. Section 45 enables the Court to commit the child to a Certified School or to the care of Fit Person in cases falling under Section 40.

(d) Part VI of the Act provides for punishment for special offences in respect of child. Section 63 makes all offences under this part cognizable.

(e) Special attention is invited to Section 68 of the Act. It lays down that no youthful offender shall be sentenced to death or imprisonment. It further enables the Court to order the offender to be kept in safe custody where in its opinion no punishment, which under the provisions of the Act, it is authorised to inflict, is sufficient or where it is satisfied that the child is of so unruly or of so depraved a character that he cannot be committed to a Certified School or detained in a place of safety and in the meantime to report the case for orders of Government. The provide that the words "conviction" and "sentence shall cease to be used in relation to children dealt with under the Act. The Court shall only record a finding that the child is either guilty or not guilty of the offence charged. Section 70 lays down that no proceedings under Chapter VIII of the Criminal Procedure Code, shall be taken against any child. Under section 71 the period of detention of a child in a certified School or a fit person institution shall not exceed the time at which the child attains the age of 18 years. It is, however, open to the Court, for reasons to be recorded in writing, to prescribe a shorter period in exceptional cases. Section 89 prescribes that in the case of a person under 15 years of age, the period of detention shall ordinarily be such as will result in the person being detained until he reaches the age of 18 years. If the person is over 15 years of age, such period of detention shall not be less than two years, unless the Court directs otherwise in special circumstances. Section 72 prescribes other orders which the Court may pass against the child. It can discharge him after due admonition. It can order the offender to pay a fine if he is over 14 years of age, or it can release the child on probation of good conduct and commit him to the care of the parent or guardian on a bond with or without surety.

(2)

(a) Section 21 of the Act directs that for the purpose of any order which the Court has to pass under the Act the Courts shall have regard to several factors including the character and the age of the child, the circumstances in which the child is living and the reports made by the Probation Officers. This section contemplates an investigation to be made into the character and circumstances of the child. Such investigation is not possible unless the child is detained in a Remand Home for observation for sufficiently long period. Detention in a Remand Home is entirely in the interest of the child, both physical and moral. A careful diagnosis of the child's difficulties would enable the probation officer to tender proper advice to the Court at the material time.

(b) The Presiding Officer of the Children Court should exercise proper care while passing orders detaining children in the remand home, pending the passing of final orders or disposal of the cases. The child in respect of which the remand order or the order extending its detention in the remand home is to be passed should be produced before the Presiding Officer and the Presiding Officer should pass such order only after proper inquiry and on proper reasons. It is desirable that the Presiding Officer should avoid indiscriminate bailing out of the children, but at the same time, he should make proper inquiry into each and every case pertaining to the child before detaining him or extending the period of his detention in the remand home, pending the disposal of his case. The question of detaining the child or extending the period of his detention in the remand home should be decided by the Presiding Officer of the Court dealing with juvenile offenders only after making proper inquiry on the basis of the reports of the Probation Officer and on personal hearing of the child. In case, the Probation Officer fails to make adequate reports to the Presiding Officer at proper time or does not make proper inquiry in the case of any child or is guilty of delay in making such inquiry, such instances should be immediately reported to the District and Sessions Judge by the Presiding Officers in the Districts and to the Chief Metropolitan Magistrate, by the Metropolitan Magistrate as the case may be. (Vide Circular No. A. 0738-62 dated 30.9.1967).

(3) The Saurashtra Children Act, 1956, is in operation in the Districts comprising the areas of the former State of Saurashtra. As per Section 4 of the Saurashtra Children Act, the definition of "child" is, "a boy or a girl who has not attained the age of 18 years". In view of the provisions of Section 69 of the said Act, if a child is to be detained in the institution namely, special schools or fit person institutions, he/she can be detained till the child attains the age of 21 years.

(4) Under Part IV of the Act, provision has been made for establishment of special schools, observation homes and other institutions. The provisions regarding care and protection of destitutes, neglected and victimised children are similar to that under the Bombay Children Act, as stated in sub-para (1), except the chronological number of sections. The special feature of this Act is that under part X of the Act, a provision has been made for setting up of follow up and after care organization.

258. . :-

The following is a list of Industrial Schools established or other institutions certified by Government under section 25 of the Bombay Children Act, 1948 and section 33 of the Saurashtra Children Act, 1956.

Government Certified and Special Schools

1. Certified School for Girls, Ahmedabad.

2. Certified School, Alembic Road, Baroda.

3. Certified School, Kukarwada Road, Baroda.

4. Special School for boys, Jamnagar Road, Rajkot.

5. Special School for Girls, Bhaktinagar Road, Rajkot.

6. Home for Mentally Deficient Children, Bhaktinagar Station Road, Rajkot.

7. Certified School, Katargam, Surat.

Government Remand Homes under Bombay Children Act.

1. Remand Home, Navapur Road, Ahwa, Dist. Bangs.

2. Remand Home, Amreli, District Arnreli.

3. Remand Home, Bhuj, District Kutch.

4. Remand Home, Godhra, District Panchmahals.

5. Remand Home, Jaybharat Society, National High Way Road, Mehsana.

6. Remand Home, Near Shah Dairy, Raichand Road Navsari, Dist. Bulsar.

7. Remand Home, Palanpur, District Banaskantha.

8. Remand Home, Nabir Bhavan, Station Road, Prantij, District Sabarkantha.

9. Remand Home, Old Police Lines, Behind Petrol Pump, Outside Bharvad Gate-Viramgam, Dist. Ahmedabad.

Government Observation Homes under Saurashtra Children Act.

1. Observation Home, "Prakash", Ghogha circle-Bhavnagar.

2. Observation Home, Ranjit Sagar Road, Jamnagar.

3. Observation Home, Hathikhana, Near Station, Jamnagar.

4. Observation Home, Sardargadh Bunglow, Bhartinagar, Rajkot.

5. Observation Home, Surendranagar.

Government Institutions Certified as fit Person Institutions

1. Remand Home, Bhuj.

2. Remand Home, Amreli.

3. Remand Home, Palanpur.

4. Remand Home, Mehsana.

5. Remand Home, Viramgam.

6. Remand Home, Prantij.

7. Remand Home, Godhra.

8. Remand Home, Navsari.

9. Remand Home, Ahwa.

10. Reception Centre, "Shrinidhi", Sharda Society, Anand Nagar, Ahmedabad.

11. Reception Centre, Opposite Mehta High School, Godhra.

12. Reception Centre, Rawaliwad, Koli Falia-Cambay.

13. Reception Centre, Delhi Darwaja, Palanpur.

14. Reception Centre, Civil Lines, Broach.

15. Reception Centre, College Society-Surendranagar.

16. State Home for Women, Athwa Lines, Surat.

17. State Home for Women, Nizampura Road, Baroda.

18. Home for Mentally Deficient Children, Baroda.

19. Home for Crippled Children, Baroda.

20. Home for Crippled Children, Rajkot.

21. Observation Home, Bhavnagar.

22. Observation Home, Surendranagar.

23. Observation Home, Rajkot.

24. Observation Home, Junagarh.

25. Observation Home, Jamnagar.

Private Institutions Declared as fit person Institutions in the State of Gujarat

1. M.R. Ashram, Out side Raipur Gate, Ahmedabad.

2. School for Blind and School for the Deaf mutes, Navrangpura, Ahmedabad.

3. Sultan Ahmed Yatimkhana for Boys, Ahmedabad.

4. Sultan Ahmed Yatimkhana for Girls, Ahmedabad.

5. Shrayas, Bal Vikas, Shrayas Tekri, Sharda Society, Ahmedabad.

6. Vikash Grih, Amreli.

7. Salvation Army Emery Hospital, Anand, District Kaira.

8. Aryakanya Mahavidyalaya, Baroda.

9. Tapibai Ranchhoddas Vikas Grih, Tapibhavan, Bhavnagar.

10. Kutch Mahila Kalyan Kendra, Bhuj.

11. Creche of the Zamama, I.P. Mission, Borsad, District Kaira.

12. Church for Brethren Girls School, Ankleshwar-District Broach.

13. Methodist Boys Hostel, Godhra.

14. Kasturba Stri Vikas Grih, Jamnagar.

15. Shishu Mangal, Junagadh.

16. Vikas Grih, Visnagar, District-Mehsana.

17. Hindu Anath Ashram, Mission Road, Near Railway lines, Nadiad; District-Kaira.

18. Kathiawar Nirashrit Balashram, Gondal Road, Rajkot.

19. Kanta Stri Vikas Grih, Rajkot.

20. Parvatibai Lady Wilson, Leprosy Clinic, Ashvinikumar Road, Surat.

21. Mahajan Anath Balashram, Katargam, Surat.

22. Vikas Vidhyalaya, Wadhwan, District Surendranagar.

23. Mangalayatan, Surendranagar.

24. Vikas Grub, Fateh Nagarh, Ahmedabad.

25. Remand Home managed by District Probation and After Care Association, Surat.

26. Remand Home managed by the District Probation and After Care Association, Broach.

27. Remand Home, Rajpipla, managed by Regional Probation and After Care Association, Rajpipla.

28. Remand Home, Jambusar.

29. Remand Hone, managed by District Probation and After Care Association, Baroda.

30. Remand Home, Kaira at Nadiad.

31. Remand Home, Ahmedabad.

259. . :-
In the interest of children, it is necessary that they should be committed to institutions which are known to be suitable. The Juvenile Court Magistrates are, therefore, advised to commit children to the institutions referred above. If for any good reason, they propose to utilise a new institution they should first arrange for some one to visit the institution in order to satisfy themselves about suitability or to obtain the opinion of the Chief Inspector of the Certified Schools in the matter. In the former case, a report submitted to the Magistrates by the investigation authority should be forwarded to the Chief Inspector of Certified Schools, Gujarat State, Ahmedabad.

260. . :-
The following is a list showing the places to which parts V and VI of the Bombay Children Act, 1948, have been applied, the date on which they were applied together with the date of Government notifications under which they were made applicable.

261. . :-
List of places to which parts II and VI of the Saurashtra Children Act, 1956 have been

applied, dates on which they were applied, together with the date of Government notification under which they were made applicable.

262. . :-
The following is a list of places in the Gujarat State where Juvenile Courts/or Children's Courts have been established and their jurisdiction.

263. . :-
Form No. 58 is the form of monthly statement of revenue realized under the Bombay Children Act, 1948 and the Saurashtra Children Act, 1956, to be forwarded by the Magistrate to the Chief Inspector of Certified Schools, State of Gujarat, Ahmedabad. The Statement shall be so forwarded in respect of the fact any order made under section 90(1) of the Bombay Children Act, 1948, for payment of contribution for the maintenance of the child. When no such order is made, "nil" statement should be forwarded.

Note.-All paragraphs of this chapter are applicable to the Courts of the Metropolitan Magistrates, Ahmedabad.

CHAPTER 11
Bombay Borstal Schools Act, XVII of 1929

264. . :-
The Borstal Schools Act applies to young offenders who are not less than 16 years of age and not more than 24 years of age and authorises the Judicial Magistrates, First Class and superior Courts to pass, in lieu of imprisonment an order for detention in Borstal School for not less than 3 or more than 5 years (section 6).

265. Aim of Borstal Training :-
The Bombay Borstal Schools Act, 1929, supplements the provisions contained in the Bombay Children Act, 1948, in respect of youthful offenders above the age of 16 years. The Bombay Borstal Schools Act is applicable to offenders of both the sexes. At present, there is no Borstal School, established for girls in this State. Government has, however, approved of certain Homes which are suited for reception of girl offenders of Borstal School age who, if committed to prisons, are released and sent to such Homes under Section 432, Criminal Procedure Code, 1973. The aim of the act is to reform young offenders who have fallen into crime and who have acquired bad habits and associations and have thus developed a tendency of leaning towards crime. The Borstal School, Dharwar, provides for the training of such lads in various trades such as carpentry, polishing, weaving, agriculture, tailoring etc. There is accommodation for about 500 inmates in that school. Courts should commit only those offenders to the Borstal School, who are likely to benefit by such training and not those who are hardened or such habitual offenders that institutional training given at much expense by Government is likely to be wasted on them.

266. Enquiries to be made :-
in order to determine whether an offender is a suitable person for being sent to the Borstal School, the court should as soon as it frames the charge, or where summary procedure has to be followed at the earliest possible moment, cause inquiries to be made regarding the offender's antecedents, character, institutional and vocational training and also regarding his mental and physical state of health. Mental and physical examination, together with assessment of age, should, if necessary, be made by competent medical authority. Other inquiries should be conducted through the Probation Officer or the District After Care Association, where such an association exists. Where such associations do not exist, the court should cause necessary preliminary inquiries to be made through any official or non-official organization or any other source of information, which may be suggested by the District Magistrate.

267. Types which are suitable for Borstal detention :-
Adolescent offenders may be classified into three categories:-

(1) The first offender, who has no criminal habits or associations.-Such boys are not suitable for detention in the Borstal School, in as much as they do not require the education and training provided. They may be dealt with under section 4 of the Probation of Offenders Act, 1958.

(2) The youthful offender with a tendency towards crime.-The habitual tendency or leaning towards crime is not to be gauged merely from frequency of convictions. The Court should take into consideration the report of the probation officer or any other person, who has been authorised to make inquiries (which should be initiated at the earliest possible moment) into the antecedents, character and family history of the accused, etc. Courts often hesitate to commit a young offender on his first conviction and instead sentence him to rigorous imprisonment for a short period. They direct detention in the Borstal School after the offender has been convicted twice or thrice. By the time, it is too late for him to derive any benefit from institutional training, as he has become hardened and by his confirmed criminal ways is more suited for the Juvenile section of the ordinary prison than for the Borstal School. On the other hand, preliminary inquiries may reveal that a first offender has criminal tendencies. Committal to the Borstal School, therefore, should not depend on the number of convictions. Courts should inquire carefully into the previous history of such persons, their surroundings, home circumstances, etc., and if convinced of their bad habits and associations, should order detention in the Borstal School rather than short periods of imprisonment, as the latter in no way act as a deterrent and do nothing to assist in the reformation of adolescent offenders.

(3) The youthful offender, whose offence is too serious to be dealt with under the Probation of Offenders Act, 1958, and whose (a) crime and (b) habits and associations do not indicate that he would derive much benefit by being sent to the Borstal School, should be sent to the Juvenile section of the Jail.

268. Types which are not suitable for Borstal detention :-

(i) Sexual perverts or lads who have been convicted for sexual offences, viz., under sections 354,366,367,377,493,497 and 498 Indian Penal Code, should not as a rule be sent to the Borstal School, but should be committed to the Juvenile Section of a Jail.

(ii) Lads convicted of a single offence of violence committed in a moment of passion should not ordinarily be committed to a Borstal School.

269. Notice to be given to parent or guardian :-
Section 6 of the Borstal Schools Act, requires that parents or guardians should be given a hearing before Borstal detention is decided upon. This requirement should always be borne in mind by Courts.

270. Sentence of imprisonment not to be passed, if an order for detention is made :-
Under section 6 of the Act, the Court may, instead of passing a sentence of imprisonment, pass an order for the offender's detention in the Borstal School for such term not being less than three years and not more than five years as the Courts think fit. If, therefore, the court decides to pass an order of detention, a sentence of imprisonment should not be passed.

271. Offenders belonging to other State :-
The lads committed to the Borstal School are eventually released on licence and sent back to their homes so that they may be rehabilitated as far as possible in their own town or village as useful and honest citizens. After-Care is necessary for this and such help and supervision is usually provided by stipendiary Probation Officers wherever District probation and After care Associations exist and by voluntary public spirited individuals otherwise. The aim of after care is rehabilitation as is also that of institutional training; consequently, where after-care is not possible, it is a waste of time and money to give training, as without

the due help and guidance of the Probation officers after release from Borstal School, young offenders usually revert to old habits and vice. In the case of lads coming from a State other than the State of Gujarat, such after-care is difficult and well-nigh impossible, as organizations for after- care do not exist or are few and far between. A list is appended of those States, which are co- operative and where such help is forthcoming or where similar Borstal institutions exist and thereby reciprocal arrangement between the State Government and the Government of the other State, where such Borstal Institutions exist, is possible. Courts should, as ageneral rule, refrain from committing young offenders hailing from States other than those appearing in this list to the Borstal School, Dharwar, as in such cases the training given at much expenses by the Government of this State is likely to be wasted.

272. . :-
The following is a list of Associations, who have full time paid Probation Officers and through whom preliminary inquiries as mentioned in paragraph 266 could be made.

273. . :-

(1) The list of States which have entered into reciprocal arrangements with the Government of Bombay prior to bifurcation, in respect of maintenance charges of boys detained in the Borstal School, is given below:-

1. Madhya Pradesh.

2. Punjab.

3. Madras.

(2) List of States which have After-Care Arrangements for lads released from the Borstal School; (1) Uttar Pradesh (2) Bengal (3) Delhi (4) Madras (5) Rajasthan (6) Kerala (7) Hariyana (8) Punjab (9) Bombay.

274. . :-
List of Homes approved by Government to which female convicts sentenced for offences other than infanticide may be sent after release by Government under Section 432, Criminal Procedure Code, 1973:-

(1) The Vikas Grih, Ahmedabad.

Note.-The provisions of the whole of this chapter are applicable to the Courts of Metropolitan Magistrates also.

CHAPTER 12
PROBATION OF OFFENDERS ACT

275. . :-
The Probation of Offenders Act, 1958, (Central Act No. XX of1958) is made applicable to the five districts of the State of Gujarat, viz., Ahmedabad, Baroda, Panchmahals, Rajkot and Junagadh, from 16th July 1972, vide notification No. GH-SH-1901- BPO-1060/45264 (72) CHH, dated 16th July, 1972. That Act is made applicable to the rest of the districts of the State of Gujarat from 5th September, 1973, vide notification No. C.SH- 1500-PO, dated 5th September, 1973.

276. Meaning of probation and supervision work :-
In Probation of Offenders Act, 1958 (Central Act XX of 1958) provisions are made for new methods of treatment for those offenders who are likely to make good, if given a chance for constructive help. Under these new methods of treatment alternatives to imprisonment are given, because experience shows that commitment to prison does more harm than good to a certain type of offenders. The object of the Act is not punishment but reform by means of constructive treatment.

277. . :-
The Probation of Offenders Act, 1958, (Central Act XX of1958) apply to the young as well as to other offenders:- Age of the Offenders Under the provisions of the Probation of Offenders Act, 1958, the Court can deal with the offenders of any age, not less than 16 years of age, where Bombay Children Act, 1948, is applicable and not less than 18 years where Saurashtra Children Act, 1956 is applicable. Under section 3 of the Act the Court may instead of sentencing any offender found guilty of committing an offence punishable under sections 379, 380, 381, 404 and 420 I.P.C. or any other offence punishable with imprisonment for not more than two years or fine or with both under the Indian Penal Code or any other law and against whom no previous conviction is proved, release the offender after due admonition. The court has to take into consideration the circumstances of the case, including the nature of the offence and the character of the offender. Under section 4 of the Probation of the Offenders Act, 1958, a person found guilty of having committed an offence not punishable with death or imprisonment of life may be released on probation of good conduct, with or without sureties by the Court. The Court can also pass the order of probation irrespective of the age of the offender. No order of releasing on probation can be passed in the case in which the offender is found guilty of having committed an offence punishable with death or imprisonment for life.

278. Method of Treatment Provided Under the Act :-
The provisions of section 562 of the Code of Criminal Procedure shall cease to apply to the place where the provisions of Probation of Offenders Act, 1958 are applicable. The Act provides for three distinctive methods of treatment for the offenders.

(a) Section 3 of the Probation of Offenders Act, 1958, deals exclusively with the first offenders, who are convicted for the offences punishable under section 379, 380, 381, 404, 420 I.P.C. or for an offence punishable with imprisonment not more than two years or with fine or both under the I.P. Code or under any other law. It provides for the release of such offender after due admonition. This method of treatment is likely to be effective only to a small number of offenders, as it provides neither for bond nor sureties and merely sends the offender back, without any constructive help to live in the same conditions in which he lived, when he committed the offence.

(b) Section 4 (1) provides for the release on probation. No order for probation of good conduct can be passed against the person who is found guilty of having committed the offence punishable with death or imprisonment for life. The section provides that the offender should enter into the bond. The offender may also be required to give sureties. It would normally be advisable to take sureties, in addition to the personal bond as sureties are themselves a guarantee of some efforts towards reform and a safeguard against the offender removing himself outside the jurisdiction of the court and breaking the condition of the bond entered into by him.

(c) Section 4(3) provides for the supervision order, by the Court. When the court passes the order for the supervision of good conduct on executing the bond with or without sureties, the court may, in addition, pass a supervision order directing that the offender shall remain under the supervision of the Probation Officer named in the order during such period not being less than one year as may be specified in the order. The court has also powers to impose, conditions as it deems necessary for the due supervision of the offender and the Court has to specify such conditions in the supervision order. When the order of supervision is passed against the offender, the Court shall require the offender to enter into the bond with or without sureties, to observe the conditions specified in the order and also such additional conditions with respect to residence, etc. as mentioned in sub-section (4) of section 4 of the Act. It is obligatory on the court to explain to the offender the terms and conditions of the order of supervision and it is obligatory to furnish supervision order to each of the offender, the sureties, if any, and also to the concerned Probation Officer. Releasing on probation with the supervision order is the most constructive type of

treatment and experience has proved that the delinquents are far more likely to make good; when placed under the guidance of a Probation Officer. It is, therefore, advisable that even in the case of first offender, they should be dealt with under section 4 of the Act in preference to discharge after due admonition under section 3 of the Act.

(d) In suitable cases, the offender may be directed under section 5 of the Act to pay compensation and the cost of the proceedings to the person to whom loss or injury has been caused.

(e) The most important provision laying down restriction on punishment of the imprisonment to the offender under 21 years of age is contained in section 6 of the Act. It restricts the powers of the court to sentence to imprisonment to the young offender under 21 years of age who is found guilty of having committed an offence punishable with imprisonment, except for the imprisonment of life. In such cases, the court shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4 of the Act. It is necessary for the court to decide and to record the reasons for not passing the orders under section 3 or 4 of the Act. It is obligatory upon the court to call for the report of the Probation Officer and to consider the report, if any, and consider any information available to the Court relating to the character, physical and mental condition of the offender for the purpose of justifying itself as to whether it would not be desirable to deal with under section 3 or 4 of the Act before sentencing the offender under 21 years of age, to imprisonment. The report of the Probation Officer should be treated as confidential. The mandatory provisions of section 6 of the Act should be strictly complied by the Courts.

(f) Under section 8 of the Probation of Offenders Act, 1958, the court has powers of variation of conditions of the probation.

(g) During the period of probation, the offender has to keep good behavior and keep away from the crime. If he fails to observe the conditions, he may be sentenced for the offence for which he was convicted, or for the failure for the first time, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees, as provided under section 9 of the Act.

279. Enquiries to be made before passing Orders :-

(1) The Act is intended for the reformation of offenders in their own house. It is, therefore, essential to find out all possible details about the offender, including his character, his physical and mental ability, the conditions in which he resides and the circumstances in which he came to commit the crime. As soon as the charge is framed or is about to be framed, the Court, if it considers that the offender, having regard to the nature of the offence and the part played by him, is likely to be given the benefit of the provisions of section 3, the Court may, and of provisions of section 4 the trial court should, immediately instruct the Probation Officer of the area concerned to make preliminary enquiries about the offender. In case the provisions of section 6 of the Act are applicable, it is obligatory on the court to call for the report from the Probation Officer. The Court should endeavor to obtain full information regarding the age, character, antecedents and physical and mental condition of the offender, which will enable it to make a wise selection of the method of treatment out of the various methods of treatment provided in the Act.

(2) In some cases, it may be desirable to get the offender medically examined in order to ascertain his mental and physical condition. In such cases, a medical examination should be arranged.

(3) Such preliminary enquiries are unnecessary in the case of offenders who are charged with trivial offences not involving moral turpitude, (e.g. where a person disregards the rule of the road or leaves cattle insufficiently attended) and who can be let off with admonition,

under section 4 of the Act or punished with fine.

280. Supervision :-
Whenever it appears to the Court that an offender is likely to improve, if placed under supervision, a Probation Officer should be appointed to supervise the offender. Local District Probation and After-care Association, have been formed at various places and if they are recognised by the Government, such organization may be requested to suggest persons for being named as Probation Officers. Chief Probation Officers have been appointed in all the districts except the districts of Dangs and Gandhinagar. In making such appointment, the court should consider that the Probation Officer appointed is a fit person to supervise the offender during the period of supervision.

281. Watch to be kept after release :-
Duty of the court does not end with the passing of the order under the Act. Where a supervision order has been passed and a Probation Officer has been appointed, the Court should keep a watch on the probationer and should direct the Probation Officer to submit the report at particular intervals. The court should, in the best interest of the person released on probation, if necessary, under section 8 of the Act, on its own motion or upon the report of the Probation Officer vary any of the conditions in the bond or extend or reduce its duration. The success of the Act depends on the wise exercise of the discretion and proper discharge of their duties by the Courts administering the Act.

282. Form :-
The forms set forth in the Schedule may be used with such modification as the court may think fit for the respective purposes therein mentioned.

283. Rules :-
In exercise of the powers conferred by section 17 of the Probation of Offenders Act, 1958, the Government of Gujarat has framed "Gujarat Probation of Offenders Rules, 1973". The said rules are published in Gujarat Government Gazette, Part IV-A, vide notification dated 17th January, 1973, at page 174. The rules provide for the appointment or recognition, area of jurisdiction of the Probation Officer, general attitude of the Probation Officer and the qualification of the Probation Officer, disciplinary action against the Probation Officer provided by the Society, duties of the Probation Officer, inquiry and report by the Probation Officer, recognition of society, subsidy to society, etc. Rule 14 provides as to how the Probation Officer should behave with the person put under the supervision and which report to be submitted by him to the Court.

(a) Duties of the Probation Officers

"14. In addition to the duties laid down in section 14, a Probation Officer shall carry out the following duties, namely:-

(1)

(a) In relation to a probationer, the Probation Officer shall act as a friend and guide of the Probationer. For this purpose he shall, subject to any provision of the supervision order, require the probationer to report to him at stated intervals, meet him frequently and keep in close touch with him.

(b) At the first meting with the probationer, the Probation Officer shall-

(i) advise him as to how he should conduct himself and

(ii) specify the days on which he should report to the probation officer, the time and place of reporting being so arranged as to avoid unnecessary hardship to the probationer and to secure proper privacy; and inform the probationer that any omission on his part in so reporting will have to be satisfactorily accounted for.

(c) The probation officer shall visit the probationer periodically in his home surrounding and

where suitable his occupational environment, in order to see the progress made by the probationer and the difficulties, if any, encountered by him:

Provided that in the case of young probationers attending school or college, the probation officer shall not visit the probationer in the institution, but may make inquiries from the teacher or tutor or head of the institution regarding his attendance, conduct and progress without prejudicing the probationer's interests in any way.

(d) The frequency of the meetings, including visits by the officer should depend on the conduct and mode of life of the probationer and upon the progress he is making. But the number of meetings should be, unless the Court directs otherwise, not less than-

(i) once a week, during the first month;

(ii) once a fortnight, during the rest of the first half of the period of probation; and

(iii) once a month during the remaining period.

(e) The probation officer shall endeavor, by example, advice, persuasion and assistance and where necessary warning to ensure that-

(i) the probationer does not violate the conditions of the supervision order or commit any further offence and behaves in conformity with law: and

(ii) his behavior, attitude to society, habits, character and moral improve, so that he may not revert to crime.

(f) The probation officer shall also take such action as he deems necessary for better regulation of the conduct and mode of life of the probationer or for closer supervision over him.

(2) The Probation Officer shall, if the circumstances of the case so require, make an application under sub-section (1) of section 8 or, as the case may be, sub-section (3) thereof.

(3) The probation officer shall make report to the Court having jurisdiction of any circumstances which is likely to lead to the belief by the Court in the offender's failure to observe any of the conditions of the bond or bonds entered into by the offender.

(4) The probation officer shall from time to time report to the Court which released the offender under his supervision-

(a) Cases where conditions of the supervision order or bond are not adhered to, which would include inter-alia.-

(i) the probationer changing his residence;

(ii) any fresh offence committed by the probationer;

(iii) any serious violation of the conditions of the supervision order and;

(iv) any plan of the probationer to abscond;

(b) any attempt by any person to aid or abet the probationer in commission of crime or otherwise influence him so as to adversely effect his conduct and reformation and

(c) The factors, if any, obstructing the rehabilitation of the probationer.

(5) The probation officer shall assist the probationer's rehabilitation in society so that he does not revert to crime. For this purpose the probation officer shall endeavor to secure for the probationer:

(a) training facilities,

(b) employment opportunities,

(c) subject to the provision of sub-rule (10) any necessary financial aid, and

(d) contacts and associations with normal individuals and congenial organizations like Boy Scouts, Government guides, Youth Organizations, etc.

(6) The probation officer shall try to maintain constant touch with discharged probationers to follow up the process made by them towards their rehabilitation, for such periods as he deems necessary.

(7) The probation officer shall participate, wherever possible in after care schemes and organizations.

(8) The probation officer shall also undertake the following functions, namely:-

(a) educating the public and mobilizing support for the probation system;

(b) Mobilizing public assistance and co-operation in the field of social defense.

(9) A probation officer shall not divulge information concerning his inquiries or work of probation to any person other than the authorities to whom he is required to report except in so far as it is necessary to do so in the interest of the probationer.

(10) A probation officer, if the circumstances so require, may grant to the probationer,-

(a) actual expense, ordinarily not exceeding Rs. 5 for each journey for visiting the probation officer in his office;

(b) a sum not exceeding Rs. 25 in the event of his illness or for meeting the expenditure towards finding an employment or for purchase of books or payment of examination fees, if such aid is found to be necessary; or

(c) a sum not exceeding Rs. 50 if any aid is found to be necessary for enabling the probationer to start any petty business:

Provided that if any financial aid to a probationer in excess of the limits specified above or for any further purpose is found to be necessary, it may be given with sanction of the State Government.

(d) a sum not exceeding Rs. 150 by way of a loan or assistance, if so authorised by the State Government, may be paid to a probationer for the sake of economic rehabilitation.

15. Inquiry and Report by the Probation Officers

(1) For the purpose of clause (a) of section 14, the probation officer shall, after making discreet inquiries regarding the offender's character and antecedents, his social and environmental conditions, the financial and other circumstances of his family, the circumstances in which the alleged offence was committed and any other facts which the court has directed him to inquire into, put down the relevant facts filly and faithfully in the report, as nearly as may be in form III.

(2) The summary of the case shall include an objective statement of facts alongwith the Probation Officer's assessment of the case, so as to help the Court in determining the most suitable method of dealing with the offender after he is found guilty.

284. . :-
As provided under section 20 of the Probation of Offenders Act, 1958 (inserted by Gujarat Act XXXIII of 1964) the Bombay Probationof Offenders Act, 1938, (Bombay Act XIX of 1938) as also applicable in Saurashtra and Kutch shall stand repealed with effect on and from the date on which the provisions of the Probation of Offenders Act, 1958 (Act XX of 1958, Central) are made applicable to the particular area of the State.

Note.-The provisions of the whole of this chapter are applicable to the Courts of the Metropolitan Magistrates also.

CHAPTER 13
THE BOMBAY PREVENTION OF BEGGING ACT, 1959

285. . :-
The following instructions regarding Prevention of Begging Act, 1959, are issued for the information and guidance of the Judicial Magistrates in the cities where the Prevention of Begging Act, 1959, is made applicable and of the Metropolitan Magistrates in the City of Ahmedabad. Aims and Purposes The Bombay Prevention of Begging Act, 1959,as adapted and modified by the Gujarat Adaptation of Laws Order, 1960, aims at prevention of begging in the State of Gujarat. It makes better provisions for the detention, training and employment of beggars and their dependants in certain institutions, and for custody, trial and punishment for beggar offenders.

286. . :-
The Act is made applicable to the Municipal Corporation limits of the City of Ahmedabad, Baroda and Surat. The Gujarat Prevention of Begging Rules, 1964, are also made applicable to those areas. All corresponding laws and those specified in the schedule attached to the Act in force in the areas where this Act is applied, stand repealed.

287. Definition of Begging :-
Sub-sections (a), (b) and (c) of Section 2 (1) (i) describe the ways in which persons solicit or receive alms. In addition, sub-section (d) lays down that persons having no visible means of subsistence and, wandering about or remaining any public place in such condition or manner, as makes it likely that the persons doing so exist by soliciting or receiving alms; are also defined as beggars under section 2(l)(i)(d). The provisions of this section enjoin upon the magistrates to detain the vagrants who are likely to exist by soliciting or receiving alms. Utilizing those provisions with adequate prudence will help largely in combating the problem of beggary. All offences under this Act except those under Section 11 that is regarding penalty for employing or causing persons to be or using them for begging shall be tried in a summary way. Sub-sections (1) to (4) of Section 5 authorise the Magistrates to make summary inquiry and release a person forthwith if he was not found begging. The Magistrates under sub-section (5) of Section 5 have to satisfy themselves that the person found to be a beggar is not likely to beg again whenever they release the beggars after due admonition and with a bond. Sub-section (6) of section 5 makes it obligatory upon the court to obtain a report regarding his age and character, the conditions in which he was living, and such other matter, as may in the opinion of the court, require to be taken into consideration in his interest. The Probation Officers attached to a Receiving Centre for Beggars collect this data.

288. Detention of Beggars :-
Sub-section (5) of section 5 authorizes courts to detain a beggar for a period of not less than one year and not more than three years. Section 6 of the Act provides for longer detention of persons who were once detained in certified institution under the Act. The purpose of detention under the Act is to inculcate work habit in the beggars and to give sufficient and reasonable time to certified institutions to impart vocational training to persons detained in the institutions. The Magistrates, therefore, should bear in mind this purpose. The Magistrates are empowered to convert any period of detention (not exceeding 2 years) into imprisonment, if the person convicted for the second or subsequent time for begging.

289. Penalty for employing or causing person to beg or using for the purpose of begging :-
Section 11 of the Act provides for penalty for employing or causing persons to beg or using them for purposes of begging. It also provides that whoever, having the custody, charge or

care of a child connives at or encourage the employment or the causing of a child to solicit or receive alms shall on conviction be punished with imprisonment for a term from one to three years. The offences under sections 6 and 11 of this Act are cognizable and non-bailable.

290. Contribution by parents or other persons liable to maintain the beggar :-
Section 8 states that a court can make an order on the parent or other person liable to maintain the beggar to contribute to his maintenance, if able to do so, in the prescribed manner as stated under section 8 (2) and (3) of the Act. Government is maintaining Receiving Centres and beggars' detention homes for male and female beggars wherein provision for the teaching of agricultural, industrial and other pursuits and for the general education and medical care is made. The list of Institutions established under sections 12 and 13 is shown in the annexure.

291. Release on licence :-
The Chief Inspector of Certified Institutions is authorised under Section 22(l)(b) to release a detained beggar conditionally and issue him a licence therefor. In view of provisions under sub-section (5) of Section 5 of the Act, magistrates are advised that unless it is ascertained that the beggar is not likely to beg again, he should be detained in an institution. If during the detention period of the beggar, the relatives of the inmate come forward to receive the beggar or an employment has been found for him the Chief Inspector can release the beggar on licence.

292. Animals used for begging :-
Sub-sections (1) and (2) of Section 30 provide for the seizure and disposal of animal exposed or exhibited for obtaining or extorting alms. In such cases, the sore, wound, injury, deformity or disease of the animal should have been exposed. ANNEXTURELIST OF INSTITUTIONS Receiving Centres 1. Receiving Centre for BeggarsØdhav Road, Ahmedabad. 2. Receiving Centre for Beggars, Warashia, Baroda. 3. Receiving Centre for Beggars, Ramnagar Colony, Rander Road, Surat. Certified Institutions 1. Shri B.S. Satia, Beggars Home for Males, Odhav Road, Ahmedabad. 2. Beggars Home for Males, Naroda, P.O. Sardarnagar, Ahmedabad. 3. Beggars Home for Females, Dabhoda, Dist. Ahmedabad. 4. Leprosy Hospital, Kagdapith, Ahmedabad. 5. Mental Hospital, Ahmedabad. 6. Parvatibai Leprosy Infirmary, Ashvini Kumar Road, Surat (Voluntary). 7. Adult Training Centre for the Blind, Behind Atira, Ahmedabad. 8. Kushta Nivedan Sangh Hospital, Bhavnagar. Note.- The provisions of whole of this chapter are applicable to the Courts of the Metropolitan Magistrates also.

CHAPTER 14
PROCEDURE IN DEALING WITH CRIMINAL LUNATICS

293. . :-
The following instructions explanatory of the procedure in dealing with Criminal Lunatics be followed by the Courts:- (1) Before releasing a criminal lunatic under section 330(1), Code of Criminal Procedure, 1973, a Court or Magistrate should, if the accused has exhibited a tendency to violence or if the crime charged is of a serious nature, question the Civil Surgeon or other officer examined under section 328 (1), Code of Criminal Procedure, 1973, about the safety of the proposed procedure. Such medical opinion should also be taken before a Court or Magistrate orders an accused person acquitted on the ground of insanity to be detained in any place other than a Mental Hospital.

294. . :-

(1) While passing an order for detention under section 330, Code of Criminal Procedure, 1973, the trying court should state whether the accused insane would ordinarily be within the class of persons in whose favour the court may pass order under Probation of Offenders Act, 1958.

(2) A court making an order of detention under section 330, Code of Criminal Procedure, 1973, should inform the Superintendent of the Mental Hospital in which the insane is to be detained of the maximum period of imprisonment prescribed by law for the crime with which the insane has been charged.

295. . :-

(1) A person detained under the provisions of section 335(l)(a), Code of Criminal Procedure, 1973, should not ordinarily be committed to jail except as a temporary measure. In order to accelerate the process of transferring the criminal lunatic from a jail to a mere proper place of custody, it is desirable that the court passing the order under section 335(1)(a), Code of Criminal Procedure, 1973, should direct that the criminal lunatic in question shall be kept in safe custody in particular jail and shall then be transferred, after the necessary arrangements have been made, to a particular mental hospital or to such other mental hospital as may have accommodation for him. It should be enquired by a telegram, as to in what mental hospital accommodation is available so that the detention in the jail may be as short as possible.

(2) The Magistrate or the Judge has powers to deliver the accused person against whom the findings are that he committed the alleged act and if such act would, but for the incapacity found have constituted an offence, to the relatives or friend of such person under clause (bO of sub-section (1) of section 335 but such power should be exercised only subject to the provisions of sub-section (3). If the Magistrate or the Judge is of the opinion, having regard to the nature of the offence, history of the accused, medial evidence, if any, certificate of the visitors when the accused was previously confined under section 330, Code of Criminal Procedure, 1973, if any, that the accused may safely be handed over to the custody of the relatives or friends at their request, the Magistrate or the Judge should pass such an order. The certificate under section 331, Code of Criminal Procedure, 1973, that the accused is capable of making his defense, does not necessarily imply that his mental condition is such as to make it safe to release him.

296. . :-
The maintenance orders in respect of insane persons should be issued within seven days from the date of issue of reception orders in petition cases under sections 7 and 10 of the Act and within three months in other cases.

297. . :-
Extracts from the notification of Government, General Department, No. 322, dated the 19th October, 1921, published at page 800 of the supplement to the Bombay Government Gazette for 1921, is reproduced, as amended from time to time, for information. In exercise of the powers conferred by section 91 of the Indian Lunacy Act, 1912 (IV of 1912), and in supersession of the notifications noted below *the Government of Bombay are pleased to make the following rules for the administration of the Act in the State of Gujarat. *General Department Notification dated the 18th May 1894; General Department notification No. 3881, dated the 23rd December, 1887; General Department notification No. 4997-A, dated the 11th September, 1890; General Department notification No. 1495, dated 19th March 1909.

1. General Establishment of Mental Hospitals.-Mental Hospitals have been established by the State Government under section 84 of the Act at the following stations in the State of Gujarat for the reception and treatment of persons of any class from any part of the State of Gujarat. Mental Hospital, Ahmedabad.

Note. -Mental Hospitals are also at the following places where lunatics are sent:-

1. Mental Hospital, Baroda.

2. Mental Hospital, Jamnagar.

3. Mental Hospital, Bhuj.

2. Detention of person under observation.-(a) A person ordered to be detained for observation under section 16 of the Act in any district in which there is no Mental Hospital, shall be sent to a hospital or dispensary where suitable accommodation exists or to jail or lock-up, as may seem most appropriate to the magistrate or commissioner of police, regard being had to his apparent condition, the means of accommodation and guarding, and the facilities for skilled observation available in each case.

4.

(1) Intimation to Superintendent that the lunatic is to be received.-Any authority before making a reception order or an order for admission to any Mental Hospital shall communicate direct with the Superintendent, or if necessary the Surgeon General, and ascertain if accommodation is available specifying at the same time the sex, race and caste of the lunatic (Government Notification, General Department No. 322, dated 18th June, 1925).

(2) Inquiry as to the domicile of the Lunatic.- A Magistrate or the Commissioner of Police making reception order under section 14 or 15 of the Act, shall after ascertaining that accommodation is available direct the reception of the lunatic into the nearest Mental Hospital or asylum affording suitable accommodation. He shall, in all cases, make strict enquiry as to the domicile of the lunatic and shall see that entry to that effect is made in the medical history sheet (Appendix III) or is communicated as soon as possible to the Superintendent of the asylum in which the lunatic is to be admitted.

(3) Procedure to be followed by Magistrate making reception order under section 5-11 of the Act.-The magistrate cannot authorise the admission of a lunatic under section 5-11 of the Act, into an asylum or Mental Hospital in another State, except under a general or special order of the State Government made in this behalf (Section 85 of the Act). In all such cases, he shall first satisfy himself that accommodation is available, and that the cost of maintenance will be paid (Section 11). In order to effect the earliest possible treatment of the lunatic, action shall be taken as soon as possible and the magistrate shall furnish to the State Government in writing full details as to domicile, reasons for the admission, fees agreed to, etc.

(4) Report to Government in case of lunatics domiciled elsewhere than in the State.-As soon as it is known that a lunatic, who has been admitted to a Mental Hospital or asylum in the State of Bombay, is domiciled elsewhere than in that State, the fact (with details of the case) should be brought to the notice of the State Government, so that action for the removal of the lunatic may, if advisably, be intimated early with the Government of the State of domicile under section 35 of the Act (Government Notification, General Department No. 3107, dated 23rd April, 1923).

(4A) Undertaking in writing by the petitioner or some other person for the payment of maintenance charges of the lunatic.-The petitioner or some other person desiring to engage himself under clause (b) of section II of the Act to pay the cost of maintenance of the lunatic shall, in order to satisfy the magistrate that he will carry out his undertaking, give such undertaking in the form in Appendix III-A.

5. Transfer and escort of lunatics.-

(1) When a magistrate has made an order under section 14 or 15 of the Act for the detention of a lunatic in a Mental Hospital, he shall arrange in communication with the Police, for the early dispatch of such lunatic with a suitable escort. The reception order, the medical history sheet in the form, Appendix III, the evidence of the medical witness, if taken, and any other papers that may be necessary or have a bearing on the lunatic's state of mind, shall be forwarded to the Superintendent of the Hospital by registered post, a

duplicate of the order being also given to the escort. If for any reason the medical history sheet or other documents not prescribed by the Act cannot be forwarded at once, they should be furnished later; but the lunatic should not be allowed to remain in a Civil Hospital or lock-up because these papers are not ready.

(2) No lunatic shall be dispatched to a Mental Hospital unless a medical officer or medical practitioner certifies in the prescribed form (Appendix II) immediately before dispatch that he is fit to travel. The originals of such certificates shall be sent to the Superintendent of the Hospital by post.

(3) The magistrate shall satisfy himself that the lunatic is provided with sufficient clothing and bedding for his protection and comfort during the journey. He shall provide escort with sufficient means to purchase food for the lunatic on the journey, and shall instruct for the officer in charge to take the lunatic to the nearest hospital for treatment in the event of his becoming ill.

(4) A female lunatic shall always be accompanied by a female attendant or relative, in addition to the police escort.

6. Documents to accompany a lunatic sent to a Mental Hospital.- The Superintendent shall see that the documents detailed below and such other documents as may be from time to time prescribed accompany every lunatic sent to the Mental Hospital. Any defect or omission discovered shall be brought to the notice of the authority or person concerned with a view to its prompt rectification:-

A Documents to be forwarded by a Magistrate in the case of a lunatic placed under restraint upon petition:

(1) The reception order (Schedule I, Form 2 of the Act).

(2) The two mental certificates referred to in section 5(1).

(3) The original application for a reception order and statement of particulars (Schedule I, Form 1 of the Act).

(4) If the case has been investigated or sent up by the police, the more important police papers (or copies thereof) bearing on the mental condition and history of the lunatic.

(5) A certificate of fitness for travelling [Rule 5(2) and Appendix II].

B Documents to be forwarded by the magistrate or by the Commissioner of Police in the case of a lunatic found wandering at large, a dangerous lunatic not under proper care and control, or who is cruelly treated or neglected:

(1) The reception order (Schedule I, Form 5 of the Act).

(2) A certificate from a Medical Officer (Schedule I, Form 3 of the Act).

(3) The revised form of medical history sheet (Appendix III).

(4) If the case has been investigated or sent up by the police, the more important police papers (or copies thereof) bearing on the mental condition and history of the lunatic.

(5) A certificate of fitness for travelling [Rule 5(2) and Appendix II].

C Documents to be forwarded by the Court in the case of a Criminal lunatic sent to a Mental Hospital under section 466 or 471, Criminal Procedure Code, (section 330 to 335 of the Code of Criminal Procedure, 1973) read with section 24 of the Act.

(1) A copy of the judgment, or where there is no judgment, of the order of the Court. Also in an case tried by jury in a sessions court, a copy either of the heads of the charge to the jury or of the committing magistrate's order, or of both, as may be considered by the presiding Judge to be most useful.

(2) The revised form of medical history sheet (Appendix III).

(3) If the case has been investigated or sent up by the police, the more important of the police papers (or copies thereof) bearing on the mental condition and history of the lunatic.

(4) A certificate of fitness for travelling [Rule 5(2) and Appendix II].

7. Amendment of papers sent with lunatics.-Superintendent of Mental Hospitals shall remedy as far as possible all important deficiencies in the papers forwarded to them with reference to any lunatic, other than the papers, referred to in Section 27, after communicating with the authority who signed the order for detention, reception or admission or with the certifying Medical Officers.

10. Reports by Official visitors on Criminal lunatics.-When the Official visitors certify that a criminal lunatic detained under section 466 of the Criminal Procedure Code is capable of making his defense, or that a criminal lunatic detained under the said Code may be discharged, their certificate shall be forwarded to the Magistrate or Court concerned or to the State Government, through the Superintendent who shall forward with it a report in the manner prescribed in rule 11. When the official visitors certify under section 473 of the said Code that a Criminal lunatic is capable of making his defense, they shall at the same time state whether he may be safely discharged, a certified copy of their statement shall be forwarded by the Superintendent to the trying Court.

11. Removal and discharge of criminal lunatics detained under Chapter 34 of the Criminal Procedure Code.-A Superintendent submitting for orders the report of the visitors on the case of a criminal lunatic detained under the provisions of Chapter 34 of the Criminal Procedure Code, shall forward therewith to the Magistrate or Court concerned or the State Government, as the case may be, the medical history-sheet of the lunatic in the form of Appendix IV accompanied by an abstract from the Mental Hospital case book detailing the chief events in his history, recorded opinion with dates regarding his mental attitude while under observation in the Hospital and shall state his opinion as to the safety of the proposed procedure. When a report is submitted with reference to a lunatic whom it is proposed to deal with under section 474 or 475 of the Criminal Procedure Code, the Superintendent shall also submit in the fullest detail his reasons for believing that it is safe to set the lunatic at liberty; and when the Superintendent considers that, owing to the nature of the disease or to the nature of the crime for which the lunatic has been detained, there are elements of difficulty, he may, when submitting his report, advise that the lunatic be transferred for further observation to a Central Mental Hospital. The Superintendent of the Central Mental Hospital to which such lunatic may be transferred shall, after such period of observation as he may consider necessary submit his recommendations to the State Government.

18. Fees chargeable for maintenance.

(1) Subject to the provisions of Sub-Rules (2), (6) and (7), fees shall be charged for the maintenance of inmates of Government Mental Hospital at the following rates, namely:-

1. Persons (including their dependents) Nil. whose income does not exceed Rs. 180 per month

2. Persons (including their dependents) Rs. 1.50 p. Per day. whose income is Rs. 180 or more per month but does not exceed Rs. 300 per month.

3. Persons (including their dependents) Rs. 4 Per day. whose income is Rs. 300 or more per month but does not exceed Rs. 500 per month.

4. Persons (including their dependents) Rs. 5 Per day. whose income is Rs. 500 or more per month but does not exceed Rs. 750 per month.

5. Persons (including their dependents) Rs. 6 Per day. whose income is Rs. 750 or more per month.

6. Members of the Army, Navy or Air Force At the rates or any other armed force of the Union, prescribed in Army Regulations.

EXPLANATION.-In this sub-rule, the expression"dependent" means any of the following relatives of a person, namely, a wife, husband, parent, child, minor brother, unmarried sister and deceased son's widow and child and where no parent of person is alive, a paternal grand parent, residing with and wholly dependent on such person.

(2) Notwithstanding anything contained in Sub-rule (1)-

(a) Where local authorities are liable under any law for the time being in force for the maintenance and treatment of lunatics resident in the area within their jurisdiction and who are committed to Government Mental Hospital, fees for their main- tenance shall be charged at the rate of Rs. 0.75 p. per day per inmate.

(b) Fees for inmates who come from other State or who are not citizens of India shall be charged as follows:- Vegetarian Non-vegetarian

(1) Persons whose income does Rs. 2-50 p. per Rs. 3 per day. not exceed Rs. 300 per day month.

(2) Persons whose income is Rs. Rs. 4 per day. Rs. 4 per day. 300 or more per month but does not exceed Rs. 500 per month.

(3) Persons whose income is Rs. Rs. 5 per day. Rs. 5 per day. 500 or more per month but does not exceed Rs. 750 per month.

(4) Persons whose income is Rs. Rs. 6 per day. Rs. 6 per day. 750 or more per month.

(c) Fees for special class of inmates at the C.M.H. Yeravada, shall be charged at the following rates:- I Class patients Rs. 12 per day II Class patients Rs. 8 per day

(3) Fees at an uniform rate of Rs. 20 for electric shock therapy and at Rs. 75 for insulin treatment shall be charged for all paying patients, the indigent patients should be exempted from payment of fees for these treatments.

EXPLANATION.-The expression "Indigent patient"means a patient the aggregate income of whose family members residing and messing jointly including that of any relative or guardian legally responsible to maintain him does not in the opinion of the Superintendent of the Mental Hospital exceed Rs. 1,800 per annum.

(4)

(a) Subject to the provisions of sub-rule (3), the indigent and the paying patients shall be entitled to get all the ordinary amenities available in a Government Mental Hospital.

(b) Special Class inmates at the C.M.H., Yeravada, shall be entitled to get routine medical treatment (other than electric shock therapy and insulin treatment), a separate well furnished room, specially cooked food, private washing of clothes and one private attendant free of all costs.

(5) Fees due from inmates shall be paid monthly in advance.

EXPLANATION.- For the purpose of calculatingthe fees both the day of admission into Hospital and the day of discharge there from shall together be counted as one day.

(6) Subject to the provisions of sub-rule (7), the following categories of persons are exempted from the payment of all charges and fees under this rule and shall be treated free in all Government Mental Hospitals, namely-

(a) Person employed in the Civil services of the State and members of their families.

(b) Hony. M.O's. at Government Hospital and dispensaries.

(c) Students studying in Medical Colleges in the State for one year only.

(d) All criminal lunatics.

(e) Subsidized Medical practitioner appointed under the Rural Medical Relief Scheme.

EXPLANATION.-The expression "family" in relation to a person employed in the Civil Service of the State means such employee's wife or husband, legitimate and step children residing with and wholly dependent on him and also widowed mother, unmarried sisters and brothers below the age of 18 years, if dependent on him.

(7) Nothing in this rule shall apply to any payment ordered under the provisions of sections 87, 88 and 89 of the Act.

18A. Reduction or remission of maintenance charges by order of Magistrates.-

(1) Where a Magistrate who had authorised the detention of an inmate finds, after due inquiry, that the petitioner or other person who has engaged in writing, under clause (b) of section 11, to pay the cost of maintenance of the inmate, has died or has become at any time, on account of insolvency or any other reason, unable to continue the payment of the cost of maintenance, the Magistrate may subject to the provisions of sub-rule (2) order a reduction or remission of such cost and inform the Superintendent of the Hospital accordingly.

(2) Where the inmate immediately prior to his admission into the hospital was ordinarily residing in any area within the limits of a local authority which is liable to pay the cost of maintenance of lunatics under the provisions of the law governing such local authority, the Magistrate shall after due inquiry made in that behalf in modification of the order of reduction or remission made under sub-rule (1), issue a fresh maintenance order charging such local authority with the maintenance charges of the inmate aforesaid at the rate prescribed under rule 18.

CHAPTER 15
MUNICIPAL APPEALS RULES

298. . :-
In exercise of powers conferred by Article 227 of the Constitution of India, the High Court of Gujarat hereby makes, with the previous approval of the Governor of Gujarat, the Municipal Appeal Rules, 1976.

CHAPTER 16
APPEALS AND REVISION APPLICATIONS TO COURTS OTHER THAN THE HIGH COURT

299. . :-
The provisions of appeal to the Court of sessions are found in sections 372 to 376,382,387,389,391 and 394, Code of Criminal Procedure, 1973. The Sessions Judge, Additional Sessions Judge, Assistant Sessions Judge and the Chief Judicial Magistrate, who have the powers to hear the appeal should strictly follow the provisions of the said sections.

300. . :-

(i) Before summarily dismissing the appeal it is obligatory to give reasonable opportunity to the appellant or his pleader to be heard.

(ii) The appeal presented from the jail by the convict should not be dismissed summarily without hearing the appellant except in circumstances specified in section 384 (1) (b), Code of Criminal Procedure, 1973. The appellant who has preferred the appeal from the jail and who is not represented by the pleader should be called from the jail and should be heard

before the appeal is disposed of and the power of not calling the accused from jail should be very sparingly exercised on grounds mentioned in the section.

301. . :-
If the appeal is not summarily dismissed, the notice of the appeal should be served to the persons as specified in section 385, Code of Criminal Procedure, 1973. In case of appeal from judgment of conviction in a case instituted on complaint, notice will have to be seryed to the complainant with the copy of grounds of appeal, if the appellate Court does not dismiss appeal summarily.

302. . :-
The appeal against sentence of death or imprisonment should not be disposed of on the ground of abatement on the date of appeal till the expiry of the period of 30 days after the date of the appeal as the near relatives of the appellant have right to continue the appeal as provided under section 394, Code of Criminal Procedure, 1973.

303. Joint appeals or applications :-
Several persons complaining of one order or judgment in a criminal case affecting them all may join in one appeal or application for revision, and one copy of the judgment or order complained of shall be sufficient. The appellate Court may, however, require separate petitions to be made by petitioners whose cases are, in its opinion, conflicting. Where a joint petition is allowed, one Court fee and Vakalatnama shall be sufficient.

304. Grounds of appeal and list of articles to be included in the Paper-book :-
Unless otherwise ordered by the Court, the grounds of appeal and a copy of the list of articles produced in the Court shall be included in the Paper-book prepared in an appeal before the Sessions Court. In appropriate cases paper-book may be dispensed with by the Sessions Judge.

305. Acceptance of appeal without copy of judgment :-
When owing to the proceedings of a Magistrate having been sent to the High Court, it is impossible for an appellant to obtain a copy of the judgment, the Court to which an appeal has been made should accept the petition of appeal, though not accompanied by a copy of the judgment as required by law. The Court should then immediately write to the High Court, stating that an appeal has been made and ask for the return of the record and proceedings.

306. Bail before Nazir :-
Whenever the Court of Session directs any person to be released on bail, the Sessions Court shall order such bail to be given before the Nazir of the District Court or before such Magistrate as the Court may think most convenient.

307. Transmission of appellate judgment to the trial Court :-
The Court deciding an appeal or revision shall transmit a copy of its judgment to the Magistrate against whose decision the appeal or revision was preferred, or to his successor in office. When the Magistrate, whose decision was appealed from or against whose decision the revision was preferred, has been transferred to another station, he should also personally be furnished with a copy of the judgment in the appeal or revision.

308. References and Revision :-
The provisions of the reference and revision to the High Court are found in sections 395 to 405, Code of Criminal Procedure, 1973.

(i) The power of reference is very limited and is confined to only cases involving the question of validity of any Act, Ordinance, Regulation or any provision contained therein. Any Judge or Magistrate can refer the matter to the High Court under section 395, Code of Criminal Procedure, 1973, only if the validity of the Act, Ordinance, Regulation or any other provision thereof is involved which is necessary for the determination of the case. The Judge or the Magistrate referring the matter to the High Court should specifically mention

the reasons for his opinion as to why he considers the provisions as invalid or in- operative.

(ii) The Court of Session or the Metropolitan Magistrate may also refer for the decision of the High Court any question of law arising during the hearing of the case pending before such Court or Magistrate. The Sessions Judge or the Metropolitan Magistrate should not send the original record of the case till it is called for by the High Court. The reference shall be accompanied by a statement of the case in English giving-

(i) A brief abstract of the case;

(ii) The grounds upon which it is proposed that the High Court should exercise the powers conferred by section 396 of the Code of Criminal Procedure; and

(iii) Whether the accused is in custody or on bail.

309. . :-
The powers of the revision of the Sessions Judges are enlarged under the relevant provisions of the Criminal Procedure Code, 1973 and they have practically the powers of the Court of Appeal under the provisions of sections 389, 390, 391 and 401, as provided under section 401, Code of Criminal Procedure, 1973. The Sessions Judge may also call for the record of the Executive Magistrates as provided under section 397, Code of Criminal Procedure, 1973. The Sessions Judge has to dispose of them as provided under the Code of Criminal Procedure.

310. . :-
The power of the revision cannot be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.

Note.-The provisions of the paragraph 308, are applicable to the Courts of the Metropolitan Magistrates also.

CHAPTER 17
APPEALS TO THE HIGH COURT AND SUPERINTENDENCE AND REVISION AND TRANSFER OF CASES BY THE HIGH COURT

311. Jail Petitions :-
Every officer in charge of a jail, on receiving a petition of appeal or a revision application to the High Court against the decision or order of the Sessions Judge shall at once intimate the fact to the Sessions Judge and at the same time inform him whether the petition of appeal or revision application is accompanied by a copy of the Sessions Judge's judgment. If the petition of appeal or revision application be not accompanied by such a copy, the Sessions Judge shall at once forward to the High Court a certified a copy of the judgment.

312. . :-
Every criminal appeal or revision application sent to the High Court from a prisoner in jail shall contain a statement that no appeal or revisional application in the same matter has been previously filed, and the officer in charge of the jail shall see that such a statement is made in the memorandum of appeal or the application before sending to the High Court.

313. Paper-book :-
Whenever in a criminal matter a paper-book is prepared in the Sessions Court, the Sessions Judge should invariably send the copy of the paper book along with the record and proceedings of the case for the use of the High Court.

314. . :-

(1) When the record of a case, in appeal is called for from a Court of Session by the High Court the Sessions Judge shall if the papers are not asked for in original only, forward with it four typed and paged copies of the records and proceedings. The copies should be initialed as correct by the typist and the Clerk of the Court. The copies should contain first the diary of the proceedings, then the list of property and the charge and thereafter the

depositions, the statement of the accused person, notes of arguments, the judgment and other exhibited documents typed copies of other exhibited documents, if any, arranged in serial order. With each copy should be supplied an index in the form No. 63. Exhibits in Gujarati language are not required to be translated into English. Typed copies of the Gujarati exhibits should be placed in their proper position in the paper-book. The index should allow for (but not include in its paging) the memo of appeal which will be typed in the High Court and included in the paper-book immediately after the index.

(2) The copies should be accurately made and the record should not be unnecessarily increased by including pages which are practically blank or otherwise. All the copies taken out should be clearly legible and not faint or blurred. The Registrar or the Clerk of the Court of the Sessions Court, as the case may be, should verify before sending the paper-books to the High Court that all the paper-books are legible and neatly prepared as per direction in the Manual.

(3) The typed copies should be given independent paging and not the paging of the original record.

(4) Instructions contained in sub-paragraphs (1) and (2) should be scrupulously followed so as to avoid mistakes in typing the records, arranging and paging the paper-books, checking the exhibits and in preparation of the paper-books. The Clerk of the Court or the Senior Clerk should exercise proper supervision over this work, and give assistance of experienced Clerk to the Section-writers for comparing work. The presiding officer of the Court should see that this is properly done and that he should himself see and check up the paper-books before the same are transmitted to the High Court.

(5) The serial number on the copies taken out should be clearly stated, so that the first two clean copies may be made available for the use of the Court. If necessary, suitable action be taken against the persons responsible for mistakes in preparing the paper-books.

315. . :-
Whenever a confession, recorded under section 164 of the Code of Criminal Procedure, 1973, and written in the regional language, is used as evidence in a trial before a Court of Session, a typed copy of it should be included in a paper-book.

316. . :-
When the record of a case has been called for in original only under section 384(2) of the Code of Criminal Procedure, 1973 and the appeal has been subsequently admitted, the record may be returned to the Court of Session, for copies to be made as provided above.

317. . :-
In Confirmation cases and References where the offence involves a death sentence, one typed copy of the record and proceedings, including the judgment should be dispatched to the High Court within 7 days of the decision. This copy should be typed on one side of the paper only, as the record is to be printed.

318. . :-
In an appeal filed by the Government against an order of acquittal, printing shall be dispensed with unless the public prosecutor obtains an order from the Court at the time of the admission of the appeal that the record should be printed. In the latter case, the lower court shall supply one copy typed on one side of the paper only.

319. Accompaniments to References under section 395 :-
The reference submitted to the High Court under section 395(1) of the Code of Criminal Procedure, 1973, shall be accompanied by the record of the case, but when reference is made under sub-section (2) of section 395 of the Code, the record of the case should be sent to the High Court only when it is called for by the High Court. The reference shall be accompanied by a statement of the case in English giving-

(i) A brief abstract of the case;

(ii) The grounds upon which it is proposed that the High Court should exercise the powers conferred by section 396, Code of Criminal Procedure, 1973; and

(iii) Whether the accused is in custody or on bail.

More than one case should not be submitted with one letter. Each case should be accompanied by a letter and the statement referred to above.

320. Returns to High Court Writs :-
Returns should be made to all writs issued from the High Court, if possible within the time specified therein, in the form of endorsement on the writ certifying its execution, or the reasons which may have prevented its execution. When such execution involves the arrest of an accused person, or the release of a prisoner, the return should be made, immediately after such person has been arrested, or released; when execution involves the refund of a sum of money, the return should be made immediately after the refund has been made. The date of arrest or of the refund should be certified in the return. All the writs issued by the High Court should invariably be returned in time. In cases in which prisoners have been released, the date and hour at which the Superintendent of Jail received the order to release the prisoner and the date and hour at which he released the prisoner should be certified. On receipt of a writ from the High Court the date of receipt shall be at once endorsed thereon; and when the return is made, the reasons shall be stated for any delay that may have occurred beyond the period prescribed for the return.

321. . :-
In cases where the execution of writ involves the release of a prisoner in jail as well as the refund of a fine, the return should be made, certifying only the release of the prisoner, if it is found that the fine cannot be refunded for a period of 15 days after such release. The fact of the refund of the fine in such cases may be subsequently certified by a separate letter in continuation of the original return.

322. . :-
In all returns to writs under paragraphs 320 and 321 the date on which the accused was arrested and the period for which he was on bail, should be stated. It should also be mentioned whether at the time of the return of the writ, the accused is on bail or in custody.

323. . :-
When proceedings are called for by the High Court from any Magistrate the copy of any order made by the appellate or revisional Court and transmitted to the lower Court shall be forwarded to the High Court with the record and proceedings of the Magistrate.

324. . :-
When the High Court calls from a Magistrate for the record of the case, which record has already been sent to the Sessions Court in appeal, the Magistrate shall make a return accordingly to the writ. When a case is called for at the same time both on appeal by the Sessions Court and by the High Court in revision the Magistrates shall comply with the order of the Sessions Court and make a return accordingly to the writ of the High Court.

325. . :-
When the proceedings in Sessions case are called for by the High Court the typed copies of the proceedings of Sessions Court, shall be sent first and the original record containing the rest of the Sessions and magisterial proceedings shall follow as soon as the intimation is received of the receipt of the typed copies by the High Court.

326. . :-
Records sent to the High Court should be properly arranged. The record sent by the Sessions Court or District Magistrate should be accompanied by a list of First in Form No.

64, signed by the Registrar or the Clerk of the Court of the Sessions Court or by the officer of the office of the District Magistrate, as the case may be. The record sent by the Court of the Metropolitan Magistrate should be accompanied by a list of First in form No. 65, signed by the Registrar of the Court of the Metropolitan Magistrate.

327. Appeals against Acquittals. :-
The following are the relevant provisions of orders which have been issued in regard to the procedure relating to appeals against acquittals:=

(1) If the accused is not in custody, the trial Courts should, in case of poverty, provide him with sufficient funds calculated on the scale of journey and subsistence money admissible to witnesses attending the High Court, to enable him to proceed to Ahmedabad. These amounts should be paid from the grant for road and diet money for witnesses.

(2) The trial Court, on receipt of an intimation that an appeal has been admitted, shall in cases of poverty, inform the accused person, whether in custody or not, that unless he intends to make his own arrangements for legal assistance, the High Court will engage a legal practitioner at Government expense to appear before it on his behalf. If it is ascertained that he does not intend to engage a legal practitioner at his own expense, a qualified legal practitioner shall be engaged by the Registrar of the High Court to undertake the defense and his remuneration shall be paid by the Government.

(3) No elaborate enquiry into the accused's poverty is necessary. Assistance should be offered to any person who cannot afford the cost of the journey or of his own defense as the case may be.

(4) These orders should apply equally to appeals for enhancement of sentences under section 377 of the Code of Criminal Procedure.

328. . :-
When a Court reports a case to the High Court for transfer under section 407(2) of the Code of Criminal Procedure, 1973, it would give notice to the accused and the complainant (if any), about having reported to the High Court.

329. . :-
The High Court deciding the appeal or revision shall transmit a copy of the judgment to the Sessions Judge against whose decision the appeal or revision was preferred or to his successor in office. When such Sessions Judge is already transferred to another station, he should also be personally furnished with the copy of the judgment in appeal or revision.

Note.-The provisions of all paragraphs except 325 are applicable to the Courts of the Metropolitan Magistrates also.

CHAPTER 18
EXECUTION OF SENTENCE AND ORDERS

330. . :-
Cases in which the sentence for default of fine is wholly undergone and the Court, does not find special reasons to be recorded in writing to issue the warrant for recovery of fine under section 421(1) the Judge or Magistrate shall write off the amount of fine unless the order has been made for the payment of expenses or compensation out of fine under section 357.

331. . :-
When an accused, who is sentenced to pay a fine, applies to the Court convicting him that the amount of fine may be recovered from the amount deposited by him in such Court as security, the said Court shall make an order accordingly, and the amount of fine shall be recovered from the amounts, if any deposited as security.

332. . :-
When any Court recovers a fine, or any portion thereof, inflicted upon a prisoner who is

already in jail, or who is liable to be further detained in jail in default of payment of that fine, such Court shall immediately send a communication to the Jailor, of the amount of fine so recovered in form No. 66.

333. . :-
When a Court has committed a person to jail in default of payment of fine and such person is subsequently transferred to another jail, the Superintendent of the former jail shall at once notify the transfer to the Court.

334. . :-
The following rules are framed to provide for the execution of orders of the Courts of appeal, reference or revision:-

(i) When a sentence on a prisoner is reversed or modified on appeal by a Court other than the High Court, a fresh warrant shall be issued by the appellate Court to the Officer in charge of the Jail and its order shall be communicated to the lower Court for record:

Provided that when the appellate Court orders the re-trial or committal for trial of a prisoner under section 386 of the Code of Criminal Procedure, 1973, it shall communicate its order to the Court whose decision has been reversed and that Court shall thereupon make such orders as are conformable to the judgment or order of the appellate Court.

(ii) When an appeal is dismissed or a sentence confirmed by an appellate Court other than the High Court an intimation to that effect shall be sent to the Officer in charge of the jail by such appellate Court and its order shall be communicated to the lower Court for record.

(iii) When a case is decided on appeal or revised by the High Court, the Court to which the High Court certifies its order, shall proceed, under the provisions of section 388 or 405 of the Code of Criminal Procedure, 1973, to issue, when necessary, a fresh warrant or order to the Jailor and while certifying the writ it shall state that fact of such communication and the date thereof.

(iv) On the rejection by the High Court of an appeal or application for revision from a prisoner in jail being communicated to the Court by which he was convicted, such Court shall at once cause intimation of the decision to be given to the prisoners and shall certify that such intimation has been given and also the date of giving such intimation.

(v) In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the High Court will send a copy of its order to the Court of Session, which shall then issue a warrant to the officer in charge of the jail, as provided in section 413 of the Code of Criminal Procedure, 1973.

(vi) In all cases in which a sentence or order is modified or reversed, whether in appeal or revision, a separate warrant should be issued as regards each prisoner whose sentence has been so modified or reversed.

(vii) In all cases, the Superintendent of that Jail shall acknowledge, by letter the receipt of any warrant, or order or intimation and shall inform the prisoner of the result of his appeal or application; a report whereof shall also be made by him in his letter of acknowledgment.

(viii) In all cases in which a fresh warrant has been issued, whether in appeal or revision, the warrant should be returned to the Court issuing it when it has been fully executed.

(ix) When the High Court either (1) sentences on appeal a person who has been acquitted by a subordinate Court, or (2) passes in appeal or revision a sentence involving re-imprisonment of a person who has already completed the term of imprisonment awarded by a subordinate Court; (a) if the accused person appears, the High Court will immediately upon passing sentence of imprisonment, order the arrest of the convict and a warrant will be issued in the usual form to the Superintendent of the Central Jail, Sabarmati Ahmedabad; (b) if the accused person does not appear, the High Court's order will be sent

to the Court by which the trial was held, and it will thereupon be the duty of such Court to carry into effect the sentence of order of the High Court, in the same manner as if such sentence or order has been passed by itself.

(x) In cases where an appellate Court has ordered a fine inflicted by a Court of first instance to be refunded, the appellate Court should forthwith certify its orders to the Court of first instance and the Court of first instance should, on receipt of the appellate Court's order for such refund of the fine, immediately prepare a payment order, if the fine has been levied and delivered it to the payee, whether he applies for it or not. The Court of first instance should at the same time ascertain from the payee at what treasury or sub-treasury he desires the refund to be made and at once direct the officer in charge of such treasury or sub-treasury to make the refund and inform the appellant of having done so. The officer in charge of the treasury or sub-treasury should, on presentation of the payment order and without requiring the applicant to furnish an official copy of the appellate Court's order or judgment or any other document besides his bare application, make the refund upon demand of the applicant as soon as he has furnished satisfactory proof of his identity.

335. . :-
The provisions of paragraph 323 shall, in so far as they relate to the enforcement of orders passed by the High Court, in its appellate or revisional jurisdiction, apply to orders passed by the Supreme court in exercise of its appellate jurisdiction.

336. . :-
The Court should give effect to orders of the Supreme Court on the production before them or on receipt by them directly, of the certified copies of the Supreme Court orders without waiting for formal endorsement from the High Court and should immediately give intimation of action taken to the High Court.

337. . :-

(1) The Jailor is the officer in charge of the jail to whom the warrants for the execution of capital sentence should be addressed by the Sessions Courts.

(2) Every execution of such sentence shall be attended by an Executive Magistrate deputed by the District Magistrate and the officer so attending shall countersign the return of execution to be sent to the Court of Session.

338. . :-
On receipt from the High Court of the order of capital sentence, the Court of Session shall direct in the warrant addressed to the jailor that the execution shall not be carried out until the day therein named. Such date shall not be earlier than 60 days and ordinarily not later than 70 days from the date of the receipt of the order of the High Court.

339. . :-

(1) When a sentence of death has to be carried into execution, the Sessions Judge shall make arrangements to secure the attendance thereat of an Executive Magistrate deputed by the District Magistrate, as specified in the foregoing paragraph 337 and in the warrant which the Sessions Court issues to the jailor, he shall be directed to carry out the execution, in the presence of an Executive Magistrate.

(2) When sending a warrant for execution to the jailor, the Sessions Judge shall at the same time, inform the Superintendent of the Jail of his having done so.

340. Mercy Petitions :-
The following instructions regarding procedure to be observed by the State for dealing with petitions for mercy from or on behalf of convicts under sentence of death and with appeals to Supreme Court and applications for special leave to appeal to that Court by such convicts are reproduced for convenience of reference.

A. Petitions For Mercy

I. A convict under sentence of death shall be allowed if he has not already submitted a petition for mercy, for the preparation and submission of petition for mercy, seven days after and exclusive of the date on which Superintendent of Jail informs him of the dismissal by the Supreme Court of his appeal to the Supreme Court:

Provided that in cases where no appeal to the Supreme Court has been preferred, or no application for special leave to appeal to the Supreme Court has been lodged, the said period of seven days shall be computed from the date next after the date, on which the period allowed for an appeal to the Supreme Court or for lodging an application for a special leave to appeal to the Supreme Court expires.

II. If the convict submits a petition within the above period, it shall be addressed,

(a) in the case of the State to the Governor of the State and the President of India,

(b) in the case of the Union Territories to the President of India. The execution of sentence shall in all cases be postponed pending receipt of their orders.

III. The petitions shall in the first instance,-

(a) in the case of the States be sent to the State Government concerned for consideration and orders of the Governor. If after consideration it is rejected it shall be forwarded to the Secretary to the Government of India, Ministry of Home Affairs. If it isdecided to commute the sentence of death, the petition addressed to the President of India shall be withheld and an intimation of that fact shall be sent to the petitioners;

(b) in the case of the Union Territories, be sent to the Chief Commissioner who shall forward it to Secretary to the Government of India, Ministry of Home Affairs, stating that the execution has been postponed pending the receipt of the orders of the President of India.

IV. If the convict submits the petition after the period prescribed by Instruction I above it will be within the discretion of the Chief Commissioner or the Government of the State concerned, as the case may be, to consider the petition and to postpone execution pending such consideration and also to withhold or not to withhold the petition addressed to the President. In the following circumstances, however, the petition shall be forwarded to the Secretary to the Government of India, Ministry of Home Affairs.

(i) if the sentence of death was passed by the appellate Court on an appeal against the convict's acquittal or as a result of an enhancement of sentence by the appellate Court whether on its own motion or on an application for enhancement of sentence, or

(ii) when there are any circumstances about the case, which in the opinion of the Chief Commissioner or the Government of the State concerned, as the case may be, render it desirable that the President should have an opportunity of considering it as in cases of a political character and those in which for any special reason considerable public interest has been aroused. When the petition is forwarded to the Secretary to the Government of India, Ministry of Home Affairs, the execution shall simultaneously be postponed pending receipt of orders of the President thereon.

Note.-The petition made in a case where the sentence of death is for an offence against any law exclusively relatable to a matter to which the executive power of the Union extends, shall not be considered by the State Government but shall forthwith be forwarded to the Secretary lo the Government of India, Ministry of Home Affairs.

V. In all cases in which a petition for mercy from a convict under sentence of death is to be forwarded to the Secretary to the Government of India, Ministry of Home Affairs, theChief Commissioner or the Government of the State concerned, as the case may be shall forward

such petition as expeditiously as possible along with the records of the case and his or its observation in respect of any of the grounds urged in the petition. In the case of the States the Government of the State concerned shall, if it had previously rejected any petition addressed to itself or the Governor, also forward a brief statement of the reasons for the rejection of the previous petition or petitions.

VI. Upon the receipt of the orders of the President, an acknowledgment shall be sent to the Secretary to the Government of India, Ministry of Home Affairs, immediately in the manner hereinafter provided. In the case of the Government of Assam, all orders will be communicated by telegram and the receipt thereof shall be acknowledged by telegram. In the case of other States, if the petition is rejected, the orders will be communicated by express letter and receipt thereof shall be acknowledged by express letter. Orders communicating the death sentence will be communicated by express letter in the case of Delhi and by telegram in all other cases and receipt thereof shall be acknowledged by express letter or telegram as the case may be.

VII. A petition submitted by a convict shall be withheld by the Chief Commissioner or the Government of the State concerned, as the case may be, if a petition containing a similar prayer has already been submitted to the President. When a petition is so withheld, the petitioner shall be informed of the fact and of the reason for withholding it.

VIII. Petition for mercy submitted on behalf of a convict under sentence of death shall be dealt with mutatis mutandis, in the manner provided by these instructions for dealing with a petition from the convict himself. The petitioner on behalf of a condemned convict shall be informed of the orders passed in the case. If the petition is signed by more than one person, it shall be sufficient to inform the first signatory. The convict himself shall also be informed of the submission of any petition in this behalf and the orders passed therein,.

B. Appeal to the Supreme Court and Applications for Special Leave to Appeal to the Supreme Court.

IX. Whenever a sentence of death has been passed by any Court or Tribunal the sentence shall not be executed until after the dismissal of the appeal to the Supreme Court or of the application for special leave to appeal to the Supreme Court or, in case no such appeal has been preferred or no such application has been lodged, until after the expiry of the period allowed for an appeal to the Supreme Court or for lodging of an application for special leave to appeal to the Supreme Court:

Provided that, if a petition for mercy has been submitted by or on behalf of the convict, execution of the sentence shall further be postponed pending the orders of the President thereon.

Note.-If the sentence of death has been passed on more than one person in the same case and if an appeal to a higher Court or an application for special leave to appeal to the Supreme Court is lodged by, or on behalf of, only one or more but not all of them the execution of sentence shall be postponed in the case of all such persons and not only in the case of person or persons by whom, or on whose behalf the appeal or the application is lodged.

X. On receipt of the intimation of the lodging of an appeal to the Supreme Court or of an application for special leave to appeal to that Court or of an intention to do so, the Chief Commissioner, or the Government of the State concerned, as the case may be, shall forthwith communicate by telegram to the Solicitor to the Government of India, Ministry of Law and also to the Secretary to the Government of India, Ministry of Home Affairs-

(i) the name of the convict under sentence of death, and

(ii) particulars relating to the appeal or the application. If it is desired to oppose the appeal or the application, three copies of the Paper Book and of the judgment of the High Court or

the Judicial Commissioner's Court or the Tribunal, as the case may be (one copy of each being a certified copy), a power of attorney in the form prescribed by the Supreme Court and instructions, if any, for the purpose of opposing the appeal or the application shall be immediately sent to the Solicitor to the Government of India, Ministry of Law. Notice of the intended appeal or application, if and when served by or on behalf of the convict, shall also be transmitted to him without delay. If the intended appeal or application is not lodged within the period prescribed by the Supreme Court Rules, the solicitor to the Government of India shall intimate the fact by telegram to the Chief Commissioner or the Government of the State concerned, as the case may be. The execution of the sentence shall not thereafter be postponed unless a petition for mercy has been submitted by or on behalf of the convict.

XI. If an appeal or an application for special leave to appeal has been lodged in the Supreme Court on behalf of the convict, the Solicitor to the Government of India will intimate the fact to the Chief Commissioner or the State Government as the case may be, and also to the Secretary to the Government of India, Ministry of Home Affairs. The Solicitor to the Government of India will keep the aforesaid authorities informed of all development in the Supreme Court, in those cases which present unusual features. In all cases, however, he will communicate the result of the appeal or application for special leave to appeal, to the Chief Commissioner or the State Government as the case may be, by telegram in the case of Assam and by an express letter in other cases, endorsing a copy of his communication to the Secretary to the Government of India, Ministry of Home Affairs. The Chief Commissioner or the State Government as' the case may be shall forthwith acknowledge the receipt of the communication received from the Solicitor to the Government of India. A certified copy of the judgment of the Supreme Court In each case will be supplied by the Solicitor to the Government of India in due course to the Chief Commissioner or the State Government as the case may be who shall acknowledge the receipt thereof. The execution of the sentence of death shall not be carried until after the receipt of certified copy of the judgment of the Supreme Court dismissing the appeal or the application for special leave to appeal and until an intimation has been received from the Ministry of Home Affairs about the rejection by the President of India, of the petition for mercy submitted, if any, by or on behalf of the convict.

341. . :-
An order of Government will be sufficient authority to the Superintendent of a Jail to carry out a sentence of execution which has been postponed pending an appeal to Government. A fresh or amended warrant by the Judge is not necessary.

342. . :-
Under the provisions of section 419, Code of Criminal Procedure, 1973 - warrants should invariably be directed to the Officer in charge of the Jail in which the prisoner is at the time of conviction, or is to be confined immediately upon conviction. The warrant should be lodged with the Jailor.

343. Previously Convicted Offenders :-
The following are among the rules under section 565 (3), Code of Criminal Procedure, 1898, made by the State Government. They are saved under section 484 of the Code of Criminal Procedure, 1973.

(1) When a Court or Magistrate makes an order under section 565(1) of the Code of Criminal Procedure, 1898 (hereinafter referred to as, "the Code"), that the sentenced person's residence and any change of or absence from such residence after his release shall be notified, such Court or Magistrate shall inform the Superintendent of the Prison in which the convict is, or is to be confined by attaching a copy of such order to the warrant issued under section 383 of the Code. The Superintendent of Police of the District wherein the offence for which the offender is convicted was committed shall also be informed of the order passed by such Court of Magistrate.

(2) On the release of the convict in accordance with the rules for release of prisoners made by the State Government under clause (i) of section 59 of the Indian Prison Act, 1894, the convict shall be taken by a Police Officer authorised in this behalf in Greater Bombay by the Commissioner of Police and elsewhere by the District Superintendent of Police, to the officer-incharge of the Police Station at the Headquarters of the district. The Officer in-charge of that Police station shall thereupon produce the convict before an Executive Magistrate authorised by the District Magistrate in this behalf. The Magistrate shall question the convict regarding his intended place of residence and explain to the convict the instructions which the said convict is bound to observe as well as the penalties attached to any infringement thereof. After satisfying himself that the convict understands the instructions, the Magistrate shall give the convict a copy ofthe instructions (Form Nos. 67 and 68) duly filled in, obtain the convict's signature or thumb impression to a duplicate copy thereof and deliver the duplicate copy to the said Police Officer. The convict shall then be at liberty to proceed to his intended place of residence.

Note.-The provisions of the following paragraphs are applicable to the Courts of the Metropolitan Magistrate.

CHAPTER 19
MAINTENANCE ORDERS

344. . :-
The notice to the opponents under section 125, Code of Criminal Procedure, 1973, should be issued in the prescribed Form No. 69. The Metropolitan Magistrates should use the said form with necessary modifications.

345. . :-
The following rules framed by the Government of India under section 12 of the Maintenance Orders Enforcement Act, 1921 (XVIII of1921) and in super session of the notification of the Government of India in the late Home Department No. F. 120-22, dated the 22nd September, 1923, are reproduced for the information and guidance of the criminal Courts, the Maintenance Orders Enforcement Rules, 1955.

CHAPTER 20
RULES REGARDING UNCLAIMED PROPERTY

346. . :-
In exercise of the powers conferred by clause (d) of sub- section (1) of section 477 of the Code of Criminal Procedure, 1973 (2 of 1974) the High Court of Gujarat hereby makes with the previous approval of the Government of Gujarat, the following rules, namely, the Unclaimed Property Rules, 1976.

CHAPTER 21
RECORDS, CUSTODY AND RETURN OF RECORDS

347. . :-

(1) Except as otherwise provided for in these rule, no Sessions Judge or Magistrate shall part with the custody of the record of a case or any documents therein.

(2) Subject to the provisions of paragraphs 359 and 360 no Sessions Judge or Magistrate shall part with the custody of the record of a case or any documents therein until the period within which an appeal or revision application can be made has expired, or until the appeal or revision application has been disposed of, or unless he is directed to do so by a superior Court.

(3) The Court may, however, on an application filed in that behalf, for reasons to be recorded in writing, return any original document to the applicant on the applicant giving an undertaking to produce the same whenever required to do so and filing a true copy of the original document, the return of which is applied for.

(4) Register of applications for return of documents shall be maintained in Form No. 72.

(5) The Court may, on an application filed in that behalf, return to the applicant the certified or ordinary copy of the judgment and/or order filed with the memorandum of Appeal, Revision Application or application, after the Appeal, Revision Application or Application is disposed of.

348. . :-
Any bonds or securities, maps, treaties and original sanads, manuscripts and other valuable exhibits which form part of the case and ought to be placed in safe custody than the ordinary record room should be removed from the case and transferred to the Treasury for safe custody and the fact noted on the case before the papers are filed for dispatch to the record room. The instructions given in the Civil Manual for avoidance of endorsements and undue handling of such documents should be followed. Special care should be taken of photographic negatives or other duplicate exhibits.

349. . :-

(1) After the trial of a case is over, and before the papers are dispatched to the record room, all police papers, except those which have been exhibited, should be returned to the Police, after the period of appeal or revision application is over or after the decision of the Appeal or Revision Application, if any, provided that the Court may return these papers earlier, if they are wanted for the purposes of any investigation.

(2) Similarly, documents which have been produced by parties and which are to be returned to them should be so returned before filing for the purposes of dispatch to the record room.

350. Inspection of Records :-
Inspection of the record shall be given on an application which shall bear the Court fee stamp of the prescribed value and shall state precisely the number of the proceedings, the record of which the inspection is sought; and if the application is for the inspection of the prescribed register, the description and the year of the register.

351. . :-
A party to a proceeding or his lawyer may be allowed to take an inspection of the record and proceedings of a case whether pending or disposed of. No inspection shall be allowed to a person other than a party to the proceeding, unless the application is accompanied by an affidavit stating the purpose for which the inspection is sought.

352. . :-
A fee of Re. 1 shall be charged per day for the inspection of a record of any case or proceeding, particulars of which shall be entered in column No. 2 of the Inspection Register prescribed herein. Similarly, a fee of Re. 1 shall be charged for every Register applied for being inspected.

353. . :-

(i) Inspection fee shall be levied in Court-fee stamps. Such Court-fee stamps shall be affixed on the application itself and cancelled in the manner provided for in section 42 of the Bombay Court Fees Act, 1959.

(ii) It shall be the duty of the presiding Officer to see that the stamps are duly affixed and cancelled. The fee shall be prepaid and shall in no case, be refunded.

354. . :-
The order for inspection shall be made by the presiding Officer of the Court on application, which may be rejected, if he considers the applicant to be an undesirable person, or for some such other reasons to be recorded in writing on the application, as he may deem fit.

355. . :-
An Inspection Register in Form No. 73 shall be maintained in each Court.

356. . :-
The inspection of records shall be taken in the office at such time within office hours and subject to such conditions as the presiding Officer may prescribe for the safety of the records and in the presence of such official as the presiding Officer may direct.

357. . :-

(i) It shall be the duty of the official supervising the inspection of a record to see that no alternations are made in it or papers abstracted and that it is returned in its original condition when the inspection is over. No one other than the applicant himself shall be allowed to inspect the record or to take notes or copies there from. It should be seen that the inspection is ordinarily completed, and the record returned within the hours fixed by the presiding judge for inspection of the record.

(ii) A party may not be permitted to inspect the record if it comes to the knowledge of the presiding Officer that the record is being misused, tampered with or not handled properly by the applicant.

358. . :-
If the applicant fails to take inspection on the day on which the inspection is allowed to be taken, the order granting the application shall lapse and no further inspection shall be allowed without a fresh application.

359. . :-
If a District Superintendent of Police, Deputy Commissioner of Police or other higher police officer or other Gazetted Government Officer desires to inspect any of the records of a magisterial Court he should apply to the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, who should call for the record and proceedings from the concerned Court and after inspecting them decide, in the excercise of his discretion, whether he should be permitted to inspect and take copies.

360. . :-
When Government desires to consider the propriety of making an appeal under section 378, Criminal Procedure Code, it is ordinarily sufficient that the Public Prosecutor or other Officer appointed by the Government, should have an opportunity of taking copies of the record. But in exceptional cases, in which Government may consider it essential to see any original documents such documents maybe given into the possession of the Officer appointed by Government to receive them, under such precautions for securing their safe custody and return as to the Court may deem necessary.

361. . :-
The record of a substantive criminal proceeding should not be considered due for dispatch to the record room until the expiry of the period of appeal or revision application and, if any appeal or revision application has been instituted, until after the disposal of the appeal or revision application. As a matter of precaution, the records of all cases should be kept intact in the sequence of the serial numbers of the institutions, for two months beyond the period of appeal or revision and then put up for filing orders of the presiding Officer.

362. . :-

(i) Immediately after the passing of the filing order in any case the record shall be arranged in four files marked as file "A", file "B", file "C" and file "D".

(ii) The arrangement of the record according to this classification is required to be made to simplify the task of maintaining the record in the record room according to the periods for which they are required to be preserved as prescribed below.

363. . :-

The classification of the record and the marking and filing thereof as A, B, C, D should be done in accordance with the directions below:-

(1) The papers, which are required to be preserved permanently, such as judgments in trials held before the Court of Sessions, should be marked "A" and kept in file "A".

(2) The papers which are semi-permanent in nature, such as judgments of Court, other than the Sessions Court, should be marked "B" and kept in file "B"

(3) The papers which have a bearing on the merits of the case, but which are not to be preserved for a long time, such as deposition, documents produced in evidence which are not required to be returned to the parties, confessions, statements of the accused etc., should be marked "C" and kept in file "C".

(4) The papers having no bearing on the merits of the case, such as Vakalatnamas, remand orders, etc., should be marked "D" and kept in file "D".

(5) The papers in file "A" shall be preserved permanently. The papers in file "B" shall be destroyed after 30 years. The papers in file "C" shall be destroyed after 5 years. The papers in file "D" shall be destroyed after 6 months.

(6) The period prescribed above for the destruction of the record shall be computed from the date of the final decision of the case in the trial Court when no appeal or revision application has been filed and from the date of the final decision of the appellate or revisional Court when an appeal or a revision application has been filed.

(7) While it is not possible to enumerate every document, which is required to be included in any particular file, the list of documents which should be included in the Files "A", "B", "C" and "D" respectively is given below for the guidance of the Courts.

(8) All papers of cases on the dormant file, except cases under the Motor Vehicles Act and such other Acts as may be specified by the High Court, shall be preserved for 30 years and should be sent to the Record-room after 5 years from the date of the receipt of the charge sheet or the complaint, as the case may be.

(9) All papers of cases on the dormant file under the Motor Vehicles Act and other Acts specified by the High Court, shall be dispatched to the Record room after two years from the date of the receipt of the charge sheet or the complaint, as the case may be, and shall be destroyed after five years from the said date.

List "A"

(1) Judgments of Court of Session.

(2) Such papers in cases of historical or scientific value, as in the opinion of the Sessions Judge should be preserved permanently.

List "B"

(1) Judgments of all Courts, except judgments in trials held by the Sessions Judge.

(2) Final orders (including orders as regards disposal of property, orders permitting withdrawal or compounding of cases and orders for payment of compensation and costs.)

(3) Warrants of commitment to jail issued by the Sessions Court and warrants returned after execution of sentence in Sessions Case.

(4) Copies of orders on petition for mercy in Sessions cases and the papers connected therewith.

(5) Warrants of Commitment issued by the magisterial Courts and Warrants returned to such Courts after execution of sentence.

List "C"

(1) Roznama.

(2) Complaints and verifications, including those dismissed under section 203, Code of Criminal Procedure.

(3) orders sanctioning prosecutions.

(4) Charges and pleas of accused.

(5) Sanction of the Central Government under section 188 of the Code of Criminal Procedure, 1973.

(6) Lists of exhibits.

(7) Depositions.

(8) Confessions and statements of accused.

(9) Documentary exhibits or copies of those returned.

(10) Bonds taken from accused for keeping peace or for good behavior.

(11) Papers of police enquiries held on orders of a Magistrate.

(12) Reports of Police Officers asking for B and C summaries and orders passed thereon.

(13) Registers.

(14) All papers of appeals and revision proceedings in Sessions Courts except judgments.

(15) Charge sheets.

(16) Papers in regard to recovery of fines.

(17) Papers of appeal excluding final orders against Municipal assessments.

(18) Copies of judgments and orders of superior Courts communicated to lower Courts.

(19) Petitions for withdrawing or compounding cases.

(20) Complaints with order on them, in uncontested petty cases disposed of summarily.

List "D"

(1) Vakalatnamas and memos of appearances.

(2) Remand orders including those passed by other Magistrates under section 167.

(3) Police papers and reports other than those referred to in list "C".

(4) Papers subsidiary to orders sanctioning prosecutions.

(5) Bail appears and bonds, including appellate orders as to bail.

(6) Summons, warrants other than those wherein the particulars as to the period of detention, etc. to be set off under section 428 of Criminal Procedure Code, 1973, are given search warrants, proclamations, executions of processes and all other papers under which attendance of witnesses and accused was obtained.

(7) Commissions for examination of witnesses and returns thereto.

(8) Applications for copies of decision, adjournments, etc.

(9) Notices of appeals received from the jailor.

(10) Writs calling for papers in revision or appeals or copies thereof (if retained with case

papers).

(11) Intimations of results of appeals and revision applications.

(12) Any correspondence as to committal of cases and dispatch of papers of appeals, etc.

(13) Papers and orders as to transfer of a case from one Court to another.

(14) Reports as to marks of violence on under trial prisoners in a case.

364. . :-
Papers not forming part of Court proceedings shall be preserved in accordance with the directions given below:-

A - Registers

I. The following Registers shall be preserved indefinitely:-

(i) Register of Sessions cases.

(ii) Register of Criminal Appeals in the Sessions Court.

(iii) Register of Miscellaneous Criminal Applications in the Sessions Court.

II.

(A) The following registers shall be preserved for 30 years from the expiry of the last year of the Register in the same volume of Registers.

(i) Registers of Cases before Judicial Magistrates and Metropolitan Magistrates.

(ii) Register of Miscellaneous Cases before Judicial Magistrates and Metropolitan Magistrates.

(iii) The registers of the cases maintained by the Courts of the Magistrates, prior to 1960 A.D.

(B) The following Registers shall be preserved for 30 years from the expiry of the year of the Register.

(i) Dormant file Register.

Note.- The Dormant File Register may be destroyed earlier if all the cases registered therein have been withdrawn or otherwise disposed of.

(ii) Register of Municipal Appeals.

(iii) Register of Summary Cases.

III. The following registers shall be preserved for six years from the expiry of the year of the Register:-

(i) All the Registers prescribed in Chapter XXVII.

(ii) Fine Register in Form No. 95 of the Sessions Courts and Magistrate's Court.

(iii) Register of Process and Process Fees.

(iv) Property Register including Valuable Muddamal Register. (Unless final orders remain to be passed in regard to disposal of case entered in the Register).

(v) Unclaimed Property Register.

(vi) Register of Copies Supplied to Prisoners in Jail.

B - Statement and Returns The following statements shall be preserved for six years from the expiry of the period for which the statement is submitted:-

I. (i) Statements relating to the Annual Report on the Administration of Civil and Criminal Justice.

II. The following Returns and Statements shall be preserved for six months from the end of the month or quarter to which the Statement or Return relates:-

(i) Monthly Return in Forms A-2 of Judicial Magistrates (Office copies).

(ii) Monthly Return in Forms Nos. I and II of the Metropolitan Magistrates (office copy).

(iii) Quarterly Return in form EE of Judicial Magistrates (Office copies).

(iv) Returns of Recognizance Bonds of Sessions and Magisterial Courts in Form D (Office copies).

(v) Returns in forms B, C and D of Executive Magistrates (office copies).

(vi) Statements of Revenue realized under the Bombay Children Act (office copies).

C - Miscellaneous Papers

I. The following papers shall be preserved for 30 years from the dates specified below:-

(i) Instructions issued for guidance on ex- From the date of amination of accounts, receipt.

(ii) Reports of Enquiry Officers and final From the date of the orders in Departmental Enquiries, final order.

II. The following papers shall be preserved for six years from the dates specified below:-

III. The following papers shall be preserved for six months from the dates specified below:-
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365. . :-
Notwithstanding anything contained in the rules above, the Sessions Judge, Chief Metropolitan Magistrate or the Magistrate with the permission of the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, may preserve the papers mentioned in paragraph 364 for longer period than that prescribed above, if in his opinion it is necessary to preserve them for long period than prescribed.

366. . :-
The Senior Clerk in the Court of the Judicial Magistrate, First Class the Sheristedar in the Court of the Metropolitan Magistrate, the Clerk of the Court in the Court of the Civil Judge and Judicial Magistrate, First Class and the Head Clerk or the Assistant registrar in the Court of Session, shall before the case is sent to the record room verify that the record is properly classified and indexed and that it contains all papers shown in the index. He shall further verify that all the Court- fees stamps are duly punched according to rules and he shall append a certificate to that effect.

367. . :-

(1) Subject to the provisions in this chapter, the rules in regard to the preservation and destruction of records prescribed in the Civil Manual shall apply mutatis mutandis to Criminal Courts.

(2) Notwithstanding anything contained above, the record connected with accounts (including correspondence) shall be destroyed in accordance with the provisions of Rule 187 and Appendix II of the Gujarat Financial Rules, 1971.

(3) No Magisterial records of the Court of the Magistrate, other than those mentioned above, should be destroyed without the previous sanction of the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be.

368. . :-
Each of the files, A, B, C and D shall be checked to see that all the papers on the record have been properly marked and kept in appropriate files. Each file shall be separately paged and indexed.

369. . :-
All the files pertaining to any particular case shall be kept together in one bundle.

370. . :-
The presiding Officer of the Court shall, on or before the 25th day of month, forward to the Record Keeper of the District Court or to the record room of the Court of the Metropolitan Magistrate, as the case may be, the records of all cases, which have become due for dispatch to the record room as prescribed above duly arranged in files.

371. . :-
The presiding Officer should, when dispatching the record, choose the most economical and expedient mode of dispatch consistent with the safety of the record.

372. . :-
The record shall be forwarded with the Register in the form No. 74.

373. . :-
The Record Keeper shall, after comparing the Register sent under the preceding rule with the records, make an endorsement which shall be duly signed by him- "All cases in this Register have been examined by me and the number of papers is as stated in columns 4 and 5." The Record Keeper shall then note in column No. 12 opposite each case in which he has checked punching of the stamps. "Checked punching of Stamps." and he shall initial such note. A true copy of the endorsement made by the Record-keeper shall be sent by him to the presiding Officer of the Court so as to reach him before the next batch of records is due to be sent.

374. . :-
The Sessions Judge or the Chief Metropolitan Magistrate, asthe case may be, shall give such orders and shall prescribe such forms, as may be necessary for the proper arrangement of the records in the Record-room and to facilitate the ready finding of any papers from the record when required.

375. . :-
The instructions as to inspection of the Record-room and the procedure as to the destruction of the record preserved in the Civil Manual for Civil Records shall apply mutatis mutandis to the records in criminal cases.

376. . :-

(i) The Officer of the Court in charge of the record of the Courts of the Metropolitan Magistrates shall, prepare every month a list of such records, which are due for destruction in the following month. The list shall be submitted to the Chief Metropolitan Magistrate, who shall scrutinize the list and thereafter pass orders for the destruction of the records, which are due to be destroyed in the following month.

(ii) After the Chief Metropolitan Magistrate has passed orders for the destruction of records, they shall be destroyed under the supervision of the officer in charge of the record by tearing them into small pieces, which should be disposed of according to the orders issued by the Government in this behalf.

Note.-All the provisions of this Chapter are applicable to the Courts of the Metropolitan Magistrates also.

CHAPTER 22
COPIES AND TRANSLATION

377. Certified Copies :-
Parties to any proceeding may, on application on the prescribed Court-fee made to the Court having the custody of the record, obtain certified copies of any judgment, order, deposition, memorandum of evidence or any other document filed in the said proceedings. The application shall state whether the copy applied for is required for private use or otherwise.

378. . :-
Applications for copies by parties other than parties to the proceeding shall be supported by an affidavit stating the purpose for which the copies are sought.

379. . :-
On receipt of an application, the office shall immediately scrutinize the application with a view to ascertain the correct number of the proceeding, names of the parties, description of the document copy of which is applied for and whether the document is available for copying.

380. . :-
The office shall estimate the costs of the copies except the copies to be given free of costs before the copying work is undertaken. The estimate should, as far as possible, cover all probable costs of the copies including the postage, if the copies are required to be sent through the agency of post.

381. . :-
The applicant, not entitled to copy, free of cost, shall be called upon to deposit the estimate costs of the copies applied for and make up other deficiencies then and there only, if his presence is available in the office. In other cases the orders of the presiding Officer shall be obtained requiring the applicant to comply with the necessary requirements before the copying work is taken on hand.

382. . :-
When the description of the documents given in the application is incorrect or deficient, and it is, in consequence, necessary for the Recordkeeper or other Clerk of the Court to search the records in order to find it, a fee at the rate of one rupee for each year of which the records are searched, shall be payable by the applicant for such search, whether the document be found or not, and whether the copy for which he applies, on examination of the said document, be granted or not.

383. . :-

(i) As soon as the office finds that the application is complete in all respects, it shall, except in case where the application is for supplying certified copy of a document free of costs, which shall be placed before the presiding Officer for orders, be dealt with by the Registrar or Clerk of the Court in the Sessions Court as the case may be. Clerk of the Court in the Court of the Civil Judge and Judicial Magistrate, the Sheristedar in the Court of the Metropolitan Magistrate or Senior Clerk in the Court of the Judicial Magistrate, who may either grant the application or refuse it for reasons to be recorded thereon, or pass such orders as may be deemed just:

Provided, however, that such application shall be dealt with by the junior clerk specially authorised by the Judicial Magistrate, in case no such Senior Clerk is appointed for his Court.

(ii) In case of refusal, such refusal and the grounds for the refusal shall be communicated to the applicant in writing.

384. . :-
Copies shall be furnished within [two weeks] of the application, if the application is complete, from the day on which it is presented, unless further delay is unavoidable, in

which case the cause of delay shall be endorsed on the copy. In other cases the period of [two weeks] shall be computed from the date on which the application is granted. Whenever a convicted person who has applied for a copy of the judgment of the Court concerned, requests the Court to furnish him with a certificate that though he applied for such a copy it is not yet ready for delivery, it should be supplied to him immediately by the Court by which he is convicted, in form No. 96 under the signature of the officer entrusted with the work of certifying copies.

385. . :-
All copies shall be dated, subscribed and sealed in the manner prescribed by section 76 of the Evidence Act.

386. . :-
All copies should be correct and typed or written in a clear hand with good ink on substantial paper and on the outer three quarter margin only of sheets of foolscap paper, the inner one- quarter margin of every sheet being left blank.

387. . :-
The Magistrates should submit the statement about the applications for certified copies to the District and Sessions Judge or the Chief Metropolitan Magistrate, as the case maybe, in form No. 97, before the 5th of each month and the District and Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should forward to the High Court by the 10th of each month, a consolidated statement showing the position regarding the application for the certified copies in their Courts and the Courts subordinate to them, in the above referred Performa.

388. . :-
The following endorsement shall be made on every copy of the document:- The date on which the copy was applied for; The date on which the application was granted; The date on which it was ready for delivery; The date on which intimation was given to the applicant by post (To be filled up when application is made by a party in person and not by an advocate). The date on which it was delivered/posted; To prevent unauthorised alterations being made, the date should be written in letters in distinct hand-writing and the endorsement should be signed by some authorised Officer of the Court on the date on which it was made.

389. . :-
Simple copies of any document on the record of a proceeding may be certified as true copies upon an application made in that behalf:

Provided that the copies sought to be certified are typed neatly on good paper and otherwise in conformity with the instructions laid down in paragraph 386 above: and

Provided further that the applicant pays the comparing fees herein prescribed for regular certified copies.

390. . :-
In giving intimation that the certified copies are ready to the applicants the following instructions be followed by the Courts.

1. A daily notice in the Performa in form No. 99 giving necessary details of the copies that are ready for delivery on a particular day should be affixed on the notice board of the Court as and when the copies are ready.

2. In addition to the daily notices as stated above, a weekly notice in the Performa in form No. 100 showing the details of the copies that are ready but have remained undelivered so far should also be affixed on the notice board of the Court on every Monday and if that day happens to be a holiday, oil the next working day.

3. In the cases of parties desiring to be informed that copies are ready. by post, self-addressed post-card with additional postal stamps for certificate of posting should be obtained from them and as soon as the copies are ready, they should be informed by post, under certificate of posting.

391. Fees :-

(1) The copies shall be charged at the following rates, subject to a surcharge of 25% and 55% in the Courts of Magistrates and in Sessions Courts respectively on copying and comparing fees:

(2) For copying a map or plan, such fee not exceeding Rs. 15/- and not less than Re. 1/-as the Presiding Officer may determine, shall be charged.

(3) No fee shall be charged for any copy which the person applying for is entitled to get or claim free of costs e.g. under section 363, Code of Criminal Procedure, 1973.

(4) In Courts where copies are prepared by unpaid candidates, the copies shall be compared by the paid members of the establishment. Out of the fees realized in respect of such copies, the copying charges shall be paid to the unpaid candidates, and the balance credited to Government.

392. . :-

(1) On extra payment of-

(a) a Court fee stamp of 25 ps. upon the application and

[(b) half the fees ordinarily charged as prescribed in Paragraph 391. Copies shall be furnished within one week, provided that the document of which the copy is sought is in existence and among the records of the Court to which the application is made:

Provided that if copies are not supplied within the time limit prescribed above, the fees shall be charged as prescribed in Paragraph 391.]

(2) If the urgent certified copy of the judgment or order cannot be prepared within the time specified in sub-paragraph (1), due to pressure of work or for any reason and if the party produces the ordinary copy of judgment or order, the same should be compared by the office with the respective original and then certified as true copy, on payment of usual comparing charges, provided the copy sought to be certified is in conformity with the instructions in paragraph 386.

393. . :-

Where different persons apply each for single copy of the same document each should be supplied, at full rates with an original and not a carbon copy. But if one person applies for more than one copy, he shall, on request, be given carbon copies, in addition to the original copy at the full rate, up to a maximum of five and should be charged l/4th of the fee prescribed in paragraph 391 with a minimum of 12 Ps. and 6 Ps. respectively per carbon copy. The paper charges shall be the same for both carbon and original copies.

394. . :-

(i) A party to any proceedings or his lawyer may obtain uncertified copies of evidence recorded by the Sessions Judge or Special Judge, on payment of the following charges, subject to the regulations made by the High Court as reproduced in Civil Manual;-

(a) If only one party applies for a copy, per 12 Ps. folio of 100 words or fraction thereof-

(b) If two parties apply for copies, per folio 10 Ps. per party. of 100 words or fraction thereof-

(c) If more than two parties apply for copies 8 Ps. per party. per folio of 100 words or

fraction thereof-

(ii) Out of the fees recovered as above, one half shall be paid to the Stenographer or typist making out the copies and the balance shall be credited to Government.

395. . :-
Court fee should be recovered at the time of furnishing copies and not when the copies are filed in Court. Under Articles 24,25 and 27 of Schedule II of the Bombay Court Fees Act XXXVI of 1959, fees are leviable in respect of copies of the documents specified therein except in cases where Government has, by notification under section 46 of the aforesaid Act, exempted any document or class of documents from payment of Court fees. Under clause (7) of Government Notification, Revenue Department No. 590, dated the 16th September 1921, Court fees are remitted in cases copies are required for private use by persons applying for them. Before the aforesaid copies of documents are furnished to the parties concerned a statement should be obtained from them as to whether the copies are required for private use or otherwise and if the parties state that the copies are required for their private use, then in accordance with the exemption granted by Government, no Court fee should be levied on such copies. In case the aforesaid copies are produced later on in any Court, then Court-fees as required under the foregoing provisions should be levied before they are received.

396. . :-
No Court fees shall be levied on the certified copies of the judgments which the accused is entitled to, free of cost, under section 363 or section 387, Code of Criminal Procedure, 1973.

397. . :-
In case the estimated deposit falls short of the charges which would have to be recovered in respect of the copies, the balance shall be recovered from the parties or lawyers concerned before the copies are delivered personally to them. In case of applicants applying for such copies by post, or where the copies are required to be sent through the agency of the post, such balance may be recovered by sending copies through the agency of value payable post parcel.

Note.-A Value Payable Parcel can only be sent for transmission to a post office which is also a money order office and the amount to be recovered must not be less than 25 paise and must not contain a fraction of paise.

398. Translation :-
Translations should be prepared by an officer of the Court qualified for the purpose or by a translator appointed by the presiding Officer of the Court.

399. . :-

(1) The following fee is sanctioned for the translation of any document in a foreign language into English for the information of the accused or of the Court in Criminal cases. 50 paise for the first 100 words or fraction of 100 words. 25 paise for every subsequent 100 words or fraction of 100 words.

(2) If such translation are made by a member of the establishment outside office hours or by any person other than the member of the staff specially appointed for the purpose, the fees recovered in respect of such translation shall be paid to him.

400. . :-
The Registrar is the Officer appointed in Sessions Court, Ahmedabad, the Clerk of the Court is the Officer appointed in every Sessions Court and the Sheristedar is the Officer appointed in the Court of the Metropolitan Magistrate, to certify and deliver copies of all criminal records, subject to the control of the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, within the meaning of section 76 of the Evidence Act.

401. . :-
Except in so far as is provided hereinabove, the rules and instructions contained in the Civil Manual relating to the subject of copies and translations, shall apply mutatis mutandis to Criminal Courts.

402. Supply of Free of Costs Copy to Accused :-

(1)

(a) The accused who is convicted and sentenced to imprisonment should be given certified copy of the judgment, free of cost, immediately after the judgment is pronounced, as provided in sub-section (1) of section 363, Code of Criminal Procedure, 1973. The copy of the judgment should be supplied not later than the period of four days to the accused, if he is undergoing the sentence in the prison.

(b) When the accused is sentenced to death the certified copy of the judgment should be supplied to the accused free of costs, forthwith, whether accused applies for the certified copy or not.

(2) When the accused applies for the copy of the judgment for the purpose of appeal in the case in which the judgment is applicable by him or of the order under section 117, Code of Criminal Procedure, 1973, he should be given the copy of the judgment or order, as the case may be, or if he desires a translation in his own language, if practicable the translation in his own language or in the language of the Court, free of cost, as early as possible, as provided in sub-section (2) of section 363, Code of Criminal Procedure, 1973.

(3) As provided in section 387, Code of Criminal Procedure, 1973, the provisions of section 363 of the Code are applicable to the Judgments of the appellate Courts and, therefore, the accused convicted or whose appeal against the conviction is dismissed and who is entitled to the copy of the judgment, free of costs, under section 363 (1) Code of Criminal Procedure, 1973, or for the purpose of appeal against the judgment of the appellate Court under sub-section (2) of section 363, should be furnished with the copy of the judgment of the appellate Court, free of cost, as early as possible. The instructions contained in sub-paragraphs (1) and (2) are applicable to appellate Courts except the High Court, to the extent permissible.

403. Supply of Copies of Judgments or other Information to Different Authorities :-
The circulars on the subject of supplying information or copies of judgments to various authorities have been grouped together for convenient reference:

(1)

(i) Military, Naval and Air Force.-POT notice to Commanding Officers incases where a person subject to Military, Naval and Air Force law appears before a Magistrate.

(ii) When any person serving in the Military Department is convicted in a criminal Court, such Court shall inform the Officer Commanding the Regiment or Corps to which the convict belongs.

(iii) Whenever a Military pensioner is convicted and sentenced to a term of imprisonment by a criminal Court, a copy of the judgment in the case should be forwarded without delay to the Deputy Controller of Military Accounts (Pensions), Allahabad. Thecopy should be supplied free of charge and the place from where the pensioner last drew his pension should be stated in the forwarding letter.

(iv) When a reservist of the Indian Army is sentenced by a criminal Court to imprisonment for any term exceeding three months, the facts of the case should be reported, without delay, by such Court to the Commandant of the appropriate Regimental Centre.

(v) All criminal Courts shall in future supply to the Defense Department (Army Branch) of the Government of India, copies of judgments in all cases in which Commissioned Officers are tried by them for criminal offences.

(2) Government servants.-Whenever a Government servant, a Government servant allocated to any panchayat established under the Gujarat Panchayats Act, 1961, Talati-cum-Secretary of any Panchayat or any other member of the Panchayat service is convicted o f any offence, the Court shall send free of charge, to the Head of the Department concerned, a copy of application and whenever such a servant is acquitted or discharged, the Court shall supply free of charge a copy of the judgment on the application by the Head of the Department.

(3) Medical Practitioners.-Whenever a registered Medical Practitioner is convicted of a cognizable offence or is censured by the Court in respect of his professional conduct or character, the Court concerned should send a copy of the judgment free of cost to the Gujarat Medical Council.

(4) Legal Practitioners.-Whenever an advocate or Attorney of the High Court or a District Pleader is convicted of a cognizable offence or is censured by the Court in respect of his professional conduct or character, the Court concerned should send a copy to the Secretary, State Bar Council.

(5) Serologist.-When the judgment contains any remarks, comments or observations of the Court concerned on the Serologist's report and which , in the opinion of the Court, is necessary to be brought to the notice of the Serologist with a view to enable him to improve the working of his Department, the Court should send the copy of the judgment free of costs, to the Serologist and Chemical Examiner to the Government of India, Calcutta.

(6) Public Prosecutors. -When a Public Prosecutor or an Assistant Public Prosecutor applies for a certified copy of the judgment or order for the purpose of an appeal or an application in revision, the same should be supplied free of costs.

Note .-1. The provisions of the following paragraphs are applicable to the Courts of the Metropolitan Magistrates.

2. The provisions of the following paragraphs are not applicable to the Courts of the Metropolitan Magistrates.

CHAPTER 23
COURT FEES

404. . :-
References should be made for the exemption of the Court fees to section 19 and 20 of the Bombay Court Fees Act, 1959.

405. . :-
Cancellation of Stamps.-No document requiring a stamp under the Act shall be filed or acted upon in any Court or Office until the stamp has been cancelled. Such Officer as the Court or the Head of Office may, from time to time, appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed (section 42).

406. . :-

(1) By notification No. GH-K-32-CFA-1061-3539-D, dated 17th August, 1967, duly amended by notification No. GHK/427/CPA/1069/2733- D, dated 14th September, 1973, the Government of Gujarat in the Legal department, in exercise of the powers conferred under section 46 of the Bombay Court Fees Act, 1959, has remitted the fees payable by

members of such tribes or tribal communities or parts of, or group within such tribes or triable communities as deemed to be Scheduled tribes in relation to the State of Gujarat under Article 342 of the Constitution of India, in respect of the first and second Schedule of the said Act, to be filed or executed or recovered in any civil or criminal Court and in respect of an application specified under No. 15 in the first schedule to the said Act.

(2) The notification came into force on 13th September, 1967, and shall remain in force for a period of eight years from that date.

Note .-The schedule of above referred tribes is given in this Manual at paragraph 43.

Note.-All the provisions of this chapter are applicable to the Courts of Metropolitan Magistrates also.

CHAPTER 24
ESTABLISHMENT, PETITION WRITERS AND CLERKS OF ADVOCATES AND HOLIDAYS

407. Establishment :-

(1) The appointment to all posts to Class III and class IV services of the Subordinate Judicial Service in the criminal Courts in each district, may be made by the District and Sessions Judge who is the Head of the Department, from the list of the candidates selected by the Advisory Committee formed for the purpose in each district, in accordance with the recruitment rules for the recruitment of Class III and Class IV services in the Subordinate Judicial Service, framed by the Government and contained in the Appendix attached to the Government Resolution No. H.D. No. MIS-1055/62546-111,dated 26th December, 1957, and as amended from time to time and as per the Gujarat Subordinate Judicial Service Class III and Class IV Services(Recruitment) (Amendment) Rules, 1966, and by notification of Legal Department No. MIS-1072-D, dated 12th May, 1975.

(2) The Judicial Magistrate is the Disciplinary Authority as per rule 2 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. The Judicial Magistrate, as the Head of the office may impose some of the penalties mentioned in rule 6 as specified in rule 7 and the appendix of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. In case of removal, reduction in rank or for other punishments, the District Judge or the Head of the Office, as the case may be, may impose such penalty as provided in said Rules. The Gujarat Civil Services (Discipline and Appeal) Rules, 1971, are applicable to all the members of the Class III and Class IV Services of the Subordinate Judicial Service.

(3) For taking the disciplinary action and inflicting the penalty provided under the the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, the procedure laid down in the said rules should be scrupulously followed by the Disciplinary authority.

408. . :-
Superintendents, Sheristedars and Registrar of the Court of the Chief Metropolitan Magistrates, Sheristedar and the Clerks in the Court of the Metropolitan Magistrates and Senior Clerks and Clerks in the Court of the Chief Judicial Magistrates and Judicial Magistrates, dealing with the cash or stamp or muddamal property shall give security for the amount and in the manner prescribed in the case of Nazir and Clerks, respectively in the Court of the Civil Judge (J.D.).

409. Duties of the Clerk of the Court of the District and Sessions Courts :-
Criminal Appeals, Applications for Revision and other Petitions shall be received by the Clerk of the Court of the Sessions Court. He shall examine the proceedings and note in writing whether they confirm to the provisions of the Act under which they are purported to have been filed and of the Court-fees Act and Limitation Act. He shall obtain the order of the Sessions Judge in the matter.

410. . :-
The Clerk of the Court may, in the temporary absence of the Sessions Judge and when

there is no Additional or Assistant Judge or the Chief Judicial Magistrate, available at the Head quarters, adjourn proceedings and make orders as to re-attendance of witnesses and, if necessary, accept bail from any apprehended witnesses.

411. . :-
The Clerk of the Court of the District and Sessions Court shall further-

(a) examine returns and statements submitted by the Judicial and Executive Magistrates and notes thereon.

(b) sign, seal and dispatch certified copies of the judgments and orders in Appeal or Revision, to the lower Court concerned in cases of acquittal or conviction of Government servants, allocated Government servants to Panchayats and Talati-cum- secretary of the Gram Panchayat and any other member of the Panchayat service, to their Departmental Heads.

(c) examine reports of Judicial Magistrates regarding committal proceedings and submit them to the Sessions Judge for fixing the dates of trial of the cases committed or likely to be committed to the Sessions Court.

(d) examine periodically the records deposited in the record room and report to the Sessions Judge in matters which appeal to call for notice.

(e) see to the smooth and efficient working of all the sections of the office.

(f) attend promptly to the complaints and inquiries made by members of the public having business in the office or in the Courts. The duties and powers of the Clerk of the Court in relation to Civil business in the District Court as prescribed in the Civil Manual shall apply mutatis mutandis to criminal business in the Sessions Court.

412. Holidays :-
The provisions contained in the Civil Manual regarding holidays, leave and transfer, shall apply mutatis mutandis to the Judicial Magistrates and Civil Judges-cum-Magistrates and their Courts.

413. . :-
The provisions contained in the Civil Manual regarding holidays leave, and transfer shall apply mutatis mutandis to the Courts of the Metropolitan Magistrates, but there shall be no Summer or Winter vacation in the said Courts.

414. Petition Writers :-
The following rules have been made for licensing the petition writers for criminal Courts.

(i) The Sessions Judge of each District may, from time to time, by notification, duly published in the Gujarat Government Gazette, direct that from such date as he may prescribe these rules shall be in force in all or any of the Criminal Courts of the District and may by like notification suspend their operation in any such Court.

(ii) When the rules are in force in any Court, no person other than Advocate, Pleader or his Clerk shall be permitted to prepare or write complaint, written statements, applications, list of witnesses, or any other legal documents within the precincts of such Court, unless he shall first have obtained from the presiding Magistrate, a petition writer's licence (form No. 76), which if issued in any criminal Court, shall be subject to confirmation by the Sessions Judge.

(iii) The Sessions Judge shall in consultation with the presiding Magistrate, fix the maximum number of petition writers to be licensed in each Court.

(iv) No such licence shall be granted to any clerk or peon in the service of Government or to the Clerk of any Advocate or Pleader, practising in the district.

(v) Every applicant for a licence shall produce a certificate of good character signed by two Advocates or Pleaders practising in the Court or other reputed and responsible gentlemen known to the presiding Magistrate.

(vi) Subject to the provision of rule (iii), the presiding Magistrate may in his discretion issue to selected applicants licences which shall remain in force till suspended or cancelled by competent authority. Temporary licences may be issued to fill temporary vacancies.

(vii) Every licensed petition writer shall attend the Court daily during office hours and shall not absent himself without leave. He shall charge such fees only as may be sanctioned by the presiding Magistrate not exceeding in the scale hereto annexed. He shall subscribe his name on every document written by him and shall note thereon the date and the fee charged. He shall keep a register in form No. 75 and shall show it to the presiding Magistrate when required.

(viii) No licensed petition writer shall act as law tout or receive any fee for introducing clients to pleaders.

(ix) No licensed petition writer shall directly or indirectly bid for any property sold at a Court sale.

(x) The Sessions Judge or presiding Magistrate may, by written order, suspend or dismiss any petition writer guilty of misconduct. All punishments inflicted by the presiding Magistrate of any Court subordinate to the Sessions Judges' Court shall be subject to appeal to the Sessions Judge.

(xi) A copy of these rules shall be hung up in a conspicuous place in each Court in which they are in force.

415. Clerks of Lawyers :-

(1) The rules regarding enrolment, suspension and removal of Clerks of Lawyers shall be the same as are contained in the Civil Manual. A common Register of all clerks of lawyers practicing in Civil and Criminal courts in the District shall be maintained by the District Judge or the Chief Metropolitan Magistrate, as the case may be.

(2) For the application of the said rules to the Courts of the Metropolitan Magistrates, Ahmedabad, the words, "Chief Metropolitan Magistrate" and "Courts of the Chief Metropolitan Magistrate", may be substituted for the words, "District Judge" and "District Court", respectively, wherever they occur.

Note-

(1) The provisions of the following paragraphs are applicable to the Courts of the Metropolitan Magistrates also.

(2) The provisions of the following paragraphs are not applicable to the Courts of the Metropolitan Magistrates.

CHAPTER 25
SUPERINTENDENCE AND INSPECTION

416. . :-
Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge and every Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

417. . :-
The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge and every other Metropolitan. Magistrate shall, subject to the general control of the Sessions Judge be subordinate to the Chief Metropolitan Magistrate.

418. . :-

(i) In exercise of his control, the Sessions Judge should himself inspect or cause to be inspected by an additional Sessions Judge, respectively, the Courts of the Judicial Magistrates under him, as far as possible, not less than once in two years.

(ii) The Chief Metropolitan Magistrate shall inspect Courts of the Metropolitan Magistrates subordinate to him, as far as possible, not less than once in two years.

(iii) The inspection of the Court of the Chief Metropolitan Magistrate will be done by the High Court.

419. . :-

The object of inspection is to maintain efficiency and to raise the standard of work in the Magisterial Courts. The more careful the inspection is, the higher will be quality of work in these Courts. The inspection should be carried out primarily to ascertain the methods of, and the practice and procedure followed by the Magistrate, the manner in which he arranges his work and conducts trials and other proceedings before him and the way in which he manages his office, deals with administrative work and supervise the work of his subordinates. Efforts should be made to ensure that undesirable and unauthorised practices are discontinued, that mistakes and errors are not repeated and that the methods of work are improved. When an error or a fault is detected, the way to avoid it should be explained and at the same time, it should be pointed out how it should have been done and why. Minor matters should be (disposed of in a personal discussion with the Magistrate, but all important points should find a place in the inspection report referred to in paragraph 423.

420. . :-

(1) The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should give due notice of the probable date of inspection to the Magistrate, who should fill in before hand a printed form in inspection report in form No. 77, giving, as far as possible, up to-date information so that. on the Sessions Judge's or the Chief Magistrate's arrival there may be no loss of time in collecting information.

(2) When deemed fit and circumstances so require, the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, may also carry out the surprise inspection of the Courts of the Magistrates subordinate to them, with the prior permission of the High Court or the Chief Metropolitan Magistrate, as the case may be, may carry out surprise inspection of the Courts subordinate to them and should immediately report to the High Court giving reason for such surprise inspection.

421. . :-

(1) The Inspecting Officer shall himself examine the records of at least 5 pending cases and 5 disposed of cases. He should pay special attention to the following points and should ascertain:-

(i) Whether the Magistrate begins work punctually at the prescribed hour and whether he observes regular hours of work.

(ii) Whether the practice and procedure followed by him are in accordance with the provisions of the Code and Criminal Manual and High Court Circulars.

(iii) Whether he hears the cases from day to day and examines as many witnesses as he can out of those who are present on any day.

(iv) Whether there are too many hearings in cases and whether adjournments are granted on inadequate grounds.

(v) Whether arguments are heard soon after the evidence has been recorded and whether

the judgments are delivered within a reasonable time thereafter.

(vi) Whether priority is given to cases in which accused persons are in custody.

(vii) Whether the Magistrate makes a proper use of his summary powers and maintains a record of cases tried summarily as required by law.

(viii) Whether the Magistrate fixes the cases on board properly and

(ix) Whether his disposal are adequate.

(2) The Inspecting Officers should also pay attention to the following points and should examine the various registers and account books kept in the Magistrate's Court:-

(i) Whether there is proper building for the Court and whether it needs any addition, improvements or repairs.

(ii) Whether the Court room and other rooms in the Court building and the compound of the Court are maintained in a clean and tidy condition.

(iii) Whether the proceedings are properly written and signed by the Magistrate.

(iv) Whether the register of criminal cases is properly maintained.

(v) Whether the register of cases on dormant file is properly maintained.

(vi) Whether the papers of each case are properly arranged and kept in separate files as laid down in this Manual.

(vii) Whether the records of disposed of cases are arranged and classified properly and whether they are maintained properly.

(viii) Whether muddamal is arranged properly and precautions taken to prevent tampering with it or mixing up of the articles.

(ix) Whether the disposal of muddamal is made promptly.

(x) Whether proper care for the safe custody of the valuable articles is taken.

(xi) Whether muddamal is checked by the Magistrate from time to time, as per instructions in this Manual.

(xii) Whether the fine register is maintained in the prescribed form and whether it is properly filled in and initialed by the Magistrate.

(xiii) Whether intimation about payment of fines received on behalf of prisoners is promptly given to the jailor in the prescribed form.

(xiv) Whether the person paying a fine or compensation is given receipt in the prescribed form and whether the receipt and the counterfoil are signed by the Nazir, Senior Clerk or Sheristedar, as the case may be, and where there is no post of Nazir or Senior Clerk, by the Magistrate.

(xv) Whether refunds of fines ordered by the appellate or revisional Courts are given promptly.

(xvi) Whether the diet and road allowances are paid according to the scales prescribed by the Government and whether proper vouchers are obtained, whenever necessary.

(xvii) Whether receipts have been duly taken in the remarks column of the register or attached thereto from persons receiving payments of compensation or subsistence allowance or any other money.

(xviii) Whether a statement of fines realized during the month is sent to the Treasury Officer in Treasury form No. 66-E and whether the statement is returned verified by the

Treasury Officer.

(xix) Whether the process register is properly maintained and the instructions contained in this Manual are properly followed.

(xx) Whether the register of copying fees is properly maintained and the rules given in this Manual are followed.

(xxi) Whether the stationery is properly kept and whether its accounts are properly maintained.

(xxii) Whether the forms are kept and arranged properly and whether proper accounts of the forms are maintained.

(xxiii) Whether service stamps account and ordinary stamp account are duly kept.

(xxiv) Whether applications received with ordinary postage stamps are duly accounted for or not.

(xxv) Whether the other prescribed registers are maintained and whether they are regularly and properly written.

(xxvi) Whether the files of Government Resolutions, etc. and files of miscellaneous papers are properly kept.

(xxvii) Whether the furniture is in good condition and whether any articles need any repairs.

(xxviii) Whether the dead stock list is properly maintained and checked.

(xxix) Whether the library register is properly maintained and checked.

(xxx) Whether the muster roll showing the attendance of clerks is properly kept.

422. . :-
The ascertaining of the improvement that has resulted in consequence of an earlier inspection should form part of the work to be done at a later inspection. He should also ascertain whether the instructions issued at the time of previous inspection have been complied with and, if not complied, the reasons for that should be ascertained.

423. . :-

(1) After completing his inspection, the Inspecting Officer shall draw up an inspection report. If the inspection has been by a Judge other than the Sessions Judge, he shall submit it to the Sessions Judge.

(2) The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, shall forward a copy of the inspection report to the Magistrate for his information and guidance. He should also issue suitable instructions, wherever they are considered necessary, for the guidance of the Magistrate and the members of his establishment.

(3) The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, may also, if he so deems proper, circulate amongst all Magistrates subordinate to him, the instructions issued by him on any points of general importance.

(4) The Sessions Judge or the Chief Metropolitan Magistrate as the case may be, should forward a report to the High Court in form No. 78, soon after the inspection has been completed by him.

424. . :-
The Sessions Judge or the Chief Metropolitan Magistrate, asthe case maybe, should issue suitable instructions for the disposal of old cases, if any, and if he finds that there are many cases pending for over six months, or that the work is seriously in arrears, he should

consult the Magistrate and if necessary, submit to the High Court his recommendations as to the best means of bringing the file under control.

425. . :-
It is desirable that inspection of both the civil and criminal Courts is undertaken simultaneously if both of them are located at the same place. Inspection of criminal Courts should, therefore, be done at the same time when the Sessions Judge would visit the place for the inspection of the civil Courts.

426. Confidential Reports on Judicial Magistrates :-
Each Sessions Judge should report confidentially on the Judicial Magistrates, Civil Judges and Judicial Magistrates and Special Judicial Magistrates and the Chief Metropolitan Magistrate should report confidentially on the Metropolitan Magistrates, as follows:-

(1) On December 31st each year on all Judicial Magistrates then serving under him.

(2) On December 31st each year on Civil Judges and Judicial Magistrates along with the reports on the Civil Judges then serving under him.

(3) On his own transfer from a District on all Judicial Magistrates, Civil Judges and the Judicial Magistrates and Special Judicial Magistrates then serving in that district.

(4) On transfer of any Judicial Magistrates, Civil Judge and the Judicial Magistrate or Special Judicial Magistrate serving under him on that individual Officer:

Provided that the report need not be sent on December 31st in respect of any Magistrate upon whom the Sessions Judge has already reported within the previous six months.

(5) Such confidential report shall also contain the information in form No.98.

Note.-

1. The following paragraphs are applicable to the Courts of the Metropolitan Magistrates

2. The following paragraph are not applicable to the Courts of the Metropolitan Magistrates

CHAPTER 26
LIBRARIES

427. . :-
The instructions in this Chapter shall apply to the Courts doing purely magisterial work.

428. . :-
The Library shall be in the charge of a Clerk nominated by the presiding Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, who shall keep a register of all the books in the Court Library, The register shall be in form No. 79.

429. . :-
The Clerk in charge of the Library shall-

(a) Stamp the Office or Court Seal on the title page of each book.

(b) Fix a number label on the back of each book giving its serial number in the register prescribed above.

(c) Check the register with the books every year in January and report to the presiding Magistrate whether the books are complete and in good condition.

(d) Paste correction slips and amendments to (1) Indian Code, (2) Bombay code, (3) Criminal Manual and (4) Civil Manual, etc.

430. . :-
The clerk taking charge of the library shall report to the presiding Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, that he has checked the books with the

register. If any books are missing or damaged, he shall prepare a list thereof and submit it to the Magistrate for his orders.

431. . :-
Every Magistrate on taking charge and every year thereafter, shall certify to the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, that he has checked the books in his Court with the register and make a report in regard to all books missing or damaged.

432. . :-
The relevant provisions of the Civil Manual are applicable to the Court of the Magistrates to the extent permissible.

Note.-All the provisions of this Chapter are applicable to the Courts of the Metropolitan Magistrates also.

CHAPTER 27
ACCOUNTS

433. . :-
The accounts of the Criminal Court deposit should be maintained as provided under Article 71(2) of the Account Code, Volume II, First Edition, Second Print and Rule 577 of The Bombay Treasury Rules 1960. Volumes I and II. The provisions of Article 71 (2) of the Account Code are as follows:- "71. (2) In cases where the Civil Courts, and Magistrates merely bank with the treasury, remitting without detail their gross deposit receipts for credit in a personal ledger and making repayments by cheque on the treasury, the accounts at the treasury should be kept in the form prescribed in Article 68 and 70 tor personal deposits, but quite separate from those of personal deposits proper; and the deposits should be designated as Civil Court or Criminal Court Deposits". The forms prescribed in this Chapter for the deposits should be used by the Criminal Courts for the criminal deposits.

434. . :-
For the details of the instructions to be observed for the maintenance of the deposit accounts, the Sessions Judges, the Chief Metropolitan Magistrate and the Magistrates are directed to refer to the rules and the instructions in Chapter on the account in the Civil Manual.

435. . :-
The Register showing the daily receipts of the Court fees in Form No. 101 should be used. The entries are not to be made in details but should show the aggregate value of the stamps filed in the Court during each day.

436. . :-
It is the duty of the Judicial Magistrate to examine and initial the receipt book for contingent charges before he signs the contingent bill for each month,

437. . :-
The practice of correcting by trying to change one figure to another is highly objectionable and is disapproved. The rectification should invariably be made by striking out the wrong figure and fairly writing the correct one above it. The correction should always be initialed.

438. Fines and Compensation Under Local and Social Acts :-

(1)The fines realized in cases tried by the Magistrates under the Municipal and other Acts, should be credited to the Government. The Court should keep subsidiary accounts of receipts from fines under the several acts within the limits of each such local body. Subsidiary Accounts should show (1) the section and the Act under which the fine has been levied and (2) the Local Body within the territorial limits of which the fine has been levied. The Accounts should be prepared in triplicate, quarterly in January, April, July and October,

by the Courts concerned. One copy should be retained in the office and second copy should be forwarded to the Treasury Officer and the third to the District Judge or the Chief Metropolitan Magistrate, as the case may be. The District Judge and the Chief Metropolitan Magistrate should in turn, submit accounts of receipts of the fines realized under the Bombay Shops and Establishment Act, 1948, to the Development Department, Government of Gujarat by first of September every year.

(2) Whenever the amount of compensation or damages are recovered from the accused person in forest cases, they should be promptly remitted to the Sub-treasuries or Treasuries, as the case may be, alongwith the Treasury Chalans in triplicate. Out of these three copies one copy would be returned to the Court which makes the deposit for its record, the second should be sent to the Divisional Forest Officer directly by the Sub-treasury or the Treasury Officer and the third one will be retained by the Sub-Treasury or the Treasury Officer for his record.

439. . :-
For details of the instructions to be observed in the maintenance of the above forms and the Accounts the Sessions Judges and Magistrates are directed to refer to the rules and instructions in the Chapter on Accounts in the Civil Manual.

440. . :-
The forms prescribed in the Civil Manual for maintenance of copying fee account shall be used by criminal Courts.

CHAPTER 28
MISCELLANEOUS

441. . :-
In the event of the absence of the Sessions Judge from a Sessions Division, where there is no Additional or Assistant Sessions Judge, the Officer who, under the provisions of section 35 of the Bombay Civil Courts Act, XIV of 1869, assumes charge of the District Court,shall take charge of the current duties of the Sessions Judge, in so far that he shall transmit writs of the High Court to the Magistrate, forward proceedings in cases called for by the High Court and submit the prescribed criminal returns.

442. . :-
Judgments may, on request, and if the presiding officer deems proper, be shown to the press reporters.

443. . :-
Whenever any bulky papers are sent by parcel post to any Court a separate letter should be sent by post advising it of the dispatch, of the papers. If the papers are not received within a reasonable time after the arrival of the letter intimating their dispatch, suitable action should be taken in the matter.

Note.-The provisions of the following paragraphs are applicable to the Courts of the Metropolitan Magistrates: 442 and 443.

Note.-The provisions of paragraph 441 are not applicable to the Courts of the Metropolitan Magistrates.

CHAPTER 29
REGISTERS

444. . :-
Registers serve as index, as also guide to all concerned and if they are not properly maintained, the purpose would not be served. It may be difficult and practically impossible to know the facts and trace the papers in future. Thus, the importance of proper maintenance of Registers should be impressed upon all concerned. The Registers should be maintained regularly and all columns should be carefully filled. The Registers should be

written in a neat and tidy manner.

445. . :-
The Registers specified below and also Registers which are prescribed or may be prescribed in future, shall be properly maintained in the prescribed forms, by the Courts concerned.

446. Metropolitan Magistrates :-
The Chief Metropolitan Magistrate should maintain all the above referred registers except the Register mentioned at Sr. No. 8. The Metropolitan Magistrates should maintain for their respective Courts, registers to be maintained by the Judicial Magistrates, First Class, listed above, except the Registers mentioned at serial Nos. 8, 25, 33, 34, 35, 36, 49, 53, 54, 61, 62, 66, 67, 68, 69.

(1) Before a Register is taken in use, each page thereof should be paged and sealed and an endorsement should be made at the end of the Register to that effect under the signature of the presiding Judge.

(2) Unauthorised Registers should not be used unless they are found to be quite essential. There should be proper sanction before such a Register is brought into use.

(3) Entries in the registers should be made serially and date- wise.

447. . :-
A new Register shall be commenced at the beginning of each calendar year, but the Court may commence a new register with new title of the year in the same book of forms in use for the previous year, provided a substantial number of forms in the said book of forms has remained unused.

448. Fine Register :-
Instructions in regard to the maintenance of Fine Register (Form No. 95)

(i) When a new Fine Register is opened, fines which remained still to be realized in the previous years and which have not been written off, shall be entered before the cases of the current year.

(ii) Entries about compensation awarded to the accused under sections 250 and 358, Code of Criminal Procedure, 1973, should be made in the Fine Register.

(iii) A statement of fines realized during the previous months should be sent at the beginning of each month in Treasury Form No. 66, to the Treasury Officer, who will return it after verification with the amount of fines remitted to the treasury during the previous month. On return, the Judge or Magistrate should initial the total of realization for that month in column 6 of the Register and note the fact of Verification by the Treasury Officer.

(iv) The entries in columns I to 5 of the Register should be made as soon as sentence of fine is passed and the Judge or Magistrate should initial the amount of column 5. Space should be left between entries in the Register for endorsements in the remarks column (e.g. dispatch of warrants to Police and the returnable dates) and the Judge or Magistrate should initial such endorsements. When the fine is paid the entry of realization should be made forthwith in its appropriate column 6 initialed by the Magistrate.

(v) A person paying a fine or compensation in Court should be given a receipt in Standard Form MM-204-E, sanctioned by the Government by Resolution, Home Department No. 3360/2, dated the 7th November, 1973. The receipt should be signed by the Nazir in the Sessions Court or in the Court of the Civil Judge and Judicial Magistrate, by the Senior Clerk in the Court of the Judicial Magistrate or Chief Judicial Magistrate and by the Sheristedar in the Court of the Chief Metropolitan Magistrate and Metropolitan Magistrates:

Provided, however, that such receipts and counterfoils shall be signed by the Magistrate himself in case no Sheristedar or Senior Clerk is appointed for his Court.

449. List A and B (Instructions in regard to the maintenance of Lists of sureties) :-

List in Form-90, should be maintained by all criminal Courts in respect of sureties in the proceedings that come up before them and a copy of the list alphabetically arranged should be sent quarterly in January, April, July and October, by the Court of the Magistrates to the Sessions Court, or to the Chief Metropolitan Magistrate, as the case may be. The Sessions Court or the Chief Metropolitan Magistrate, as the case may be, should prepare a consolidated alphabetical list of sureties from the lists received from the subordinate Courts after adding the names of sureties in the proceedings before itself. Addition to this list should be made every quarter on the basis of the names received from the subordinate Courts. As soon as a person is found from list 'A" to have been surety for two different persons in two different matters, his name should be entered in another consolidated list in form -91, (list 'B'), for the whole district and copies thereof should be supplied to all the subordinate Courts (in the district) so that the activities of persons entered in list 'B' can be watched. Every Court should also be informed of the additions, if any, made to list 'B' every quarter, so that the Officer in charge of the work of accepting sureties may refer to this list before accepting a surety.

Note.-All the provisions of this chapter are applicable to the Courts of the Metropolitan Magistrates also.

CHAPTER 30
RETURNS

450. . :-

Blank returns should not be submitted. When there is no material for filling in any Return a report to that effect will be sufficient.

451. . :-

The required information should be entered in the appropriate column of each return use being made if necessary of blank spaces in neighbouring columns. So far as possible, no separate memorandum should be appended to the return. Explanations and remarks should be written as clearly and concisely as possible and reasonably intelligible abbreviations may be used. In preparing the returns care should be taken to see that there is no needless waste of forms.

452. . :-

The returns of the Sessions Judges will be in the forms prescribed in the Civil Manual.

453. Magisterial Returns :-

(1) The following returns are required to be submitted by the Judicial Magistrates and by the Civil Judges and Judicial Magistrates.

I. Monthly Criminal Return in form A-2 regarding cases disposed of and pending in the Courts of the Judicial Magistrates and Civil Judges (J.D.) and Judicial Magistrates, First Class, and the Monthly Criminal Return in form No. A-1 regarding the cases disposed of and pending in the Courts of the Civil Judges (S.D.) and Judicial Magistrates.

II. Quarterly Return in form No. EE giving explanation for delay in the disposal of cases in which under trial prisoners have been in custody for more than three months.

III. Quarterly return in form-D, pertaining to bonds forfeited by the Judicial Magistrates and the Metropolitan Magistrates.

IV. Quarterly statement of fines realized under the local Acts for grant in aid.

V. Return of criminal work done during the vacation in the prescribed form 56.

VI. Annual statement of the cases put on the dormant file in the prescribed from No. 55.

(2) The following Returns are required to be submitted by the Metropolitan Magistrates:-

I. Monthly Criminal Return in form No. I of the cases received, disposed of and pending.

II. Quarterly statement of the fines realized under the local Acts by the Metropolitan Magistrates for grant in aid.

III. Quarter return in Form D pertaining to bonds forfeited by Metropolitan Magistrates.

IV. Quarterly return in Form EE giving explanation for delay in disposal of the cases in which under trial prisoners are in custody for more than three months.

V. Annual statement of the cases put on the dormant file in the prescribed Performa 55.

(3) The following returns are required to be submitted by the Chief Metropolitan Magistrate.

I. Quarterly consolidated return in form No. 2, for the Metropolitan Magistrate, in accordance with paragraph 455.

454. . :-
The returns of the Judicial Magistrates shall be forwarded to the Sessions Judge not later than 5th of each month and the returns of the Metropolitan Magistrates shall be forwarded to' the Chief Metropolitan Magistrate, not later than 10th of each month.

455. . :-

(1) On receipt of the monthly returns, the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be shall scrutinise them and after making such remarks on them, as he may think proper, he shall forward the returns to the High Court not later than 15th of the month. These returns need not be accompanied by a letter, but the Sessions Judge or the Chief Metropolitan Magistrate will note upon them the date of receipt and of dispatch by himself and the cause of any delay exceeding fifteen days in his own office.

(2) The monthly returns in forms A-1, A-2 should be forwarded by the District and Sessions Judge to the High Court every month along with the remarks about the out turn of the work etc. The returns for month of March, June, September and December only should be submitted to the High Court duly consolidated and for the rest of the months, the returns need not be consolidated but two copies of the statements received from the subordinate Courts should be stitched together and forwarded to the High Court after proper scrutiny.

(3)

(a) The monthly returns in form No. I, of the Metropolitan Magistrates and of the Chief Metropolitan Magistrate should be sent by the Chief Metropolitan Magistrate to the High Court in accordance with sub- paragraph (2).

(b) The Chief Metropolitan Magistrate should submit the statement in form No. 2 to the High Court at the end of each quarter in accordance with sub-paragraph (2).

(4) The returns of all the Magistrates received by the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should be sent together and not separately. The returns received from the Magistrates in the cases in which the returns are blank, need not be sent to the High Court.

(5) The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, while forwarding the returns to the High Court should express his opinion as to the adequacy or otherwise of the disposal of each Magistrate.

(6) Copies of the remarks made on the returns by the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should be sent to the Magistrate concerned.

456. . :-

The Executive Magistrate shall submit the following returns:-

(1) Six monthly return in form C of cases pending for more than three months.

(2) Quarterly return in form-D of bonds forfeited by the Executive Magistrate.

457. . :-
The following instructions should be carefully attended to in filling the foregoing Returns.

458. RETURN NO. I :-
Monthly Return in Form A-1 of the work disposed of and remaining in the Court of the Civil Judge (S.D.) and J.M.F.C., should be submitted by the Civil Judge (S.D.) and Judicial Magistrate, First Class and the monthly Return in Form No. A-2 of the work disposed of and remaining in the Court of the Civil Judge (J.D.) and Judicial Magistrate, First Class, and in the Court of the Judicial Magistrate, First Class should be submitted by the Civil Judge (J.D.) and J.M.F.C. and by the Judicial Magistrate, First Class. The Civil Judge (S.D.) and J.M.F.C., the Civil Judge (J.D.) and J.M.F.C. and the Judicial Magistrate, First Class, should submit the Return in the prescribed forms viz. A-1 and A-2 respectively to the Sessions Judge before 5th of the month. In case, any Judicial Magistrate desires to submit any remarks in a particular month regarding his out-turn of work, he may submit the same to the Sessions Judge alongwith the Monthly-Returns and the Sessions Judge should forward the same with his remarks thereon in accordance with paragraph 460. The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should scrutinize the Returns and forward to the High Court not later than 15th of the month. The Sessions Judge or the Chief Metropolitan Magistrate should express his opinion as to the adequacy or otherwise of the disposal of each Magistrate. The Sessions Judge should forward a consolidated Return of the work done by the Civil Judges and the Judicial Magistrates, to the High Court before 15th of the following month of each quarter, in accordance with paragraph 455. The Chief Metropolitan Magistrate should forward a consolidated Return in Form 2 of the work done by the Metropolitan Magistrates to the High Court before 15th of the following month of each quarter, in accordance with paragraph 453. The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should scrutinize the Returns on the following lines and issue suitable instructions to the Magistrates respectively working under them:-

I.

(a) Whether the out-turn of a particular Magistrate is adequate or not according to the standard. Where a Magistrate is working at more than one place, his overall disposals during the month irrespective of the Courts and the work attended to by him, should be taken into account, while assessing his work.

(b) Whether any progress is being made in the disposal of the old cases.

(c) The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should keep a proper watch over the Judicial dispatch of the Judicial Officers working under them, respectively and see whether they are keeping pace with the institution, whether they are also disposing of the old and presumably heavy cases, or merely attempting to dispose of lighter cases and whether they have done the work normally expected of them in those Courts during his period of review.

II. The Sessions Judge should consider from time to time and particularly at the time of the scrutiny of the Monthly Returns, in which Courts assistance is required, and from which Courts in his District, Judges could be spared and make proposals, if any, to the High Court.

III. The period of sittings at linked Courts should be reviewed by the Sessions Judge periodically and he should make proposals, if any, to the High Court in that behalf. While forwarding the Returns of the Subordinate Courts, the Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, should inter alia, mention the following points

in their covering letter:-

(a) about adequacy or otherwise of the out-turn of the work of the Judicial Officers;

(b) whether explanation, to his satisfaction, is given by the Judicial Officer concerned in respect of his out-turn or work which is apparently inadequate;

(c) whether the Judicial Officer is making his best efforts to hear old cases according to their duration;

(d) whether necessary instructions about giving priority to old cases have been issued by them to the Judicial Officer;

(e) whether, in their opinion, the Judicial Officers are complying with the instructions issued by them and in case of non-compliance, the reasons therefor as ascertained from the Judicial Officers concerned.

IV. The following instructions should be carefully observed in the submission of the Returns in Form A-1 and A-2:-

(a) Instructions given in the foot notes of the Form should be carefully observed.

(b) The name of the Judicial Officer should be mentioned along with his designation.

(c) If a Judicial Officer is transferred, is on deputation, or is on leave, a note about the same should be made in the Return against his name.

(d) The name of the Judicial Officer on deputation and his disposals while on deputation should be shown against the Court where he was working on deputation. His disposals in his original Court should be shown against that Court

(e) In the case of link Courts or Circuit Courts, the information in respect of each Court should be furnished separately.

(f) I.P.C. Cases tried summarily should be included in the col. of the cases triable summarily and the figures of such cases tried summarily should be shown in the remarks column.

(g) If the Criminal cases shown as disposed of otherwise than by judgment include any cases disposed of as such after recording evidence the figure of such cases should be shown in the bracket below the total figure of cases disposed of otherwise than by judgment in the relevant column.

(h) In Col. 16 of the Return in Forms A-1 and A-2, the total number of Criminal cases including effective and non-effective cases pending at the beginning of the month should be shown and the total of non-effective cases such as cases on dormant file, cases which are stayed and cases in which accused are absconding, if any, pending at the end of the month should be shown in the remarks column against respective categories of Criminal Cases.

459. RETURN NO. III :-

Returns in Form EE giving explanations for delay in the disposal of cases in which under trial prisoners have been in custody for more than three months.

1. Returns in this form should be sent by Judicial Magistrates to the Sessions Judge and by the Metropolitan Magistrates to the Chief Metropolitan Magistrate by the 5th of April, July, October and January, for each quarter of the Calendar year.

2. The Sessions Judge or the Chief Metropolitan Magistrate, as the case maybe, after examining these Returns forward them to the High Court with his remarks and state the action, if any, taken by him.

3. An explanation should be given for delay, if any, in the submission of the Returns.

460. RETURN FORM C :-
Six monthly Return in Form-C of cases pending for more than three months showing the persons in custody or on bail for any proceeding under the orders of the Executive Magistrates. This Return should be forwarded by all the Executive Magistrates to the District Magistrate not later than the 15th January and July of each year. The Returns should be stitched together and should be forwarded by the District Magistrate not later than the end of January and July of each year.

Column 1. -This column should show the number of the case in the Magistrate's Register.

Column 8.- The history of the case should show briefly and not in full detail the main cause for the delay in the disposal of the case. In regard to adjournments, these should be summarised under the following heads:-

(a) For convenience of a pleader.

(b) For non-appearance of the police or the Police Prosecutor.

(c) On account of the Magistrate being absent on leave or otherwise.

(d) On account of absence of witnesses.

(e) On account of time being taken up in deciding other cases.

(f) For other reasons (state them).

461. RETURN OF ARREARS :-
When a Sessions Judge or a Judicial Magistrate or a Metropolitan Magistrate delivers charge of his Court on transfer whether to his successor direct or to some one else, he should submit to the High Court a Return in standard form Civ. E. 28e (Revised) which is reproduced in the Civil Manual Vol. II, showing the state of the file on the dates of his receiving and delivering the charge. An Assistant Judge or a Civil Judge who is a Joint Judge on deputation need not submit such a return.

462. . :-
Every Magistrate, every Assistant and Additional Sessions Judge and every Metropolitan Magistrate shall submit by the 5th of each month to the Sessions Judge of the district or the Chief Metropolitan Magistrate, as the case may be, a statement of all cases in which in the preceding month there has been a delay of more than 15 days in delivery of judgment, since the conclusion of trial or since the hearing of arguments, in an appeal or revision, in the form given below:-

463. . :-
The Sessions Judge or the Chief Metropolitan Magistrate, as the case may be, will scrutinize the statements and pass necessary orders and report to the High Court such cases as he considers necessary. They shall also submit a similar statement in respect of their Courts to the High Court by 5th of every month in the above form.

464. . :-
Separate Return for the dormant file should be submitted as directed in paragraph 211.

Note 1 .-

The provisions of the following paragraphs are applicable to the Court of Metropolitan Magistrate.

2. The provisions of the following paragraphs are not applicable to Metropolitan Magistrate.

465. Part A :-

The statements required by the High Court for the purposes of the compliance of the Annual Report on the Administration of Criminal Justice in the State of Gujarat shall be submitted by 1st February each year correctly drawn up. The forms of the Statements and the instructions relating thereto (in addition to the instructions below or at the back of the forms) are set out below. The Sessions Judges and the Chief Metropolitan Magistrate for the City of Ahmedabad, shall, before submitting their statements, have them checked in the light of these instructions and assure themselves that they are correctly drawn up.

466. Part B Forms :-

Forms of the Annual Judicial Statements Nos. 1, 2,9, 10, 11, 12, 12-A and Forms A and B, regarding Youthful Offenders dealt with under the Bombay Children Act, 1948, and the Saurashtra Children Act, 1954.

467. . :-

The following forms A and B are prescribed for statements regarding Youth Offenders dealt with under the Bombay Children Act, 1948. The same forms should be used for Youthful Offenders dealt with under the Saurashtra Children Act, 1954, also by substituting the relevant sections in different columns.

ANNUAL STATEMENT NO. 1

(Civil and Criminal)						
For the District of for the year 19						
Return showing the Number of Officer of each Class exercising Appellate and						
Original Jurisdiction in the District on the 31st day of December 19 .						
Class of Courts.	Officers	Officers	Officers	In the District		Remarks
	exercising	exercising	exercising	Number	Number	
	Original	Appellate	both	of Talukas	of Pethas	
	Jurisdiction	Jurisdiction	Original			
			and Appellate			
			Jurisdiction			
1	2	3	4	5	6	7
COURT OF SESSION:						
1. Sessions Judge.'						
2. Additional Sessions Judge.						
3. Assistant Sessions Judge.						
Total						

ANNUAL STATEMENT NO. 2

Statement showing the number of cases decided by the various Courts.					
Courts	Total number of cases decided				Remarks
	Original Appellate				
	Regular	Miscellaneous	Regular	Miscellaneous	
1	2	3	4	5	6
Civil Courts.					
Criminal Courts.					
Judicial					
Executive					
NOTES.-1. In column 3 against Civil Courts should be shown the total number of applications for execution of decrees. Insolvency					
applications and Miscellaneous Cases and details should be given in the remarks column.					
2. In column 3 against Criminal Courts should be shown the total number of Proceedings under Chapter VI-C and Sections					
349, 125. 126 and 446, Chapter XXVI, Chapter IX, XXXIII and XXVII (section 369) of the Criminal Procedure Code,					
1973.					
3. In column 5 against Criminal Courts all cases of Revision and Miscellaneous Applications under the					

Criminal
Procedure Code should be entered.

ANNUAL STATEMENT NO. 9

(Criminal)							
Statement showing the general results of Trial of Criminal Cases in the Tribunals of							
various Classes in the District of.....in the year 19 .							
Class of Courts	Number	Number	Persons whose cases were disposed of				
	of	of	Discharged	Convicted	Number of	Committed	Died,
	offences	persons	or		offenders placed on	or	escaped or
	reported	under trial	acquitted		probation out of	referred	transferred
					persons shown in		to
					column 5, 5(a)		another
							District.
1	2	3	4	5	5(a)	6	7
1. Superior Courts.							
2. Courts of Session (including Additional							
Sessions Judges)							
3, Courts of Special Judges.							
4. Courts of Assistant Sessions Judges.							
5. Judicial Magistrates.							
6. Special Judicial Magistrates.							
7. Benches of Judicial Magistrates.							

Notes

Column 1.-Sub-head "Courts of Session" includes cases decided by Sessions Judges on reference under sections 28, 316 and 122.

Column 2.-Sub-head "Superior Courts" includes cases decided by the High Court on reference under sections 338 and 366 Cr. P.C. 1973.

Column 3.-That is the total of entries of columns 4,5,6,7 and 8. The cases of persons transferred from one Court to another in the same District will appear only against the Court by which decided, or in which pending at the end of the year if not decided.

Column 5.-Persons whose cases were referred to a Superior Court for higher punishment, for orders under section 360, Cr. P.C. or for confirmation of sentence will be entered in column 6 and not in column 5 against the Courts making the reference. Against the Court receiving the reference, they will be shown as convicted or acquitted according lo the orders passed by it or as pending, if orders have not been passed.

Column 5(a). -The information in this column should be given in respect of cases dealt with under the Probation of Offenders Act only.

Column 6.-These cases will be shown against the Courts, who made the reference entry being made as directed above.

Column 7.-A Note against the figure for each Court should be made in the column of remarks showing separately how many accused persons died, escaped or were transferred to another District.

Column 8.-An insane accused who has been sent to a mental hospital should be kept on the file and entered in this column, until he has been tried and either convicted or acquitted. General-The figures in this Statement should tally with those of Statement No. 11 and should include nothing else.

ANNUAL STATEMENT NO. 10

(Criminal)						
Statement showing the General Results of Appeals and Revision in Criminal Cases in the						
District ..... in the year 19 .						
TRIBUNALS	Number of Persons					
	Number of	Appeals,	Sentence	Sentence	Sentence	Otherwise
	Appellants	or	or order	altered	reversed	disposed
	and applicants	Applications	confirmed			of
	for revision	rejected				
	before the					
	Courts.					
1	2	3	4	5	6	7
APPEALS:						
To Chief Magistrates of Districts.						
To Court of Session						
Total						
REVISION:						
By Chief Magistrate of District.						
By Court of Session						
Total						
GRAND TOTAL						

No. 10

Column 1 .-Sub-head "To Chief Magistrates of Districts" includes other Magistrates authorised to hear appeals under section 407, Criminal Procedure Code.

Column 2.-That is the total of columns 3 to 9. Cases transferred from one Court to another in the same District will appear only against the Court of the District by which decided or in which pending at the end of the year if not decided. The words "Applications for Revision" in the heading of this column should be held to include only accused persons on whose behalf an application for revision is made, or in whose interest the Magistrate or Judge may take steps to obtain revision on his own motion, Where such application is made or such steps are taken on behalf of a complainant, that fact should be noted with the number of complainants and the number of accused concerned in the column of Remarks. In the latter case the accused persons against whom the application is made, though not appearing in this column, will fall into their proper place in columns 3 to 9 according to the result of such applications.

Column 4.-Appeals dismissed under section 386, Criminal Procedure Code, 1973 should be entered in this column.

Column 7.-in this column should be entered (1) Orders of discharge set aside by Superior Courts under section 398, Criminal Procedure Code, 1973, (2) Proceeding quashed in appeal and new trials and further inquiries ordered (3) cases referred to the High Court, and (4) all other cases which do not fall under columns 4, 5 and 6.

Column 8.-A note against the figure for each Court should be made in the column of remarks showing separately how many accused persons died, escaped or were transferred to another District.

Column 10.-The number of persons dealt with under section 106(3) of the Criminal Procedure Code, 1973, or under section 8, Clause (2) of the Reformatory Schools Act, 1897, should be noted in this column (vide Government Order Judicial Department No. 1948, dated 28th December, 1899). General. Persons whose appeals were rejected under section 384, Criminal Procedure Code, 1973, should be entered in column 3 in which should also be included applicants for revision whose cases the Courts have refused to submit to the High Court. In Columns 4 to 6 should be shown opposite the sub-heads for Magistrates of Districts and Courts of Sessions persons whose cases were disposed of by those Courts without reference to the High Court.

ANNUAL STATEMENT NO. 11

(Criminal)							
Statement of nature of offence reported and number of persons tried, convicted and							
acquitted of each class of offence in the District of..... in the year 19 .							
Description of offence	Number of cases			Number of persons			
	Offences	Returned	Brought	Under trial	Acquitted	Convicted	No. of
	reported	as true	to trial	including	or		offenders placed
				pending	discharged		on probation
				from previous			out of persons
				years			shown in Col. 7
1	2	3	4	5	6	7	7(a)
Offences of Criminal conspiracy. Chapter							
V-A, Indian Penal Code							
Offences against the State, Chapter VI							
Indian Penal Code							
Attempts at .....do							
Offences relating to the Army and Navy							
Chapter VII							
Attempts at ..... do							
Offences against the Public tranquillity							
Chapter 8							
Attempts at ..... do.....							
Offences by or relating to Public Servants,							
Chapter IX							

No. 11

Column 1.-

(1) "abatements" should be included with the substantive offences abetted.

(2) When giving the list of Special and local laws, against which offences have been committed, care should be taken to specify the title of each Act quoted as well as its number and year. They should be given in alphabetical order, first the central and then of the local legislature distinguishing the latter by initial letters placed after the number of the Act.

Column 2.-All offences (cases) of which information was given, complaint made or

cognizance taken under Chapter IV, V, XIV, XVI, Criminal Procedure Code, for the first time during the year, are to be shown although some of the charges may not have been prosecuted or may have turned out to be false.

Column 3.-This column should be total of Column 2, less the number of cases dismissed under section 203, Criminal Procedure Code, 1973 and less all other cases in which a Magistrate declared that the charge was false, and the offence never occurred or which were dismissed as frivolous and vexatious and in which the complainant was fined under section 250, Criminal Procedure Code, 1973.

Column 5.-This column should be the total of columns 6,7, 8 and 9.

Column 6 and 7.-These columns are intended to show the results of the trials in the Magistrate's Court as regards persons whose cases were disposed of by Magistrates, and in the Court of Sessions as regards persons whose cases were disposed of by the Court. In cases referred by Subordinate Magistrates under section 325, by Assistant Judges under section 360(1) and (2) and by Courts of Sessions under section 366, Criminal Procedure Code, 1973, the results to be shown are those in the Court which received and dealt with the reference. Should the Court not have decided the case by the end of the year, it should be entered as "remaining under trial".

Column 7(a).-The information in this column should be given in respect of cases dealt with under the Probation of Offenders Act only.

Column 8.-Persons transferred from one Court to another in the same District are not to be entered in this column. Persons transferred to another State should however be shown separately in the Remarks column.

General.-

(1) Cases committed or referred should not be included in the statement by the committing or referring Magistrates. The results of the trials in these cases should be shown by the Courts to which the cases are committed or referred. If the total of column 6, Statement No. 9 is deducted from the total of column 3 of that statement, the difference should correspond with the total of column 5 of the Statement.

(2) Sessions Judge should append to this Statement as memorandum showing the number of murders reported as true under the heads (1) from motives connected with women; (3) other murders for the sake of gain; (4) for other causes.

(3) The word "convicted" in column 7 includes cases in which no punishment may be passed; for instance, cases in which fulfilment of contract is ordered under Act XIII of 1959.

(4) The headings "Offences" under Special and Local Laws. and "Attempts at do" in Statement 11 (Criminal) should include cases under sections 107, 108, 109, 110, 117, 119 and 122 of Chapter VIII of the Code of Criminal Procedure, 1973.

(5) Cases of contempts of Courts under Chapter XXXV of the Criminal Procedure Code, should appear in the statement under their appropriate heads in the Schedule of offences under the Penal Code.

ANNUAL STATEMENT NO. 12

ANNUAL STATEMENT NO. 12									
(Criminal)									
Statement showing the punishments inflicted in Criminal Cases in the District of..... in the year 19 .									
Class of Tribunal	Number	Number of persons sentenced lo							
	of	Death	Imprisonment	Imprisonment	Fine or	Release	Give	Fine of	
	persons		for life	for	forfeiture	on	security	Rs.	Over

							admonition		10	
		executed			lesser term				and under	Rs. 10.
1		2	3	4	5	6	7	8	9	10
1.	Superior Courts.									
2.	Courts of Session (including									
	Additional Sessions Judges)									
3.	Courts of Special Judges.									
4.	Courts of Assistant Sessions									
	Judges.									
5,	Judicial Magistrates.									
6.	Special Judicial Magistrates.									
7.	Benches of Judicial Magistrates.									
8.	Executive Magistrates (including									
	District Magistrates)									
9.	Village Officers.									
10	Village Panchayats.									
11	Sanitary Committees and									
	Sanitary Boards									
	Total									

No. 12

Column 1 .-Sub-head "Court of Session" includes cases decided by Sessions judges on reference under sections 28 and 122, Criminal Procedure Code.

Column 12.-Includes fines realized during the year, though imposed in previous years. This column is intended to show the realized portion of fines imposed by officers in the exercise of original jurisdiction only.

Column 13.-Represents compensation awarded to complainants under section 357, Criminal Procedure Code, 1973 . These awards should also be shown under the head fines "imposed" and "realized" in columns II and 12, for they form part of such fines.

Column 18.-The information in this column should be given in respect of cases dealt with under the Probation of Offenders Act only.

General.-

(1) The total of column 5 should correspond with the total of columns 14 to 17 (both inclusive) and deducting the number of persons sentenced to forfeiture, which should be

shown in the Remarks column, the total of .the remainder in column 6 should correspond with the total of column 9 and 10.

(2) This statement is meant to exhibit every sentence passed and where two penalties are inflicted on the same offenders to exhibit them both. Further to reconcile the number of persons entered in this statement as punished with the number entered as convicted in statement No. 9. It is necessary to note cases such as those in which children are dealt with under the Bombay Children Act LXXI of 1948 by special methods or young offenders are submitted to detentions in a Borstal School in a foot note.

(3) As regards persons whose cases were referred for higher punishment for orders under section 360(1) and (3) to (6), Criminal Procedure Code, 1973 or for confirmation of sentence, the punishment if any, sanctioned by the higher Court should be entered against such higher Court and not against the Court making the reference.

ANNUAL Statement NO. 12A

ANNUAL STATEMENT NO. 12 (A) (CRIMINAL)							
Statement showing the number of persons dealt with by various kinds of probation orders passed by the							
Tribunal of various classes in the State of..... in the year 19 ,							
Class of Tribunal		Total	Number of	Number of Offenders released on proba ion			
		number of	offenders	Without	On furnishing	Placed	Required to
		offenders	released on	supervision	surety or in charge	under	reside at a
		dealt with	admonition		of Probation	Supervision	Probation
		under			Officer specially	of Probation	Home/Hostel
		probation of			appointed by Court	Officer	or other
		Offenders Act.					places
1		2	3	4	5	6	7
1.	Superior Courts.						
2.	Courts of Session (including						
	Additional Sessions Judges)						
3.	Courts of Special Judges.						
4.	Courts of Assistant Sessions						
	Judges.						
5.	Judicial Magistrates.						
6.	Special Judicial Magistrates.						
7.	Benches of Judicial Magistrates.						
8.	Executive Magistrates (including						
	District Magistrates)						
9.	Village Officers.						
10.	Village Panchayats.						
11.	Sanitary Committees and						
	Sanitary Boards						
	Total						

Form A Statement of cases against Youthful Offenders dealt with under the Bombay

Children Act, 1948

Description	Number of	Number of Youthful offenders			
of offences	cases	Acquitted	Discharged	Released on probation of	
	disposed of in	or discharged	after	pond conduct and	
	the year		admonition	committed to the care of fit	
			under	persons under section 66(ii)	
			section 66(i)	With	Without
				supervision	supervision
1	2	3	4	5	

Note No.

1. -Judicial Statement (11) prepared for the Annual Administration Report should still include offences by children "found to have committed" an offence should still be included in column 7 as "convicted", the difference in terminology being disregarded for this purpose.

Note No. 2.-The description should be as in column 1 of Judicial Statement 11.

Note No. 3. -Columns 4 to 9 of this Statement are intended to exhibit every method of dealing with child offenders adopted under the Children Act, and where two methods are adopted as regards the same child to exhibit them both.

Note No. 4. -Column 10 is intended to show the total number of Children, sub-divided according to sex, appearing as accused before the Courts.

Form B Statement of cases in which orders are passed under section 45, 46, 47,79, 81 and 84 of the Bombay Children Act. 1948

Name	Destitute or neglected			Repatriated	Uncontrollable Children		
of	Children (Sections 45 and 46)				(Section 47)		
District	Committed to the care of			(Section 46)	Committed to the care of		
	Certified	Fit persons			Cer	Fit persons	
		(Individual)			tified	(Individuals)	
	School or Fit	With	Without		School or Fit	With	Without
	Persons	super	super		Persons	super	super
	Institu	vision	vision		Institu	vision	vision
	tions				tions		
1	2	3	4	5	6	7	8

<u>467A.</u> Part C INSTRUCTIONS :-

(i) The Statements should be submitted early enough to reach the Registrar's Office by the 1st of February of each year.

(ii) The instructions printed on each form of statement should be carefully studied and noted.

STATEMENT NO. 1 The Officers shown in thisstatements should be those who are at the places in that District on the 31st December of the year under report.

STATEMENT NO. 2

(i) Figure in column 2 should correspond with the total of column 11 of Statement No. 9 as also with the total number of cases decided under (1) Indian Penal Code, and (2) Special and Local Laws to be shown in the Remarks Column 13 of Statement No. 11.

(ii) Figure in column 4 should correspond with the first total of column 11 of statement No.

10 relating to Appeals.

(iii) Figure in column 5 should correspond with the second total of column 11 of Statement No. 10 relating to Revision.

STATEMENT NO. 9

(i) The total of column 2 should correspond with the total of column 2 of Statement No. 11.

(ii) The figure in column 3 against each sub-head should tally with the total of columns 4, 5, 6, 7 and 8.

(iii) The total of column 6 when deducted from the total of column 3 should correspond with the total of column 5 of Statement No. 11.

(iv) The totals of columns 4, 5, 5(a), 7 and 8 should respectively correspond with the totals of columns 6, 7, 7(a), 8 and 9 of Statement No. 11.

(v) The total figure in column No. 9 (number of cases pending at the beginning of the year) should tally with the total figure in column No. 12 of Statement No. 11 for the preceding year.

(vi) The number of persons transferred outside the District or State are only to be shown in this Statement. The number of persons transferred from and to the Courts within the same district should not be included in this statement. The number of persons transferred to another district in the State and those transferred to another State should be shown separately in column No. 14.

STATEMENT NO. 10

(i) Details of column 8 should be given in the Remarks Column 13.

(ii) Number of appeal cases or applications for revision disposed of during the year should be shown in a separate column 11 against each sub-head.

(iii) The total of columns 3 to 9 against each sub-head should agree with the figure in column 2.

(iv) Revision.-The figure in column 2 with the addition of the number of accused persons involved in application for revision made on behalf of complainants must be equal to the total of columns 3 to 9 against each sub-head. The number of accused persons involved in the applications for revision made on behalf of complainants should be shown in Remarks column 13.

(v) In columns 4 to 6 under the heading "Revision" should be shown the accused persons whose cases are decided by the Sessions Judges under sections 397 and 401 of the Criminal Procedure Code, 1973, in view of the powers delegated under section 271(3) of the Village Panchayats Act, 1961.

STATEMENT NO. 11

(i) In column 2 (offences reported), the number of offences reported during the year only should be shown against each sub- heading. The number of cases pending at the end of the previous year should not be included in column No. 2.

(ii) As regards the entries to be made in column No. 3 (number of cases returned as true) instructions to column No. 3 printed on reverse of Statement No. 11 should be seen and the entries made in columns Nos. 10 and 11 of this statement should be taken into consideration. The figure in column No. 3 against each sub-head should in no case be more than in column No. 2 as cases in column No. 3 are those "Returned as true" out of the offences reported during the year and entered in column No. 2. Column No. 3 does not include cases pending at the end of the previous year.

(iii) All cases brought to trial, whether disposed of or pending should be shown in column 4.

(iv) The total of columns 6, 7, 8 and 9 against each sub-head should agree with the figure in column 5.

(v) The number of complaints dismissed under section 203, Criminal Procedure Code, 1973 and the number of complainants fined under section 250, Criminal Procedure Code, 1973, should be noted against each sub-head in columns 10 and 11.

(vi) The number of cases pending at the end of the year under report should be given in column 12, and when deducted from the total of column 4, there should remain a balance corresponding to the total of column 11 of statement No. 9.

(vii) The total number of cases (1) under the Indian Penal Code, and (2) under Special and Local Laws respectively decided during the year should be noted in the Remarks Column 13.

(viii) The accompaniment to statement No. 11 showing the offences committed under the Special and Local Acts should be prepared exactly on the lines of Statement No. 11 and the correct titles, numbers and years of all the Central, Bombay or other Local Acts should be given. The Acts should be given in the Alphabetical order, first the Central Acts and then the Bombay, Gujarat or other Local Acts.

(ix) Sessions Judges should append to this statement a memorandum showing the number of murder cases reported as true and the total number of cases of convictions under the heads:-

(1) from motives connected with women;

(2) of children for the sake of ornaments;

(3) other murders for the sake of gain;

(4) murders arising out of other causes.

(x) The number of persons transferred outside the district of the State is only to be shown in column 8 of this statement under the heading "transferred", out of which the number of persons transferred outside the State should be shown separately in the Remarks column 13 against each sub-head.

STATEMENT NO. 12

(i) The figure in column 5 against each sub-head should correspond with the total of columns 14 to 17 against that sub- head.

(ii) The figure in column 6 against each sub-head should correspond with the total of columns 9 and 10 together with the number of persons sentenced to forfeiture of property, if any. The number of such persons sentenced to forfeiture of property should be shown in the Remarks column 18.

(iii) In column 2, the number of persons actually executed injails out of those sentenced to death (shown in column 3) are only to be shown against the respective heading.

(iv) The figure in column 18 against each sub-head should respectively correspond with figures in column 5(a) of Statement No. 9 as also in Column 2 of the Statement No. 12(a).

(v) Total of column 18 should correspond with the total of column 7 (a) of Statement No. 11. General

(1) The Annual Statements should be prepared in regard to both Civil and Criminal Cases by the District and Sessions Judges.

(2) The function of the District Magistrates in relation to the Annual Statements should not

be the compilation of the statements but furnishing the necessary information available to them to the respective Sessions Judges to enable the latter to prepare statements.

(3) The Sessions Judges should arrange the preparation of statements in so far as cases under the Criminal Procedure Code, are concerned in consultation with the District Magistrates and the District Magistrates should supply all the information necessary for the compilation of the Annual Statements Nos. I, II, IX and XII relating to Executive Magistrates as well as cases disposed of by them in exercise of their original, appellate and revisional powers.

468. . :-
A Sessions Judge before leaving his division and a District Magistrate before leaving his district on transfer or otherwise, towards the end of the year, shall place on record for the information of his successor and for the purpose of the annual report a minute embodying any points which he would have noticed in the annual report had he stayed on in the end of the year.

Note.-All paragraphs of this chapter are applicable to Courts of Metropolitan Magistrates, Ahmedabad.

CHAPTER 32
COURTS OF METROPOLITAN MAGISTRATES, AHMEDABAD

469. Arrangement of the Record in Files :-

1. The record of every case shall be kept in three parts.

2. Part I shall contain (i) the record of proceedings (ii) the notes of evidence and the statements of the accused persons recorded by the Magistrates and written statements, if any (iii) all documents which have been exhibited and if they are not in English, translations of such documents where they have been made, (iv) the judgment and the final order, including the order with regard to the disposal of property and (v) the warrant of commitment, if any, issued to the Jailor.

3. Part II shall contain copies of statements recorded by the police and all documents referred to in section 173, Criminal Procedure Code, which have not been exhibited and the report of the Police Officer submitted after investigation, if any, directed by the Magistrate, under section 202, Criminal Procedure Code.

4. Part III shall contain miscellaneous papers which have not been exhibited, such as, charge-sheets, if not exhibited, summonses, warrants, applications for bails, remand orders, etc.

5. All the documents exhibited in a case should be kept separately in a long envelope or in a brown paper packet together with the list of exhibits. This packet should be kept tied up with the case papers and filed with Part 1.

6. Every paper which is produced before a Court, if exhibited, shall be marked with red ink. A, B, C or D, according to the period for which it is required to be preserved as specified in paragraph 363.

7. Dormant File.-

(1) All cases in which the accused are of unsound mind and are consequently unable to make a defense or are absconding and cannot be traced or served with warrant, summons or notice for a period of six months or more from the date of receipt of the charge-sheet or complaint, should be placed on the dormant file provided that no case shall be kept on the dormant file, if the Judge or Magistrate, as the case may be, after considering the police report or other information in his possession, is of the opinion that the accused is likely to be found within a reasonable time thereafter.

Provided further that cases under the Motor Vehicles Act, 1939, Bombay Police Act, 1951, the Bombay Police Conveyance Act, 1920 and the Bombay Provincial Municipal Corporation Act and other petty cases under such other Acts as the High Court may direct from time to time, may be put on the dormant file, if the Magistrate, after two attempts of service is of the opinion that it will not be possible to secure the attendance of the accused within a reasonable time.

(2) A separate register shall be maintained in the form given below showing all cases which are put on the dormant file.

Dormant File Register				
Sr.	Case	Date on	Reasons for	Date on which warrants and
No.	No.	which put on	keeping on	summons were received after
		dormant file	dormant file	keeping cases on dormant file.
1	2	3	4	5

(3) The cases put on the dormant file shall be transferred to the record room six months after the date on which they are kept on the dormant file.

8. Libraries.- There shall be a library in the Court presided over by the Chief Metropolitan Magistrate for the use of the Metropolitan Magistrate.

9. Every Metropolitan Magistrate shall be supplied with a set of standard books selected by the Chief Metropolitan Magistrate and approved by the High Court. These books shall be kept by him in his chamber or in his Court room for use during the trial of the cases.

10. Rules framed by the Chief Metropolitan Magistrate.-

(1) The Metropolitan Magistrate, Ahmedabad, (and the Special Metropolitan Magistrate, Ahmedabad, as and when appointed), shall undertake such business as is made over to them by general or special order of the Chief Metropolitan Magistrate, Ahmedabad.

(2) In the event of pressure of work occurring in any Courts or during the casual or other absence of any Metropolitan Magistrate, the Chief Metropolitan Magistrate shall arrange for the distribution of business amongst the Metropolitan Magistrates.

(3) The Chief Metropolitan Magistrate, Ahmedabad, will arrange for the disposal of the urgent business on any day on which the Courts and Offices remain closed.

(4) All complaints and miscellaneous applications shall ordinarily be presented to the Metropolitan Magistrate, Ahmedabad, in the first sitting. Applications involving urgency may be made without disturbing the working of the Courts at any time during the Court hours.

(5) The Metropolitan Magistrates, Ahmedabad, shall submit such forms, records, reports and returns as may be called for by the Chief Metropolitan Magistrate, Ahmedabad.

Note.-This chapter is applicable to the Courts of the Metropolitan Magistrates only.

CHAPTER 33
RULES FOR THE COURTS OF SESSION FOR THE CITY OF AHMEDABAD

470. . :-
The Honourable the Chief Justice and Judges of the High Court of Gujarat at Ahmedabad, with the previous sanction of the Government of Gujarat, are pleased to make the following rules for regulating the practice and procedure to be followed in the Court of Session for the city of Ahmedabad.

(1) The Registrar and the Deputy Registrar of the Ahmedabad City Civil Court shall also be the Registrar and Deputy Registrar of the Court of Session for the City of Ahmedabad.

(2) Save as is otherwise provided in the Code of Criminal Procedure and in these rules, all summonses, precept, rules, orders and mandatory processes, shall be issued from and returned into the office of the Registrar and shall be subscribed and sealed by the Registrar, Deputy Registrar or such other Officer as the Principal Judge may, by general or special order authorise in that behalf.

(3) No summons shall be issued by the office of the Registrar to compel the attendance as witness of any person residing beyond the local limits of the Court of Session for the city of Ahmedabad except upon an order of a Judge.

(4) An application on behalf of any person, who has been committed to the Court of Session for trial, for being released on bail, may be made on giving 24 hours' written notice to the Public Prosecutor unless otherwise ordered by the Court. The application shall state the particulars in regard to the Committing Court, offence charged, place of custody and the grounds in support of the application. The Court may require, if it thinks fit, that the application should be supported by an affidavit. The copy of the application with affidavit in support, if any, shall be served upon the Public Prosecutor with the notice. The Public Prosecutor may appear to oppose the application, and may, if affidavits have been filed in support of the application, file affidavits in reply.

(5) Application for release on bail may be made on shorter notice than 48 hours if the Public Prosecutor consents thereto or waives his right to 48 hours' notice provided that written notice and affidavit have been served on him as prescribed in rule 4 above.

(6) The Judge hearing such application may call for record or such part of the record of the Committal proceedings from the Committing Magistrate as he may think necessary.

(7) When a Judge orders a prisoner to be admitted to bail, he shall direct to what amount such bail shall be taken and with how many sureties and unless the Judge approves the names proposed as bail or unless he otherwise directs, the Registrar shall after examination approve the same if he is satisfied of their sufficiency.

(8) The rules in the Manual of Criminal Circulars issued by the High Court shall be applicable to the Court of Session for the City of Ahmedabad, except in so far as any rules therein are inconsistent with these rules.