CRIMINAL PROCEDURE ACT

Cap 169 – 25 June 1853

ARRANGEMENT OF SECTIONS

PART VI – JUDGMENT AND SENTENCE

Third Schedule
Fourth Schedule
Fifth Schedule

CRIMINAL PROCEDURE ACT

PART I – GENERAL

1. Short title

This Act may be cited as the Criminal Procedure Act.

2. Interpretation

In this Act—

"larceny" includes larceny committed under any of the circumstances specified in sections 303, 304, 305, 306 and 309 of the Criminal Code;

"property" means movable and immovable property of every kind, on or with respect to which an offence may be committed.

3. Power of DPP

(1) The Director of Public Prosecutions is empowered to prosecute all offenders in the name and on behalf of the State, by himself, or, under his directions, by his deputy, provided that, except in the Intermediate Court and in the District Courts, no person shall be so deputed to act on the trial of any party charged with a crime or misdemeanour, unless he is a barrister of 3 years' standing at the Bar.

(1A) Where a person is charged with an offence referred to in section 116 of the Courts Act, the Director of Public Prosecutions may, at his discretion but subject to any other enactment, decide whether or not a preliminary inquiry shall be held before the person is made to stand trial and prosecute the case—

(a) before a Judge and a jury, without holding a preliminary inquiry;

(b) before a Judge without a jury;

(c) before the Intermediate Court; or

(d) before the appropriate District Court for the Magistrate to inquire into the charge and commit the person for trial.

(2) Notwithstanding subsection (1), the Director of Public Prosecutions may, instead of prosecuting an offender, direct the police or any other person prosecuting an offender under his directions to administer a warning to the offender where he reasonably considers—

(a) the offence to be a minor one and that such warning would satisfy the ends of justice;

(b) the offender has not previously committed any similar offence; and

(c) the offender did not seriously dispute his guilt when confronted with or made aware of the offence.

[S. 3 amended by Act 48 of 1991; Act 4 of 1999; s. 3 (a) of Act 18 of 2011 w.e.f. 9 July 2011.]

4. Prosecution by aggrieved party

(1) In any case of crime or of misdemeanour triable before the Supreme Court, the Director of Public Prosecutions may, on the complaint of an aggrieved party, institute a

prosecution on behalf and at the expense of the State.

(2) Where the Director of Public Prosecutions has declined to institute a prosecution under subsection (1), the aggrieved party or his representative may, subject to section 5, institute a prosecution.

[S. 4 amended by Act 48 of 1991.]

5. Information given by aggrieved party

(1) Where an aggrieved party or his representative intends to institute a prosecution, he shall produce before a Judge an information duly prepared, together with a certificate endorsed on it, under the hand of the Director of Public Prosecutions, specifying that he has seen such information and declines to prosecute at the expense of the State the party charged for the offence named in the information.

(2) Where the information and certificate under subsection (1) are exhibited, the Judge shall, if he thinks fit, bind over the aggrieved party or his representative in his personal recognisance of 1,000 rupees together with 2 sureties of 500 rupees each, duly and without delay to prosecute the information to its conclusion, if permitted so to do, and to obey all orders or judgments that the Court or a Judge, may make in the matter.

(3) (a) The Judge shall then consider the case, and make such order as he thinks just, and may grant or refuse to the aggrieved party or his representative the process of the Court.

(b) No process shall issue on the case without the permission of the Judge.

(4) The certificate under subsection (1) shall be given by the Director of Public Prosecutions within one week from the exhibition to him of the proposed information. [S. 5 amended by Act 48 of 1991.]

6. Costs in case of frivolous private prosecution

Where a person is tried before the Supreme Court at the instance of a private prosecutor and is acquitted, the Court may, if the prosecution appears to it to be frivolous or malicious, adjudge the prosecutor to pay the whole costs and expenses of the person prosecuted, without prejudice to the right of the person prosecuted to bring a civil action for damages sustained in consequence of the prosecution.

7. State and civil action not to be joined

(1) No prosecution at the suit of the State shall be joined with a civil action, but a private party in whose behalf a prosecution has been instituted may bring an action for damages in a civil Court against the offender.

(2) The verdict or judgment in the one case shall not be admitted as evidence in the other.

[S. 7 amended by Act 48 of 1991.]

8. Information against Magistrate

The Supreme Court may, on the application of a private party to file an information against a Magistrate in respect of official misconduct, refuse to grant leave, where the Magistrate appears to have acted from no corrupt or improper motive.

9. Crime reduced to misdemeanour

Where a preliminary inquiry has been held pursuant to Part II of the District and Intermediate Courts (Criminal Jurisdiction) Act, the Director of Public Prosecutions may, after examining the depositions, reduce a charge of crime to a misdemeanour, and file an information before the Supreme Court or before any other Court having jurisdiction over

such misdemeanours.

[S. 9 amended by s. 3 (b) of Act 18 of 2011 w.e.f. 9 July 2011.]

10. Offences triable by Supreme Court without a jury

(1) Offences committed under an enactment specified in the Fifth Schedule may be prosecuted by the Director of Public Prosecutions before the Supreme Court without a jury on an information signed by him and filed before the Court.

(2) Subsection (1) shall not affect the jurisdiction of any other competent Court in respect of an offence under an enactment specified in the Fifth Schedule.

[S. 10 amended by Act 12 of 1986.]

11. Rules where there is no jury

This Act shall, in so far as applicable, apply to a prosecution under section 10 (1) except that part of the Act which refers to the jury.

12. Prosecution for defamation

No prosecution for defamation shall be instituted by the State unless on complaint made by the aggrieved person to the police or to the Ministère Public within 6 months of the alleged offence.

[S. 11 amended by Act 48 of 1991.]

13. Reference of defamation case to Intermediate Court

(1) Where a person has filed an information for defamation before a Magistrate, he may apply to the Director of Public Prosecutions for an order referring the case to the Intermediate Court.

(2) Where the Director of Public Prosecutions is satisfied that the importance of the case justifies its reference to the Intermediate Court, he may make the order.

14. Trial of defamation case

(1) The provisions of the District and Intermediate Courts (Criminal Jurisdiction) Act respecting trials before the Intermediate Court shall apply to all trials under sections 12 and 13.

(2) Notwithstanding the District and Intermediate Courts (Criminal Jurisdiction) Act, a person convicted on a charge of defamation may in all cases appeal from the final judgment of the Intermediate Court to the Supreme Court.

15. Evidence of husband and wife in defamation case

A person charged with the offence of defamation before a Court of criminal jurisdiction and his spouse shall be competent but not compellable witnesses at the hearing.

16. —

PART II – THE INFORMATION

17. Information to be certain

In any case of crime brought before the Supreme Court, the State or other prosecutor shall draw up an information which shall be direct and certain as regards—

(a) the party charged;

(b) the description of the offence charged;

(c) the material circumstances of the offence charged.

[S. 17 amended by Act 48 of 1991.]

18. Description of accused

(1) The accused shall be described—

(a) by his first name and surname, or by the names by which he is more commonly known; and

(b) by the addition of his estate, degree or calling, and of the town or place and district in which he was or is residing.

(2) In the case of doubt as to the accused's names, he may be variously described under an alias *dictus*.

19. —

20. Description of victim

(1) The names of persons against whom the offence is committed, or whose description is involved in the statement of the offence, shall be specified.

(2) Such persons shall in general be described by their first names and surnames, where they are known by such names, or by the names by which they are commonly known.

21. Variance between information and evidence

(1) (a) Where, on the trial of an information for a crime or misdemeanour, there appears to be a variance between a statement in the information and the evidence offered in proof in—

(i) the name or description of a town, district or place mentioned or described in the information;

(ii) the name or description of a person, stated or alleged to be the owner of any property which forms the subject of the offence charged;

(iii) the name and description of a person stated or alleged to be injured or damaged or intended to be injured or damaged by the commission of such offence;

(iv) the first name or surname, or both the first name and surname, or other description, of a person named or described in the information;

(v) the name or description of any matter named or described in the information; or

(vi) the ownership of any property named or described in the information,

the Court before which the trial takes place may, if it considers that the variance is not material to the merits of the case, and that the accused cannot be prejudiced in his defence on the merits, order the information to be amended according to the proof, by some officer of the Court or other person, both in that part of the information where the variance occurs, and in every other part of the information which it may become necessary to amend, on such terms as it thinks reasonable, including the postponement of the trial before the same or another jury.

(b) Where the information has been amended, the trial shall proceed in the same manner, in all respects, and with the same consequences, both with respect to the liability of witnesses to an information for perjury and otherwise, as if no such variance had occurred.

(2) Where a trial is postponed under subsection (1), the Court may respite the recognisances of the witnesses and of the accused, and any sureties and, in such case, the witnesses shall be bound to attend trial at the time and place to which it is postponed, without entering into any fresh recognisances for that purpose, in the same manner as if they were originally bound by their recognisance to appear and prosecute or give evidence at the time and place to which the trial has been so postponed.

(3) Where the trial takes place before another jury, the State and the accused shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn.

[S. 21 amended by Act 48 of 1991.]

22. Information for homicide

(1) In an information for murder or manslaughter, it shall not be necessary to specify the manner in which or the means by which the death of the deceased was caused.

(2) It shall be sufficient, in an information—

(a) for murder, to charge that the accused did criminally, wilfully and of his malice aforethought, kill the deceased; and

(b) for manslaughter, to charge that the accused did criminally and wilfully kill the deceased.

23. Information for forgery and related offences

In an information for forging, uttering, stealing, embezzling, destroying or concealing, or for obtaining by false pretences, an instrument, it shall be sufficient to describe the instrument by the name or designation by which it is commonly known, without setting out any copy or facsimile of the instrument or otherwise describing it or its value.

24. Engraving

In an information for engraving or making an instrument or matter, or for using or having the unlawful possession of a plate or other material upon which an instrument or matter has been made or printed, it shall be sufficient to describe the instrument or matter by the name or designation by which it is commonly known, without setting out a copy or facsimile of the instrument or matter.

25. Averment as to an instrument

In every other case where it is necessary to make an averment in an information as to an instrument, whether it consists of writing, print or figures, it shall be sufficient to describe the instrument by the name or designation by which it is commonly known, without setting out a copy or facsimile of the instrument.

26. Averment as to intent to defraud

(1) In an information for forging, uttering, offering, disposing of, or putting off an instrument, or for obtaining a property by false pretences, it shall be sufficient to allege that the accused did the act with intent to defraud, without alleging the intent of the accused to defraud a particular person.

(2) On the trial of an offence specified in subsection (1), it shall not be necessary to prove an intent on the part of the accused to defraud a particular person, but it shall be sufficient to prove that the accused did the act charged with an intent to defraud.

27. Joining counts before Supreme Court

(1) In an information filed in the Supreme Court and containing a charge of larceny, it shall be lawful to add a count, or several counts, for knowingly receiving the whole or

part of the stolen property or for being found, without sufficient excuse or justification, in possession of the whole or part of the property, and the jury may return a verdict of guilty either of larceny or of knowingly receiving the whole or part of the stolen property or of being found without sufficient excuse or justification, in possession of the whole or part of the property.

(2) Where the information has been preferred against 2 or more persons, the jury may find all or any of those persons guilty either of larceny or of knowingly receiving the whole or part of the stolen property or of being found without sufficient excuse or justification in possession of the whole or part of the property, or to find some of the persons guilty of larceny, and the others guilty of knowingly receiving the whole or part of the stolen property, or of being found, without sufficient excuse or justification, in possession of the whole or part of the property.

(3) Subsections (1) and (2) shall apply to an information filed under section 31, and section 125 shall apply to the alternative counts for knowingly receiving the whole or part of the stolen property, or for being found, without sufficient excuse or justification, in possession of the whole or part of the property.

28. Joining counts before Intermediate Court

Section 27 shall apply to informations triable by the Intermediate Court.

29. Joining counts before District Court

(1) Sections 27 and 125 shall apply to informations triable by a Magistrate.

(2) No information shall contain against one person more than one alternative count for knowingly receiving the whole or part of the stolen property, or being found, without sufficient excuse or justification, in possession of the whole or part of the property.

30. Accessory or receiver

Any number of accessories or receivers may, notwithstanding that the principal is not included in the same information nor is in custody or amenable to justice, be charged with substantive crimes in the same information.

31. Information containing various acts of larceny

An information may contain several counts against the accused for any number of distinct acts of larceny not exceeding 3, which he may have committed against the same person within 6 months from the first to the last of such acts.

32. Averment as to money or bank note

(1) In every information in which it is necessary to make an averment as to any money or bank note, it shall be sufficient to describe the money or bank note simply as money, without specifying any particular coin or bank note.

(2) In such information, the description of the money or bank note shall be sustained—

(a) by proof of any amount of coin or bank note, although the particular species of coin of which the amount was composed, or the particular nature of the bank note is not proved; and

(b) in cases of embezzlement and obtaining money or bank notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any bank note, or any portion of the value thereof, although the piece of coin or bank note may have been delivered to him in order that some part of its value should be returned to the party delivering the coin or bank note, or to any other person, and such part has been returned accordingly.

33. Perjury

In an information for perjury or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously or corruptly, taking, making, signing, or subscribing an oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient to specify the substance of the offence charged against the defendant and by what Court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, was taken, made, signed, or subscribed, without setting forth the bill, answer, information, declaration, or any part of any proceeding and without specifying the commission or authority of the Court or person before whom such offence was committed.

34. Subornation of perjury

In an information for subornation of perjury, or for corrupt bargaining or contracting with a person to commit perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient—

(a) where the perjury or other offence has been committed, to allege—

(i) the offence of the person who actually committed the perjury or other offence in the manner mentioned in section 33;

(ii) that the accused unlawfully, wilfully, and corruptly did cause and procure that person to commit the offence of perjury or other offence;

(b) where the perjury or other offence has not been committed, to specify the substance of the offence charged against the accused, without averring any matter rendered unnecessary to be averred in the case of wilful and corrupt perjury.

35. Certificate of clerk is sufficient evidence

A certificate containing the substance and effect only (omitting the formal part) of the information and trial for any crime or misdemeanour purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where the information was tried shall, on the trial of an information for perjury or subornation of perjury, be sufficient evidence of the trial of the information for crime or misdemeanour, without proof of the signature or official character of the person appearing to have signed the certificate.

36. Unnecessary averment

No information for an offence shall be held to be defective—

(a) for want of the averment of any matter which needs not be proved;

(b) for the omission of the words—

(i) "as appears by the record";

(ii) "with force and arms";

(iii) "against the peace";

(c) for the insertion of the words "against the form of the statute" instead of the words "against the form of the statutes" or *vice versa*;

(d) for the designation of a person in the information by a name of office or other descriptive appellation instead of his proper name;

(e) for the omission of the time at which the offence was committed where time is not of the essence of the offence;

(f) for stating the time imperfectly;

(g) for stating the commission of offence on—

(i) a day subsequent to the filing of the information;

(ii) an impossible day; or

(iii) a day that never happened;

(h) for want of, or imperfection in the addition of, any defendant; or

(i) for want of—

(i) a proper or perfect venue;

(ii) a proper or formal conclusion;

(iii) the statement of the value of any matter or the amount of damage, where the value or amount of damage is not of the essence of the offence.

37. Promoter of an illegal act

The procurer or promoter of an illegal act capable of being jointly done by 2 or more may be charged directly with having done such act.

38. Effect of acquittal on party charged

The acquittal of a party charged as accessory before the fact to a crime, shall be no bar to a charge against him as principal, and the acquittal of a party charged as a principal in crime, shall be no bar to a criminal information charging him as an accessory before the fact.

39. Effect of conviction on party charged

The conviction of a party charged as an accessory before the fact to a crime, shall be a bar to a charge against him as a principal offender in respect of the same offence, and the conviction of a party charged as a principal shall be a bar to a criminal information charging him as an accessory before the fact to the same offence.

40. Several persons in one criminal transaction

Several persons implicated in the same criminal act may be charged with different acts of participation, provided those acts constitute offences of the same degree, although the participants may be liable to different penalties in respect of their participation.

41. Accessory before fact

In an information against an accessory before the fact, where the principal has been convicted, it shall be sufficient—

(a) to state the record of conviction; and

(b) to allege the procuring and promoting by the accessory of the criminal act or the criminal omission by the principal offender.

42. Misconduct by or towards a public officer

Where the offence consists in misconduct—

(a) by a public officer; or

(b) towards a public officer,

it shall be sufficient to allege that the offender or the offended person is a public officer.

43. Allegation of a particular office

An allegation of being in a particular office or situation shall be equivalent to a direct averment that the accused was in that office or in that situation.

44. Several counts for crimes

(1) Subject to subsection (2), several counts for crimes, none of which amounts to treason, may be joined in the same information.

(2) The Court may restrain the prosecutor to the proof of one offence only at the trial.

45. Several misdemeanours to be proved

Where several distinct misdemeanours are charged in the same information, the prosecutor may, at the trial, prove them all.

46. Offences proved against several persons

Several offences of the same degree may be charged in the same information against several persons.

47. – 48. —

PART III – PRE-TRIAL PROCEDURE

49. Warrant to apprehend an accused

Where an information is filed against a person who is—

(a) not already in actual custody;

(b) not under recognisance to appear and answer; or

(c) under a recognisance to appear and answer,

and who makes default, his appearance to answer may, on the application of the Director of Public Prosecutions, be compelled by warrant of a Judge for his apprehension.

50. Warrant where information is for misdemeanour

On an information filed against a person for a misdemeanour, a Judge may, on the application of the Director of Public Prosecutions, issue his warrant under his hand and seal and cause that person to be apprehended and brought before him or some other Judge, or before a Magistrate.

[S. 50 amended by Act 32 of 1999.]

51. —

52. To whom warrant directed

(1) The warrant mentioned in sections 49 and 50 shall be directed to the ushers of the Court, to the police, and to all others whom it may concern.

(2) Where there are several accused, a separate warrant may be taken against each of them or they may all be included in one warrant.

53. —

54. Witness examined in absence of accused

Where on a warrant for crime the accused has not been found, or after being apprehended has escaped, the Magistrate of the district where the offence is alleged to have been committed shall, notwithstanding the absence of the accused, proceed to examine witnesses upon the facts and circumstances of the case, in the manner prescribed for such offence.

55. Information on examination of witness

An information shall be drawn up by the State or other prosecutor on such examination, and on the prosecutor's application, an order may be issued by a Judge directing the accused to appear and surrender himself within 20 days, on pain of being outlawed.

[S. 55 amended by Act 48 of 1991.]

56. Order for outlawry

An order under section 55 shall be posted up on the doors of—

(a) the Supreme Court;

(b) the last known residence of the accused;

(c) the District Court; and

(d) all police stations.

57. Sequestration of outlaw's property

Where after the expiration of 20 days, the accused named in the order under section 56 has not surrendered himself or been taken, the Director of Public Prosecutions shall apply to the Supreme Court for a sequestration to the use of Government of all the property of, or belonging to, or in any way held in trust, for the accused, and the property shall be vested in the Curator.

58. Sequestration order when superseded

Where the accused against whom, or against whose property a sequestration has been issued under section 57, is captured or surrenders himself within a year and a day after the issue of the sequestration so as to be brought to trial for the offence of which he stands charged, the sequestration shall, on his application to the Supreme Court, be superseded by its order, and the property seized by virtue of the sequestration, or the proceeds thereof, after deducting all the administrative expenses, shall be restored to him.

59. Person accused of treason or crime

Every person against whom an information has been filed for treason or crime shall have, if required—

(a) a copy of the information delivered to him by the registrar at least 5 days before the day of trial;

(b) a list of the witnesses intended to be produced at the trial, with their names, professions and addresses; and

(c) a list of the jurors with their names, professions and addresses.

60. List of witnesses for accused

The accused shall, at least 3 days before the day of his trial, deliver or cause to be delivered to the registrar or clerk of the Court a list of the witnesses and a notice of the documents for the defence.

[S. 60 amended by Act 29 of 1992.]

61. List of additional witnesses

Nothing in this Act shall prevent the State or other prosecutor or the accused from delivering a further list of witnesses, where the Court is satisfied that the party filing the list was not, at the time of filing his previous list, aware that the evidence of those witnesses was material to the case.

[S. 61 amended by Act 48 of 1991.]

62. Objection when waived

Where the accused pleads without claiming a copy of the information under section 59 or without having the copy delivered to him within the time specified in that section, an objection in respect of the non-delivery or defective delivery of a copy of the information shall be waived.

63. Objection when made

An objection by the accused that the list of the witnesses has not been delivered to him under section 59, shall be too late if not made before the first witness is called at the trial.

64. Copy of examination of witnesses

(1) Where a preliminary inquiry has been held pursuant to Part II of the District and Intermediate Courts (Criminal Jurisdiction) Act, any person who is held on bail or committed to prison for an offence shall be entitled to require and have on demand, copies of the examinations of the witnesses upon whose depositions he has been held on bail or committed to prison, on payment of a prescribed fee.

(2) Where the demand is not made before the day appointed for the commencement of the trial of the accused, the accused shall not be entitled to have a copy of the examination of witnesses, unless the Judge presiding at the trial thinks that the copy may be made and delivered without delay or inconvenience to the trial.

(3) Notwithstanding subsection (2), the Judge may, where he thinks fit, postpone the trial where the accused has not received a copy of the examination of witnesses.

[S. 64 amended by s. 3 (1) (a) of Act 11 of 2007 w.e.f. 21 July 2007; s. 3 (c) of Act 18 of 2011 w.e.f. 9 July 2011.]

65. Prosecution evidence available

(1) Every person charged with an offence—

(a) before a Judge and a jury where the trial has not been preceded by a preliminary inquiry;

(b) before a Judge without a jury; or

(c) before the Intermediate Court,

shall be entitled to have, on demand, copies of the statements recorded from the witnesses for the prosecution, of any documentary evidence to be produced at the trial and of any unused material.

(2) Where the trial has been preceded by a preliminary inquiry, the person charged shall, in addition to the statements, documentary evidence and unused material referred to in subsection (1), be entitled to copies of the depositions taken against him by the committing Magistrate.

[S. 65 repealed and replaced by s. 3 (d) of Act 18 of 2011 w.e.f. 9 July 2011.]

66. – 67. —

68. Perjury of witness

A Judge may direct a person examined as a witness before him to be prosecuted for the offence of perjury and immediately commit that person for trial where there appears to him a reasonable cause for the prosecution.

69. Objection to information

(1) An objection to an information for a formal defect apparent on the face shall be taken by demurrer or motion to quash the information before the jury is sworn.

(2) The Court before which an objection is taken for a formal defect may, if it thinks fit, cause the information to be forthwith amended in such particular by an officer of the Court or some other person, and the trial shall then proceed as if no such defect had appeared.

PART IV – ARRAIGNMENT

70. Information to be read over to accused

(1) Every accused shall, before his trial, be brought to the bar to be—

(a) called upon by name to hear the information read to him by the registrar;

(b) asked whether he is guilty or not guilty of the offence charged.

(2) The accused shall, unless there is a danger of his escape, be brought without irons, shackles, or other restraint.

71. —

72. Several charges for same offence

Where the accused is charged with more than one offence for the same act, he may be arraigned and tried at the same time on all or any of those offences.

73. Several accused charged in one information

Where several accused are charged in the same information, they shall all be arraigned at the same time.

74. Unfitness to stand trial

(1) Where an accused suffers from insanity and on arraignment is found to be so suffering by a Court so that he cannot be tried on the information filed against him, the Court may direct the confinement of the accused in a mental health care centre under the Mental Health Care Act.

(2) The Court shall not make a finding under subsection (1) except on the evidence of not less than 2 registered psychiatrists.

[S. 74 amended by Act 24 of 1998.]

75. Accused admitting charge

Where the accused admits the charge to be true, his confession shall be recorded, and judgment delivered according to law.

76. —

77. Plea in abatement

(1) A plea in abatement praying that the information be quashed may be pleaded previously to a plea in bar.

(2) The plea may be made verbally.

78. One charge proved sufficient

Where an information contains more than one distinct charge, and, on demurrer, one of the charges demurred to appears to be insufficient, but one of the others appears to be sufficient, judgment shall be given for the State as to the offence sufficiently alleged.

[S. 78 amended by Act 48 of 1991.]

79. Demurrer against or for accused

(1) Where a demurrer is found against the accused, the judgment—

(a) in the case of crime, shall not be final, but the accused may plead over not guilty;

(b) in the case of misdemeanour, shall be final, and may be given against the accused as if he had been convicted.

(2) Where a demurrer is found for the accused, the judgment shall be the dismissal and discharge of the accused.

80. Accused may plead over

Where judgment is given against the accused on demurrer, on a charge of misdemeanour, the Court may, in special circumstances, give the accused leave to plead over.

81. Unreversed acquittal

(1) An unreversed acquittal on a sufficient information before a Court of competent jurisdiction shall be a bar to another prosecution for the same offence.

(2) Subsection (1) shall extend to all cases where the accused might on the first information have been convicted of the offence charged in the second information, or of an offence included in that charged in the second information.

82. —

83. Special verdict no bar

The acquittal is not a bar unless it is on a sufficient information, although the jury finds a special verdict, and the accused is acquitted on it.

84. Plea of *autrefois acquit*

A plea of *autrefois acquit* shall show, by voucher of the record and proper averments, an acquittal of the accused by judgment of a Court of competent jurisdiction, from a charge on which he might have been convicted and on which judgment might have been pronounced against him on conviction and which—

(a) is the same charge in law and in fact with that to which he pleads;

(b) in law or in fact involves the same charge; or

(c) in law or in fact is a substantive offence essential to the charge to which he pleads.

85. Previous conviction

(1) A previous conviction or attainder for the same offence in law and in fact with that charged in an information or for an offence involving the same offence in law and in fact with the one charged in the information, may be pleaded in bar of such information.

(2) The rules relating to the pleading of a former acquittal shall, so far as they are applicable, be applied to the pleading of a former conviction or attainder.

86. —

87. Accused being dumb or mute

(1) Where a person who is arraigned or charged on an information for a crime or misdemeanour—

(a) is mute by the visitation of God;

(b) stands mute of malice; or

(c) will not answer directly to the information,

the Court may, if it thinks fit, order the registrar to enter a plea of not guilty on behalf of that person.

(2) The plea entered under subsection (1) shall have the same force and effect as if that person had actually pleaded not guilty.

88. Accused admitting part of information

The accused may plead not guilty as to part of the information and either confess or plead matter in defence as to the remainder.

PART V – TRIAL

89. Summons to witness for prosecution

(1) All witnesses for the prosecution shall be summoned by a writ of subpoena issued from the Registry at the instance of the Director of Public Prosecutions and served by an usher.

(2) Any witness who fails to appear as directed shall, on conviction, be liable to a fine not exceeding 100 rupees, and to the expenses consequent upon his non-attendance, and shall be apprehended in virtue of a warrant, and brought before the Court on the day of trial.

90. Summons to witness for defence

(1) A person against whom an information has been filed may take out a similar subpoena from the Registry for the attendance of a witness he may require.

(2) The subpoena under subsection (1) shall be served by an usher at that person's request, and any witness who fails to appear shall be liable to the consequences mentioned in section 89.

91. Pleading before Judge

The trial shall take place, according to the nature of the offence, before a Judge.

92. Postponement of trial

Where the number of jurors is insufficient at the time of trial—

(a) the trial shall, where the Court thinks fit, be postponed; or

(b) the number of jurors shall be completed according to section 45 of the Courts Act.

93. –

[S. 93 amended by Act 48 of 1991; Act 15 of 2000; repealed by s. 3 (1) (b) of Act 11 of 2007 w.e.f. 21 July 2007.]

94. Reason for postponement of trial

A trial may be postponed—

(a) where a witness is ill or absent;

(b) where a witness, being a child of tender years, is incompetent without instruction to take an oath;

(c) where circumstances have occurred likely to prevent a fair trial from taking place;

(d) where evidence which ought to be procured, without default on the part of the prosecution, is not available;

(e) where the evidence is defective by reason of improper practice on the part of the accused or his representative; or

(f) where the Court is, under the circumstances, satisfied that delay is proper and essential to the ends of justice.

95. Treatment of accused during postponement

Where a trial for crime is postponed at the request of the Director of Public Prosecutions or on account of the absence of a material witness, the Court may—

(a) order the accused to be detained until the date fixed for the hearing of the case; or

(b) admit him to bail or discharge him on his own recognisance. [S. 95 amended by s. 3 (1) (c) of Act 11 of 2007 w.e.f. 21 July 2007.]

96. – 100. —

101. Challenge of jury by accused

On a charge of treason or other crime, the accused shall be informed, before the swearing of the jury, that if he challenges any member of the jury, he shall challenge him as he comes to be sworn and before the taking of the oath is commenced.

102. Challenge of jury after swearing

No party may, of right, challenge the array, or a particular juror, after the swearing of the jury, unless for some cause which arose after the administering of the oath.

103. Reading over of panel of jury

To enable the accused to make his challenges, the whole panel may be read over in order that he may see who they are that appear.

104. Challenges where several accused

Where several accused are tried by the same jury, they shall agree as to their challenges, which shall not, in any case, exceed the number of challenges allowed to one accused.

105. Opening by Counsel for State

Counsel for the State shall open the information and specify its circumstances and call witnesses for the prosecution.

[S. 105 amended by Act 48 of 1991.]

106. Swearing of witness

Any person who is produced or appears as a witness, against or for an accused on a criminal charge shall before he is admitted to depone or give any manner of evidence—

(a) be sworn by the Court according to the form of the religion he professes; or

(b) make such solemn affirmation as is receivable in place of an

oath, to speak the truth, the whole truth and nothing but the truth.

107. Examination of witness

Every witness—

(a) shall be examined separately by Counsel for the State;

(b) may then be cross-examined by Counsel for the defence or by the accused through the Judge;

(c) may be re-examined by Counsel for the State as to any new matter which has been elicited by the cross-examination.

[S. 107 amended by Act 48 of 1991.]

108. State's evidence

Where several persons are charged in one information, the State may, with the consent of the Court before the opening of the case, have one of them acquitted for the purpose of being called as a witness for the prosecution.

[S. 108 amended by Act 48 of 1991.]

109. Child victim as witness

In every trial of an offence charged as having been committed, or attempted to be committed, upon a child of tender years, the child, if under the age of 9, shall be admissible as a witness, where the Judge or Magistrate by or before whom the case is tried, is satisfied that he has sufficient intelligence to make a correct statement on the subject of the trial, although he may not understand the nature of an oath or of a solemn affirmation.

110. Child witness not to be sworn

A child who is heard as a witness under section 109, shall—

(a) not be examined on oath or solemn affirmation;

(b) before giving evidence, make, in presence of the Judge or Magistrate, a promise to speak the truth in terms of the First Schedule.

111. Evidence of child

The evidence given by a child under sections 109 and 110 shall be regarded in all respects as that of a witness lawfully admitted in the cause, and it is for the Judge, Magistrate, or jury, as the case may be, by whom the truth of the charge is to be decided to determine what credit, if any, should be given to that evidence.

112. Defence of accused

(1) A person tried for a crime or misdemeanour, shall be admitted after the close of the case for the prosecution, to make a full answer and defence to the crime or misdemeanour by Counsel, and to give evidence and call witnesses in support.

(2) Every witness for the defence shall be called and sworn, and examined by Counsel for the defence and cross-examined by Counsel for the State, in the same order and manner as specified in sections 106 and 107 with reference to the witnesses for the prosecution.

(3) Where the accused conducts his own defence, he may be heard by the Court on any question of law.

[S. 112 amended by Act 48 of 1991.]

113. Order of closing speeches

In cases of prosecution for crime or misdemeanour instituted by the State, Counsel for the State shall be allowed to make a closing speech after the close of the case for the defence but before the closing speech, if any, on behalf of the accused.

[S. 113 amended by Act 15 of 2000.]

114. Accused being ill

Where during the trial an accused is taken so ill as to be incapable of remaining at the bar on his defence, the jury may be discharged, and on his recovery, he may be tried by another jury, and be put on his trial again.

[S. 114 amended by s. 3 (1) (d) of Act 11 of 2007 w.e.f. 21 July 2007.]

115. Acquittal on account of insanity

(1) Where it is given in evidence on the trial of a person charged with an offence that the person was suffering from insanity as provided in section 42 of the Criminal Code at the time of the commission of the offence and the person is acquitted, the Court shall be required—

(a) to find specially whether that person was suffering from insanity at the time of the commission of the offence;

(b) to declare whether it has acquitted him on account of such insanity.

(2) Where the Court finds that the accused was suffering from insanity at the time of the commission of the offence, the Court shall order that the accused be confined in a mental health care centre as provided in the Mental Health Care Act.

(3) The Court shall not make a finding under subsection (1), except on the evidence of not less than 2 registered psychiatrists.

[S. 115 amended by Act 24 of 1998.]

116. Court adjourning trial

(1) Where the trial cannot be concluded in one day, the Court may adjourn to the next morning or a subsequent day and so on from day-to-day.

(2) Where a trial is adjourned, the Judge may, if the offence with which the prisoner is charged is not one punishable by penal servitude for life, allow the jury to separate at any time before it has begun to consider its verdict.

117. Juror being unable to perform his functions

Where a juror dies or becomes incapable of performing his functions before the verdict—

(a) another juror may, with the consent of the accused, be added to the remaining jurors, the accused having his challenges over again as to the jurors who are to be resworn; or

(b) the jury may be discharged and a fresh jury charged.

118. Court postponing trial for production of proof

The Court may, although the witnesses for the prosecution have all been examined, postpone the trial and direct another trial to take place in order to give time for the production of any matter essential to the proof.

119. General or special verdict

In all cases of crime, the jury shall give its verdict in open Court, and may give either a general or special verdict.

120. Verdict of attempt on charge of full offence

(1) Where, on the trial of a person charged with a crime or misdemeanour, it appears to the jury upon the evidence that he did not commit the offence charged, but only attempted to commit the offence, that person shall not for that reason be entitled to be acquitted, but the jury may return as their verdict that he is not guilty of the crime or misdemeanour charged, but is guilty of an attempt to commit the crime or misdemeanour.

(2) The accused shall be liable to be punished in the same manner as if he had been convicted upon an information for attempting to commit the particular crime or misdemeanour charged in the information.

(3) The accused shall not be liable to be prosecuted subsequently for an attempt to commit the crime or misdemeanour for which he was so tried.

121. Verdict of assault with intent to rob on charge of aggravated larceny

(1) Where, on the trial of a person upon an information for aggravated larceny, it appears to the jury upon the evidence that he did not commit the crime of aggravated larceny, but that he did commit an assault with intent to rob, that person shall not for that reason be entitled to be acquitted, but the jury may return as its verdict that he is guilty of an assault with intent to rob.

(2) The accused shall be liable to be punished in the same manner as if he had been convicted upon an information for criminally assaulting with intent to rob.

(3) The accused shall not be liable to be prosecuted for an assault with intent to commit the aggravated larceny for which he was so tried.

122. Crime by accused charged with misdemeanour

(1) Where, on the trial of a person for a misdemeanour, it appears that the facts given in evidence amount in law to a crime, that person shall not for that reason be entitled to be acquitted of the misdemeanour.

(2) No person tried for the misdemeanour shall be liable to be prosecuted for a crime on the same facts, unless the Court before which the trial takes place thinks fit to discharge the jury from giving any verdict upon the trial, and to direct that person to be included in an information for crime, in which case, that person may be dealt with in all respects as if he had not been put upon his trial for the misdemeanour.

123. Verdict of larceny on charge of embezzlement

(1) (a) Where, on the trial of a person who is charged in an information for embezzlement as a clerk, servant or person employed for the purpose or in the capacity of a clerk or servant, it is proved that he took the property in question in a manner which amounts in law to larceny, he shall not for that reason be entitled to be acquitted, but the jury may return as its verdict that he is not guilty of embezzlement but is guilty of simple larceny, or of larceny as a clerk, servant or person employed for the purpose or in the capacity of a clerk or servant, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an information

for the larceny.

(b) Where on the trial of a person who is charged in an information for larceny, it is proved that he took the property in question in a manner which amounts in law to embezzlement, he shall not for that reason be entitled to be acquitted, but the jury may return as its verdict that he is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an information for such embezzlement.

(c) No person who is tried for embezzlement or larceny shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

(2) Subsection (1) shall, with such adaptations and modifications as the context may require, apply to a person charged under section 40 of the Criminal Code with receiving or being found in possession of articles obtained by means of a larceny or embezzlement as they apply to a person charged with larceny or embezzlement.

124. Receiver of stolen property

Where on the trial of 2 or more persons charged in an information for jointly receiving property, it is proved that one or more of them separately received part of the property, the jury may convict upon that information such persons as are proved to have received part of the property.

125. Larceny of property stolen at different times

Where on the trial of an information for larceny it appears that the property alleged in the information to have been stolen at one time was taken at different times, the prosecutor shall not for that reason be required to elect upon which taking he will proceed, unless it appears that there were more than 3 takings or that more than 6 months elapsed between the first and the last of such takings.

126. Verdict where there are several accused

(1) Where an information is filed against several accused for an offence, one or more may be convicted, if the evidence and the nature of the offence charged warrant such conviction, and others may be acquitted.

(2) Where several persons are jointly charged with an aggravated offence, one or more may be convicted of the aggravated offence, and the others may be convicted of the simple offence, where the evidence warrants the conviction.

127. —

128. Verdict of assault on indictment for crime

On the trial of a person for a crime, where the crime charged includes an assault against the person, the jury may acquit him of the crime, and return a verdict of guilty of assault against the person where the evidence warrants that finding.

129. Reconsidering and correcting verdict of jury

(1) The Court may, before the verdict is recorded, direct the jury to reconsider its verdict.

(2) Where the verdict is recorded, and it appears before the jury leaves the box that the verdict is not in accordance with the intention of the jury, the Court may correct that verdict.

PART VI – JUDGMENT AND SENTENCE

130. Judgment entered on record

(1) Upon the conviction of an accused where the judgment is final, judgment shall be entered on record by the registrar or clerk of the Court.

(2) The Court may, for the purpose of deliberation, or for some other good reason, suspend or delay the judgment.

[S. 130 amended by Act 29 of 1992; s. 3 (1) (e) of Act 11 of 2007 w.e.f. 21 July 2007.]

131. —

132. Judgment in presence of accused

(1) Where an accused is convicted of a crime punishable by a custodial sentence, or of a misdemeanour punishable otherwise than by a simple fine, judgment shall not be pronounced against him, unless he is in Court at the time, and does not allege any matter sufficient in law to arrest or bar judgment.

(2) Where the accused is in custody, he shall be brought up by order of the Court. [S. 132 amended by Act 31 of 1995.]

133. Adjournment after conviction

Where, on the conviction of an accused, the Court thinks proper to adjourn before pronouncing judgment against him, the accused shall, if he is in custody at the time of his conviction, remain in custody during the interval of the adjournment, and until judgment is pronounced against him, unless the Court thinks fit, with the consent of Counsel for the State or prosecutor, to allow the accused to be freed, upon his entering into his recognisance, with 2 sureties in such sum as the Court thinks proper, on condition that he appears on the day to which the Court adjourns, or when called to receive judgment.

[S. 133 amended by Act 31 of 1995.]

134. New recognisance

Where, at the time of his conviction, the accused is not in custody upon his recognisance to appear and answer the offence of which he has been convicted, he may, after reference to Counsel for the State or prosecutor, if the Court thinks proper, enter into a new recognisance, with 2 sureties, in such sums and with such conditions as are specified in section 133 and the previous recognisance shall be discharged.

135. Deduction of time of previous confinement

Where an accused has been in custody or has been imprisoned under a warrant or process before his trial for an offence of which he has been convicted, the Court or Judge, in passing sentence, shall take into account the time spent by the accused in custody and may sentence the accused to a term less than the minimum by a term not exceeding the aggregate of the term of imprisonment already served.

[S. 135 amended by s. 5 (a) of Act 36 of 2008 w.e.f. 6 December 2008.]

136. Joint fine

Where several accused are jointly convicted of an offence, the Court may impose a joint fine on them.

137. Judgment on indictment for several offences

Where 2 or more persons are included in an information for an offence which includes a lesser one of the same degree, and one or more of them are convicted of the greater, and one or more, of the lesser offence, judgment may be severally given according to their different offences.

138. One offence proved among several

(1) Where it appears that one or more of the charges in an information is or are sufficient in law, and, although one other charge, or several other charges, in the same information is or are deemed to be insufficient, the accused shall be acquitted in respect of such charge or charges as is or are held to be insufficient, and judgment shall be given in respect of such charges as are sufficient.

(2) (a) Subject to paragraph (b), the Intermediate Court may on sentencing a person convicted of more than one offence under section 303, 304, 305, 306 or 307 of the Criminal Code order that the sentences shall run consecutively.

(b) No order shall be made under paragraph (a) whereby a person shall be required to serve sentences which in the aggregate exceed 30 years.

[S. 138 amended by Act 1 of 1985.]

139. Penalty to be consecutive

(1) Where sentence is passed for an offence on a person already imprisoned under sentence for another crime, the Court may order that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which that person has been previously sentenced.

(2) (a) Subject to paragraph (b), the Intermediate Court may on sentencing a person convicted of more than one offence under section 303, 304, 305, 306 or 307 of the Criminal Code order that the sentences shall run consecutively.

(b) No order shall be made under paragraph (a) whereby a person shall be required to serve sentences which in the aggregate exceed 30 years.

[S. 139 amended by Act 1 of 1985.]

140. Accused convicted of several offences

(1) Where an accused is convicted of several offences at the same time, of the same nature, the Court may sentence him in respect of the several offences of which he has been so convicted.

(2) Where the Court sentences the accused under subsection (1) to imprisonment or penal servitude, the sentence in respect of the several offences may commence one after the other.

[S. 140 amended by s. 5 (b) of Act 36 of 2008 w.e.f. 6 December 2008.]

141. —

142. Imprisonment for non-payment of fine

A person sentenced to pay a fine may be sentenced to imprisonment until the fine is paid.

143. Payment of fine by instalments

Where a Court sentences a person convicted of an offence to pay a sum as a fine or other pecuniary penalty or for costs, it may, instead of forthwith issuing execution, direct payment of the sum to be made by instalments.

144. Security to be given by convicted person

The Court may, when directing a sum to be paid by instalments under section 143, require the convicted person to give security to the satisfaction of the Court for the payment of the instalments.

145. Failure to pay instalments

Where a sum is directed to be paid by instalments under section 143 and the convicted person fails to pay the instalment in time, execution shall forthwith be issued for the recovery of all the instalments then remaining unpaid in the same manner as if, after the conviction, no order had been made for the payment of the sum by instalments.

146. How recognisance is dealt with

(1) Where security has been furnished, and default is made in the payment of an instalment under section 145, the recognisance shall be dealt with and execution for the portion of the fine unpaid issued in the manner provided in section 10 of the Bail Act where the recognisance has been entered before a District Court.

(2) Where the recognisance has been entered before the Supreme Court, execution shall be issued in conformity with the law applicable to that Court.

147. Time limit for payment of fine

(1) Subject to subsection (2), the time fixed for the payment by instalments of a sum, as a fine or other pecuniary penalty, or for costs, shall, in no case, exceed one month for every 10 rupees or fraction thereof.

(2) The maximum period for the payment of any sum above 110 rupees shall be 12 months.

147A. Supervision of probation officer

(1) Notwithstanding sections 143 to 147, where a person has been allowed time for the payment of a sum which he has been sentenced to pay as a fine or other pecuniary penalty or for costs, and not less than 14 days have elapsed since the date of the sentence, the Court may, if it thinks fit, order that that person be placed under the supervision of a probation officer appointed under the Probation of Offenders Act.

(2) Where a person has been placed under the supervision of a probation officer under subsection (1), the Court shall, before issuing a warrant of seizure or a writ of execution against his property, in respect of non-payment of any sum specified in subsection (1), consider any report as to the conduct and means of the offender, which may be made by the probation officer.

148. Court may order payment of costs by accused

The Supreme Court trying a criminal case, with or without a jury, may, if it thinks fit, upon the conviction of an accused for a crime or misdemeanour, in addition to such sentence as may otherwise by law be passed, condemn the accused to the payment of the whole or part of the costs or expenses incurred, whether by the State or by a private prosecutor, in relation to the prosecution and conviction for the offence of which he is convicted.

149. Recovery of costs

The payment of the costs and expenses under section 148—

(a) may be ordered by the Court to be made out of money belonging to the convicted person wherever it may be found; and

(b) may be enforced in the same manner as the payment of any costs ordered to be paid by a judgment or order of a Court of competent jurisdiction in a civil action or proceeding may be enforced.

150. Sentence of penal servitude

Where under any enactment a Court is empowered or required to pass a sentence of penal servitude, other than a sentence of penal servitude for life, the sentence may, at the discretion of the Court, be for a term of not less than 3 years and not exceeding any period fixed by the enactment.

150A. Sentence of penal servitude for life

Where under any enactment other than the Criminal Code, a Court is empowered or required to pass a sentence of penal servitude for life, the sentence may, at the discretion of the Court, be for a term of not less than 3 years and not exceeding 60 years.

[S. 150A inserted by Act 6 of 2007 w.e.f. 18 June 2007.]

151. Imprisonment in lieu of penal servitude

Where under any enactment a Court is empowered or required to pass a sentence of penal servitude other than a sentence of penal servitude for life, the Court may, unless the enactment otherwise provides, inflict imprisonment with or without hard labour, for any term not exceeding 5 years.

[S. 151 reprinted by Reprint 1 of 1983; amended by s. 5 (c) of Act 36 of 2008 w.e.f. 6 December 2008.]

152. Imprisonment for less than minimum

Where under any enactment a Court sentences a person for an offence for which the penalty of imprisonment is provided, the Court may inflict imprisonment, for a period less than the minimum term of imprisonment fixed by the enactment.

[S. 152 amended by s. 5 (d) of Act 36 of 2008 w.e.f. 6 December 2008.]

153. Fine for less than minimum

Where under any enactment a Court sentences a person for an offence for which the penalty of a fine is provided, the Court may, unless the enactment otherwise provides, inflict a fine less than the minimum fixed by the enactment.

154. Revenue, customs, and quarantine law

Nothing in this Act shall be construed as giving a Court the power of inflicting a penalty less than the minimum penalty provided for by a revenue, customs or quarantine law.

155. Derogation

Sections 150, 151, 152 and 153 shall not apply to a conviction under sections 299 and 301A of the Criminal Code.

[S. 155 added by Act 1 of 1985; amended by Act 40 of 1990.]

156. – 168. —

168A. Reserving question of law for Court of Criminal Appeal

Where a person is charged with an offence before a Judge sitting with or without a jury, the presiding Judge may reserve for the consideration of the Court of Criminal Appeal any question of law either arising on the trial or any question of law on which at the trial he has given a decision as to the correctness of which he subsequently entertains a doubt, and if he thinks fit—

(a) adjourn the case until such question has been considered and determined;

(b) commit the person charged to prison;

(c) call upon such person—

(i) to enter into a recognisance with one or more sureties and in such sum as to him seems fit;

(ii) to appear at such time and place as may be appointed by him or by the Court of Criminal Appeal;

(iii) receive judgment or render himself in execution, as the case may be.

[S. 168A amended by Act 20 of 1993.]

168B. Statement of question reserved

(1) The Judge by whom a question of law is reserved under section 168A shall—

(a) state the question with the circumstances upon which it has arisen; and

(b) direct such statement to be entered upon the record for the opinion of the Court of Criminal Appeal.

(2) The matter shall be argued before the Court of Criminal Appeal, where it so directs, by Counsel for the State and for the defence.

(3) The Court of Criminal Appeal shall have full power and authority—

(a) to hear and finally determine the question;

(b) to reverse, affirm or amend a judgment which has been given; or

(c) to order that the verdict of guilty be set aside, and that a judgment of acquittal be entered on the record.

(4) Where a question of law has been reserved and a recognisance has been entered into for the appearance of the person convicted for receiving judgment or for his rendering himself in execution, and the person convicted fails to appear or surrender himself in compliance with the terms of the recognisance, a warrant may be issued by a Judge for his arrest and execution shall issue for the recovery of the amount of the recognisance as if a civil judgment had been obtained against the person convicted and his surety or sureties.

[S. 168B amended by Act 48 of 1991.]

168C. —

169. —

170. Convict suffering from mental disorder

(1) Where an offender suffers from mental disorder after judgment is pronounced against him, immediately or at any time thereafter, the execution of or further execution of judgment shall be stayed and he shall be dealt with as a security patient under the Mental Health Care Act.

(2) Section 7 and following of the Mental Health Care Act shall apply to an offender specified in subsection (1).

[S. 170 amended by Act 24 of 1998.]

PART VII – IMPRISONMENT IN LIEU OF FINE AND STOLEN PROPERTY

171. – 181. —

182. Judgment on misdemeanour

Where an accused, on a charge of misdemeanour, is present on the passing of the judgment, the Court or Judge may commit him to prison in execution of the judgment, or

until he has paid the fine imposed.

183. Return of stolen property

(1) Where an information is lodged against a person, for a crime or misdemeanour in stealing, taking, obtaining, or converting, or in knowingly receiving property and he is convicted of the crime or misdemeanour, the Court—

(a) shall order the property to be restored to its owner or representative;

(b) may make writs of restitution for the property or order the restitution of the property in a summary manner.

(2) Where it appears that valuable security has been *bona fide* paid or discharged by some person liable to the payment or, being a negotiable instrument, has been *bona fide* taken or received by transfer or delivery by some person for a just and valuable consideration, without a notice or without reasonable cause to suspect that the security had been stolen, taken, obtained, or converted by a crime or misdemeanour, the Court shall not order the restitution of such security.

184. Property purchased with stolen money

The Court may also order property purchased with stolen money to be delivered up in cases where it has authority to do so.

PART VIII – SECURING LIBERTY OF INDIVIDUAL

185. Unlawful imprisonment

(1) Any person who is aware that another person is confined in a place which has not been appointed to serve as a place of detention or prison, shall give information of the fact to a Magistrate or the Ministère Public.

(2) A Magistrate or the Ministère Public shall, on information received under subsection (1) or on his own initiative, resort to any place where it is alleged that a person is confined in a place which has not been appointed to serve as a place of detention or prison and release any person found there.

(3) Where it is alleged that a person found in any place under subsection (2) is lawfully detained, the person concerned shall forthwith be taken before a Magistrate who shall, if necessary, issue a warrant.

(4) Where there is any resistance to the Magistrate or other public officer, the Magistrate or the officer may require the assistance of any person.

(5) Any person who is called upon for help under subsection (4) and does not give assistance shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200 rupees.

186. – 187. —

188. Complaint of illegal detention to Judge

(1) Where a Judge receives a complaint by or on behalf of a person to the effect that he is illegally committed or restrained of his liberty, he may order all persons whom it may concern to—

(a) return to him any depositions and commitments;

(b) take and return any other evidence or matter necessary for the purpose of ascertaining the cause of such detention and imprisonment; or

(c) issue a writ of *habeas corpus* directed generally to every gaoler, officer or

any other person in whose custody the person committed or restrained may be.

(2) The gaoler, officer or any other person shall, at the return of the writ upon due and convenient notice given to him—

(a) bring or cause to be brought the person committed or restrained before the Judge who issued the writ, in open Court or in Chambers;

(b) certify the true cause of that person's detention or imprisonment,

and the Judge or Court shall proceed to examine and determine whether the cause of the commitment appearing on the return is just or not, and may thereupon release, bail out or remand that person.

189. Remand where arrest is irregular

Where the Judge finds from the depositions returned under section 188 that—

(a) the person claiming to be illegally committed or restrained has been illegally arrested;

(b) his warrant of commitment is defective or informal;

(c) there is reasonable ground for the offence charged against him,

he shall not discharge but remand that person or bind him over by recognisance to answer the charge.

190. Flouting writ of *habeas corpus*

(1) Where a person to whom a writ of *habeas corpus* is directed under this Act wilfully neglects to obey it, he shall commit a contempt of Court.

(2) The Court or the Judge may, upon proof made of wilful disobedience of the writ, issue a warrant to apprehend and bring before him any person wilfully disobeying the writ and commit him to prison until the writ is obeyed, and the Court or Judge shall forthwith proceed thereupon and inflict against such person a fine not exceeding 1,000 rupees.

191. – 193. —

PART IX – DISABILITY OF OFFENDER

194. Incapacity of criminal convict

(1) Where a person has been condemned to imprisonment upon the verdict of a jury and the interest of that person or of his family, or of any other person who requires it, a Judge in Chambers shall, on the application of the Attorney-General, appoint a guardian and subguardian to the condemned person for the administration of his property.

(2) The spouse of the condemned person, or his nearest male relative, as the case may be, shall, unless there is a valid reason to the contrary, be appointed guardian.

(3) No sale, lease or disposal of the property of the condemned person shall be made except with the consent of the Ministère Public after previous communication with the condemned person.

195. —

196. Property of outlaw

(1) Where an order has been issued by a Judge under section 55 directing the accused

to appear and surrender himself within 20 days under the penalty of being outlawed and the accused has not surrendered himself or been taken, a curator shall be appointed to his property where the accused has no agent lawfully entitled to sue and be sued on his behalf in Mauritius.

(2) (a) The spouse or the nearest male relative of the accused, as the case may be, shall, unless there is a valid reason to the contrary, always be preferred in accordance with section 194.

(b) Where no spouse, ascendants or descendants in the direct line can be legally appointed curator, the Curator shall—

(i) be sent into possession of all the property belonging to, or in any way held for, the accused; and

(ii) administer the property in accordance with the Curatelle Act or until the return of the accused to Mauritius.

(3) No sale, lease or disposal of any property of the outlaw, shall, except with the consent of the Ministère Public, be made by the person who holds the power of attorney of the outlaw.

PART X – DISCHARGE OF OFFENDER

197. Absolute or conditional discharge

(1) Where a Court by or before which a person is charged with an offence (not being an offence the sentence of which is fixed by law) thinks that having regard—

(a) to the character, antecedents, age, health or mental condition of the person;

(b) to the trivial nature of the offence; or

(c) to the extenuating circumstances under which the offence was committed,

it is inexpedient to inflict punishment and that a probation order is not appropriate, the Court may make an order discharging him absolutely or conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding 3 years, as may be specified in the order, and in either case order him to pay the costs.

(2) In this section, "offence the sentence for which is fixed by law" means an offence for which the Court is required to sentence the offender to penal servitude for life or detention for a period to be prescribed by the Minister, or any offence referred to in section 205.

198. Conditions of recognisance

(1) Subject to subsection (2), a recognisance under this Part may contain such additional conditions with respect to the residence of the offender, his abstention from intoxicating liquor, or from frequenting undesirable places, his reporting to the police, and any other matter as the Court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences.

(2) (a) A recognisance shall not include a condition that a person under the age of 17 shall reside in an institution which is not approved by the Minister or subject to such inspection as the Minister may direct, unless that person is while residing in the institution to be employed or to seek employment outside it.

(b) Where it is made a condition of recognisance that a person under the age of 17 shall reside in an institution, the Court shall forthwith give notice of the terms of the recognisance to the Minister.

(c) Where the residence has, in the case of a person under the age of 17 been made a condition of recognisance, the Minister may, if he considers that it is in the interest of that person so to do, cause an application to be made to the Court before which he is bound by his recognisance to appear, and thereupon the Court may vary the conditions of the recognisance by excluding the condition as to residence or by substituting the name of some other institution.

(3) The Court shall furnish to the offender a notice in writing stating in simple terms the conditions of the recognisance he is required to observe.

199. Court may vary conditions of release

(1) The Court before which a person is bound by his recognisance under this Part to appear for sentence may—

(a) where it is of opinion, on the application of the Director of Public Prosecutions, that it is expedient that the terms or conditions of the recognisance should be varied, summon the person bound by the recognisance to appear before it, and, if he fails to appear or fails to show cause why such variation should not be made, vary the terms of the recognisance by extending or diminishing its duration or by altering its conditions, or by inserting additional conditions;

(b) on the application of the Director of Public Prosecutions, and on being satisfied that the conduct of the person bound by the recognisance has been such as to make it unnecessary that he be any longer under supervision, discharge the recognisance.

(2) Any variation made under subsection (1) shall not exceed 3 years from the original order.

200. Breach of conditions of release

(1) Where the Court, before which an offender is bound by his recognisance under this Part to appear for sentence, or any Court of summary jurisdiction, is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognisance, it may—

(a) issue a warrant for his apprehension; or

(b) where it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and any sureties requiring him or them to attend at such Court and at such time as may be specified in the summons.

(2) Where an offender is apprehended under subsection (1), he shall, if not brought forthwith before the Court before which he is bound by his recognisance to appear for sentence, be brought before a Court of summary jurisdiction.

(3) The Court before which an offender who is apprehended is brought, or before which he appears in pursuance of a summons under subsection (1), may, if it is not the Court before which he is bound by recognisance to appear for sentence, remand him to custody or on bail until he can be brought before that Court.

(4) An offender under this section may be remanded to prison.

(5) Where a Court before which a person is bound by his recognisance to appear is satisfied that he has failed to observe any condition of his recognisance, it may—

(a) forthwith sentence him for his original offence; or

(b) where the case was one in which the Court in the first instance might have ordered the offender to be sent to the Correctional Youth Centre or Rehabilitation Youth Centre, and the offender is still under the age of 17, make such an order.

(6) (a) A Court before which an offender is brought or appears under this section for failing to observe the conditions of his recognisance may, instead of sentencing him under subsection (5) or remanding him to custody or on bail under subsection (3), impose on him a penalty not exceeding 100 rupees, without prejudice to the continuance in force of the recognisance originally entered into.

(b) No penalty inflicted under this subsection shall exceed the maximum penalty imposed for the original offence.

201. Right of appeal

(1) (a) Where a person in respect of whom an order to enter into a recognisance has been made by any Court, other than the Supreme Court, did not plead guilty or admit the truth of the information, that person shall have a right of appeal against that order to the Supreme Court, in the same manner as if he had been convicted of the offence charged.

(b) The District and Intermediate Courts (Criminal Jurisdiction) Act shall apply to an appeal under this subsection.

(2) On the hearing of an appeal under subsection (1) or of a case stated, the Supreme Court shall have, in addition to the powers exercisable under the District and Intermediate Courts (Criminal Jurisdiction) Act, the power of amending, altering or cancelling any of the conditions contained in the recognisance entered into by the offender under this Act.

(3) On the hearing of an appeal or a case stated, the Supreme Court may exercise the power as to the absolute or conditional discharge of the offender which is by this Act vested in the Court hearing the original charge.

[S. 201 amended by s. 3 (1) (f) of Act 11 of 2007 w.e.f. 21 July 2007.]

202. Limitation of forfeiture of recognisance

Where a person who has entered into a recognisance under this Part is, in accordance with section 200 (5), sentenced for the original offence and his recognisance is adjudged by the Court to be forfeited, the Court, instead of adjudging the persons bound to pay the sums for which they are respectively bound, may, if it thinks fit, adjudge those persons or any of them to pay part only of those sums or may, as respects all or any of those persons, remit payment.

203. No disability on offender

Where a Court has made an order under section 197, the offender shall not as a result be subject to any disabilities.

204. Quarterly returns

The registrar or clerk of any Court shall forward to the Director of Public Prosecutions quarterly returns of all orders made under sections 197, 198 and 199 and of all sentences under section 200 (5) and (6), and to the Commissioner of Police copies of all recognisances entered into under this Part.

205. Application of this Part

This Part shall not apply to—

(a) a prosecution under the Labour Act, or under a customs, quarantine, or revenue law;

(b) a prosecution under section 158 of the Criminal Code and under sections 159 and 160 of the Criminal Code where the violence is directed against a member of the Police Force.

206. Publication of approved institutions

The Minister may publish in the *Gazette* a list of the institutions approved by him for the purposes of this Act.

PART XI – HABITUAL CRIMINAL

207. Interpretation

In this Part—

"crime" means a breach of an enactment specified in the Third Schedule;

"habitual criminal" means a person convicted of a crime, against whom a previous conviction of a crime is proved.

[S. 207 amended by Act 35 of 1988.]

208. —

209. Supervision of habitual criminal

Where a person is convicted of a crime and a previous conviction of a crime is proved against him, the Court of trial may, in addition to any other punishment which it may inflict on him, direct that he shall be subject to the supervision of the police for a period not exceeding 7 years, commencing immediately after his discharge from gaol.

210. Remand for purpose of identification

(1) Subject to subsections (2) and (3), where a person charged with a crime upon *prima facie* evidence is suspected of having been previously convicted of a crime, the prosecution may, before sentence is passed, apply to the Court for an order of remand for purposes of inquiry and identification.

(2) The Court may remand the person for a period not exceeding one week.

(3) No person shall be remanded more than 3 times for the same purpose.

211. Mode of proving previous conviction

(1) A previous conviction for crime may be proved by producing—

(a) a certificate containing the substance and effect of the charge and conviction signed by the clerk or registrar of a Court and certifying that—

(i) the person concerned was previously convicted before that Court; or

(ii) where the person concerned was convicted by that Court of another offence, he admitted that he was so previously convicted or was proved to have been so previously convicted; or

(b) the original record of the case in which the previous conviction was made or the original warrant of commitment in virtue of which the person concerned has served, or is serving, a sentence passed upon him on his previous conviction of a crime,

and by giving proof of the identity of the person against whom a previous conviction is sought to be proved with the person named in the certificate or record or warrant, as the case may be.

(2) A certificate from the police officer in charge of fingerprint records at the Police Headquarters who has compared the fingerprints of an accused with the fingerprints of a person previously convicted of a crime, certifying the identity of the accused with the person previously convicted, shall, where the fingerprints of the accused have actually been taken by the officer producing the certificate, be *prima facie* proof that the accused and the person previously convicted are one and the same person.

212. – 218. —

219. Duty to report to police

Every person, who is subject to the supervision of the police, shall—

(a) immediately on release from gaol, inform the police of his intended place of residence; and

(b) thereafter so long as he remains subject to such supervision, notify his residence and report himself at such time and place and in such manner as may be prescribed.

[S. 219 amended by Act 35 of 1988.]

220. Penalty

Any person who contravenes section 219 or any regulation made under this Act shall, unless he satisfies the Court that he did his best to act in conformity with that section or regulation, commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 6 months.

PART XII – MISCELLANEOUS

221. Fingerprint of suspect to be taken

Where a person arrested on suspicion of having committed a crime is brought to a police station, the officer in charge of the station or any police officer may take his fingerprints on a fingerprint slip.

222. Fingerprint of convict to be taken

(1) Any Magistrate may, on the application of a Superintendent or Assistant Superintendent of Police by notice in writing, require any person who has been convicted of a crime, and whose fingerprints have not been taken, to attend at a police station in order that fingerprints may be taken.

(2) Any person who is required under subsection (1) to attend at a police station shall do so at the time and place specified in the notice.

(3) Any person who fails to comply with the notice under subsection (1) shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 6 months.

223. Regulations

The President may make regulations for—

(a) regulating the supervision of habitual criminals;

(b) prescribing the conditions under which convicts may be under the supervision of the police; and

(c) prescribing the fee payable under section 64. [S. 223 amended by Act 35 of 1988; Act 48 of 1991.]

First Schedule

[Section 110]

I promise that I will speak the truth in answer to questions which shall be put to me in this Court.

Second Schedule

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Third Schedule

[Section 207]

Bank of Mauritius Act	Section 42	Possession of counterfeit currency notes
Civil Status Act	Section 66	Counterfeiting and altering documents
	Section 68	False statements or declarations
	Section 69	Offences in respect of children
	Section 70	Concealment of birth
Courts Act	Section 195	Swearing false affidavit
Criminal Code	Sections 37 and 38, in so far as they affect the other offences and mis-demeanours mentioned in this Schedule	Accomplices in cases of crimes
	Sections 40 and 41	Possession of stolen property
	Sections 92 to 99	Counterfeit coin
	Section 108	Forgery by private individual
	Section 109	Making use of forged public writing
	Sections 111 and 112	Forgery and making use of forged private writing
	Sections 159 and 188 to 191	Assault against agent of civil or military authorities and association of malefactors
	Sections 215, 216, 220	Manslaughter, murder and infanticide
	Sections 227 to 229	Assault
	Section 236	Administering noxious substance
	Section 249	Rape, attempt upon chastity and illegal sexual intercourse
	Section 251	Debauching youth
	Sections 276 to 282	Giving false evidence and subornation of perjury

	Sections 301 to 310, 321 and 322	Larceny
	Section 330	Swindling
	Sections 331, 332, 333	Embezzlement
	Sections 346 to 360 and 362	Arson and damaging property
Criminal Code	Section 90	Brothel keeping
(Supplementary) Act	Sections 103 to 107	Impersonation
Dangerous Drugs Act	Section 30	Drug dealing offences
	Section 35	Offering or selling for personal consumption
District and Intermediate Courts (Criminal Jurisdiction) Act	Section 126 (2)	Perjury
Excise Act	Sections 40 and 41	Illicit distillery offences
Interpretation and General Clauses Act	Section 45 in so far as it affects the other offences mentioned in this Schedule	Attempts to commit crimes and misdemeanours
Prevention of Corruption Act	Section 5	Bribery of public official

[Third Sch. amended by s. 72 (1) of Act 34 of 2004.]

Fourth Schedule

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Fifth Schedule

[Section 10]

Offences committed under—

(a) Consumer Protection (Price and Supplies) Act,

(b) Criminal Code, sections 156, 249 (in respect of the offence of rape, where it is averred that the offence was committed by 2 or more individuals), 283, 284 and 288;

(c) Customs Act, sections 17 (4), 21 (8), 38 (3), 83 (3), 97 (4), 111 (2), 154, 156, 158 (1), (2) and (3) (a), (b) and (c) and 163 (2);

(d) Customs Tariff Act, section 5 (4);

(e) Dangerous Drugs Act;

(f) Excise Act, sections 40, 41 and 45 (2) (a), (b), (c), (d) and (g);

(fa) Freeport Act, sections 146 (6), 20 (5) and 22 (2);

(g) Gambling Regulatory Authority Act, sections 134, 135, 137, 138, 145 and 148 (4) and (5);

(h) —

(i) Income Tax Act, sections 123 (8) and 147;

(ia) International Criminal Court Act, section 4 (including ancillary offence);

(j) Piracy and Maritime Violence Act;

(k) Prevention of Terrorism Act, section 3;

(l) Registration Duty Act, section 24 (7);

(m) Value Added Tax Act, sections 54, 55, 57, 58, 59 (b), 64 (2) and 69 (3);

[Fifth Sch. added by Act 12 of 1986; amended by s. 34 (2) of Act 2 of 2002 w.e.f. 16 March 2002; s. 54 (1) of Act 23 of 2003 w.e.f. 28 April 2004; s. 4 of Act 30 of 2003 w.e.f. 28 August 2003; s. 7 of Act 15 of 2006 w.e.f. 7 August 2007; s. 166 (1) of Act 9 of 2007 w.e.f. 6 December 2007; s. 44 (2) of Act 27 of 2011 w.e.f. 15 January 2012; s. 11 (2) of Act 39 of 2011 w.e.f. 1 June 2012.]