

Offences committed outside British India

So far we have dealt with offences committed *within the limits* of British India. Suppose now that although the offender is within British India but the offence is committed outside British India, how is the situation to be dealt with?

It may be dealt with in two ways—

I. The offender may be sent up for trial in the country where the offence was committed.

II. The offender may be tried in British India. The first is known as dealing in *extradition*. The second may be called dealing in ex-territorial jurisdiction.

I. Extradition out side India may be to any—

- (a) Native State
- (b) Foreign State
- (c) His Majesty's Dominions.

(a) *Native State*

Extradition to a Native State is governed by the Indian Extradition Act of 1903.

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Having regard to the Statutes of Parliament and the Acts of the Indian Legislature I make the following geographical divisions of this globe for the purpose of jurisdiction of the secular Courts:

(1) Territorial divisions of land and foreign country governed by the Cr. P. C. and other enactments of the Indian Imperial Legislature.

(2) Territorial waters governed by Statutes 41 and 42 *Vic. C. 73*.

(3) High seas governed by statutes 12 and 13 *Vic. C. 96* (admiralty offence (colonial) 23 and 24 *Vic. C. 88 and 37 and 38 Vic. C. 2*. It would thus be seen that the offences on high seas are governed only by the Statutes of Parliament 12 and 13 *Vic.* confer on colonial courts to try all offences which could have been tried by the admiral. Section 1 of statute 23 and 24 *Vic. C. 88* makes statute 12 and 13 *Vic. C. 96* applicable to India and Statute 37 and 38 *Vic. C. 27* makes the offence punishable according to Indian Law.

India. Defined in Section 3 (27) of the General Clauses Act X of 1897.

“India shall mean British India together with any territories of any native Prince or Chief under the *Suzerainty* of H. Majesty exercised through the G. G. of India or other officer subordinate to the G. G. of India.”

British India. Defined in Section 3 (7) of the General clauses Act X of 1897

“Shall mean all territories and places within H. M’s dominions which are for the time being governed by H. M. through the G. G. of India or through any Governor or other officer subordinate to the G. G. of India.”

British India = B. I. + 3 miles

8 Bom. H.C.R. Cr. C 63.

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Who are liable to be tried for offences under the Penal Code ?

Section 3 I. P. C. Any person liable by any law passed by the Governor-General of India in Council to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner, as if such act had been committed within the said territories.

Section 4 I.P.C. The provisions of this Code apply also to any offence committed by—

(1) Any native Indian subject of H.M. in any place without and beyond British India.

(2) Any other British subject within the territories of any Native Prince or Chief in India.

(3) Any servant of the Queen whether a British subject or not within the territories of any Native Prince or Chief in India.

Explanation. In this section the word *offence* includes every act committed outside British India which, if committed in British India, would be punishable under this Code.

Section 7(1) of the Act

Under this section the Political Agent for such a State may demand by a warrant addressed to the D. M. or the Chief Presidency Magistrate the surrender of an offender. Provided that offender is not a European British subject and the offence is such as is described in the 1st schedule of the Indian Extradition Act.

Section 10

Magistrates in British India may, of their own motion and without requisition, issue warrant of arrest on satisfactory information, or complaint, and surrender the offender to the State within whose jurisdiction he has committed the offence.

N. B.—This Act is subject to treaty rights and the special provisions for extradition conserved by them.

Extradition is governed by the Extradition Act

(b) Foreign State.—The scene of offence.

In the case of a Foreign State to which English Extradition applies, the offender may be surrendered on requisition to such foreign State. Provided :

- (i) The Government of India or the Local Government thinks fit,
- (ii) If the offence is one mentioned in the 1st Schedule of the Indian Extradition Act, and
- (iii) If the offence is not of a political nature.

(c) Dominions. The scene of offence.

Extradition is governed partly

- (i) by the Fugitive Offender's Act, 1881 (Parliamentary Statute) and partly.
- (ii) by the Indian Extradition Act.

All criminal jurisdiction is local: the jurisdiction of the crime belongs to the country where the crime is committed.

L.R. (1891) A. C. 458.

Crime is purely local i. e. depends on the law of the place in which it is committed, and not on nationality of the person who commits it.

L.R. (1894) A.C.670.

British Indian Courts have no jurisdiction to try a foreigner for offences committed and completed outside British territory. No foreign subject can be tried in British India for an offence committed outside British India. *28 All 372:2 Bombay. L. R. 337.* Where a subject of the Native State committed theft in that State, and was subsequently found in British India in possession of the stolen property, the British Indian Court had no jurisdiction to try him for the offence of theft. It had however jurisdiction to try him for retaining stolen property. *10 Bombay 186.*

Found = does not mean where a person is discovered, but where he is actually present, whether he comes of his own accord or is brought under arrest.

6 *Bombay* 622.

A trial under this section will not be vitiated by reason of the fact that the accused has been brought into British India from a foreign territory under an illegal arrest.

13 *Bombay L. R.* 296.

Section 106 and 107 deal with dangerous quarrels.

Section 106 deal with the following cases :

Any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than offences punishable under Sections 143, 149, 153-A and 154, or of assault, or, other offence *involving a breach of the peace*, or of abetting the same, or any person accused of committing criminal intimidation is convicted and such Court *is of opinion* that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on him, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

2. If conviction is set aside on appeal or otherwise, the bond so executed shall become void.

3. High Court in revision may demand security.

NOTES.—Involving breach of the peace.

Two interpretations

1. These words refer to offences in which a breach of the peace is an essential ingredient and not to offences which merely provoke or are *likely to* lead to a breach of the peace.

30 Cal. 366. 47 Mad. 846 (848)

2. These words include offences where a breach of peace is *likely to* occur.

This is the view of the Bombay and the Allahabad High Courts. So that a bond in cases involving Section 504 I. P. C. (insult with intent to provoke a breach of the peace) as well as Section 448 I. P. C. (removal of a land mark) is good.

Section 107

Whenever a Criminal Court is informed that *any person who is likely to commit a breach of the peace or disturb public tranquillity or to do any wrongful act* that may probably occasion a breach of the peace or disturb public tranquillity, the Magistrate, if in his opinion there is sufficient ground for proceeding, may require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period *not exceeding one year* as the Magistrate thinks fit to fix.

NOTES

1. *Is informed.* The information must be reliable. A statement by a private person not upon oath or solemn affirmation is not credible information upon which alone a Magistrate can issue a summons under the section. The information must be of a *clear* and definite kind, directly affecting the person against whom process is issued, and should disclose tangible facts and details so that it may afford notice to such person of what he is to come forward to meet.

6 All. 26.

2. The act likely to cause a breach of the peace must be an *impending* one and not *likely to happen at some future time*; it must be shown to be in contemplation at the time of the information given.

3. The act resulting in a breach of the peace must be *wrongful*.

Acts which amount to an exercise of lawful rights are not to be treated as wrongful acts necessitating an order under this Section.

An act which is lawful does not become unlawful because some persons oppose it.

Wrongful act means an act forbidden or declared to be penal or wrongful by the Criminal law, and not a mere improper act.

e. g. killing a cow.

singing of ballads in open streets.

saying Amin in a loud voice in prayers in a mosque.

Section 108 deals with dangerous propaganda.

It deals with

any person who, within or without such limits, either orally or in writing or *in any other manner, intentionally* disseminates or attempts to disseminate, or in any wise abets the dissemination of,—

(a) Any seditious matter, i.e. any matter the publication of which is punishable under Section 174-A of the I. P. C.

(b) Any matter the publication of which is punishable under Section 153-A of the I.P.C., or

(c) Any matter concerning a judge which amounts to criminal intimidation or defamation under the Indian Penal Code.

Such Magistrate, if, in his opinion there is sufficient ground for proceedings, may require such person to show cause why he should not be ordered to execute a bond, with or without sureties for such period not exceeding one year as the Magistrate may think fit to fix.

NOTES.—

1. In any manner *e. g. by gramophone records.*

2. *Intentionally* would exclude innocent agents and ignorant tools *e. g.* newspaper boys and others merely handling.

3. Not writing but dissemination is necessary. When the matter is disseminated through a newspaper the Editor, proprietor, printer, or publisher shall not be proceeded against except by order of the Local Government.

Sections 109 and 110 deal with dangerous characters.

Section 109 deals with the following persons :—

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

(b) Person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself.

In these cases the bond may be for a year.

1. Concealing must be with a view to commit an offence.
2. Ostensible means of subsistence.

To be penniless or out of work is not to be without ostensible means of subsistence.

53 Cal. 347 Victor vis Emp.

Section 110 deals with the following cases of *habitual offenders*.

- (1) *is by habit* a robber, house-breaker, thief or forger or
- (2) *is by habit* a receiver of stolen property knowing the same to have been stolen or
- (3) *habitually* protects or harbours thieves or aids in the concealments or disposal of stolen property or
- (4)

In the case of habitual offenders the bond may be for 3 years.

Section 121

The method adopted to compel such persons to keep peace or be of good behaviour is to demand from them security to keep peace or behave for a certain period.

Difference between a bond for keeping peace and bond for keeping good behaviour

1. A bond for keeping the peace will not be forfeited by the commission of *any* offence ; but only by the commission of offences likely in their consequences to cause a breach of peace.

2. A bond for good behaviour will be forfeited by the commission of *any* offence punishable with imprisonment.

Procedure on breach of bond. When a person forfeits a bond by being convicted of an offence, the amount of the forfeited bond may be recovered, but he cannot be forthwith imprisoned for the unexpired portion of the term of security. The Magistrate's remedy is to take fresh proceedings under this chapter.

Magistrate is not justified in forfeiting a recognizance without giving the party charged with breach an opportunity to cross examine the witnesses upon whose evidence the rule to show cause has been issued.

The security may be a personal security with or without sureties.

The Magistrate has a right to define the class of sureties *e.g.* landholders, etc.

Section 122

A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor on the ground that such surety is an unfit person for *the purposes of the bond*.

There is to be inquiry into fitness.

Test of fitness is whether the surety can exercise proper control over the person who has been bound over. Mere pecuniary fitness is not the only test of his fitness. The object of requiring security is not to obtain money for the Crown by the forfeiture of recognisances, but to ensure that the accused should be of good behaviour.

Surety unfit if he were staying away.

According to the Bombay High Court it is sufficient if they are solvent and respectable.

22 Bombay L.R. 190.

Ability to control the accused is not a desirable condition.

Section 126

A surety may apply at any time for cancellation of his bond.

Liability of surety

Surety's liability arises on the breach of the bond which again depends upon the conviction of the principal.

Good behaviour and peace are general terms and include many offences. That being so, it would be unjust to hold that the surety is liable for every conceivable offence committed by the principal.

They indicate liability for such good conduct as indicated by the circumstances under which security was demanded.

Procedure

Section 112

When a Magistrate deems it necessary to require any person to show cause under such section, he shall make an order in writing

setting forth the substance of the information received; the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Section 113

If the person is present in Court it shall be read over to him, or if he so desires the substance thereof shall be explained to him.

Section 114

If he is not present a summons shall issue.

If immediate breach of peace is feared warrant may issue.

Section 115

Copy of the order shall accompany the summons.

Section 116

Power to dispense with personal attendance.

Section 117

Inquiry as to the truth of the Information

When the person is present the Magistrate shall proceed to inquire into the truth of the information upon which *action has been taken*, and to take such further evidence as may appear necessary.

If action is taken under Section 107 the procedure shall be of a summons case.

If action is taken under Sections 108, 109, 110 it shall be as in warrant case except that no charge need be framed.

Pending inquiry, the Magistrate may, if he considers that immediate action is necessary for reasons to be recorded in writing, direct the person to execute a bond to behave until the conclusion of the inquiry.

Section 118

If upon such inquiry it is proved that bond is necessary, the Magistrate shall make an order accordingly.

Provided:

1. That the order shall not be different from that served upon the person
2. The amount of each bond shall not be excessive
3. If the person is a minor the bond shall be executed by his sureties only.

Section 119

If it is not proved that it is necessary for keeping peace or good behaviour, the Magistrate shall release him if he is in custody or discharge him after making an entry to that effect.

Is the person proceeded against an accused person ?

There is a difference of view on this question. In some cases it has been held that he is an accused person.

In other cases it has been held that he is not an accused person.

Bombay L.R. 27.

The sections itself are clear.

The deliberate use of such expressions the person, such persons, etc. and studiously avoiding the use of the word accused, the person informed against, the person called upon to show cause.

That being so, oath can be administered to him and examined and X-examined.

Section 120

The period of security shall commence on the expiration of sentence if one was being undergone at the time.

In other cases, it shall commence on the date of the order unless the Magistrate for sufficient reason fixes a later date.

Section 123

On failure to give security, he shall, if he is already in prison, be detained in prison, *until such period expires* or until within such period he gives the security to the Court or Magistrate who made the order.

2. When the period of security exceeds one year and there is a failure to give security, the Magistrate shall order to detain him in prison pending the orders of the Sessions Judge or High Court to whom the case is to be submitted.

The Sessions Judge or High Court may pass any order except imprisonment exceeding 3 years.

3. When the case of one is referred, the cases of others jointly tried is also referred. But the period of theirs shall not be increased.

Imprisonment

Simple for failure to give security for keeping peace.

Simple for good behaviour under Sections 108 and 109 and rigorous under section 110.

Section 124

1. D. M. or Chief Presidency Magistrate may order any person failing to give security if he is of opinion that he may be released without hazard to the community or to any other person.

2. D. M. or Chief Presidency Magistrate may reduce the amount of security or the number of sureties or the time for which security has been required.

3. The release of a person may be conditional or unconditional.

The condition shall cease when the period expires.

The order of discharge may be cancelled if the condition is not fulfilled.

When conditional order of discharge is cancelled, such person may be arrested by any police officer without warrant and shall be produced before the D. M. or Chief Presidency Magistrate.

Unless then he gives security in accordance with the terms of the original order, the D. M. or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion.

He may be released if gives security thereafter in terms of the original order.

**Proceedings dealing with the enforcement of
certain obligations**

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Section 9 of the Fugitive Offenders Act, 1881

Mentions offences in which a fugitive offender from one dominion may be surrendered.

Section 19(d) of the Indian Extradition Act

Also mentions the offences in which an offender from a dominion may be surrendered.

Dealing in territorial jurisdiction

Instead of extraditing him, can he be tried in British India for the offence committed outside British India ?

Section 188

The answer is yes. Provided

1. That he is a Native Indian Subject of the H. M.
2. That he is a British Subject and has committed an offence in the territories of any Native Prince or Chief in India.
3. That he is a servant of H. M. (whether he is British Subject or not) and the offence is committed in the territories of any Native Prince or Chief in India.
4. That such offender is *found* in British India.

N. B.—S. 188 confers jurisdiction to try offences committed in *foreign territory*, but not on High Seas.

19 Bom. L. R. 527.

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What is of which cognizance is taken ?

What the Court takes cognizance of is the offence, and not the fact that a particular person is alleged to have committed that offence.

Reasons

(1) When, during the course of proceedings which a Court has commenced by cognizance properly taken, it appears that a person or persons other than that or those alleged or appearing to be offenders when cognizance was taken also is or are offenders, then the Court can issue process against these new accused, and can deal with them just as it can issue process against and deal with the person or persons originally mentioned. (2) In fact, a Court can take cognizance even when the offender is absolutely unknown and can then issue process as soon as inquiry or investigation shows there is evidence justifying the placing of some person upon his trial. (3) Again, if a magistrate receives on transfer a case of which he could not have taken cognizance on his own authority, he can issue process against all whom the evidence at any stage shows to have probably been concerned as offenders.

Bars to cognizance

1. Section 337—approver.

III. *Powers of Criminal Courts*

The subject may be dealt with under three different heads.

- (1) Power to take cognizance of an offence.
- (2) Power to pass interlocutory orders in a criminal matter.
- (3) Power to punish.

(I) *Power to take cognizance of an offence*

Whether a Court can take cognizance of an offence depends upon

- (a) The Status of the Court.
- (b) The nationality of the offender.
- (c) Depends upon whether the accused will get justice at the hands of the Judge or Magistrate.

(a) *The status of the Court*

Section 6

According to the Criminal Procedure Code there shall be five classes of Criminal Courts in British India.

- I. The Sessions Court.
- II. Presidency Magistrate.
- III. Magistrate of the first class.
- IV. Magistrate of the second class.
- V. Magistrate of the third class.

To this must be added the High Court.

(i) *Regarding offences under the Penal Code*

Section 28

1. The High Court may try any offence under the Indian Penal Code.

2. The Court may try any offence under the Indian Penal Code.

3. But with respect to other magistrates they can take cognizance of such offences only as they are empowered to do by the provisions contained in the 8th column of the Second Schedule to the Cr. P. C.

Section 29(ii) *Regarding offences under other laws*

1. If the law mentions the Court no other Court can take cognizance of the offence.

2. If the law does not mention the Court then

(a) It may be tried by the High Court or

(b) It may be tried by the Court mentioned in the 8th column of the Second Schedule to the Cr. P. C. under the heading "Offences against other laws".

Section 29-A(b) *The nationality of the offender*

If the offender is an *European British Subject* a magistrate of the 2nd or 3rd class cannot try him for an offence punishable otherwise than with fine exceeding Rs. 50.

If the offence is such that it is not punishable with imprisonment is punishable with fine and the fine does not exceed Rs. 50 then he can be tried by a magistrate of the 2nd or 3rd class.

But if it is punishable with imprisonment or is punishable with fine exceeding Rs. 50 he cannot be tried by them.

N. B.—This is so if the European British Subject claims his privileges as such given to him by the *principle of ultra vires an intra vires*.

Prior to 1923 the definition stood as follows :

European British Subject means (i) any subject of H. M. born, naturalized or domiciled in the U. K. or any of the European, American or Australian colonies or possessions of H. M. or in the colony of New Zealand or in the colony of the Cape of Good Hope or Natal; (ii) any child or grand-child of such person by legitimate descent.

Domicile = The place where a person has his *home* a place to which one returns.

Domicile is of three sorts :

(1) by birth

(2) by choice

(3) by operation of law (e. g. wife acquiring the domicile of her husband).

Section 195 deals with offences affecting the administration of justice.

General Rule

A magistrate cannot convict a person for contempt of Court committed in respect of his own authority a commitment to another magistrate is necessary. The Court before which an offence was committed, and by which a preliminary inquiry was held under Section 476 should not try the case.

Section 480

Court can try an offence committed in the view of the Court when the offence is

175 (Omission to produce a document by person bound to produce to a public servant)

178 (Refusing to take oath or affirmation)

179 (Refusing to answer public servant authorized to question)

180 (Refusing to sign a statement)

228 (Intentional insult or interruption to public servant sitting in judicial capacity).

Section 485

Imprisonment of 7 days or committal of a witness refusing to answer or produce a document.

For a convenient summary of the privileges formerly enjoyed by an European British Subject and privileges which he now enjoys see Woodroffa Criminal Procedure (1926) pp. 516—519.

Section 4 (I) European. British Subject means

(I) Any subject of H. M. of *European descent in the male line born*, naturalized or domiciled in the British Islands or any colony, *or*

(II) Any subject of H.M. who is the child or grand-child of any such person by legitimate descent.

Essentials of clause 1.—

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| <ol style="list-style-type: none"> 1. European descent 2. In the male line 3. Born
naturalized
domiciled. | in the British Islands or any colony. |
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Essentials of clause 2. —Person may not himself be born naturalized or domiciled. But he may be the son of such a person. A person claiming the privileges of a European British Subject *under clause 2* must prove

1. Legitimate descent and
2. *Nationality* of his father or grandfather.

6 *M. H. C. R.*, 7

Turnbull

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(III) Depends upon whether the accused will get justice at the hands of the Judge or magistrate. There is very little chance of justice being done if the judge or magistrate is himself the complainant. The principle of law is that in no case shall the prosecutor shall also be the judge. This principle is embodied in

Section 487

(1) Except as provided in Sections 480 and 485 *no judge* of a criminal court *or magistrate*, other than a Judge of a High Court, *shall try* any person for any offence referred to in Section 195, *when such offence is committed before himself or in contempt of his authority or is brought under his notice (as such judge or magistrate)* in the course of a judicial proceeding.

(2) Nothing in Section 476 or Section 482 shall prevent a magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

NOTES.—

Section 195 deals with offences affecting the administration of justice.

The section says that such an offence *if it has been committed before the judge* or in contempt of his authority is brought under his notice shall not be tried by him.

Unless the case falls under Sections 480 and 485.

Contempt is any act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority or to obstruct or interfere with the due course of justice or the lawful process of the court.

(Navianbeg. 10 B. H. C. R. 73)

JUDGE.—Insertion of this word in lieu of the word ‘Court’ in the Code of 1872 makes the disqualification personal and the successor in office of the particular officer can therefore, now hold such trial.

MAGISTRATE.—Includes a Presidency Magistrate.

12 C. W. N. 246.

Trial includes hearing of an appeal.

AS SUCH JUDGE OR MAGISTRATE.—That means he cannot try it in his capacity as a judge or magistrate of the Criminal Court. If the same matter had come before him in another capacity he can try.

Sameness of the individual as distinct from the sameness of capacity. The Section is based on sameness of capacity.

16 Cal.776 of B.

18 Bom. 380 of B.

Contra.—1 Mad. 305-Disqualification based on sameness of the individual.

Section 556

No judge and magistrate shall, except with the permission of the Court to which an appeal lies from his court, try or commit for trial any case to or in which he is a party, or personally interested, and no judge or magistrate shall hear an appeal from any judgement or order passed or made by himself.

Explanation.—A judge or magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a municipal commissioner or otherwise concerned in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

Party

Personally interested do not imply mere intellectual interest. It implies something of the nature of an expectation of advantage to be gained, or of a loss or some disadvantage to be avoided, by the person who is said to be interested in the case.

8 Bom. L. R. 947.

(1) Pecuniary interest

A magistrate who is a shareholder of the company which is the complainant in the case, is disqualified from trying the case.

20 Bom. 502.

A magistrate should not entertain a criminal case in which persons indebted to him are concerned either as complainant or as accused.

Relationship

Magistrate who is a *servant* of the complainant will be disqualified.

7 Cal. 322 : 10 Cal. 194.

Magistrate who is *master* of the complainant will not be disqualified.

9 Bom. 172.

Magistrate who is *husband* of the complainant will be disqualified.

14 Bom. 572.

Distinction between 487 and 556

1. Section 487 does not disqualify an High Court Judge. Section 556 does.

2. Section 487 does not disqualify committal. Section 556 does.

Distinction between 556 and 526 (transfer)

Great deal confusion in cases.

Taking cognizance of an offence not of an offender.

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Section 129. Empowers a Magistrate to call in Military Power to disperse an unlawful assembly *which cannot otherwise be dispersed* when the dispersal of that assembly seems to be necessary for public safety.

(II) Powers to pass interlocutory orders in a criminal matter
Section 36

1. *Ordinary Powers*

Mentioned in the *Third Schedule* to the Criminal Procedure Code. They vary with the class of the Magistrate.

2. *Additional Powers*

Local Government or the District Magistrate may invest any Sub-divisional Magistrate or any magistrate of the 1st, 2nd or 3rd class with certain additional powers. They are mentioned in the *Fourth Schedule* to the Cr. P. Code. They vary with the class of the Magistrate.

A Mode of Exercising such powers.

Section 107 (3) When a Magistrate has reason to believe that any person is likely to commit the breach of the peace or disturb the public tranquillity any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented such a magistrate may issue warrant for his arrest. He must record his reasons.

Courts can inflict such sentences as are authorized by law. If a criminal were to ask the Court to pass upon him a sentence not allowed by law instead of one which the law warrants such a sentence will not be valid.

3B.L.R. 50

Commutation. Section 59 of the Penal Code points out in what cases transportation may be awarded instead of imprisonment.

Transportation is only authorized in lieu of imprisonment as a *substantive* punishment. A sentence of nine years transportation and a fine of Rs. 300 and in default of payment, to three years further transportation, is bad in regard to the latter part of the sentence.

5 Mad. 28.

(III) POWERS OF PUNISHMENT

The punishment for offences prescribed by Section 53 I. P. C. are :

I. DEATH

(a) Which *may be* inflicted Sections 121, 132, 194, 302, 305, 307, 396.

(b) Which *must be* inflicted Section 303 (murder committed by a life convict).

II TRANSPORTATION

(i) for life.—

(a) Which *may be* inflicted Sections 75, 125, 128.

(b) Which *must be* inflicted Sections 226, 311.

(ii) for any term.—

(a) Which *may be* inflicted Sections 121-A, 124-A.

(b) Which *may be* inflicted for not less than seven years and not more than the term for which the offender might be imprisoned. Section 59.

III. PENAL SERVITUDE

Which *must be* inflicted whenever a European or American is convicted of an offence punishable with transportation. Section 59.

IV. IMPRISONMENT

(1) Which *may be* for any term not exceeding 14 years.

(2) It *may be* simple or

(3) It *may be* rigorous.

Repealed by Section 4 of Act XVI of 1921

V. FORFEITURE (I) of *all* property

(a) Which *may be* inflicted. Section 62.

(b) Which *must be* inflicted. Sections 121, 122.

(II) of *Specific* property

(a) Which *may be* inflicted. Sections 126, 127.

(b) Which *must be* inflicted. Section 169.