

**THE CODE OF CRIMINAL PROCEDURE (AMENDMENT)
ACT, 1978**

No. 45 OF 1978

[18th December, 1978.]

An Act further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

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| Short title. | 1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1978. |
| Amendment of section 2. | 2. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), in section 2, in clause (j), the words “and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify” shall be inserted at the end. |
| Amendment of section 11. | 3. In section 11 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—

“Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.”. |

4. In section 13 of the principal Act,—

(i) in sub-section (1), for the words “of the second class, in respect to particular cases or to particular classes of cases or to cases generally, in any district, not being a metropolitan area:”, the words “of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area:” shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.”.

5. In section 14 of the principal Act,—

Amend-
ment of
section 14.

(a) to sub-section (1), the following proviso shall be added, namely:—

“Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.”;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.”.

6. In section 18 of the principal Act,—

Amend-
ment of
section 18.

(i) in sub-section (1), the words “or to cases generally” shall be omitted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class.”.

Amend-
ment of
section 20.

7. In section 20 of the principal Act, in sub-section (2),—

(a) for the words “all or any”, the word “such” shall be substituted;

(b) after the words “in force”, the words “, as may be directed by the State Government” shall be inserted.

Substitu-
tion of
new sec-
tion for
section 24.

8. For section 24 of the principal Act, the following section shall be substituted, namely:—

Public
Prosecu-
tors.

“24. (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.”

9. In section 25 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely: —

Amend-
ment of
section
25.

“(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.”

10. In section 102 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amend-
ment of
section
102.

“(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.”

11. In section 107 of the principal Act, in sub-section (1), after the words “ordered to execute a bond,” the words “with or without sureties,” shall be inserted.

Amend-
ment of
section
107.

12. In section 123 of the principal Act,—

Amend-
ment of
section
123.

(i) in sub-section (1), for the words “the Chief Judicial Magistrate”, the words and figures “the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case” shall be substituted;

(ii) in sub-sections (2), (5), (6), (7) and (9), for the words “Chief Judicial Magistrate”, wherever they occur, the words and figures “District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case” shall be substituted.

13. In section 167 of the principal Act, in the proviso to sub-section (2),—

Amend-
ment of
section
167.

(a) for paragraph (a), the following paragraph shall be substituted, namely:—

“(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention

of the accused person in custody under this paragraph for a total period exceeding,—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;”;

(b) the *Explanation* shall be numbered as *Explanation II*, and before *Explanation II*, as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation I*.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.”;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted

to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.”.

14. The provisions of section 167 of the principal Act, as amended by this Act, shall apply to every investigation pending immediately before the commencement of this Act, if the period of detention of the accused person, otherwise than in the custody of the police, had not, at such commencement, exceeded sixty days. Amendment of section 167 to apply to pending investigations.
15. In section 182 of the principal Act, in sub-section (2), after the words “by the first marriage”, the words “, or the wife by the first marriage has taken up permanent residence after the commission of the offence” shall be inserted. Amendment of section 182.
16. In section 196 of the principal Act, in sub-section (2), for the words “a cognizable offence”, the words “an offence” shall be substituted. Amendment of section 196.
17. In section 198 of the principal Act, in paragraph (c) of the proviso to sub-section (1),— Amendment of section 198.
- (i) for the word and figures “section 494”, the words and figures “section 494 or section 495” shall be substituted;
- (ii) after the words “mother’s brother or sister”, the words “, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption” shall be inserted.
18. In section 206 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:— Amendment of section 206.
- “(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.”.
19. In section 209 of the principal Act, for clause (a), the following clause shall be substituted, namely:— Amendment of section 209.
- “(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;”.
20. In section 276 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 276.
- “(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take

down, or cause to be taken down, any part of such evidence in the form of question and answer.”.

Amend-
ment of
section
293.

21. In section 293 of the principal Act, in clause (e) of sub-section (4), after the word “Director”, the words “, Deputy Director or Assistant Director” shall be inserted.

Amend-
ment of
section
297.

22. In section 297 of the principal Act, in sub-section (1), for clause (a), the following clause shall be substituted namely:—

“(a) any Judge or any Judicial or Executive Magistrate, or”.

Amend-
ment of
section
299.

23. In section 299 of the principal Act, in sub-section (1), after the words “competent to try”, the words “, or commit for trial,” shall be inserted.

Amend-
ment of
section
309.

24. In section 309 of the principal Act, in sub-section (2), after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.”.

Amend-
ment of
section
320.

25. In section 320 of the principal Act, in the Table under sub-section (1), in column 1, for the word “Defamation”, the words, figures and brackets “Defamation, except such cases as are specified against section 500 of the Indian Penal Code in column 1 of the Table under sub-section (2)” shall be substituted.

45 of 1860.

Amend-
ment of
section
326.

26. In section 323 of the principal Act, the following shall be inserted at the end, namely:—

“and thereupon the provisions of Chapter XVIII shall apply to the commitment so made”.

Amend-
ment of
section
326.

27. In section 326 of the principal Act,—

(i) in sub-section (1), for the word “Magistrate”, wherever it occurs, the words “Judge or Magistrate” shall be substituted;

(ii) in sub-section (2), for the words “from one Magistrate to another Magistrate”, the words “from one Judge to another Judge or from one Magistrate to another Magistrate” shall be substituted.

Amend-
ment of
section
374.

28. In section 374 of the principal Act, in sub-section (2), for the words “has been passed”, the words “has been passed against him or against any other person convicted at the same trial” shall be substituted.

Amend-
ment of
section
377.

29. In section 377 of the principal Act, in sub-section (2), for the words “the Central Government may direct”, the words “the Central Government may also direct” shall be substituted.

30. In section 378 of the principal Act, in sub-section (1), the following shall be inserted at the end, namely:—

“or an order of acquittal passed by the Court of Session in revision”.

Amendment of section 378.

31. In section 428 of the principal Act, after the words “sentenced to imprisonment for a term”, the words “, not being imprisonment in default of payment of fine,” shall be inserted.

Amendment of section 428.

32. After section 433 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 433A.

“433A. Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.”.

Restriction on powers of remission or commutation in certain cases.

33. In section 468 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment of section 468.

“(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”.

34. In section 478 of the principal Act,—

Amendment of section 478.

(i) for the words “State Legislature”, the words “Legislative Assembly of a State” shall be substituted;

(ii) for the word “requires”, the word “permits” shall be substituted.

35. In the Second Schedule to the principal Act,—

Amendment of the Second Schedule.

(i) in Form No. 34,—

(a) in the heading, for the word “Magistrate”, the word “Court” shall be substituted;

(b) for the brackets, words and figures “(See sections 248 and 255)”, the brackets, words and figures “(See sections 235, 248 and 255)” shall be substituted;

(ii) in Form No. 41, for the brackets, words and figures “(See section 386)”, the brackets, words and figures “(See sections 386, 413 and 416)” shall be substituted;

(iii) in Form No. 42, for the brackets, words and figures “(See section 414)”, the brackets, words and figures “(See sections 413 and 414)” shall be substituted;

(iv) after Form No. 44, the following Form shall be inserted, namely:—

“FORM No. 44A

BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING REALISATION OF FINE

[See section 424 (1)(b)]

WHEREAS I, (name), inhabitant of (place), have been sentenced to pay a fine of rupees and in default of payment thereof to undergo imprisonment for ; and whereas the Court has been pleased to order my release on condition of my executing a bond for my appearance on the following date (or dates), namely:—

I hereby bind myself to appear before the Court of at o'clock on the following date (or dates), namely:—

and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees .

Dated, this day of , 19 .

(Signature).

WHERE A BOND WITH SURETIES IS TO BE EXECUTED, ADD—

We do hereby declare ourselves sureties for the above-named that he will appear before the Court of on the following date (or dates), namely:—

and, in case of his making default therein, we bind ourselves jointly and severally to forfeit to Government the sum of rupees .

(Signature).”;

(v) after Form No. 46, the following Forms shall be inserted, namely:—

“FORM No. 47

WARRANT OF ATTACHMENT TO ENFORCE A BOND

(See section 446)

To the Police Officer in charge of the police station at .

WHEREAS (name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance, and has by default forfeited to Government the sum of rupees (the penalty in the bond); and whereas the said (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorise and require you to attach any movable property of the said (name) that you may find within the district of , by seizure and detention, and, if the said amount be not paid within days, to sell the property so attached or so

much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature).

FORM No. 48

NOTICE TO SURETY ON BREACH OF A BOND

(See section 446)

To of

WHEREAS on the day of , 19 , you became surety for (name) of (place) that he should appear before this Court on the day of and bound yourself in default thereof to forfeit the sum of rupees to Government; and whereas the said (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Dated, this day of , 19 .

(Seal of the Court)

(Signature).

FORM No. 49

NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 446)

To of

WHEREAS on the day of , 19 , you became surety by a bond for (name) of (place) that he would be of good behaviour for the period of and bound yourself in default thereof **to forfeit the sum of rupees** to Government; and whereas the said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited;

You are hereby required to pay the said penalty of rupees or to show cause within days why it should not be paid.

Dated, this day of , 19 .

(Seal of the Court)

(Signature).

FORM No. 50

WARRANT OF ATTACHMENT AGAINST A SURETY

(See section 446)

To _____ of _____

WHEREAS (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*) and the said (*name*) has made default, and thereby forfeited to Government the sum of rupees _____ (*the penalty in the bond*);

This is to authorise and require you to attach any movable property of the said (*name*) which you may find within the district of _____, by seizure and detention; and, if the said amount be not paid within _____ days, to sell the property so attached, or so much of it as may be sufficient to realise the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Dated, this _____ day of _____, 19 ____.

(Seal of the Court)

(Signature).

FORM No. 51

WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED
PERSON ADMITTED TO BAIL

(See section 446)

To the Superintendent (or Keeper) of the Civil Jail at _____.

WHEREAS (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*) and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Government; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of his movable property, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*);

This is to authorise and require you, the said Superintendent (or Keeper) to receive the said (*name*) into your custody with **this warrant** and to keep him safely in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this _____ day of _____, 19 ____.

(Seal of the Court)

(Signature)

FORM No. 52

NOTICE TO THE PRINCIPAL OF FORFEITURE OF BOND TO KEEP THE PEACE

(See section 446)

To (name, description and address)

WHEREAS on the day of , 19 , you entered into a bond not to commit, etc. (as in the bond), and proof of the **forfeiture of the same** has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees or to show cause before me within days why payment of the same should not be enforced against you.

Dated, this day of , 19 .

(Seal of the Court)

(Signature).

FORM No. 53

WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE

(See section 446)

To (name and designation of police officer), at the police station of .

WHEREAS (name and description) did, on the day of , 19 , enter into a bond for the sum of rupees binding himself not to commit a breach of the peace, etc., (as in the bond), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said (name) to the value of rupees , which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same; and to make return of what you have done under this warrant immediately upon its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature).

FORM No. 54

WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE

(See section 446)

To the Superintendent (or Keeper) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that (name and description) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Government the sum of rupees ; and whereas the said

(Signature).

(Signature).

WHEREAS (name, description and address) did, on the day of , 19 , give security by bond in the sum of

rupees for the good behaviour of (name, etc., of the principal) and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (name) has forfeited to Government the sum of rupees , and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment);

This is to authorise and require you, the Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and to keep him safely in the said Jail for the said period of (term of imprisonment), returning this warrant with an endorsement certifying the manner of its execution.

Dated, this day of 19 .

(Seal of the Court)

(Signature)."