

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court Division, shall, when such Court consists of two or more judges, be made, passed and signed by at least two of them.

Confirmation of new sentence to be signed by two Judges

378. When any such case is heard before a bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in case of difference of opinion

379. In cases submitted by the Court of Session to the High Court Division for the confirmation of a sentence of death, the proper officer of the High Court Division shall, without delay, after the order of confirmation or other order has been made by the High Court Division, send a copy of the order, under the seal of the High Court Division and attested with his official signature, to the Court of Session.

Procedure in cases submitted to High Court Division for confirmation

380. [Repealed by section 16 of the Probation of Offenders Ordinance, 1960 (Ordinance No. XLV of 1960).]

CHAPTER XXVIII

OF EXECUTION

381. When a sentence of death passed by a Court of Session is submitted to the High Court Division for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court Division thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Execution of order passed under section 376

382. If a woman sentenced to death is found to be pregnant, the High Court Division shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to ¹[transportation for life].

Postponement of capital sentence on pregnant woman

¹ The words "transportation for life" construed as a reference to "imprisonment for life" by section 3 of the Penal Code (Amendment) Ordinance, 1985 (Ordinance No. XLI of 1985).

Execution of sentence of transportation or imprisonment in other cases

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Direction of warrant for execution

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine

386.(1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

- (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;
- (b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) The Government may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), Clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the Decree, and all the provisions of that Code as to execution of decrees shall apply accordingly:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

387. A warrant issued under section 386, sub-section (1), clause (a), by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the attachment and sale of any such property without such limits, when endorsed by the District Magistrate¹ [or Chief Metropolitan Magistrate] within the local limits of whose jurisdiction such property is found.

Effect of such
warrant

388.(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

Suspension of
execution of
sentence of
imprisonment

- (a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and
- (b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

¹ The words "or Chief Metropolitan Magistrate" were inserted by section 2 and Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

Who may issue warrant

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

Execution of sentence of whipping only

390. When the accused is sentenced to whipping only, the sentence shall subject to the provisions of section 391 be executed at such place and time as the Court may direct.

Execution of sentence of whipping, in addition to imprisonment

391. (1) When the accused—

- (a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or
- (b) is sentenced to whipping in addition to imprisonment,

the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders is to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.

Mode of inflicting punishment

392.(1) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode and on such part of the person, and with such instruments, as the Government directs.

(2) In no case shall such punishment exceed thirty stripes and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.

Limit of number of stripes

393. No sentence of whipping shall be executed by instalments: and none of the following persons shall be punishable with whipping, namely:—

Not to be executed by instalments
Exemptions

- (a) females;
- (b) males sentence to death or to ¹[transportation], or to imprisonment for more than five years;
- (c) males whom the Court considers to be more than forty-five years of age.

394.(1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution

395.(1) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, or to a fine not exceeding five hundred Taka, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicted under section 394

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term or a fine of an amount exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

¹ The word "transportation" construed as a reference to "imprisonment for life" by section 3 of the Penal Code (Amendment) Ordinance, 1985, (Ordinance No. XLI of 1985).

Execution of sentences on escaped convicts

396.(1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, or transportation, shall take effect according to the following rules, that is to say—

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation—For the purposes of this section—

- (a) a sentence of transportation shall be deemed severer than a sentence of imprisonment;
- (b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and
- (c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence

397. When a person already undergoing a sentence of imprisonment, or transportation, is sentenced to imprisonment, or transportation, such imprisonment, or transportation shall commence at the expiration of the imprisonment, or transportation to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced:

Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

398.(1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Saving as to sections 396 and 397

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, or transportation, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

399.(1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

Confinement of youthful offenders in reformatories

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).]

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of warrant on execution of sentence