

**PART B- PREPARATION AND ISSUE OF WARRANTS OF
ARREST AND OTHER PROCESSES.**

General Warrants for arrest should never be issued by a Court of Justice.

General Warrants.

2. Every warrant should state as shortly as possible the special matter on which it proceeds, and should be in the Form II given in Schedule V of the Code of Criminal Procedure. This form expresses on the face of it the special cause on which it is granted, viz., that the party 'stands charged with the offence of (stating the offence)'. A warrant issued under section 90 should in like manner be made out in Form VII. A strict adherence to the form of warrants of arrest prescribed by the Code will tend to prevent their being granted irregularly and without inquiry as to whether the circumstances justify their issue.

Prescribed form of warrants which should state the special cause on which it is granted.

3. In all warrants and processes of every description, whether under the Code of Criminal Procedure or any other law in force, the father's name, caste, tribe or nationality, and residence of the person to be arrested, summoned, etc., should be entered, so as to place his identity beyond all doubt. The warrant should also set forth the Court from which it issues, and the name of the district.

What a warrant or process should contain.

4. (i) Great care should be exercised in distinguishing forms of warrants from forms of summons, and in making the Police and the public acquainted with the difference, different tinted paper and lithographed or printed forms should always be used. The people of the country will gradually become familiar with the appearance of each sort of process and know how to act.

Care to be exercised in distinguishing forms of warrants and summons.

(ii) All vernacular warrants of commitment to jail should be drawn up in the Roman character, except in the case of Indian Magistrates who are unable to read this character, and ordinary country ink should never be used in filling up the blanks in the printed form of warrant, or in warrants drawn up upon English paper.

A warrant should not be issued where a summons can serve the purpose.

^[1]5. Great care should be taken that a warrant, which always implies personal arrest and restraint, is never issued when a summons to attend would be sufficient for the ends of justice and any attempt to coerce or restrain a party called upon to appear in obedience to a summons should be checked and punished. It must be understood that the police will carry out to the letter the instructions issued in the writ handed over to them, but the Magistrate is responsible for the consequences of an informal or illegal process bearing his official seal and signature. The Hon'ble Judges wish to impress upon the Subordinate Courts the desirability of caution in issuing warrant of arrest against a person in public service unless and until the court is fully satisfied that he is willfully omitting to obey the summons. In most cases it will produce the desired effect if the attention of the superior officer is drawn to the conduct of his subordinate, and the witness is warned that his willful non-attendance might entail coercive and penal action against him. Of course, in cases of pronounced refractoriness, the Courts can set the law in motion in any one or all of the forms available to them.

Service of warrants on Railway servant.

6. Warrants issued against Railway servants should be entrusted for execution to some Police officer of superior grade, who shall, if he finds on proceeding to execute the warrant, that the immediate arrest of the Railway servant would occasion risk or inconvenience, make all arrangements necessary to prevent escape, and apply to the proper quarter to have the accused relieved, deferring arrest until he is relieved.

Execution of a warrant outside jurisdiction of the Court.

7. Under section 83(1) of the Code a warrant to be executed outside the local limits of the jurisdiction of the Court issuing it, may be forwarded by post or otherwise to the Superintendent of Police of the district in which it is to be executed. Similarly, by section 85, an offender when arrested may be taken before the Superintendent of Police instead of a Magistrate, and by section 86, the Superintendent of Police

[1] Substituted vide C.S.No.18-Gaz/V1.Z.23, dated Chandigarh the 11th May, 1966.

may send the offender to the Court issuing the warrant.

8. Every warrant issued under the Public Gambling Act, 1867, if not executed, shall be returned to the Magistrate or Superintendent of Police, who issued it, within a period of not more than fifteen days from the date of issue. The Magistrate or Superintendent of Police will then cancel the warrant, but a fresh warrant can immediately be applied for or issued, if necessary. (*Chief Court Circular Memo. No. 9-1970-G, dated the 4th June, 1896*).

Warrants under
the Gambling Act.

9. Some rules from the Punjab Rules, 1934, dealing with handcuffing of prisoners are reproduced below for the information of the Courts:-

“26.22 (1) Every male person falling within the following category, who has to be escorted in police custody and whether under police arrest, remand or trial, shall provided that he appears to be in health and not incapable of offering effective resistance by reason of age be carefully handcuffed on arrest and before removal from any building from which he may be taken after arrest:-

- (a) Persons accused of a non-bailable offence punishable with any sentence exceeding in severity a term of three years' imprisonment.
- (b) Persons accused of an offence punishable under section 148 or 226 Indian Penal Code.
- (c) Persons accused of, and previously convicted of, such an offence as to bring the case under section 75, Indian Penal Code.
- (d) Desperate Characters.
- (e) Persons who are violent, disorderly or obstructive or acting in a manner calculated to provoke popular demonstration.

(f) Persons who are likely to attempt to escape or to commit suicide or to be the object of an attempt at rescue. This rule shall apply whether the prisoners are escorted by road or in a vehicle.

(2) Better class under trial prisoners must only be hand-cuffed when this is regarded as necessary for safe custody. When a better class prisoner is hand-cuffed for reasons other than those contained in (a), (b) and (c) of sub rule (1) the officer responsible shall enter in the station Daily Diary or other appropriate record his reasons for considering the use of handcuffs necessary.

27.12. * * *
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If, in accordance with rule 26.23 prisoners have been brought to the court in handcuffs, the handcuffs shall not removed in court unless this is specially ordered by the presiding officer.”

NOTE--- In this connection Rule 26.21-A of Punjab Police Rule 1934 is as follows:-

“26.21-A-Undertrial prisoners are divided into two classes based on previous standard of living. The classifying authority is the trying court subject to the approval of the District Magistrate, but during the period before a prisoner is brought before a competent court, discretion shall be exercised by the officer incharge of the Police Station concerned to classify him as either ‘better class’ or ‘ordinary’. Only those prisoners should be classified provisionally as ‘better class’ who by social status, education or habit of life have been accustomed to a superior mode of living. The fact that the prisoner is to be tried for the commission of any particular class of offence is not to be Considered. The possession of a certain degree of literacy is in itself not sufficient for ‘better class’ classification and no under-trial prisoner shall be so classified whose mode of living does not appear to the Police Officer concerned to have been definitely superior to that of the ordinary run of the population, whether urban or rural.