

CHAPTER 11

Realization of Fines

1. Discretion to be used in making further efforts to realize fines if sufficient efforts made have failed—Although Section 70 of the Indian Penal Code gives the power to levy a fine at any time within six years or during the term of imprisonment of the offender, if this be more than six years, neither that Section nor Section 386 of the Code of Criminal Procedure requires that the power should be exercised in every case. The law is permissive and not imperative. When sufficient efforts have been made to realize a fine by distress and sale, but without any success, the Court should exercise its discretion, according to the circumstances of each particular case, as to whether any further steps should be taken towards the realization of the fine within the period allowed by law. If there is reason to believe that the offender is able to pay, but will not do so preferring to undergo imprisonment, the law should be strictly enforced; but if it appears that the fine was not paid for want of means or that its full realization would be ruinous to the offender or his family, it is not desirable that further steps should be taken.

2. Warrant for recovery of fine to be issued only for special reasons if accused has undergone imprisonment in lieu of fine—Under Section 386, as amended in 1923, the offenders, movable as well as immovable property is now liable to be sold for realization of the fine. But sale of immovable property must be made through the Collector of the District. When an offender has undergone the sentence of imprisonment awarded in default of payment of the fine, no Court can issue a warrant for realization of the fine unless for special reasons to be recorded in writing, it considers it fit to do so.

3. Fine Register. Its scope and inspection—Every Court, whether Criminal or Civil, will keep up in the vernacular a separate Fine Register (No. XIV Criminal), and it will be the duty of the Reader of each Court to see that all fines imposed by the Judge or Magistrate are entered the same day in this register. Compensation awarded under Section 545 (Section 357 of the New Code) of the Code of Criminal Procedure will be treated as a fine imposed in a case instituted on complaint by the original defendant. Fines imposed under Section 480 (Section 354(1) of the New Code) of the Code of Criminal Procedure, or under Order XVI, Rules 12, 17, of the Code of Civil Procedure, will also be entered in the register and dealt with according to the instructions laid down in these directions. The register should be inspected and signed, in the case of Sessions Courts, by the Judge once a month, and, in other Courts, by the Presiding Officer once a week.

4. General Register of fines. Its scope and inspection—In addition to the above register there will also be kept up in the same form, at the headquarters of each District, a General Register of Fines. This register will be under the special charge of the Fine Moharrir, whose duty it will be to see that the register is correctly maintained, that the necessary measures are taken from time to time to realize the fines, and that sums realized are duly disposed of. He should in each case look for his orders to the officer who, under these directions, is responsible for the due execution of the sentences of fine. Separate pages of this register and separate serial numbers should be assigned to the Court of each Magistrate and each Civil Court in the District, and also to the Sessions Court exercising jurisdiction therein. The Presiding Officer of each Court will send to the Fine Moharrir a copy of all entries made in his separate register on the day

on which they are made. Fines imposed by the Sessions Court will be entered in accordance with the rules hereinafter provided.

This register should be inspected and signed by the Magistrate of the District, or the Assistant Commissioner or Extra Assistant Commissioner specially charged with the supervision of the Fine Department, once a week at least.

5. Payment of fine at the time of pronouncing sentence procedure—(i) If a person, at the time of being sentenced to fine, whether or not in addition to other punishment, tenders payment, in whole or in part, to the Judge or Magistrate imposing the fine, such Judge or Magistrate will receive the amount tendered and grant, under his hand, a receipt in the form prescribed for the same.

(ii) If the fine has been paid in full, the Court will cause an entry to that effect to be made on the file of the case and will sign such entry; and, if the Court is a Court of Session, will, in forwarding a copy of the sentence to the Magistrate of the District, under Section 373 (Section 365 of the New Code) of the Code of Criminal Procedure, notify the fact of payment with a view to the necessary entry being made in the District Register of Fines. If the fine has been paid only in part, the Court will likewise cause such payment to be entered on the file of the case and will then proceed as provided hereinafter.

(iii) Fines thus paid direct into Court at the time of sentence should be entered at once in the Court's Fine Register, the amount received being noted by the Presiding Officer with his own hand in column 12, and should be then dealt with in the manner provided in paragraph 19 of these directions.

6. Procedure for recovery of fines imposed by the Sessions Judge—Under Section 386 (Section 421 of the New Code) of the Code of Criminal Procedure it is in the discretion of the Court passing a sentence of fine to issue a warrant for the levy of the amount by distress and sale of movable property belonging to the offender, although the sentence provides for his imprisonment in default. If the fine is imposed by a Court Session, the Judge should, in the absence of any special direction to the contrary in the law under which the fine is imposed, direct the warrant to the Magistrate of the District. If the whole or a portion of the fine has been awarded in compensation or reward, this fact should be communicated, along with the warrant. The Magistrate of the District to whom the warrant is addressed will, on receipt, cause the particulars to be entered in the proper page of the General Fine Register, and the Fine Moharrir will then be responsible that the proper steps are taken for the realization of the fine.

7. Procedure for recovery of fine imposed by Magistrates—If the fine is imposed by a Magistrate the warrant should, except when issued by a Tahsildar for execution in his own tahsil, or as hereinafter provided in paragraph 11, ordinarily be addressed to the Tahsildar within whose jurisdiction the offender resides. Warrants for the levy of fine, received by a District Magistrate under the preceding paragraph, should also be executed through the Tahsildars in the same manner as the warrants issued by Magistrates.

8. Warrants for recovery of fine not to be sent to Police—The practice of issuing a written order to the police for the realization of the fine has been discontinued under the orders of the State Government. In considering whether a warrant of distress should or should not be issued, the Court will bear in mind the provisions of Section 386 (Section 421 of the New Code) of the Code of Criminal Procedure.

9. Recovery of fine in instalments and suspension of execution of sentence of imprisonment—Section 388 (Section 424 of the New Code) of the Code (as recently amended) provides for the realization of fine in instalments and suspension of the execution of the sentence of imprisonment in default of payment of the fine, when an offender is sentenced to fine only.

10. Recovery of fine in Cantonments—Warrants issued for the levy of fines by distress and sale of movable property situate in Cantonments will not be executed by the Tahsildar, but through the Magistrate entrusted with the Judicial work of the Cantonment concerned.

11. Procedure for attachment, sale and objections as laid down in CPC—Formalities will be observed in attachment, sale and adjudicating upon objections similar to those in force in the execution of Civil decrees, with this difference, that the process issues on the Criminal side.

12. Attachment agricultural implements should be rarely resorted to—Although agricultural implements are not exempt from distress and sale in realization of a fine, the measure is one which should be resorted to with discretion; otherwise it may entail undue hardship.

13. Objections attachment—When an objector comes forward, he should be warned of the penalties prescribed in Section 207 of the Indian Penal Code for a fraudulent claim to property to prevent its seizure in satisfaction of fine. After this warning, the objection should be inquired into and disposed of, either by admitting the claim or referring the objector, to a civil action if his claim seems *prima facie* groundless.

14. Commission on sale—The officer employed on the duty of selling property attached in default of payment of fines will receive a commission at the following rate, to be deducted from the sale-proceeds—

if the sale-proceeds do not exceed Rs. 5,000, at 5 per cent. if the sale-proceeds exceed Rs. 5,000, 5 per cent on Rs. 5,000 and at ½ per cent on the remainder.

15. Action to be taken subsequent to the realization of a fine—When a Tahsildar has realized a fine or part of a fine, in the manner above provided, he will forthwith dispose of it as hereinafter directed in paragraph 19 below, and return the warrant to the Magistrate who issued it with an endorsement that he has done so. In the endorsement should be noted the date of payment into the Treasury and the number of the Treasury receipt. On the return of the warrant the Magistrate will at once notify in the form prescribed, under his hand and seal, the payment endorsed thereon to the Superintendent of the Jail in which the offender is confined, if he is in prison, and, after causing the necessary entries to be made in his Fine Register and attaching the warrant to the file of the case, will pass on the papers to the Fine Moharrir with a view to the results reported by the Tahsildar being noted in the General Fine Register, a fresh warrant being prepared if further proceedings appear to be called for.

Note—The notice (*see* Form No. 93 of Rules and Orders, Volume VI-B, Part B-I) of payment to the Superintendent of the Jail shall be sent by the Magistrate by registered post, or by a special messenger if the offender is confined in the local jail.

16. Fine may be tendered at any time to Magistrate, Tahsildar and Superintendent of Jail and District Magistrate—(i) All Magistrates will, at any stage of the proceedings, receive fines imposed by themselves or their predecessors in office, if tendered in their Court, and proceed in the manner described in paragraph 5, and, if the offender is in prison, intimate the payment in the prescribed way to the Superintendent of the Jail in which he is confined.

(ii) Magistrates of Districts will likewise receive fines tendered to them in satisfaction of warrant received from the Courts of Sessions, under the provisions of paragraph 6.

(iii) Tahsildars will always receive fines by whomsoever tendered and will grant receipts. These receipts must be in the prescribed form and be signed by the Tahsildar in full, and will then be admitted by the Magistrate executing the sentence as proof of payment.

(iv) Superintendents of Jails will also receive fines in respect of prisoners in their Jails, and send the money with a report to the Magistrate of the District. The Magistrate of the District will make over sums so received to the Nazir, to be dealt with according to the provisions of paragraph 19, and when this has been done, will forward the report of the Superintendent of the Jail, duly endorsed with the date on which the fine was paid into the Treasury and the number of the Treasury receipt, to the Magistrate executing the sentence, who will inform the Tahsildar, and cause the necessary entries to be made in his Fine Register and the report to be attached to the file of the case.

17. Form of receipt of fine. Number of copies to be prepared—A form of receipt has been prescribed. When a fine is received by a Tahsildar on behalf of another Magistrate, the receipt should be prepared in triplicate; one part should be given to the person paying the fine; the second part should be sent to the Court which imposed it, the third part being retained by the Tahsildar himself. Where the fine is paid direct to the Court which imposed it, the receipt need only be prepared in duplicate, one copy being given to the person paying the fine and the counterfoil being retained for record by the Court.

Where a fine is remitted by a Superintendent of a Jail to the Magistrate of the District as provided in sub-paragraph (iv) to paragraph 16, the receipt will also be prepared in duplicate, one copy being sent to the Superintendent of the Jail and the counterfoil being retained by the Magistrate of the District. The form of receipt referred to in this paragraph will be found at No. 142 of Part B-III, Rules and Orders, Volume VI-B.

18. Procedure to be followed when fine is paid in another district—Fines may be paid in any district, but if paid in any district other than that in which the offender was sentenced, the following procedure should be carefully observed :—

(a) When a warrant or intimation has been received from the district where the fine was imposed the amount received or realized should either be at once credited to Government and intimation sent to the Magistrate of that district, or in case the whole or any part of the fine is to be paid in compensation or to be credited to any Local Fund, so much should be remitted to the Magistrate of that District, and intimation sent to him that the remainder has been credited to Government. In case the fine is only partially realized, and it is not clear in what way the amount should be disposed of, it should be kept in deposit pending instructions from the Magistrate of the District concerned, to whom reference should at once be made.

(b) In case no warrant or intimation has been received, the amount received or realized should be placed in deposit and intimation at once sent to the Magistrate of the District where the fine was imposed with a request for instructions as to its disposal.

(c) Any fine, or portion of a fine, which has to be finally credited to Government, should be credited in the District in which it is levied, and the Magistrate of the District in which the fine was imposed, should, when communicating, as laid down in clauses (a) and (b) of this paragraph, with the District Magistrate who has received the fine, notify to him the amount to be so credited.

(d) Unless the payment is made to the Jail authorities, notice of the realization should at once be sent in the manner prescribed in the note to paragraph 15 to the Superintendent of the Jail in which the

prisoner is confined, either by the Magistrate of the District where the offender was sentenced, or by the Magistrate of the District where the offender is confined, in case the fine is paid in that district.

19. Sums received by Courts in payment of fine shall be paid into the Treasury—(i) Every sum received by a Judicial Officer in payment of fine will be taken charge of by the Nazir of his Court, or by the Assistant Nazir or other officer performing the duties of Nazir. If the officer holds his Court in the immediate vicinity of a Government Treasury, whether District, Sub-Divisional or Tahsil, the realizations of each day will be paid into the Treasury at the close of the day. If the officer holds his Court at a distance from a Government Treasury, sums received in payment of fine will be paid into the nearest Treasury once a month at least, on the 25th day of each month, and oftener if the amount received since the last payment exceeds Rs. 100 in all. When the payment into the Treasury is made on account of fines which have been paid direct to the Court which imposed them, or if imposed by the Court of Session, to the Magistrate of the District acting under paragraph 6, the date of payment into the Treasury with the number of the Treasury receipt will be noted in respect of each fine so paid in the Court's Fine Register and on the record of the case.

(ii) *Directions as to the credit of the sums sent to the Treasury*—Sums thus paid into the Treasury will be paid to the credit of Government, or as a deposit, according as the fine is, under the terms of the sentence or the orders relating thereto, to be credited to Government or to be paid in compensation or reward.

(iii) *Refund of fines credited to Government*—Sums paid into the Treasury for credit to Government should, even in appealable cases, be credited at once to Government, and will be subject to refund if remitted on appeal or in revision. A form of certificate for refund of fine has been prescribed. Before the amount of the remitted fine, or any portion of it, can be refunded, the exact amount realized and credited in the accounts of the Treasury must be ascertained and certified by the Superintendent of the Deputy Commissioner's Office, and the certificate must be passed for payment by the officer-in-charge of the Treasury to which it is presented for that purpose.

(iv) *Withdrawal of fines paid in Treasury as deposit*—Sums paid into the Treasury as deposits will be withdrawable on the order of the Court executing the sentence, on application being made therefore by the party or parties entitled to receive the same, after the expiry of the period of appeal or, if an appeal has been presented, after the decision of the appeal. When sums are realized which, under the term of the sentence, are payable in compensation or reward, intimation should be given to the party or parties concerned by the Court which is executing the sentence.

(v) *Consequences of neglect to follow the directions*—A strict observance of the foregoing directions is necessary, as the Code of Criminal Procedure contains no provision for recovering sums once paid away in compensation or reward.

20. (i) Statement of fines imposed, realized and credited to Government to be sent to the Accountant-General every month—Further rules on the subject of crediting and accounting for fines have been issued by the Accounts Department, and these rules must be strictly observed. At the close of each month a statement, for the whole District, of all the fines imposed by Courts, which were realized, and credited to Government during the month, should be prepared and submitted to the Accountant-General or, if no fines were so realized, a certificate that no realizations were effected, should be submitted. The statement for the Sessions Court will be prepared by the District Moharrir of Fines and signed by the Magistrate of the District. The officer who signs the statement will be responsible for its accuracy. The certifying officer should at the same time satisfy himself that realizations excluded from the statement have been duly accounted for.

(ii) *Register XV of fine realizations*—To facilitate the preparation of these statements and the checking of the items excluded from them a register of fine realizations, No. XV, will be kept by the District Fine Moharrir for all Courts in the District and for the Sessions Court. The entries in this register should invariably be made at the same time as the corresponding entries are made in the General Register of Fines, No. XIV, prescribed in paragraph 4 above. The register should be totalled at the end of each month and should then be examined and checked by the officer-in-charge of fines with reference to the Treasury certificate-in-regard to credit of fines in the Treasury during the month. Register No. XV is not to be maintained in future by Courts.

21. Duty of Fine Moharrir to draw the attention of the Magistrate to unrealized fines—Under the foregoing rules, as each fine has been realized, the Fine Moharrir will have noted the fact in the proper column of his register, after satisfying himself that the amount has been credited to Government or otherwise duly dealt with; if a Tahsildar has reported that there are no effects, this also will have been noted; if payment has been made, this will also have been noted. It is also the duty of the Fine Moharrir, from time to time, to draw the attention of the Magistrate to unrealized fines, in order that fresh processes may issue as assets are indicated.

22. Quarterly statement of fine realized to be sent to Sessions Judge. Action to be taken by Sessions Judge—At the close of each quarter, a return will be submitted to the Sessions Judge, in the prescribed form, showing the progress which has been made during the quarter in realizing the fines imposed by his Court. The realizations shown in this return should be carefully noted in the appropriate column of the Sessions Court's Fine Register, and explanations should be called for or instructions issued in cases in which failure to realize seems to call for explanation or order. The result of this return will be embodied in the Sessions Judge's Annual Statements.

23. Illegal detention after the fine has been recovered should be prevented—Care should be taken to prevent illegal detentions in prison. When the Superintendent of a jail receives a fine or a notice, in the prescribed form, that a fine has been realized, he will note the realization in the warrant of imprisonment, and, if the prisoner is entitled to his release, will release him and return the warrant, duly endorsed, to the Magistrate.

24. Precautions to be taken as to noting of fines as to prisoners transferred to another jail—Whenever prisoners under sentence of fine are transferred to a Jail in another district, care should be taken to notify on the back of the warrant the amount of fine realized if any realization has been effected. The name of a transferred prisoner who is sentenced to fine must necessarily remain on the Fine Register of the District in which sentence was passed until the whole of the fine has been paid, or until the period within which it can be realized has expired.

25. A General result of the directions—A careful observance of the foregoing directions will result in the following checks:

I. *Duty of officer-in-charge of the Fine Department to check the District Fine Register*—Every fine imposed by Courts exercising jurisdiction in the District will be entered in the Fine Registers.

II. When the fine has been paid into Court, the fact will appear in the proper register, under the hand of the Judge or Magistrate, and on the file of the case.

III. In other cases, the proceedings of the Tahsildar will show what steps have been taken for forcible levy.

IV. Each realization will be checked by the Fine Moharrir.

V. The realizations of each Court will be checked and certified once a month by the Presiding Officer of the Court, or, in the case of fines imposed by the Sessions Court, by the Magistrate of the District.

VI. An inspection of the District Register of Fines will always at once show every stage of each transaction, and quarterly, half-yearly or annual audit can be held of the whole fine transactions of the period, by comparing each entry of the register with the record of the case and the credit in the Treasury. The officer-in-charge of the Fine Department should occasionally test the correctness of the entries in the District Fine Register by comparing some of them with the records of the cases to which they relate and with the credits in the Treasury.

26. Some directions apply to fines imposed by Civil Courts for contempt of court—It will be observed that fines imposed by Civil Courts under the powers conferred by Section 480 (Section 354 (i) of the New Code) of the Code of Criminal Procedure, must be dealt with in accordance with the instructions laid down in this Chapter so far as they are applicable. It will accordingly be necessary for Courts of purely Civil jurisdiction to keep up Criminal Register No. XIV.

27. Appointment of an officer to supervise the Fine Department. Duty of District Magistrate and controlling officers *re.* supervision—District Magistrates should invariably appoint an Assistant or an Extra Assistant Commissioner to supervise the Fine Department, and should themselves, from time to time, see that these directions are understood and carried out. Whenever any Court is inspected by a controlling officer, special attention should be given to the subject.