Gujarat Civil Judge (Mains) 2025: Paper I (Criminal) — Solution

High Court of Gujarat · Main Written Examination · 12 October 2025 · 100 marks

Q.1 Answer the following (Any 5):- [25 marks]

1. Define and distinguish between Theft, Extortion, Robbery and Dacoity.

Theft, extortion, robbery and dacoity protect possession against different methods of dishonest acquisition. For theft under IPC section 378, the offender moves movable property out of another's possession without that person's consent, intending to take it dishonestly. A picks B's pocket. For extortion under section 383, A intentionally puts B in fear of injury to B or another, and thereby dishonestly induces delivery of property, valuable security or something signed or sealed convertible into a valuable security. B hands over a signed instrument after a threat to injure her child.

Under section 390, theft becomes robbery if, to commit it, carry it out or carry away the property, the offender voluntarily causes or attempts death, hurt or wrongful restraint, or fear of instant death, hurt or restraint. Extortion becomes robbery when the offender is present, threatens such instant harm and induces delivery then and there. Under section 391, five or more persons conjointly committing or attempting robbery, counting persons present and aiding, commit dacoity. A gang of four may commit robbery, but its size alone cannot satisfy the last definition.

2. Discuss the evidentiary value of the statement recorded by the police under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

BNSS section 180 permits the investigating police to examine someone orally who appears acquainted with the facts. The person must answer truly, subject to protection against questions exposing him to a criminal charge, penalty or forfeiture. A separate accurate record may be made for each witness. The rule governing its use is section 181. The maker does not sign a police statement. It is an investigative record and ordinarily cannot establish in court that the event it describes actually happened.

Suppose a witness testifies that she saw the accused strike the victim, although her recorded account said she arrived later. The defence may draw her attention to the specific passage and, if disputed, duly prove it through the investigating officer. The prosecution needs the court's permission to use the contradiction. Re-examination may explain the discrepancy. A material omission can amount to a contradiction in context. Minor omissions ordinarily prove little. The statutory qualifications preserve statements about the cause of the maker's death and the limited discovery rule. Reading out the diary entry is no substitute for examining the witness.

3. Discuss the powers to summon/recall a witness under Section 311 of the Code of Criminal Procedure, 1973 with the case laws.

CrPC section 311 gives every court a power and a corresponding duty. At any stage of an inquiry, trial or other proceeding it may summon someone as a witness, examine a person present although not summoned, or recall and re-examine a person already examined. If the evidence appears essential to a just decision, the court must take it. Either side may draw attention to the need, and the court can act

on its own. The subject of the proposed evidence and the issue it resolves should appear in the reasons. [BNSS section 348.]

For instance, where the prosecution has tendered a sanction document but proof from the sanctioning authority is essential, the judge should consider calling that officer. The evidence must remain open to cross-examination. In Jamatraj Kewalji Govani v. State of Maharashtra, the Supreme Court explained the distinction between discretionary examination and the mandatory duty once necessity is established. The power exists to decide the real issue justly. Repeated recall to harass a witness or repair a tactical omission without showing necessity would defeat that purpose.

4. What constitutes the offence of "Criminal Conspiracy" under the Indian Penal Code, 1860? Explain the ingredients of criminal conspiracy with illustrations.

The agreement supplies the foundation of criminal conspiracy. Under IPC section 120A two or more persons must agree to do or cause an illegal act, or to do a lawful act by illegal means. An illegal step may be the ultimate aim or only incidental to achieving that aim. Where the agreement is to commit an offence, the agreement itself completes the conspiracy. For a different illegal object or means, at least one party must do some act pursuant to it. Merely hearing about a plan, sharing a motive or being present around the conspirators does not establish assent.

If A and B agree to forge a deed to sell C's land, their agreement to commit forgery is punishable although the deed is never made. If their agreement is to pursue a non-criminal but unlawful object, the court must also identify a step in furtherance. Secrecy makes direct proof uncommon. Communications, coordinated acts and timing may prove a meeting of minds, but suspicion alone cannot. Section 120B distinguishes serious offence-conspiracies from other conspiracies in fixing punishment.

5. Are the offences under Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Cognizable? Which Courts are competent to try such offences? And when can the Judicial Magistrate First Class take cognizance of offence under Section 28 of the Act?

Every offence under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act is cognizable, non-bailable and non-compoundable under section 27. Cognizability concerns investigation. Section 28 imposes a separate condition on the court's taking cognizance. A Metropolitan Magistrate or Judicial Magistrate of the First Class is the lowest court competent to try these offences.

There must be a complaint by the Appropriate Authority concerned or an officer authorised in this behalf by the Central Government, the State Government or the Appropriate Authority. A person, including a social organisation, can also complain. That route requires at least fifteen days' notice in the prescribed manner to the Appropriate Authority, specifying the alleged offence and the intention to complain. Where a private complainant requests relevant records, the court may direct that authority to provide copies. An allegation by a patient can initiate scrutiny, but the Magistrate must identify the statutory basis of the complaint before taking cognizance. Police powers to investigate do not dispense with this safeguard.

6. Elucidate the principles relating to the evidentiary value of the hostile witness with case laws.

A party calling a witness may seek leave to question that witness as an adverse party would. The court must exercise its discretion on the conduct of the witness or the course of the evidence. An inconvenient answer alone does not establish deliberate hostility. Under Evidence Act section 154 the party who obtains permission can still rely on credible parts of the testimony. The opposing party retains the opportunity to cross-examine. A prior inconsistent police statement, if duly proved, normally impeaches credibility and does not become substantive proof of its contents.

The judge should examine the deposition part by part. For example, a witness may reliably identify the scene and participants while giving inconsistent accounts of who inflicted an injury. Independent medical or eyewitness evidence may support part of the account. In Sat Paul v. Delhi Administration the Supreme Court recognised that credible portions can survive cross-examination by the party calling the witness. If the account is discredited throughout, none should be relied upon. A finding of guilt still requires proof beyond reasonable doubt.

7. Discuss regarding the liability of the director of a company under Section 138 of the Negotiable Instruments Act, 1881. What are the defences available to the director in criminal prosecution against him under the above provision?

First establish the company's offence. It must have drawn the cheque towards a legally enforceable liability. Presentation, dishonour, timely statutory demand and default during the payment period must be shown. Where the company is the drawer, section 141 of the Negotiable Instruments Act determines when another person is responsible. A director who was in charge of and responsible to the company for the conduct of its business at the material time may be proceeded against together with it. The complaint must disclose the basis of that responsibility. The office of director alone does not describe what the individual did.

Even a person outside that first category can be liable if consent, connivance or neglect on the part of the officer is proved. A director can contest any missing ingredient of the underlying cheque offence, identify the absence of operational responsibility at the relevant time, or prove lack of knowledge or all due diligence under the first limb. A documented resignation predating the transaction is relevant. Merely asserting that another officer signed does not by itself meet the allegation that the director controlled the business.

Q.2 Answer the following (Any 4):- [28 marks]

1. Define "Abetment" under the Indian Penal Code, 1860. Discuss the essentials of abetment with suitable examples.

Abetment under section 107 IPC has three routes. Instigation means positively urging, provoking or encouraging another to do the thing. It may also take the form of a deliberate misrepresentation or wilful concealment of a fact which the accused is bound to disclose, where that causes or attempts to cause the act. An angry remark must be assessed in its setting before an intention to instigate is inferred. Knowing about a proposed offence is insufficient by itself.

In abetment by conspiracy the accused joins an agreement with another or others, and some act or illegal omission takes place pursuant to the conspiracy and in order to do the thing. Suppose A and B agree to poison C and B obtains the poison for that purpose. This additional step matters. Intentional aid consists in purposeful assistance by act or illegal omission. A guard who deliberately unlocks a door so that thieves can enter may aid them; a guard who carelessly forgets to lock it does not thereby intend the theft. Assistance before or during the act must facilitate it.

For liability identify the actual conduct, the form of abetment and the state of mind. The abettor need not physically carry out the principal act. Section 109 supplies the punishment of the offence when it is committed in consequence of the abetment and no specific punishment is otherwise provided. Special provisions govern different results or an offence that is never completed.

2. Explain the difference between Section 299 and Section 300 of the Indian Penal Code, 1860 with regard to the concept of culpable homicide and murder.

Culpable homicide is the broader offence. Section 299 IPC requires causing death with the intention of causing death, the intention of causing bodily injury likely to cause death, or knowledge that the act is likely to cause death. After finding a causal link and one of these mental elements, the court asks whether a clause of section 300 applies. Death alone establishes neither intention nor murder.

Section 300 covers an intention to cause death. It also covers an intention to inflict an injury the offender knows is likely to cause the death of that particular victim. A third clause concerns intentional infliction of the bodily injury actually caused when that injury is sufficient in the ordinary course of nature to cause death. The fourth concerns an act known to be so imminently dangerous that in all probability it will cause death or such injury as is likely to cause death, undertaken without excuse for taking the risk. Firing into a crowd illustrates that last inquiry.

Even where the definition of murder is met, examine the five statutory exceptions and their conditions: grave and sudden provocation, good-faith excess of private defence, good-faith excess by a public servant advancing public justice, sudden fight without undue advantage or cruelty, and informed consent to death or its risk by a person above eighteen. If a valid exception applies, or only section 299 is met, the offence is culpable homicide not amounting to murder. Distinguish intention from knowledge when determining the applicable part of the punishment provision.

3. Discuss the provisions relating to tender of pardon to accomplice.

A conditional pardon secures evidence from someone directly or indirectly concerned in, or privy to, an offence. The condition is full and true disclosure of the circumstances within that person's knowledge and of everyone concerned, including the approver. It is not immunity granted merely for agreeing to implicate a co-accused. Under CrPC section 306 the Chief Judicial Magistrate or Metropolitan Magistrate can tender it during investigation, inquiry or trial. A first-class Magistrate can do so at the inquiry or trial he conducts. The provision covers offences exclusively triable by a Court of Session or the designated special court, and offences punishable with imprisonment extending to seven years or a more severe sentence.

Record reasons and whether the person accepts the tender. On acceptance, examine the person as a witness before the Magistrate taking cognizance and in the subsequent trial, if any. Unless already on

bail the approver remains in custody until termination of the trial. After commitment and before judgment the court to which the case is committed can itself tender pardon under section 307. A voluntary acceptance is not a guarantee that the account is true: the defence may test it in cross-examination.

Under section 308 a Public Prosecutor's certificate of material concealment or false evidence can expose the approver to separate trial for the relevant offence and, subject to the statutory sanction, giving false evidence. The approver may plead compliance, which the prosecution must disprove. [BNSS sections 343–345.]

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4. What is confession? Discuss the various provisions relating to confession. Under what circumstances, a confession is admissible and what is its evidentiary value?

A confession is the accused's acknowledgment of guilt or of substantially all the facts constituting the offence. A damaging admission that falls short of this is relevant only according to the rules for admissions. For example, admitting presence at the scene does not alone admit the killing. Separate three questions: what was actually said, to whom and under what circumstances, and whether it is true.

Under Evidence Act section 24 an inducement, threat or promise from a person in authority relating to the charge can exclude a confession where it offers the accused reasonable grounds to expect an advantage or avoid a temporal evil in the proceedings. The statute excludes confessions to police and, subject to the Magistrate exception, confessions in police custody. Only the portion of supplied information distinctly relating to a discovered fact escapes those bars under section 27. The whole accompanying narrative cannot be proved by attaching a discovery to it.

A Magistrate recording a confession under CrPC section 164 warns the maker of the freedom to remain silent and the possible use in evidence, investigates voluntariness and records the statutory memorandum. An extra-judicial confession requires careful proof of the occasion, actual words, voluntariness and reliability. A trustworthy voluntary confession may support conviction of its maker. A retraction requires independent scrutiny and ordinarily material corroboration. In a joint trial a confession affecting its maker and a co-accused can be taken into consideration against the latter; it cannot independently supply missing substantive evidence against that person.

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5. What is plea bargaining? Briefly describe its procedure. Whether it applies to all types of offences?

Plea bargaining allows an eligible accused voluntarily to seek a negotiated disposition under judicial supervision. Under BNSS sections 289–293 the process begins in a case on a police report or qualifying complaint. It excludes offences punishable with death, life imprisonment or imprisonment exceeding seven years, notified socio-economic offences and offences against women or children. The chapter also excludes proceedings against children in conflict with law. A previous conviction for the same offence is material to eligibility. The accused files within thirty days after framing of charge, describes the case and affirms that the decision is voluntary and informed.

The court examines voluntariness privately after giving notice. If the conditions fail, ordinary proceedings resume. If satisfied, the court gives the relevant participants an opportunity to work out a

satisfactory disposition, including compensation and expenses for the victim. In a police case this involves the accused, the prosecutor, the investigating officer and the victim. A complaint case involves the accused and victim. The parties and presiding officer sign the report of a successful disposition. Failure to reach agreement returns the case to the regular process.

The court then hears the parties on compensation, probation and sentence, applies the statutory concessions where appropriate and pronounces judgment. The scheme does not allow a private bargain to bind the judge or buy an acquittal. Admissions in an unsuccessful application cannot be used for another purpose. For a proceeding continuing under the old Code the corresponding regime is CrPC Chapter XXI-A, with its own eligibility and sentencing terms.

6. Explain the provision of Section 41A of the Code of Criminal Procedure, 1973.

Section 41A CrPC was a safeguard against unnecessary arrest. When arrest under section 41(1) was unnecessary in a case involving a reasonable complaint, credible information or reasonable suspicion of a cognizable offence, the officer had to issue a notice directing the person to appear before the officer or at the place indicated. The notice facilitated questioning and investigation while preserving liberty. It was not a finding that the allegation was false. The person served had a duty to appear and comply with its terms.

Compliance ordinarily protected the person from arrest in respect of that offence. If new facts meant an arrest became necessary, the officer had to record reasons for that opinion. A mechanical statement that the offence was cognizable would not explain why custody had become necessary, for instance to prevent interference with evidence. Failure to comply with the notice or unwillingness to identify oneself allowed arrest for the offence mentioned, subject to orders of the competent court. Failure to attend did not erase the protection of the remaining arrest procedures.

For application in a problem, establish the basis of suspicion, decide whether any statutory ground made immediate arrest necessary, examine the terms and service of the notice, and identify compliance or default. A cooperative person appearing with records and a person ignoring repeated notices stand differently. [BNSS section 35(3)–(6).]

Q.3 Write short notes (Any 5):- [15 marks]

1. Doctrine of Estoppel

Estoppel prevents a person from denying, in a proceeding with the other party or that party's representative, a state of affairs which the person intentionally led the other to believe and act upon by declaration, conduct or omission. Evidence Act section 115 therefore requires both inducement and action on the belief. Suppose A knowingly represents that A owns land and induces B to buy it. Having subsequently acquired title, A cannot deny the earlier representation to defeat B's claim.

2. Withdrawal from prosecution.

The prosecutor in charge may, with the court's consent and before judgment, withdraw from prosecution of a person generally or for one or more offences under CrPC section 321. The prosecutor must exercise independent judgment and the court must consider the interests of justice. Withdrawal

before charge results in discharge. After charge, or where no charge is required, it results in acquittal. It differs from compounding an offence by a person named in the statutory table. [BNSS section 360.]

3. Anticipatory bail.

A person who reasonably apprehends arrest on an accusation of a non-bailable offence may seek a direction from the High Court or Court of Session under CrPC section 438 that, in the event of arrest, the person be released on bail. The court considers the accusation, antecedents, risk of flight and possible misuse of the process. Conditions can secure cooperation with questioning and prevent intimidation of witnesses. The direction does not quash the case or prevent a lawful investigation. [BNSS section 482.]

4. Victim compensation.

CrPC section 357A requires a State scheme, prepared with the Central Government, to fund rehabilitation of victims or their dependants. On a court recommendation the State or District Legal Services Authority determines the amount. The trial court can recommend it where ordinary compensation is inadequate, or an acquittal or discharge leaves a victim needing rehabilitation. An identified victim may also apply when the offender is untraced and no trial takes place. Immediate medical or other interim relief can precede the final award.

5. 'Shared household' under the Protection of Women from Domestic Violence Act, 2005?

Section 2(s) of the Protection of Women from Domestic Violence Act concerns a household where the aggrieved woman lives or has lived in a domestic relationship, alone or with the respondent. It includes specified singly or jointly owned or tenanted homes and a joint family's household of which the respondent is a member. Her own title or beneficial interest is unnecessary. The factual issue is the domestic living arrangement. A right to reside and an order protecting that residence do not transfer ownership.

6. Holder in due course.

A holder in due course takes a negotiable instrument for consideration, before the amount becomes payable, without sufficient cause to believe the transferor's title is defective. Under section 9 of the Negotiable Instruments Act a bearer instrument requires possession, while an order instrument requires the status of payee or indorsee. Someone receiving an overdue instrument or knowing of theft does not acquire this special status. Possession alone may make someone the physical custodian of a cheque without giving the statutory protection.

7. Doctrine of Res Gestae.

Facts forming part of the same transaction as a fact in issue are relevant, even where they occurred at different times or places. Under Evidence Act section 6 the connection may be shown by continuity of action, proximity and common purpose. A spontaneous cry identifying the attacker during an assault

can form part of the occurrence. A narrative given later, after opportunity for reflection or fabrication, needs a separate basis for admission. Mere proximity in time does not establish the required connection.

Q.4 State whether True or False:- [7 marks]

1. Section 320 of the Code of Criminal Procedure, 1973 deals with withdrawal of Prosecution.

False. Section 320 concerns compounding. Withdrawal by the prosecutor in charge with the court's consent is governed by section 321.

2. Section 34 of IPC does not create any joint liability.

False. Section 34 attributes the criminal act done by several persons in furtherance of their common intention to each as if done by that person alone.

3. Offence punishable under Section 304A of the Indian Penal Code, causing death by rash or negligent act, is Non-bailable.

False. The entry for IPC section 304A in the First Schedule to the CrPC classifies the offence as bailable.

4. An illegitimate minor child can claim maintenance under Section 125 of the Code of Criminal Procedure, 1973.

True. Section 125 expressly includes a legitimate or illegitimate minor child unable to maintain itself, subject to the other statutory conditions.

5. Testimony of an accomplice can safely be acted upon without corroboration.

False. An accomplice is competent, but safe reliance ordinarily requires independent corroboration in material particulars connecting the accused. Evidence Act section 133 allowed an uncorroborated conviction in law. BSA section 138 expressly refers to corroborated testimony.

6. The proof of insanity lies on the accused.

True, as to the general exception. The accused must establish legal unsoundness at the time of the act on a balance of probabilities. The prosecution retains its burden to prove the offence beyond reasonable doubt.

7. Ignorance of law is a defence to avoid legal liability or punishment.

False. A good-faith mistake of fact can matter under IPC sections 76 and 79. Mere ignorance of the law prohibiting the conduct is no defence.

Q.5 Attempt the following (Any 3):- [15 marks]

1. Discuss the provisions relating to the right of private defence.

A person may defend his own body, another person's body and his own or another's property against specified offences under IPC sections 96–106. Property offences include theft, robbery, mischief, criminal trespass and attempts. The right arises on reasonable apprehension of danger and lasts while the statutory danger continues. It permits necessary defensive force, not punishment after the attacker has been disarmed or has withdrawn. The law can permit defence even against an assailant whose age or unsoundness prevents criminal responsibility.

Section 99 limits the right, including where there is time for recourse to public authorities. No more harm may be inflicted than necessary. Causing death is restricted to the grave categories in sections 100 and 103, such as assault reasonably creating apprehension of death or grievous hurt, and robbery. In a street attack the relevant inquiry concerns the threat reasonably apprehended then, the available means of protection and whether the defensive response continued after the danger passed. A label such as "self-defence" cannot justify retaliation the next day.

2. Explain the difference between 'Kidnapping from lawful guardianship' and 'Abduction'?

Under IPC section 361, kidnapping from lawful guardianship occurs when a person takes or entices a male minor under sixteen, a female minor under eighteen, or a person of unsound mind, out of a lawful guardian's keeping without the guardian's consent. Lawful guardianship includes lawful entrustment of care or custody. A child's apparent willingness cannot replace the guardian's consent, but the prosecution must still prove taking or enticement. The provision contains an exception for a good-faith claim to paternity of an illegitimate child or to lawful custody, subject to the stated improper-purpose qualification.

Abduction under section 362 requires force compelling or deceitful means inducing any person to go from a place. Age, a guardian's keeping and a guardian's consent are not ingredients. A person falsely telling an adult that her relative has had an accident to induce her to go elsewhere may satisfy that definition. Abduction requires a specified criminal purpose under a penal provision for punishment. Kidnapping from lawful guardianship is itself punishable. The classifications can overlap if force or deceit is also used to take a minor out of lawful keeping.

3. What precautions should a Magistrate take while recording the statement of a child victim under section 164 of the Code of Criminal Procedure, 1973 in a case under the Protection of Children from Sexual Offences (POCSO) Act, 2012?

Under POCSO section 25 a Magistrate recording a child's account under CrPC section 164 must record it as spoken by the child. The defence advocate cannot participate by relying on the proviso to section 164(1). The exercise records the child's own account; it is not cross-examination. Use simple language, open questions and adequate breaks. Avoid leading the child, making the child repeat traumatic details unnecessarily, or allowing an accompanying adult to supply answers.

POCSO section 26 requires the presence of the child's parents or another person in whom the child reposes trust or confidence. Where necessary obtain a qualified translator or interpreter. For a child

with mental or physical disability, seek an appropriate special educator, person familiar with the child's communication, or expert. Wherever possible use audio-video means. Preserve the identity and privacy of the child and distinguish the child's own words from the interpreter's assistance. Section 25 also requires the Magistrate to provide the child and parents or representative with the specified documents upon the police filing the final report. These safeguards preserve both the reliability of the account and the child's ability to speak freely.

4. Discuss the offence of "Criminal Breach of Trust" under the Bharatiya Nyay Sanhita, 2023. Explain the essential ingredients of Criminal Breach of Trust with case law.

BNS section 316 requires entrustment of property or of dominion over it, followed by dishonest misappropriation, conversion, use or disposal contrary to law or an express or implied legal contract governing the trust. Wilfully allowing another to commit such misuse is included. The prosecution must identify the particular property, the purpose of entrustment, who obtained control, and the act showing dishonest diversion. An ordinary unpaid debt or inability to perform a contract, without entrustment and dishonest dealing, will not suffice.

A warehouse keeper taking furniture for safekeeping and selling it for personal gain illustrates both entrusted dominion and conversion. Compare a buyer who receives goods outright and later disputes the price. The seller must show why the transaction created an obligation to hold the property for another rather than simply passing ownership. In State of Gujarat v. Jaswantlal Nathalal the Supreme Court explained, under the corresponding IPC definition, that entrustment qualifies dominion as well as possession and entails an obligation respecting another's interest. No technical deed of trust is essential. The breach alleged must concern the very property or dominion initially entrusted.

5. Explain the legal safeguards provided under "The Immoral Traffic (Prevention) Act, 1956" for the rescue and immediate protection of persons forced into prostitution. What are the key steps outlined in the Act for their rescue and rehabilitation?

Under the Immoral Traffic (Prevention) Act rescue is followed by judicial supervision. Section 15 allows a special police or trafficking police officer to search without warrant where there are reasonable grounds to believe an offence is being committed regarding a person in the premises and obtaining a warrant would cause undue delay. Record the grounds, observe the witness and woman-officer safeguards, and produce persons removed before the appropriate Magistrate. Under section 16 a Magistrate who has reason to believe someone is living in or carrying on prostitution in a brothel can direct a police officer of the requisite rank to enter, remove and produce that person.

The Magistrate must provide safe interim custody where necessary, give the person an opportunity to be heard, and inquire into age, circumstances, home conditions and the suitability of proposed care. Section 17 permits protective placement upon the statutory findings. Before return to parents or guardian the Magistrate may investigate capacity and genuineness under section 17A. A purported guardian may be involved in exploitation. A safe accommodation decision requires an individual inquiry rather than automatic return to the premises from which the person was rescued.

Q.6 Considering the given set of facts, draw an order below the said application filed under Section 97 of the Code of Criminal Procedure, 1973. [10 marks]

1. 'A', the legally wedded wife of 'B' for the last 10 years, was living with him in a joint family, and from the said wedlock, two children, namely 'C', aged 7 years, and 'D', aged 5 years, were born. 2. She filed an application under Section 97 of the Code of Criminal Procedure, 1973, before the Judicial Magistrate, contending that her husband used to torture her and subjected her to cruelty, and 6 months before preferring the present application, she was driven out from the matrimonial home, and custody of the children was snatched away by her husband 'B'. She also alleged in her application that, thereafter, she made several requests to 'B' and his family members to hand over the custody of the children, as they are not able to take good care of them and as child 'D' is just 5 years old and he needs special care from his mother, and 'B' is not taking care of the children, and also alleged that 'B' and his family members did not allow her to meet her children. She thus, by the present application, prayed for issuing the production warrants for producing the children before the Court and for handing them over to her custody. 3. On receiving the notice of the said application, 'B' appeared before the Court and resisted the claim of the applicant, contending that the applicant, for reasons best known to her, left her matrimonial home, leaving the children in the custody of the opponent about 6 months prior to the presentation of the application in the Court. 4. The learned advocate for the applicant, in his arguments, submitted that the applicant is the legal custodian of the children, and as the children are under the age of 10 years, they need special care of their mother, and the custody of the children with 'B' is illegal. Therefore, considering the nature of the application and the reasons stated therein, he prayed to allow the application. 5. The learned advocate for the opponent objected to the contention of the applicant and submitted that the opponent is the father of the children and, as the applicant left the matrimonial house without sufficient reason and the children do not want to live with the applicant, the application filed by her is not tenable and hence, prayed for the rejection of the said application with costs. He further raised the issue of the maintainability of the application, contending that the custody of the children by the opponent is not illegal, as he is the natural guardian of the children.

Court of the Judicial Magistrate First Class. A, applicant, against B, opponent. Application for a search warrant under section 97 of the Code of Criminal Procedure. Order.

A seeks production of C, aged seven, and D, aged five, and transfer of custody. She says B drove her from the matrimonial home six months ago, retained the children and refused access. B denies that account, says A left voluntarily and relies on his relationship to the children. A submits that children of these ages need their mother. The issue at this stage is whether there is reason to believe that the children are confined in circumstances amounting to an offence. An adjudication of permanent custody would require a different inquiry.

Section 97 permits a search warrant upon that statutory belief. If the person is found, the executing officer produces that person immediately before a Magistrate for an appropriate order. The power cannot be used merely because two parents disagree about the residence of their children. Ramesh v.

Laxmi Bai illustrates the distinction where a child lives with its father. Neither parent's description as guardian settles the question if facts actually indicating criminal confinement are shown.

On this material the residence of both children is known. The allegation that A was excluded from the home and denied contact is serious, but no concrete fact shows either child locked up, secretly removed, threatened, or otherwise detained in circumstances constituting an offence. Their ages and the disputed adequacy of care concern welfare. They do not, without more, establish the condition for compulsory search. Nor is the claim that the children prefer B tested evidence on which to award custody.

The application for a search warrant and consequential handover is dismissed. No order as to costs. A is at liberty to seek custody, interim access and appropriate protection before the competent forum. No finding of this court determines parental fitness, the merits of the alleged cruelty, or ultimate guardianship. A copy of this order shall be supplied to the parties.