

**WHO IS A ‘PROCLAIMED OFFENDER’? PUTTING THE CRPC’S INTERPRETATIVE
IMBROGLIO TO REST**

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Unlike many other wrangles of statutory interpretation, the clash of conflicting High Court judgments on the meaning of the term ‘proclaimed offender’ under India’s Criminal Procedure Code has received little to no attention in the realm of academia. This paper remedies that ignorance by anatomizing the changes that the 2005 amendments to the Code (and accompanying amendments to the Indian Penal Code) have brought to the legal framework on who a ‘proclaimed offender’ is and what liabilities the ascription of that title entails. Highlighting how a simple act of issuing a proclamation or declaring a person as a ‘proclaimed offender’ can have legal consequences of staggering proportions in the domain of penal liability, the paper contextualizes the interpretative conflict by tracing how the term’s usage has historically evolved within the contours of the Criminal Procedure Code. It then discusses the substance of the conflicting judgments of India’s High Courts to arrive at the realization that none of the proffered opinions answer the relevant questions completely. After pointing out the severe shortcomings in the opinion of the Delhi High Court, the paper applies rules of statutory construction to propose an interpretation that comports with the legislative intent writ large in the concerned statutory provisions. The paper then concludes with the hope of the imbroglio’s final determination by the Apex Court.

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INTRODUCTION

As a comprehensive body of procedural law for dispensing criminal justice, the Code of Criminal Procedure, 1973, (**CrPC** or **1973 Code**) has run into myriad issues, requiring judicial interpretation to put statutory ambiguities to rest. From the scope of Section 438 in *Gurbaksh Singh Sibbia v. State of Punjab*¹, provisions regulating arrest in *Joginder Kumar v. State of Uttar Pradesh*² and *DK Basu v. State of West Bengal*³, the registration of a First Information Report (**FIR**) in *Lalita Kumari v. Govt of UP*⁴ to more recent instances of factors

¹ *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565.

² *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

³ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

⁴ *Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1.

to be taken into account while granting bail in *P Chidambaram v. Directorate of Enforcement*⁵, final adjudication by the Supreme Court has not only ushered in legal uniformity but has also salvaged legislative intent from being rendered otiose due to faulty construction.

One domain into which this interpretative exercise of the Apex Court has still not ventured is that of the meaning of the term ‘proclaimed offender’ under the CrPC. An anomaly arose with amendments in 2005 to the text of Section 82 of the 1973 Code, a provision that prescribes the procedure of issuing proclamations for securing the presence of absconders before a court of law.⁶ Sections 82-86 deal with scenarios where after an arrest warrant has been issued against an accused person, there are reasons to believe that such accused is absconding or is otherwise concealing himself so that the warrant cannot be executed. In these cases, the court has the power to issue written proclamations enjoining such a person to appear before the court.⁷ The court may even decide to attach his property and in case the accused does not appear before the court as required by the proclamation, the property would be at the disposal of the state government and can even be sold.⁸

Prior to 2005, a person against whom a proclamation had been issued was referred to as a ‘proclaimed person’ in some sections and as a ‘proclaimed offender’ in others.⁹ However, by the amendment in 2005, two sub-sections (sub-sections 4 and 5) were added to Section 82, one of which stipulated, only for a specific list of offences, that if the person does not appear as required by the proclamation, then the court may make a declaration pronouncing him a ‘proclaimed offender’.¹⁰ Post the amendment, petitions started surfacing, challenging the Court’s designation of an accused person as a ‘proclaimed offender’ on the ground that this designation could only be attributed if the person was accused of any of the offences mentioned in the list provided in Section 82(4), and not otherwise. Conflicting interpretations by different High Courts in response to this matter have only compounded the interpretative predicament.

One may be tempted to think of the issue as an innocuous controversy of terminology, but disabusing oneself of that notion only requires a reading of Sections 40, 41, 43 and 73 of the 1973 Code and Section 174A of the Indian Penal Code, 1860 (IPC). The dispute is not

⁵ *P. Chidambaram v. Directorate of Enforcement*, 2019 SCC OnLine SC 1549.

⁶ *Vimla Ben Ajit Bhai v. Vatslaben Ashom Bhai Patel*, (2008) 4 SCC 649; *Deepak Saha v. State*, 2017 (5) RCR (CrI) 730.

⁷ The Code of Criminal Procedure, No. 2, Acts of Parliament, 1973 (India), § 82.

⁸ *Id.* § 83

⁹ *Id.* §§40, 43, 73, 83, 84, 85.

¹⁰ The Code of Criminal Procedure (Amendment) Act, No. 25, Acts of Parliament, 2005 (India), § 12.

of mere theoretical significance; it has practical consequences for determining the scope of powers of arrest, issuing warrants and criminal punishment. For that reason, uncovering the correct legal position is of paramount importance for upholding the rule of law and ensuring that justice is appropriately administered. In pursuit of that aim, it would be instructive to first discuss the frame of reference for the issue, i.e., CrPC provisions governing the framework for securing the accused's presence.

I. CONTEXTUALISING THE DISPUTE

The precepts of fair trial ordain that for a trial to be considered as fair, it will, inter alia, have to be conducted in the presence of the accused.¹¹ Bearing this in mind, the CrPC's provisions provide several ways of ensuring the attendance of the accused in court, from coercive measures like arrest without warrants to means that tread on liberty gradually, like summons, arrest warrants, proclamation and property attachment measures. Chapter VI of the 1973 Code outlines the process of compelling the appearance of the accused.

A. *Summons and Warrants: The Initial Choice*

The 1973 Code envisages two ways of ensuring an accused's presence at trial: (i) issuing summons for appearance; and (ii) arrest and detention. The choice of which method deserves to be employed in a particular case is, generally speaking, at the discretion of the judicial officer tasked with handling the matter.¹² However, this discretion does not operate haphazardly; it is guided by the provisions of the CrPC. The CrPC categorises all criminal cases into 'summons cases' and 'warrants cases' on the basis of the seriousness of the offence, as indicated by the quantum of punishment.¹³ This classification guides a judicial officer's decision on which of the two methods has to be adopted to secure the accused's presence in that it lays down the general rule that summons are to be issued in a summons case and an arrest-warrant has to be issued in a warrants case.¹⁴ The rationale of this general rule is that in summons cases, which involve trials for less serious offences, the probability of the accused absconding or disobeying the summons would be relatively lower than in warrants cases, where the accused faces the threat of greater punishment. However, the rule isn't an absolute decree, as the CrPC confers discretion on a judicial officer to deviate from this general rule if the

¹¹ See *H.R. Industries v. State of Kerala*, 1973 Cri LJ 262; *State v. Ananta Singh*, 1972 Cri LJ 1327.

¹² See *Ram Lal Narang v. State*, AIR 1979 SC 1791; *State (CBI) v. Dawood Imbrahim Kaskar*, (2000) 10 SCC 438.

¹³ *supra* note 7, §§ 2(w), (x).

¹⁴ *supra* note 7, § 204.

circumstances warrant such departure.¹⁵ Additionally, an intentional omission to appear in court after a summons has been issued is a punishable offence.¹⁶

B. Proclamation: Disciplining Contumacy

As has been highlighted earlier, once a warrant of arrest has been issued and the person for whose arrest the warrant has been issued seems to be evading the warrant's execution, the court can issue a proclamation for such person asking him to appear before it at a specific time and place.¹⁷ Sub-section (2) of Section 82 provides the manner in which the written proclamation is to be published, and the requirements therein are mandatory.¹⁸ Sub-section (3) lays down that the issuing court's written statement is conclusive evidence of the issuance of the proclamation and the compliance of that issuance with the section's requirements. With the addition of sub-sections (4) and (5) through the 2005 Amendment, sub-section (4) now specifies that the court, after making such inquiry as it deems fit, is empowered to declare that person a 'proclaimed offender' who: (i) is accused of any of the select offences mentioned therein¹⁹; and (ii) fails to appear at the specified place & time required by the proclamation issued for him under sub-section (1).

This is relevant because a proclamation triggers two main corollaries. First, under Section 83 of the CrPC, the issuance of a proclamation under Section 82(1) allows the court to attach property belonging to the 'proclaimed person', which the court can sell in case of the accused's continued non-appearance. Second, non-appearance in response to a proclamation is an offence under Section 174A of the IPC.²⁰ This is where the Section 82(4) declaration makes a pertinent difference; a person who disobeys a proclamation under Section 82(1) is liable for punishment with imprisonment up to three years or with fine or with both (under Para 1, Section 174A of the IPC), while a person against whom a subsequent declaration under Section 82(4) has been made is liable to be punished with imprisonment up to seven years and a compulsory fine (under Para 2, Section 174A of the IPC). It must be noted that prior to the 2005 addition of Section 174A, disobeying proclamations was punished merely by simple imprisonment up to six months or fine up to a thousand rupees or both, under Section 174 of the IPC.

¹⁵ *supra* note 7, § 87.

¹⁶ The Indian Penal Code, No. 45, Acts of Parliament, 1860 (India), § 174.

¹⁷ *supra* note 7, §82(1); Sunil Kumar v. State, 2001 SCC OnLine Del 1020.

¹⁸ Bishundayal v. Emperor, AIR 1943 Pat 366; Devendra Singh Negi v. State of U.P., 1994 Cri LJ 1783.

¹⁹ Offences punishable under Indian Penal Code, 1860, §§ 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460.

²⁰ Added by the Code of Criminal Procedure (Amendment) Act, 2005, § 44(b).

C. Usage of the Term ‘Proclaimed Offender’: Tracing Historical Progression

The CrPC was first concretised in 1882; subsequently, it underwent substantial overhaul only in 1898 and then in 1973 after the 41st Law Commission Report.²¹ Before the amendment in 2005, the term ‘proclaimed offender’ found an explicit mention only in three sections of the 1973 Code²² and an implicit mention in one.²³ Section 40(1)(b) of the 1973 Code casts a duty on village-officers and village-residents to report the presence of any person who the officer/resident knows or reasonably suspects to be a ‘proclaimed offender’ if such offender enters or passes through the village. This provision was first incorporated in India’s Criminal Procedure Code of 1882.²⁴ Since the 1882 Code only contemplated a proclamation (and not a further declaration as in the 2005 Amendment’s new sub-section 4 of Section 82 of the 1973 Code), a ‘proclaimed offender’ meant a person in respect of whom a proclamation had been issued under Section 87 of the 1882 Code (which is now Section 82 in the 1973 Code).²⁵ In 1894, a new explanatory clause was added to Section 45 of the 1882 Code (which remained Section 45 in the 1898 version of the Code, but became Section 40 in the 1973 Code) which extended the definition of ‘proclaimed offender’ to offenders in respect of whom a court in a territory where the CrPC did not apply had issued a proclamation in relation to acts which if committed within the territories to which CrPC did apply, would qualify as an offence under any of the following sections of the IPC: “302, 304, 382, 392 to 399, 402, 435, 436, 449, 450 and 457 to 460”.²⁶ With this expansion, the village-officer’s/resident’s responsibility now extended even in respect of those offenders against whom a proclamation might not have been issued under the CrPC. This was done mainly to avoid jurisdictional problems encountered during Crown prosecutions. Since the CrPC did not extend to the whole of India even after Independence, it made sense to retain this explanation in the 1973 Code.²⁷

²¹ LAW COMMISSION OF INDIA, THE CODE OF CRIMINAL PROCEDURE, 1898 (41st Report 1969).

²² *supra* note 7, §§ 40(1)(b), 43(1), 73(1).

²³ *supra* note 7, § 41(1)(c).

²⁴ The Code of Criminal Procedure, Acts of Parliament, 1882 (India), § 45.

²⁵ *Emperor v. Ram Sarup*, AIR 1938 Oudh 80; *In Re: Petition of Pandya Nayak*, (1884) 7 Mad 436.

²⁶ *supra* note 24, §45(ii); D.E. CRANENBURGH, THE NEW CODE OF CRIMINAL PROCEDURE 19 (1894) (in the 1898 version of §45 and even in §40 of the 1973 Code which is *in pari materia* with §45 of earlier versions of CrPC, the list in the explanatory clause remained the same; note that the list in this explanatory clause is different from the list in 2005 Amendment’s §82(4) of the 1973 Code because the former list does not include many sections in the latter list & vice-versa).

²⁷ *supra* note 7, §§1, 40.

Bearing this meaning of a 'proclaimed offender' in mind, there seems to be no doubt about the fact that before 2005, the terms 'proclaimed person'²⁸ and 'proclaimed offender'²⁹ referred to the same concept, i.e., a person in respect of whom a proclamation has been issued under the CrPC.³⁰ Accordingly, Section 41(1)(c) of the 1973 Code authorises the arrest without warrant of a person 'who has been proclaimed as an offender'. Moreover, Section 43(1) legitimises the arrest of a 'proclaimed offender' by a private person and Section 73(1) bestows both the Chief Judicial Magistrate and a Magistrate of the First Class with the authority to issue an arrest-warrant for a 'proclaimed offender'. Thus, Sections 40, 41, 43 and 73 confer powers on different authorities in respect of 'proclaimed offenders', understood as persons against whom a proclamation has been issued.

The 2005 Amendment added a new scheme to the CrPC by specifying a process according to which the issuance of a 'subsequent declaration' as per Section 82(4) of the CrPC designating the accused as a 'proclaimed offender' would make him liable for greater punishment under IPC. The bone of contention with regard to this change is two-fold: (i) does the amendment imply that no one can be referred to as a 'proclaimed offender' except a person accused of any of the nineteen offences listed in Section 82(4) and against whom a subsequent declaration under that provision has been made? (question one); (ii) if yes, does that mean that the term 'proclaimed offender' as used in four other CrPC sections³¹ has also undergone semantic remodelling to the effect that the four sections are no longer triggered simply on the issuance of a proclamation, but that they would now require the Section 82(4) subsequent declaration to be operative? (question two). Ever since High Courts embarked on the journey of answering these questions through the adjudication of petitions challenging proclamation orders, the responses proffered have either ignored one of these questions, rendering the whole exercise futile, or have embraced fallacious interpretations of statutory history relegating the CrPC's provisions to ineffectuality.

²⁸ Used in the Code of Criminal Procedure, 1882, §§88-89; The Code of Criminal Procedure, 1898, §§88-89; The Code of Criminal Procedure, 1973, §§83-85.

²⁹ Used in the Code of Criminal Procedure, 1882, §§45, 59, 78; The Code of Criminal Procedure, 1898, §§45, 59, 78; The Code of Criminal Procedure, 1973, §§40, 43, 73.

³⁰ *Emperor v. Ram Sarup*, AIR 1938 Oudh 80; *In Re: Petition of Pandya Nayak*, (1884) 7 Mad 436 (the explanatory clause only expands this definition while the general meaning remains the same).

³¹ *supra* note 7, §§ 40, 41, 43, 73.

II. THE TALE OF DIVERGENT OPINIONS

In light of the indispensability of proclamation provisions, one would presume that most High Courts must have at some point confronted the two questions. But, an examination of case law on the point reveals that there are only two to three High Courts that have been at the forefront of analysing the debate and proposing answers, viz. the Punjab & Haryana High Court, the Rajasthan High Court, and the Delhi High Court. These High Courts have ended up locking horns in illuminating the accurate legal position with respect to both the questions.

A. *Punjab and Haryana High Court: Chronicling the Court's Intramural Contradictions*

The Punjab & Haryana High Court has had a pronounced history of striking down orders declaring an absconding accused person as a 'proclaimed offender', if he has not been accused of any of the offences enlisted in Section 82(4).³² In a half-page order in *Satinder Singh v. State of UT Chd.*,³³ Justice Permod Kohli quashed a proclamation order declaring the accused as a 'proclaimed offender' because he had not been accused of any of the offences mentioned in Section 82(4). This case was followed in two subsequent matters.³⁴

The reasoning on which these pronouncements are predicated received detailed substantiation only in *Rahul Dutta v. State of Haryana*³⁵ and *Sanjay Sarin v. State (UT Chandigarh)*³⁶. The court's interpretation of the CrPC in both these judgments led it to the conclusion that after the 2005 Amendment, the terms 'proclaimed person' and 'proclaimed offender' had distinct connotations inasmuch as only a person evading arrest-warrants issued in respect of the offences mentioned in Section 82(4) could be declared a 'proclaimed offender', whereas persons accused of other offences could be referred to as 'proclaimed persons' and nothing more. Evidently, the Court does not answer question two in any of these judgments, and as long as an answer to the effect of the theoretical classification between the

³² See *Satinder Singh v. State of U.T. Chandigarh*, 2010 SCC OnLine P&H 6551; *Sarabjit Rai v. State of Punjab*, CrI. Misc. No. M-37489 of 2010 (decided on Jan 27, 2011); *Ramji Dass v. State of Punjab*, CrI. Misc. No. M-24417 of 2010 (decided on Feb 10, 2011); *Baldev Singh v. State of Punjab*, CrI. Misc. No. M-6301 of 2011; *Balihar Dhami v. State of Punjab*, CrI. Misc. No. M-7249 of 2011 (decided on Mar 9, 2011); *Sukhwinder Singh v. State of Punjab*, CrI. Misc. No. M-18469 of 2011 (decided on Aug 23, 2011); *Likhma Ram v. State of Punjab*, CrI. Misc. No. M-36988 of 2011 (decided on Dec 7, 2011); *Jaswant Singh v. State of Punjab*, CrI. Misc. No. M-31531 of 2011 (decided on Dec 15, 2011).

³³ 2010 SCC OnLine P&H 6551.

³⁴ *Likhma Ram v. State of Punjab*, CrI. Misc. No. M-36988 of 2011 (decided on Dec 7, 2011); *Jaswant Singh v. State of Punjab*, CrI. Misc. No. M-31531 of 2011 (decided on Dec 15, 2011).

³⁵ 2011 SCC OnLine P&H 16868.

³⁶ 2012 SCC OnLine P&H 22817.

two terms on the operation of CrPC provisions is unclear, this series of judgments does not lay down the law completely. In fact, in this scenario, any judgment that only addresses ‘question one’ and does not touch ‘question two’ will have to be viewed as bad in law in so far as the lack of a response to ‘question two’ breeds obscurity in the apparent answer to question one (in the sense that the characterisation of the term ‘proclaimed offender’ that question one requires would be deficient if the implications under Sections 40, 41, 43, and 73, of a person being declared as a ‘proclaimed offender’ are not clarified, as required by question two).

This is where the sole deviating approach assumes centre stage. In the midst of a plethora of judgments advocating for one proposition, Justice MMS Bedi in *Deeksha Puri v. State of Haryana*³⁷ advanced a diametrically opposed view.³⁸ The pith of this ruling is that the 2005 Amendment has not altered the principle that the terms ‘proclaimed person’ and ‘proclaimed offender’ mean one and the same thing for the purposes of liabilities and consequences under the CrPC. The only effect it has had is in relation to Section 174A of the IPC, where a person for whom the Court issues the Section 82(4) declaration is liable for a higher degree of punishment; so, even if someone is referred to as a ‘proclaimed offender’, that would not automatically render them liable for a higher punishment under Section 174A of the IPC. This is because higher punishment is contingent on compliance with Section 82(4)’s essentials and not on the usage of one term or another. For that reason, Justice Bedi says that a proclamation order referring to a person as a ‘proclaimed offender’ cannot be called into question merely on the ground that the offence alleged to be committed by him does not fall under the list of sections given in Section 82(4). The logic to which this proposition is anchored lies in the Court’s recognition that addressing or referring to a person either as a ‘proclaimed person’ or ‘proclaimed offender’ makes no difference to liabilities and consequences under the CrPC which accrue to both classes with equal vigour (since both the terms indicate one and the same thing within the scheme of the CrPC in Justice Bedi’s opinion). Justice Bedi invokes Section 41(1)(c) as an example of this parity to say that irrespective of the title, a proclaimed person’s/offender’s arrest without warrant is permissible. The judgment does not discuss whether the same reasoning would extend to Sections 40, 43 and 73 of the 1973 Code, but it can safely be assumed that the question would have been answered in the affirmative if brought before Justice Bedi.

³⁷ 2012 SCC OnLine P&H 20122.

³⁸ Foundations for the opinion however had previously been laid in *Rajiv v. State of Haryana*, CrI. Misc. No. M-30146 of 2011 (decided on Oct 12, 2011).

Justice Bedi's judgment was subsequently brought to the attention of a bench of coordinate strength in *Sanjay Sarin v. State (UT Chandigarh)*.³⁹ Justice Vijender Singh Malik in that case refused to follow Justice Bedi's opinion without scrutinising its ratio and instead reaffirmed the decision in *Rahul Dutta*. On the contrary, Justice Naresh Kumar Sanghi in *Puneet Sharma v. State of Punjab*⁴⁰ followed Justice Bedi's approach without discussing contrasting judgments. This record of the Punjab & Haryana High Court's verdict on the two questions shows that the High Court itself does not endorse or follow a uniform approach. Contradictory judgments exist, and the question is still open for deliberation.

B. Delhi High Court and its Radical Postulation

The Delhi High Court's approach to the matter is of relatively recent origin. In *Sanjay Bhandari v. State (NCT of Delhi)*⁴¹, the High Court was faced with a criminal revision petition wherein the petitioner sought to impugn the order of the trial court declaring him a 'proclaimed offender', contending that since he had not been accused of offences listed under Section 82(4) of the CrPC, such declaration was *contra legem*. The petitioner's counsel relied on a 2018 judgment of the Rajasthan High Court.⁴² In *Rishabh Sethi v. State of Rajasthan*⁴³, the petitioner – accused of offences under Sections 7, 12, 13(1)(d), 13(2) & 14 of the Prevention of Corruption Act, 1988 and Section 120B IPC – filed a criminal miscellaneous petition to quash the Sessions Court order declaring him as a 'proclaimed offender'. The accused-petitioner's counsel contended inter alia, that the petitioner should not have been declared as 'proclaimed offender' by the court below as none of the offences alleged against him were mentioned in sub-section (4) of Section 82 CrPC. Following the decisions of the Punjab & Haryana High Court in *Rahul Dutta*, *Satinder Singh* and *Sanjay Sarin*, Justice Deepak Maheshwari of the Rajasthan High Court accepted the argument of the accused-petitioner's counsel and held that he could at most be termed as a 'proclaimed person', and not a 'proclaimed offender'.

Per contra, the State's counsel before the Delhi High Court, contended that the term 'proclaimed offender' could rightly be employed for persons who are accused of offences other than the ones that §82(4) mentions, though consequences under the IPC may be different for such persons. To buttress this argument, the State's counsel placed heavy reliance on the

³⁹ 2012 SCC OnLine P&H 22817.

⁴⁰ 2013 SCC OnLine P&H 7577.

⁴¹ 2018 SCC OnLine Del 10203.

⁴² *Rishabh Sethi v. State of Rajasthan*, S.B. CrI. Misc. No. 5767 of 2017 (decided on Mar 8, 2018).

⁴³ *Id.*

Punjab & Haryana High Court's decisions in *Rajiv v. State of Haryana*⁴⁴ and *Deeksha Puri v. State of Haryana*⁴⁵.

A single judge bench of the Delhi HC rebuffed the State's contention and held that 'proclaimed persons' and 'proclaimed offenders' have discrete spheres of operation. Explaining further, the Court asserted that 'proclaimed persons' are those against whom a proclamation has been issued under Section 82 of the CrPC; 'proclaimed offenders' on the other hand are those accused of offences mentioned in Section 82(4), and in respect of whom a subsequent declaration after the initial proclamation, ascribing them the title under the same section, has been made. The reason behind this ruling is that no provision except Section 82(4) authorises the designation of a person as a 'proclaimed offender'; since that is true, such a designation will have to be limited to the regime that Section 82(4) provides, i.e., the title shall be reserved only for individuals who fit the scenario contemplated by that section. In the considered opinion of the High Court, a declaration that attributes the title of 'proclaimed offender' to persons accused of offences not covered by the list in Section 82(4) is bad in law and liable to be set aside for its illegality.

Nonetheless, the elevation of lexical trivialities to the status of the determining feature of illegality for proclamations, was not the most radical feature of the Court's ratio decidendi. In examining the dichotomy of 'proclaimed persons' and 'proclaimed offenders', the Court held that being declared as the latter not only occasions higher liability under Section 174A of the IPC but also occasions adverse consequences under Sections 40, 41, 43 and 73 of the CrPC, saying in effect that these four sections would be triggered only when the Section 82(4) declaration is made. This means that village officers/residents would no longer have any responsibility to report in respect of a person against whom only a proclamation has been issued; police officials would no longer have the authority to effect the arrest of such a person without a warrant; private persons wouldn't be able to arrest such a person; and the Chief Judicial Magistrate or a Magistrate of the first class would cease to have the statutory power to issue an arrest-warrant against such a person if he is within their local jurisdiction. The consequence of this is that according to the Delhi High Court, the intent of the 2005 Amendment was to carve out an exemption from applicability of Sections 40, 41, 43 and 73 of the CrPC for all those accused persons against whom a proclamation has been issued but for

⁴⁴ CrI. Misc. No. M-30146 of 2011 (decided on Oct 12, 2011)

⁴⁵ 2012 SCC OnLine P&H 20122.

offences other than the ones listed under Section 82(4). This part of the Court's pronouncement has placed imperative components of CrPC's scheme at the risk of being gutted of their content.

III. DISINTERRING THE TRUE STATUTORY PURPORT

All relevant judgments considered, the interpretative conflict still awaits final adjudication. The perusal of differing High Court decisions confirms that opinions on this criminal procedure disputation fall short of a complete account of legislative intent on the two questions that the paper started with; questions, which seek to harmonise the 2005 Amendment with the framework that existed prior. On account of this shortcoming, the issue deserves a fresh perspective.

A. Harmonious and Purposive Construction to the Rescue

In this epoch of jurisprudential development, it is accepted as axiomatic that interpreting a statutory provision requires it to be studied against the backdrop of the statute as a whole, the legal position prior to the provision's addition, the general scheme of the concerned legislation and the mischief that it seeks to remedy.⁴⁶ The rule of harmonious construction necessitates that the court must always harmoniously construe the provisions of a statute such that one provision is not allowed to emaciate or defeat the operation of other connected provisions.⁴⁷ It has been held that the principle that a piece of legislation is to be construed as a whole applies on a parity of reasoning to every part of a single section as well, meaning thereby that all parts of a section are to be read as a whole.⁴⁸

Another seminal rule of statutory interpretation is the one evolved in Heydon's Case⁴⁹. The ruling established that the canons of purposive construction call for a four-point enquiry to give effect to the legislature's true intent: (i) analysing the common law as it existed before the enactment in question; (ii) identifying the mischief or defect that the legal position prior to the enactment in question failed to address; (iii) viewing the remedy that the legislature developed to cure the defect or deal with the mischief; (iv) examining the true reason of the remedy. The case further saddles all judges with the responsibility of favouring a construction

⁴⁶ Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, 2021 SCC OnLine SC 194.

⁴⁷ Canada Sugar Refining Co. v. R., 1898 AC 735; M. Pentiah v. Muddala Veeramallappa, AIR 1961 SC 1107; Gammon India Ltd. v. Union of India, (1974) 1 SCC 596; C.I.T. v. National Taj Traders, (1980) 1 SCC 370; Sultana Begum v. Prem Chand Jain, (1997) 1 SCC 373; Kailash Chand v. Mukandi Lal, (2002) 2 SCC 678; Indore Development Authority v. Shailendra, (2018) 3 SCC 412.

⁴⁸ Tehsildar Singh v. State of U.P., AIR 1959 SC 1012; Mohan Singhania v. Union of India, AIR 1992 SC 1.

⁴⁹ (1584) 76 ER 637.

that advances the purpose of the remedy. These English law doctrines have been assimilated into the body of Indian law on statutory construction.⁵⁰ Since the ‘proclaimed offender’ wrangle is in the nature of a conflict of statutory interpretation, the application of these principles is desirable.

B. Delhi HC’s Paradigm: A Hornet’s Nest

In view of the historical and contemporary scheme of the CrPC and how it is implemented, the Delhi High Court’s opinion and all rulings of the Punjab & Haryana High Court that are congruent with the Delhi High Court’s opinion appear inimical to the principles of purposive and harmonious construction.

According to the Delhi High Court, the legislative intent of the 2005 Amendment was to limit the meaning of the term ‘proclaimed offender’, such that village-officer/resident reporting responsibilities, the police’s power to arrest without a warrant, a private person’s power of arrest, and a Magistrate’s power to issue arrest-warrants in relation to a ‘proclaimed offender’ were restricted to the extent that these provisions only bear relevance for persons who have been declared ‘proclaimed offenders’ under Section 82(4), and not for persons against whom only a proclamation has been issued under Section 82(1). The right questions to ask in response are: Why would the legislature want to do that? What mischief would such a change remedy? What makes those nineteen offences so special as to be the only class of offences in respect of which Sections 40, 41, 43 and 73 should be triggered?

Since the 1882 and 1898 versions of the Code, Sections 40, 43 and 73 of the CrPC (which were Sections 45, 59 and 78 in those earlier versions) have existed only to facilitate obtaining information as to the commission of offences, thereby enabling the investigation of the crime, and to secure the presence of the accused person.⁵¹ The term ‘proclaimed offender’ as used in these sections meant that the mere issuance of a proclamation under Section 82(1) of the CrPC (which was Section 87 in the 1882 & 1898 versions of the Code) would be sufficient for a person to be a ‘proclaimed offender’ under Sections 40, 43 and 73.⁵² Hence, as has been highlighted earlier, prior to the 2005 Amendment, the terms ‘proclaimed person’ and

⁵⁰ See *Bengal Immunity Co. v. State of Bihar*, AIR 1955 SC 661; *National Insurance Co. v. Baljit Kaur*, (2004) 2 SCC 1.

⁵¹ *Queen Empress v. Narpat Singh*, (1901) AWN 10.

⁵² *Emperor v. Ram Sarup*, AIR 1938 Oudh 80; *In Re: Petition of Pandya Nayak*, (1884) 7 Mad 436.

‘proclaimed offender’ meant the same thing for the operation of Sections 40, 41, 43 and 73. There is no reason why the legislature would want to effect a statutory inversion of this scheme.

Notably, even after the 2005 Amendment, procedural guidelines for the police do not reflect any distinction between ‘proclaimed persons’ and ‘proclaimed offenders’. As soon as a proclamation is issued in respect of a person, the person becomes a ‘proclaimed offender’ for the police, and the stipulations for the entry of such person’s name in the surveillance register, delivery of notices to village headmen & watchmen of all places where he/she has connections or is likely to visit etc., are to be complied with.⁵³ The police and the prosecuting agency are also required to maintain a register for such ‘proclaimed offenders’ in each district.⁵⁴ These lists must be periodically revised.⁵⁵ The idea behind such guidelines is to advance the objectives of Sections 40, 41, 43 and 73, as there is complete congruence in how such sections are operationalised. For instance, the provision for sending notices to village headmen and watchmen supplements the responsibility of village officers to give information on the whereabouts of ‘proclaimed offenders’ if they pass through their village. This only fortifies the claim that the 2005 Amendment was not enacted to jettison absconding accused persons (against whom only a proclamation under Section 82(1) of the CrPC has been issued) from the operation of Sections 40, 41, 43 and 73.

Further, an examination of the offence classification in the First Schedule of the 1973 Code, the nineteen enlisted sections under Section 82(4), and their substantive content in the IPC, indicates that all of them prescribe punishments ranging between imprisonment that may extend to seven years (the least severe punishment) and the death sentence (the most severe punishment). A simple reading of the First Schedule of the 1973 Code would reveal that these offences are not the only ones that fit this criterion of determining a crime’s seriousness. The list of nineteen sections leaves out various equally serious IPC offences that fit the punishment range; dowry death, abetment of suicide, attempt to murder, administering a stupefying drug with intent to cause hurt⁵⁶ and many other offences are not on the list. In such a scenario where equally serious offences have been left out of the scope of the list in Section 82(4), what would the legislature have intended to achieve by clipping the wide scope of the term ‘proclaimed offender’ with respect to Sections 40, 41, 43 and 73?

⁵³ Punjab Police Rules, 1934, Rules 21.5, 23.24.

⁵⁴ *Id.* Rules 22.54, 23.20, 23.22, 23.25.

⁵⁵ *Id.* Rule 23.23.

⁵⁶ *supra* note 14, §§ 304B, 306, 307, 328.

It may be argued that many of these serious offences could be brought under the scope of Sections 41, 43 and 73, subject to other heads like ‘persons accused of non-bailable offences and evading arrest’ as in Section 73. Yet, that would still exempt many accused persons (against whom proclamations have been issued for those offences which would be left out even after the application of other heads like ‘persons accused of non-bailable offences and evading arrest’ under Section 73⁵⁷) from the operation of the basic legal regime that governs the methods of facilitating the obtaining of information as to the commission of offences, enabling the investigation of the crime, and securing the presence of the accused.

Clearly, the Delhi High Court’s proposition has deleterious effects for the otherwise sound scheme of the 1973 Code. Its interpretation therefore not only defies the yardsticks of purposive interpretation but also misjudges the effect of the 2005 Amendment, because if the amendment on the one hand adds a new section to the IPC to prescribe a higher punishment for disobeying proclamations (from six months imprisonment to three to seven years as the case may be), the same amendment would not provide relaxations to those who disobey proclamations by allowing them to escape the operation of CrPC provisions (like Sections 40, 41, 43 and 73) that deal with ‘proclaimed offenders’.

C. The ‘Title’ and the ‘Effect’: Dissecting the Statutory Position

It is clear from the history of the CrPC that prior to 2005, the terms ‘proclaimed offender’ and ‘proclaimed person’ referred to the same statutory concept. However, clouds of ambiguity still loom large over the legal stance of CrPC on the question, post 2005. It would now be germane to provide answers to the two questions that the paper started with. It must first be realised that the cause of the complications surrounding question one is the misplaced attribution of importance to the title of a ‘proclaimed offender’. Designating someone as a ‘proclaimed offender’ is a toothless act unless it engenders consequences or sets off liabilities in law. That is where question two has to be factored in. Taken together, an appropriate approach to the resolution of this issue is one that sheds light on the effect of declaring someone

⁵⁷ To illustrate, §325 IPC is a bailable offence that is – in terms of punishment – just as severe as many offences which made to Section 82(4)’s list. Now, a person accused of an offence under §325 IPC would still escape the operation of §73 in the Delhi High Court paradigm since he would neither be covered under the head ‘persons accused of non-bailable offences and evading arrest’, nor under the head of ‘proclaimed offender’. The latter is because issuance of a proclamation would no longer allow the Magistrate to issue an arrest-warrant if such person enters the area within his local jurisdiction, as the word ‘proclaimed offender’ would require a subsequent declaration under §82(4) of the 1973 Code, which can anyway not be issued in this case since §325 is not part of §82(4)’s list of offences.

as a 'proclaimed offender'. This effect can be studied in the realm of procedural law and substantive criminal law separately.

1. Substantive Criminal Law

As stated earlier, a declaration under Section 82(4) of the CrPC, designating someone as a 'proclaimed offender' prompts a greater degree of punishment under Section 174A of the IPC for disobeying a proclamation. Contrarily, in case a person who is accused of an offence not enlisted in Section 82(4) is designated as a 'proclaimed offender', it is obvious that he would not be liable to that greater degree of punishment merely because he shares the same title. This is because a higher degree of punishment is triggered only when such designation is made in accordance with Section 82(4) and not otherwise, which implies that unless such designation has been made while he is accused of an offence which is one of the enlisted nineteen, the designation does no harm. Therefore, the 'title' is not material, but the nature of the declaration is. Only if the nature of the declaration is consistent with the requisites set out in Section 82(4) would a higher penalty be attracted.

2. Procedural Law

I suggest that the 2005 amendments were never aimed at altering the general meaning of the term 'proclaimed offender' for provisions like Section 40, 41, 43 and 73 of the CrPC, that apply equally to: (i) persons against whom only a proclamation has been issued under Section 82(1); and (ii) persons in respect of whom a subsequent declaration has also been made under Section 82(4). Recent judgments of the Supreme Court also reflect the same understanding by using the terms 'absconder' (general term for 'proclaimed person') and 'proclaimed offender' interchangeably. The Court has done this while clarifying law on CrPC that applies without discrimination to persons belonging to those terminological categories.⁵⁸ Another judgment of the Apex Court, *Lavesh v. State (NCT of Delhi)*⁵⁹, furthers the claim that the meaning of the term in the realm of procedural law has not undergone any transmogrification. In that case, an individual accused of abetment to suicide and cruelty was addressed as an 'absconder' and a 'proclaimed offender' interchangeably throughout the

⁵⁸ *State of Madhya Pradesh v. Pradeep Sharma*, (2014) 2 SCC 171 (where the Court held that if anyone is declared as an absconder/proclaimed offender, he would not be entitled to anticipatory bail).

⁵⁹ (2012) 8 SCC 730.

judgment. To the Delhi High Court, this would have seemed illegal because none of the offences he was accused of were covered by the list in Section 82(4) of the 1973 Code.

It must be noted finally that the 2005 Amendment was narrowly tailored to serve the specific object of instituting the safeguard of the court's inquiry before a person is made liable for a greater punishment of imprisonment up to seven years for disobeying proclamations issued in relation to the nineteen enlisted offences. It was also meant to add a new element of pressure to secure the presence of the accused in response to a proclamation; the amendment sought to increase deterrence against the offence of disobeying proclamations, with heavier or relatively lighter punishments depending upon the court's discretion in making the Section 82(4) subsequent declaration. Construing the amendment to disturb other elements of the CrPC's scheme would be antithetical to the amendment's purpose. Hence, it can be conceded that it is the proclamation that is material for CrPC provisions; a subsequent declaration under Section 82(4) of the CrPC only leads to more stringent penalties under the IPC.

There is a need, therefore, for harmoniously construing other provisions of the CrPC that deal with 'proclaimed offenders' with the provisions added by the 2005 Amendment. In my opinion, the construction that would best advance the content of all the provisions involved would be to hold: (i) that for the purposes of Sections 40, 41, 43 and 73 of the CrPC, the term 'proclaimed offender' refers to a person against whom a proclamation has been issued irrespective of whichever title has been attributed to him in the text of such proclamation or any subsequent declaration (rule [i]); (ii) that for the purpose of determining the applicability of either of the two paras of Section 174A of the IPC, the material factor is compliance with the conditions stipulated in Section 82(4) and not the otherwise hollow ascription of the title of a 'proclaimed offender' (rule [ii]).

An argument may be made against rule [i] that since the CrPC does not provide any way except Section 82(4) to declare someone as a 'proclaimed offender', professing that persons not covered by Section 82(4) should still be considered as members of the genus of 'proclaimed offenders' for the purpose of procedural provisions like Sections 40, 41, 43 & 73 is bad in law. That argument essentially ignores the fact that prior to the 2005 Amendment, there was no 'explicit' way by which a person could be declared as a 'proclaimed offender'; yet, the Code did use the term 'proclaimed offender' to refer to all persons against whom only

a proclamation had been issued.⁶⁰ This obviates the need for an explicit provision to reiterate what has always been an implicit part of the Code. Nevertheless, Section 40(2)(ii) as an explanatory clause hints towards the general meaning it seeks to expand, by referring to a ‘proclaimed offender’ as someone for whom a proclamation has been issued. This is the only inescapable inference of the section since there was no delineation between the terms ‘proclaimed person’ and ‘proclaimed offender’ when the section was introduced, and the fact that the same explanatory clause has been retained even after 2005 only fortifies the claim that the legislature never intended to upset the general meaning of the term ‘proclaimed offender’ for provisions like Sections 40, 41, 43 & 73. Also, the counterpoint against rule [i] is logically untenable in view of the discussion in Part III.B of this paper.

CONCLUSION: WHAT’S IN A NAME?

In Deeksha Puri, Justice Bedi was correct in stressing that the objective of Section 82(4) of the CrPC was only to supplement the new offence added to the IPC under Section 174A and not to change the meaning of the term ‘proclaimed offender’ for other provisions of the 1973 Code. Sections 40, 41, 43 and 73 therefore become applicable on the mere issuance of a proclamation under Section 82(1) and are not contingent on a subsequent declaration under Section 82(4). Moreover, the term ascribed to a person – ‘proclaimed person’ or ‘proclaimed offender’ – makes no difference to the quantum of punishment for disobeying proclamations under Section 174A of the IPC unless the declaration of someone as a “proclaimed offender” is made in accordance with Section 82(4)’s requirements.⁶¹

Accordingly, embracing the distinction between considering all individuals for whom proclamations have been issued under the umbrella term of ‘proclaimed offenders’ for procedural aspects of the Code on one hand, and making a subsequent declaration for someone as a ‘proclaimed offender’ under Section 82(4) for higher punishment under the IPC on the other, is crucial for promoting a purposive construction of the legislature’s intent. In that regard, it cannot be gainsaid that a subsequent declaration under Section 82(4) has consequences only in the domain of the IPC; under the CrPC however, the statutory concepts

⁶⁰ R.V. KELKAR, CRIMINAL PROCEDURE 41 (K.N. CHANDRASEKHARAN PILLAI, 6th ed. 2016).; P. RAMANATHA AIYAR, CODE OF CRIMINAL PROCEDURE 223 (7th ed. 2003).

⁶¹ The essentials of a ‘subsequent declaration’ under §82(4), CrPC 1973 can be summarised as: (i) person must have been declared as a “proclaimed offender” by the Court after making such inquiry as it deems fit; (ii) such person is accused of any of the select offences mentioned in §82(4); and (iii) that person fails to appear at the specified place & time required by the proclamation issued in respect of him under sub-section (1).

indicated by the terms ‘proclaimed person’ and ‘proclaimed offender’ subsume under the same genus of ‘proclaimed offenders’ for provisions such as Sections 40, 41, 43 and 73. Ergo, Indian courts must refuse to quash proclamation orders that refer to a person not accused of offences listed in Section 82(4) as a ‘proclaimed offender’ merely on the ground that the term ascribed to such accused person ought to have been different; terminological inexactitude of that sort is irrelevant for legal consequences, as such accused person would not face higher punishments under Section 174A merely for being called a ‘proclaimed offender’ unless his declaration fulfils the essentials of Section 82(4) of the CrPC.

It is alarming that a statutory concern which engenders legal ramifications (penalties under the IPC and procedural responsibilities and powers under the CrPC) of such a considerable magnitude has received no attention in academic discourse. After probing the issue in its entirety, one can only hope for India’s Apex Court to take notice of the conflicting judgments rendered by the High Courts and put years of incertitude to rest by rectifying the erroneous past to usher in a just future. The exigency for the Indian Supreme Court’s interference is only amplified by the fact that the Delhi High Court’s fallacious ratio in Sanjay Bhandari case is being cited to quash proclamation orders for terminological infelicity even in 2020.⁶²

⁶² Gaurav Saxena v. State, CrI. Revision No. 24/20 (ID No. 61/20) (decided on Aug 6, 2020).