



# Analysis Of Transfer of Criminal Cases

**Submitted To: Prof. Anjali Sharma**

**School Of Law, NMIMS (Deemed to be University)**

**Submitted By: Rishi Jain**

## **INTRODUCTION**

Criminal matters may be moved from one court to another under the 1973 Code of Criminal Procedure (CrPC). Criminal cases may need to be transferred for a number of reasons, including the parties' convenience, the interests of justice, or the safety of the accused. The CrPC allows for both the transfer of cases between districts as well as transfers of cases within the same district.

Case transfers across courts in the same district are addressed in Section 406 of the CrPC. This clause permits the District Magistrate or the Chief Judicial Magistrate to transfer any case from one court to another court subordinate to the same High Court within the local limits of its jurisdiction on their own initiative or in response to a party's application.

The transfer of cases from one district to another district is covered in Section 407 of the CrPC. This clause allows the High Court to transfer any case from one court to another court under the same High Court or to any other High Court in India on its own initiative or in response to an application submitted by a party.<sup>1</sup>

Case transfers are at the judge's discretion and should only be done sparingly. The distance between the courts, the convenience of the parties and witnesses, the complexity of the case, the stage of the case, and the interest of justice are all elements that the courts take into account before moving a case. While deciding whether to move a case, the courts also take the safety of the accused and witnesses into account.

To guarantee that justice is administered in a fair and unbiased manner, the transfer of cases under the CrPC is a crucial tool. To guarantee that the parties concerned receive a fair trial free from undue pressure or interference, the CrPC allows for the transfer of cases. Also, the transfer of cases promotes swift and effective case resolution.

## **RESEARCH QUESTIONS**

1. What are the grounds for transfer of appeal and cases?
2. What are the provisions for the transfer of cases under CrPC?

## **RESEARCH OBJECTIVES**

1. To highlight the ground for transfer of appeal and cases.
2. To highlight the provisions for the transfer of cases under the Criminal Procedure Code, 1973.

## **RESEARCH METHODOLOGY**

"Analysis of transfer of criminal cases from courts" is the topic of my research. My research is entirely grounded in "DOCTRINAL METHOD." This challenge encompasses a wide range of ideas or doctrines. Also, this project covers the majority of the concerns linked to this topic. The technique of the studies really forms the foundation of this project.

All the sources are secondary in nature. Even secondary resources like books, papers, journals, and internet-based research have been used by me.

## **REVIEW OF LITERATURE**

1. Sarda, M. (2014). Transfer of Criminal Cases: A Study

This paper talks about how courts are frequently flooded with requests to transfer cases that are pending in one court to another. The Criminal Procedure Code of 1974 established Section 406 to address similar situations. This paragraph give the courts the authority to transfer cases.

2. Bajpai, G. S. (2019). TRANSFER OF CRIMINAL MATTERS.

This paper aims in order to guarantee a fair trial, cases are frequently transferred for trial. whether the "goals of justice" may truly be satisfied by the simple transfer of a case. By examining the outcomes of many cases where the Supreme Court has approved or refused the plea of transfer, this paper makes an attempt to provide an answer to that query. Although the case transfer is a good start towards achieving the objectives of justice, it might not be enough to guarantee the public's confidence in the trial. The paper concludes that mere transfer can only increase the chances of fair prosecution and justice but does not guarantee the same.

## **FINDINGS**

### **Grounds for Transfer of Appeal and Cases<sup>2</sup>**

1. Maintaining the spirit of justice Delivering justice and defending each person's rights is the ultimate purpose of any legal system on earth. People hold courts in high regard as institutions of justice, and they have high expectations for the justice that the wronged party seeks. The court has a great moral responsibility to maintain the functioning of justice, equity, and good conscience.

2. Superior judicial officers' recommendations: When deciding whether to transfer cases and appeals from one court to another, the courts take into account the investigations and conclusions provided in the reports produced by the more senior judicial officers, such as the Chief judicial magistrate or any sessions judge.

3. Upon request from the trial court: When the court that is hearing the case determines that it lacks jurisdiction because it involves a significant legal issue that is not within its purview. It could ask for the matter to be transferred by the higher judiciary.

4. Absence of full jurisdiction: In some circumstances, the court only has partial authority over the matter at

hand. In these instances of shared or circumscribed legal concerns, the court adjudicating the case is free to transfer the case to the court with final adjudication authority. This procedure makes sure that the parties in the case have received full justice.

5. Differences between the parties and the judicial officer: Chances of an unfair and biased trial are comparatively higher in situations when there are already disagreements between the judicial officer and any of the parties. The ability to request a case transfer is thus provided by the legal system to the party anticipating these implications of continuing the trial.

6. Principles of natural justice violated: If a party to the Supreme Court presents evidence that a court or judicial official has been consistently violating these standards, the court may order the case to be transferred in order to uphold these values.

<sup>2</sup>Bajpai, G.S., 2019. TRANSFER OF CRIMINAL MATTERS. *Journal of the Indian LawInstitute*, 61(3), pp.391-400

## ANALYSIS

### **Section 406 - Transfer of cases and appeals by the Supreme Court**

The Criminal Process Code's Section 406 grants the Supreme Court the authority to transfer cases and appeals. In order to uphold the principles of justice and natural justice, the Code grants the Supreme Court extensive discretion to transfer any case or appeal to the High Court of any other High Court of any State of the nation.

Any party who fears judicial injustice, is unable to determine who is receiving proper justice, is unable to identify who is being served, or who is the Attorney General or Advocate General of India may file an application to transfer any case or appeal currently pending in the High Court to the Supreme Court.<sup>3</sup>

The power granted to the Supreme Court by Section 406 of the Code is entirely discretionary; there is no justification for the transfer, and the applicant is not need to prove beyond a reasonable doubt that only they are expected. To support the arguments he raised in the Supreme Court application. Unless the applicant is the Advocate General or Attorney General of the nation, the application must take the form of an affidavit or an affirmative motion under section 406 of the Code.

The Supreme Court has the authority to transfer cases and appeals from any lower court in any country that has outstanding cases. Yet, the Supreme Court can make sure that, while transferring the case, the Supreme Court is doing everything possible to respect the principles of fair and natural justice by hearing the case. Anytime there are reasonable grounds to raise concerns about potential obstacles to a person's right to a fair trial, the client is always guaranteed to bring those concerns to the notice of the court with the proper jurisdiction.

<sup>3</sup> legal Service India, *Lawyers in India*, Advocates, Law Firms, Attorney directory, Lawyer, vaki <https://www.legalserviceindia.com/legal/article-9012-an-analysis>

The transfer of cases and appeals from the Supreme Court or from one High Court to another is allowed by this regulation.

One High Court is submitted to another High Court in a Criminal Court with equal or more authority by the Criminal Court.

if justice is regarded to be served. Such a request ought to be submitted by:

- The Indian Attorney General
- State Party's case's general advocate
- Any other party concerned or interested in the case, which must be backed up by an affidavit or confirmation.

Any party opposing the transfer application should get payment if someone is discovered to have filed a fraudulent application under Section 2000.

According to the court's ruling in *Sukhdev Singh Sodhi v. The Chief Justice and Judges of the PEPSU High Court*[5], the authority to transfer matters to the Supreme Court does not include the transfer of any ongoing contempt cases in the High Court.<sup>4</sup>

Because Section 406 does not grant the Supreme Court the jurisdiction to transfer an ongoing investigation from one police station to another for the express purpose of filing a FIR, the authority to transfer cases and appeals is not only discretionary but also constrained. The party filing the petition may request that the party pay compensation in excess of Rs. 1,000 if the Supreme Court determines that the petition is frivolous and there are no substantive rights resisted such an application.

### **Section 407 - Transfer of cases and appeals by the High Court<sup>5</sup>**

The High Courts have the authority to transfer cases and appeals under Section 407 of the Criminal Procedure Code.

The conditions under which HC may order a case or appeal to be transferred. When satisfied, the High Court may transfer cases:

- Any party may not exercise the right to a fair and impartial trial guaranteed by Article 21 of the Indian Constitution if the case is heard by lower courts because certain issues surrounding the case at hand are extraordinarily difficult to resolve,
- the appeal or case must be transferred because of a provision of the Code,
- and the transfer order is made for the benefit of the parties or witnesses involved in the case.

Orders the High Court may make include:

When the aforementioned conditions are met, the High Court may issue any of the following orders:

- Every court that is subordinate to or subservient to any other court in violation of Sections 177 and 185 of the Code is guilty of prosecution but is not entitled to a trial or the opportunity to defend itself;

- Any other criminal court with jurisdiction over the Supreme Court may hear a particular case or appeal if it is pending before one;
- The Sessions Court should be assigned to hear the specific matter;
- The High Court should hear a specific case or appeal.

### **Authority of Sessions Judge to Move Cases and Appeals, Section 408**

According to S 408, the Sessions Judge may also transfer cases and appeals from the Code.

When the Sessions Judge deems it necessary to transfer the matter to further the interests of justice, it will be done pursuant to subsection 1 of Section 408. Within the purview of his session, he has the power to transfer such matters from one criminal court to another criminal court.

The circumstances under which the Court of Sessions may transfer cases are listed in Subsection 2 of Section 408. The provision states that the interested party or the court may file the application, authority at its own discretion, in the event of a report filed by the lower court having the jurisdiction to transfer cases to the Sessions Court.<sup>6</sup>

### **SUGGESTIONS**

1. Standard guidelines: To guarantee that the power to transfer cases is used sensibly and fairly, the transfer of criminal cases under the CrPC should be guided by standard criteria. The courts can use these principles as a guide for deciding whether to transfer cases, taking into account the factors mentioned above.
2. Transparency and communication: The parties concerned in the case should be informed in writing of the reasons why the case was transferred. As a result, the transfer procedure would be transparent and accountable.
3. Justice should be served without delay, hence cases should be transferred as quickly as possible. Delays in the transfer procedure may put the parties concerned through undue hardship and erode public confidence in the court system.
4. Technology: To make the transfer of cases easier, technology utilisation should be promoted. When there is a substantial geographic distance between the courts, technology can aid in the effective and quick transfer of cases.
5. Adequate resources: The recipient court's workload may occasionally grow as a result of case transfers. As a result, sufficient resources should be made available to the receiving court to guarantee that the transferred matter is handled quickly and effectively.
6. Review process: To make sure that cases are transferred in a fair and just way, a review process should be set in place. The implementation of a review committee or the selection of an ombudsman to manage the transfer procedure could be part of this mechanism.

## CONCLUSION

It is abundantly obvious from an analysis of the case transfer provisions of the Criminal Process Act of 1973 that virtually all courts, from the Supreme Court to subordinate courts, have the authority to transfer cases and hear appeals. The justifications for such transactions are often revised thanks to court safeguards.

The nature of the investigation or the privileges accorded to the customer of the business are unaffected by the transfer of business. It is a system to guarantee that customers receive justice. Criminal matters may be moved between courts with the permission of the Supreme Court, the High Court, and the Sessions court.<sup>7</sup>

The authority of each court varies, nevertheless. The courts have the authority to require the plaintiff to pay damages to the opposing party if the parties to the dispute exercise the rights protected by the case's rules and their intentions are unclear.

Each court has a different cap on how much compensation it can order. By order of the Sessions Judge, Judicial Magistrate, and Executive Magistrate, cases may be withdrawn or recalled. The justifications for any order made in accordance with these provisions must be included with the order itself. Until the matter can be moved, the court must have a good reason to believe that it will not pursue justice within its purview.

## REFERENCES

1. legal Service India, *Lawyers in India*, Advocates, Law Firms, Attorney directory, Lawyer, vaki <https://www.legalserviceindia.com/legal/article-9012-an-analysis>
2. Sarada, M., 2014. Transfer of Criminal Cases: A Study. *Indian JL & Just.*, 5, p.18.
3. Bajpai, G.S., 2019. TRANSFER OF CRIMINAL MATTERS. *Journal of the Indian Law Institute*, 61(3), pp.391-400.
4. *Transfer of Criminal Cases*, Law Times Journal (Oct. 21, 2019), <https://lawtimesjournal.in/transfer-of-criminal-cases>
5. January 15, *Transfer Of Criminal Cases - CrPC*, Law Epic (Feb. 20, 2021), <https://lawepic.com/transfer-of-criminal-cases-crpc>
6. *Understanding Transfer of Criminal Cases under the Code of Criminal Procedure, 1973*, Indian Legal Solution (May 9, 2020), <https://indianlegalsolution.com/understanding-transfer-of-criminal>
7. E-Justice India, *Concept Of Transfer Of Criminal Cases*, E-Justice India (Apr. 5, 2021), <https://www.ejusticeindia.com/concept-of-transfer-of-criminal-cases>
8. LawMint Team, *Code of Criminal Procedure CRPC 31 Transfer of Criminal Cases*, LawMint (June 27, 2021), <https://lawmint.com/bare-acts/crpc-31-transfer-of-criminal-cases>
9. Acer, (Jan. 9, 2016), <https://www.crpc.in/images/criminal-procedure-code.pdf>.