

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ
نَحْمَدُهٗ وَنُصَلِّیْ عَلٰی رَسُوْلِهِ الْكَرِیْمِ

Constitution and Powers of Criminal Courts and Offices

[Ss. 6 to 41 Cr.P.C.]

[Justice ® Dr. Munir Ahmad Mughal]

Introduction

Code of Criminal Procedure, 1898

The general law as to constitution and powers of criminal courts and offices in Pakistan is given in Part II of the Code of Criminal Procedure, 1898 (Act V of 1898). There are also special laws on various subjects which have special provisions. Where there is conflict

between a provision of the general law and the special law, the former shall yield before the later.

Both the general and the special laws are subject to the Constitution as such where there is any conflict both are to yield before the Constitutional provision as contained in the Constitution of the Islamic Republic of Pakistan, 1973.

Part II of Cr. P.C. has two Chapters, namely,-

Chapter II (On the Constitution of Criminal Courts and offices) and

Chapter III (on power of courts).

Chapter II is further divided into six subjects, namely,-

A. Classes of Criminal Courts.

It has only one section i.e. section 6 which deals with Classes of Criminal Courts.

B. Territorial Divisions.

It consists of two sections. i.e. sections 7 and 8.

Section 7 speaks of three things, namely the Sessions Divisions and districts, powers to alter divisions and districts, and existing divisions and districts till altered.

Section 8 speaks of the power to divide districts into sub-divisions and that the existing sub-divisions maintained.

C. Courts and Offices.

It consists of ten sections, i.e. sections, 9 to 14 and Sections 14-A to section 17.

Section 9 speaks of Court of Sessions.

Section 10 speaks of District Magistrate.

Section 11 speaks of officers temporarily succeeding to vacancies in office of District Magistrates.

Section 12 speaks of Subordinate magistrates and local units of their jurisdiction.

Section 13 speaks of Power to put Magistrate in charge of sub-division and also delegation of power to District Magistrate.

Section 14 is on the subject of Special Magistrates.

Section 14-A deals with the appointment of Special magistrates.

Section 15 deals with Benches of Magistrates and the Power exercisable by Bench in absence of special direction.

Section 16 deals with Power to frame rules for guidance of Benches.

Section 17 deals with Subordination of Magistrates and Benches to District Magistrate and Subordination of Assistant Sessions Judges to Sessions Judges

D. Courts of Presidency Magistrates [was consisting four sections, namely, sections 18 to 21 which have since been Omitted by A.O. 1949].

E. Justice of the Peace.

It has six sections.

Section 22 which deals with Appointment of Justice of the Peace. Section 22-A deals with the power of Justice of the Peace. Section 22-B deals with the duties of Justice of the Peace, Sections 23 and 24 have since been repealed by Act XII of 1923. Section 25 deals with Ex-officio Justice of the Peace,

F. Suspension and Removal [contained sections 26 and 27 which have since been repealed by A.O. 1937]

Chapter III is divided into four is also further divided into four subjects, namely,-

A. Description of Offences cognizable by each Court.

It consists of five sections.

Section 28 deals with offences under Penal Code.

Section 29 deals with other laws.

Section 29-A since omitted by Act II of 1950.

Section 29-B deals with the jurisdiction in the case of juveniles.

Section 30 deals with offences not punishable with death.

B.Sentences which may be passed by Courts of various Classes.

It has six sections.

Section 31 deals with the Sentences which High Court and Sessions Judges may pass.

Section 32 deals with Sentences which Magistrates may pass.

Section 33 deals with Powers of Magistrates to sentence to imprisonment in default of fine.

Section 34 deals with the High Powers of certain District Magistrate.

Section 34-A was omitted by Act II of 1950.

Section 35 deals with Sentence in case of conviction of several offences at one trial and the maximum term of punishment.

C. Ordinary and Additional Powers.

It has three sections.

Section 36 deals with the Ordinary Powers of Magistrates.

Section 37 deals with Additional Powers conferrable on Magistrates.

Section 38 deals with Control of District Magistrates investing power.

D.Conferment, Continuance and Cancellation of Powers.

It has three sections.

Section 39 which deals with the Mode of conferring powers.

Section 40 which deals with Powers of officers appointed.

Section 41 deals with “Powers may be cancelled”.

Substantive law of crime and Procedural Law of crime

Substantive law is that law which defines the offences and prescribes their punishments. In Pakistan it is the Pakistan Penal Code, 1860 which is the general substantive Penal law of Pakistan. There are also other criminal

laws which are substantive but are specific and special. All such statutes have their individual titles. Each one of them is called a law while collectively they are called the Criminal law of Pakistan. During the process of Islamization of laws many statutes were enacted those are also included in the Criminal law of Pakistan.

Procedural law is an adjective law. It is the machinery by which the substantive law is to be implemented. It begins from lodging of an FIR and ends at conviction and then passing further stages of appeal or revision or reference reaches the stage of execution or acquittal. The general procedural law in Pakistan is called the Code of Criminal Procedure, 1898 and the special procedures are provided by

the individual special laws enacted in Pakistan.

Al-ḥamdu lillāh! Pakistan is an Islamic Democratic Republic. It has its own Constitution. It is a member state of the United Nations. It has signed many conventions and protocols and is playing its role as a modern Islamic Democratic state where independence and liberties, human rights and fundamental rights and almost all the democratic principles are being applied. Legislature, executive and judiciary are independent and playing their role to promote healthy ideal democratic principles as enshrined in the ideal injunctions of Islam. Welfare and dignity of mankind is always in the focus. Our judges, our members of the Bar, and even our litigant public is conscious of the usefulness of rule of law

and due process of law and that it is the civilized behaviour on the part of all of us that we will control the crime and alleviate our burdens of all kinds by mutual cooperation and coordination remaining honest in dealings and transparent in character. We have potential, we have courage, we realize our role must be constructive, most modern and progressive yet avoiding all sorts of abuse by our word or conduct of the favours of Allah on us, and in the best interests of the whole mankind. Our God is the Most merciful among all the merciful; our Holy Prophet (صلى الله عليه و آله وسلم) is mercy for all the worlds. We are to remain knowledgeable, hard working, sincere and full of integrity and also kind and merciful in our words and conduct. Offence is the last stage of deviation. Our name as given by Allah

himself is Muslimīn. From our word and conduct peace and fairness must be promoted. We neither cause injury nor allow injury. We are a nation just and reasonable. We have the Holy Qur'an and Sunnah as our guide. Even our Constitution says that Islam is the State Religion. No law shall be made repugnant to the Injunction of Islam as enshrined in the Holy Qur'an and Sunnah. Even interpretation of all laws is to be made in the light of the Holy Qur'an and Sunnah. The law of crime is no exception to it.

Education is the solution of all misunderstandings. Education needs training. Training requires the prior training of the trainers. The schools, colleges, universities, institutions, academies, publication of books, journals, media, print or electronic,

discussions, debates, conferences, symposiums all are tools to educate and train our young generation who are to hold the reigns after us. We owe a debt to them which we must pay correctly, properly and legitimately.

We are in 2014. Sixty seven years have passed to the achievement of Independence. We have made many developments in all fields of life. Not to appreciate them is not fair. Appreciation costs nothing. It encourages the honest workers. Finding faults is not bad when it is honest, correct and lawful. It is contempt, disrespect, derogation that hurts which is not becoming of a civilized people. Despite all this deviations take place and disputes do arise. Courts are there to hear and adjudicate according to law, under the

law and in accordance with law. We all must respect and obey the law.

It is generally stated that crime is at increase. But population is also at increase. Our data must be correct our assessment must be correct our analysis must be correct our reports must be correct. Projects based on true reports prove constructive.

Where lies the power to constitute a Criminal Court

Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 states: There shall be a Supreme Court of Pakistan, a High Court for each Province and a High Court for the Islamabad Capital Territory and such other courts as may be established by law.

It also provides that no court shall have any jurisdiction save as may be conferred on it by the Constitution or by or under any law.

Article 185 of the Constitution confers appellate jurisdiction on Supreme Court.

“185. Appellate Jurisdiction of

Supreme Court. □ (1) Subject to this

Article, the

Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of a High Court.

(2) An appeal shall lie to the Supreme Court from any judgment, decree, final order or sentence-

(a) if the High Court has on appeal reversed an order of acquittal of an

accused person and sentenced him to death or to transportation for life or imprisonment for life; or, on revision, has enhanced a sentence to a sentence as aforesaid; or

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him as aforesaid; or

(c) if the High Court has imposed any punishment on any person for contempt of the High Court; or

(d) if the amount or value of the subject matter of the dispute in the court of first instance was, and also in dispute in appeal is, not less than fifty thousand rupees or such other sum as may be specified in that

behalf by Act of Majlis-e-Shoora(Parliament) and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or

(e) if the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or

(f) if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

(3) An appeal to the Supreme Court from a judgment, decree, order or

sentence of a High Court in a case to which clause (2) does not apply shall lie only if the Supreme Court grants leave to appeal.”

Powers of High Court under the Code of Criminal Procedure, 1898

Under the Constitution of Pakistan the High Court can exercise its constitutional jurisdiction under article 199 without waiting for the trial court to pass any order and thereby give any direction, modify or set aside the order within its discretion.

Under the Code of Criminal Procedure, 1898, the High Court has the following powers:

1. Pass any kind of sentence which it is authorised by law to pass i.e. death sentence, imprisonment for life.
2. To hear appeal against conviction under section 411 (a) Cr.P.C.
3. To hear appeal against acquittal under section 417 Cr.P.C.
4. To hear murder reference under section 374 Cr.P.C.
5. To pass order of acquittal of the accused where the Sessions Court had awarded death sentence under section 374 (c) Cr.P.C.
6. To direct further inquiry or to take additional evidence where a case comes for confirmation of sentence passed by a Sessions court under section 375 Cr.P.C.
7. To confirm the sentence where after further inquiry the high Court is satisfied that

- the sentence passed by the sessions court is based on merit.
8. To pass any sentence warranted by law under section 376 (a) of Cr.P.C.
 9. To annul sentence and convict the accused of any offence of which the Sessions Court have convicted him under section 376 (b) Cr.P.C.
 10. To order *de novo* trial on the same or amended charge under section 376 (b).
 11. To issue direction of the nature of habeas corpus under section 491 Cr.P.C.
 12. To grant bail under section 496 Cr.P.C. called bail before arrest.
 13. To grant bail under section 497 Cr.P.C. called bail after arrest.
 14. To grant bail under section 498 Cr.P.C. called protective bail.

15. To transfer cases from one court to another which is subordinate to its jurisdiction or hear itself under section 526 Cr.P.C.
16. To make rules for inspection of record of subordinate courts under section 554 Cr.P.C.
17. To exercise inherent powers to make such order as may be necessary to give effect to any order under the Cr.P.C. or to prevent the abuse of the process of any court or otherwise to secure the ends of justice under section 561 Cr.P.C.
18. To restore case dismissed in default.
19. To stay proceedings.
20. To review or recall any order passed by itself.

Where a high court judge sits singly it is called a single bench.

Where two judges sit jointly to hear a case it is called a Division bench.

Where three or more sit jointly to hear a case it is called a Full Bench.

Where all the judges sit at hearing it is called a Full Court.

Powers of the Provincial Government

1. To establish a court of sessions for every sessions division and also to appoint a judge of such court under section 9(1) of Cr.P.C.
2. To issue direction by general or special order published in the official Gazette at what place or places the Court of Sessions shall hold its sittings under section 9 (2) of Cr.P.C.

3. To make appointments of Additional Sessions judge under section 9(3) of Cr.P.C.
4. To appoint Assistant Sessions Judges in one or more Sessions Courts.

Powers of a Sessions Court

1. Power to try any offence under Pakistan Penal Code, 1860 under section 28 (b) Cr.P.C.
2. Power to award any sentence authorized by law under section 31 (2) of Cr.P.C.
3. Power to award death sentence subject to confirmation by the high court under section 31(2) Cr.P.C.
4. Power to hear appeal and set aside sentence awarded by Court of Magistrate.

5. Power to transfer cases from one subordinate court to another
6. Power to act as a revision court under section 439-A Cr.P.C. and may also exercise any of the powers conferred on the High Court under section 439.
7. Power to issue direction of habeas corpus under section 491 (1A) Cr.P.C.

Powers of an Additional Sessions Judge

On judicial side the same powers that are available to the Sessions Judge.

Powers of an Assistant Sessions Judge

On judicial side the same powers that are available to the Sessions Judge except that an Assistant Sessions Judge cannot pass a sentence of death or imprisonment for term exceeding seven year.¹

Powers of a Judicial Magistrate

A Judicial Magistrate is a First Class Magistrate and he can pass a sentence of imprisonment upto three years and sentence of fine upto forty five thousand arsh daman whipping.

¹ 1988 P.Cr.Law Journal 350.

Powers of a Magistrate to sentence to imprisonment in default of fine.

The substantive sentence of the offence is that which is prescribed by the Penal Code or the special law relating to the offence.

The jurisdiction of every criminal court to try a particular offence is derived from a statute, either from the statute which creates the Court or from the statute which defines the offence. Section 28 of Cr.P.C. together with the Schedule provides for the forum and the manner of trial of all offences under the Penal Code. The Cr.P.C. does not permit trial of any offence under the PPC except by a Court of competent jurisdiction²
It is essential that offence should be shown to be triable by the Court

² 1968 P. Cr. Law Journal 682.

concerned. Offences not shown in Schedule to be triable by Magistrate, trial by Magistrate is without jurisdiction.³ It is the statute which gives the jurisdiction to a certain Court, not consent of parties⁴ or want of objection⁵

CHAPTER - III

POWERS OF COURTS

A. Description of offences cognizable by each Court

28. Offences under Penal Code.

Subject **to** the other provisions of this Code any offence under the Pakistan Penal Code may be tried:

- (a) by the High Court; or
- (b) by the Courts of Sessions; or
- (c) by any other Court by which such offence is shown in the eighth column of the second schedule **to**

³ 1972 P. Cr. Law Journal 233.

⁴ AIR 1942 Oudh 50.

⁵ 33 Cr. Law Journal 511.

be triable ⁶[.]
⁷[*Proviso.*]

Illustration

A is ⁸[tried by] the Session Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

Balochistan Amendment:

“Provided that the offences falling under Chapters VIII, X, XIII and XIV of Pakistan Penal Code 1860 (Act XLV of 1860), except offences specified in section 153-A and section 281 of the aforesaid Code, shall be tried by the Executive Magistrate and the expression “Magistrate” used in the said eighth column shall mean Executive Magistrate of the respective class.” *Proviso added by The Code of Criminal Procedure, 1898 (Balochistan Amendment) Act No. XV of 2010 dated 10th December, 2010.*

29. Offences under other laws.

(1) Subject **to** the [other provisions of this Code]⁹, any offence under any other law shall, when any Court is mentioned in this behalf in such law,

6 Subs. for the [;] by Ordinance XXXVI of 2001 w.e.f. 14.8.2001

7 Omitted by Ordinance (XXXVII of 2001) w.e.f. 14-08-2001, PLD 2002 Cent. St. 92.

8 Subs. by Law Reforms Ordinance 1972, item. 11. Enforced in Punjab on 26.12.1975, in Balochistan on 23.12.1975, in KPK on 26.12.1975, in Sindh on 24.12.1975, in Islamabad 21.03.1996. (Federal SRO 202(1)/96 dated 20.03.1996.

9 Subs. By the Act, 12 of 1923 for “provisions of S.447”.

be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or ¹⁰[subject as aforesaid] by any Court constituted under this Code by which such offences shown in the eight column of the second schedule **to** be triable [.]¹¹

[Proviso.] Omitted by Ordinance (XXXVII of 2001) w.e.f. 14-08-2001, PLD 2002 Cent. St. 92

Balochistan Amendment:

“Provided that the offences punishable with imprisonment for a term not exceeding three years, with or without any other punishment, shall be tried by the Executive Magistrates.” *Proviso added by The Code of Criminal Procedure 1898 (Balochistan Amendment) Act No. XV of 2010 dated 10th December, 2010.*

29-A. Trial of European British subjects by second and third class Magistrates.

[XXX]¹²

[29-B.]¹³ Jurisdiction of the case of

10 Inserted by Act, 18 of 1923.

11 Colon subs. by full stop, by Ordinance (XXXVII of 2001) w.e.f. 14-08-2001.

12 Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950)

juveniles.

Any offence, other than one punishable with death or [imprisonment¹⁴] for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by any Judicial Magistrate ***¹⁵ specially empowered by the *[Provincial Government] to exercise the powers conferred by section 8, sub-section (1), of the Reformatory Schools Act, 1897, or, in any area in which the said Act is not applicable, by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to

13 Subs. by Law Reforms Ordinance 1972, enforced in the Province of Punjab w.e.f. 21.3.1996 vide No. SOJ-H/1-8/75 dated 21.3.1996, item. 12.

14 May be "transportation" - Please check from the Original Gazette. Thanks

15 "or by any Magistrate"

exercise all or any of the powers conferred thereby.]

“30. Offences not punishable with death.

Notwithstanding anything contained in sections 28 and 29, the ***[Provincial Government]** may invest any Magistrate of the first class with power **to** try as a Magistrate all offences not punishable with death.”¹⁶

Balochistan Amendment:

In section 30, after the word “invest”, the word “**District Magistrate or**” shall be inserted.¹⁷

B. Sentences which may be passed Courts of various Classes

31. Sentences which High Courts and Session Judges may pass.

(1) A High Court may pass any sentence authorized by law.

¹⁶ Subs. by Ordinance (XXXVII of 2001) w.e.f. 14-08-2001, PLD 2002 Cent. St. 92

¹⁷ by The Code of Criminal Procedure 1898 (Balochistan Amendment) Act No. XV of 2010 dated 10th December, 2010.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judges may pass any sentence authorized by law, except a sentence of death or of ***¹⁸ imprisonment for a term exceeding seven years.

32. Sentence which ¹⁹[Magistrate] may pass.

(1) The Courts of ²⁰[Magistrates] may pass the following sentences namely:

(a) Courts of Imprisonment for a ²¹*** term not exceeding

18 Words "transportation for a term exceeding seven years or of" omitted by Act XXV of 1974.
19 Words "Judicial Magistrate" subs. by Law Reforms Ordinance 1972, item. 188, omitted by Ordinance XL of 1996 item 22.
20 Words "Judicial Magistrate" subs. by Law Reforms Ordinance 1972, item. 15, but entry omitted by Ordinance XL of 1996, Item No. 6.
21 The words "of Presidency Magistrates and" omitted by A.O. 1949.

Magistrates of the first class ; ²²[three years], including such solitary confinement as is authorized by law;

Fine not exceeding ²³[forty five thousand] rupees ²⁴[*arsh, daman*] Whipping.

(b) Courts of Magistrates of the second class; Imprisonment for a term not exceeding ²⁵[one year] including such solitary confinement as is authorized by law; Fine not exceeding [fifteen thousand] ²⁶ rupees.

22 Subs. by Act XXI of 1976.

23 Subs. by Ordinance LXXXV of 2002, dated 25-10-2002. The words "fifteen thousand" were substituted by Ordinance XXV of 1982

24 Ins. by Act II of 1997, originally substituted by Ordinance XVIII of 1991.

25 Subs. By LRO 1972, as amended by Act, 21 of 1976, for "six months"

26 Subs. by Ordinance LXXXV of 2002, dated 25-10-2002. The words "five thousand" were substituted by Ordinance XXV of 1982.

(c) Courts of Imprisonment for a Magistrates term not exceeding one of the third month; class; Fine not exceeding ²⁷[three thousand] rupees.

(2) The Courts of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

²⁸***

33. Power of Magistrates to sentence to imprisonment in default of fine.

(1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default;

Provided that:

²⁷ Subs. by Ordinance LXXXV of 2002, dated 25-10-2002. The words "one thousand" were substituted by Ordinance XXV of 1982.

²⁸ Subsection (3) Rep., by Act, 4 of 1909.

- (a) *Proviso as to certain cases.* The term is not in excess of the Magistrate's powers under this Code:
- (b) In any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth ($\frac{1}{4}$) of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.
- (2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by

the Magistrate under section 32.

²⁹[**34. Higher powers of certain**
³⁰[xxx].

The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or ³¹[xxx] imprisonment for a term exceeding seven years.]

34-A. [Sentences which Court and Magistrates may pass upon European British subjects].
***³²

35. Sentence in case of conviction of several offences at one trial.

(1) ³³[When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions

²⁹ Omitted by Law Reforms Ordinance 1972, item. 16. However, entry relating thereto omitted by Ordinance XL of 1996, item 7.

³⁰ Words "District Magistrate" omitted by Ordinance XXXVII of 2001 w.e.f. 14.8.2001, PLD 2002 Cent. St. 92

³¹ Words "transportation for a term exceeding seven years or" omitted by Act XXV of 1974.

³² *Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (11 of 1950), Sch.*

³³ Subs. By Act, 18 of 1923, for the words "When a person is convicted at one trial of two or more distinct offences, the Court may".

of section 71 of the Pakistan Penal Code] sentence him, for such offences, **to** the several punishments prescribed *therefor* which such Court is competent **to** inflict; such punishments, when consisting of imprisonment ³⁴[xxx] **to** commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

- (2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent **to** inflict on conviction of a single offence, **to** send the offender for trial before a

³⁴ Words "or transportation" omitted Act XXV of 1974.

higher Court;

Provided as follows:

Maximum term of punishment.

- (a) in no case shall such person be sentenced **to** imprisonment for a longer period than fourteen years;
 - (b) if the case is tried by a Magistrate,³⁵[xxx] the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent **to** inflict.
- (3) For the purpose of appeal,³⁶[the aggregate of consecutive] sentences passed under this section in case of convictions for several offences at one trial shall be deemed **to** be a single sentence.

³⁵ Words "(other than a Magistrate acting under section 34)" omitted by Law Reforms Ordinance 1972, item No 17. Omission enforced w.e.f. 21.3.1996 vide No. SOJ-H/1-8/75 dated 21.3.1996 in the Punjab Province.

³⁶ Subs. By Act, 18 of 1923, S.7 for the word "aggregate"

***³⁷

C. Ordinary and Additional Powers

36. Ordinary powers of Magistrates.

All ³⁸[xxx Magistrates] have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers".

Balochistan Amendment:

In section 36 after the word "All" the words "Judicial and Executive Magistrates" shall be inserted *by The Code of Criminal Procedure 1898 (Balochistan Amendment) Act No. XV of 2010 dated 10th December, 2010.*

"37. Additional powers conferrable on Magistrates.

On the recommendations of the High

³⁷ The Explanation and Illustration to S.35 Rep. by the Act, 18 of 1923, S..7.

³⁸ Words "Judicial and Executive" omitted by Ordinance XXXVII of 2001 w.e.f. 14.8.2001, PLD 2002 Cent. St. 92

Court, the ***[Provincial Government]** may in addition **to** the ordinary powers, invest any Magistrate with any powers specified in the Fourth Schedule."³⁹

Balochistan Amendment:

For Section 37, the following shall be substituted, namely;

[37. Additional Powers Conferrable on Magistrates.—

The ***[Provincial Government]** may, in addition **to** ordinary powers, invest any Magistrate with any powers specified in the Fourth Schedule.

Provided in the case of a Judicial Magistrate, such powers shall be conferred on the recommendation of the High Court.

Provided further that the ***[Provincial Government]** may authorize a District

39 (Subs. by Ordinance (XXXVII of 2001) w.e.f. 14-08-2001, PLD 2002 Cent. St. 92.)

Magistrate to invest any Magistrate subordinate to him with any of the powers specified in Part-II of the Fourth Schedule.]⁴⁰

[38. Control of District Magistrates investing power.

***⁴¹

Balochistan Amendment:

After section 37, the following section (38) shall be inserted, namely;

“38. Control of District Magistrate investing power.

The powers conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Provincial Government.”⁴²

D. Conferment, Continuance and Cancellation of Powers

⁴⁰ by the Code of Criminal Procedure 1898 (Balochistan Amendment) Act No. XV of 2010 dated 10th December, 2010.

⁴¹ Omitted by Ordinance XXXVII of 2001 w.e.f. 14.8.2001, PLD 2002 Cent. St. 92]

⁴² by The Code of Criminal Procedure 1898 (Balochistan Amendment) Act No. XV of 2010 dated 10th December, 2010.

39. Mode of conferring powers.

- (1) In conferring powers under this Code the ***[Provincial Government]** may by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official title.
- (2) Every such order shall take effect from the date on which it is communicated **to** the person so empowered.

40. Powers of officers appointed.

Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is ⁴³[appointed] **to** an equal or higher office of the same nature, within a like local area under the same [Provincial Government]⁴⁴,

⁴³ Subs. By the Act, 18 of 1923 for “transferred”.

⁴⁴ Subs. By the A.O. 1937 for “L.G.”

he shall, unless the ***[Provincial Government]** otherwise directs, or has otherwise directed,⁴⁵*** exercise the same powers in the local area⁴⁶[in which] he is so⁴⁷[appointed].

“41. Withdrawal of powers.

The Provincial ***[Government]** may on the recommendations of the High Court, withdraw all or any powers conferred by it under this Code on any person or Magistrate.”⁴⁸

Balochistan Amendment:

For section 41, the following shall be substituted, namely;

“41. Withdrawal of Powers—

The ***[Provincial Government]** may withdraw all or any powers conferred by it under this Code, on any person or Magistrate:

⁴⁵ The words “continue to” Rep. by the Act, 18 of 1923.

⁴⁶ The words “to which” Rep. by the Act, 18 of 1923.

⁴⁷ Subs. By the Act, 18 of 1923 for “transferred”.

⁴⁸ Subs. by Ordinance 37 of 2001 w.e.f. 14.8.2001, PLD 2002 Cent. St. 92.

Provided that, in case of Judicial Magistrate, the withdrawal of powers shall not be made except on the recommendation of the High Court.

Provided further that the powers conferred by the District Magistrate may be withdrawn by the District Magistrate.”⁴⁹

49 by The Cr.P.C. 1898 (Balochistan Amendment) Act No. XV of 2010 dated 10th December, 2010.