# PART II - CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES - CHAPTER II - OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES

1. **Classes of Criminal Courts**

**[6. Classes of Criminal Courts and Magistrates:-**-

1. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of Criminal Courts in Pakistan, namely:
2. Courts of Session;
3. Courts of Magistrates.
4. There shall be the following classes of Magistrates, namely:
	1. Judicial Magistrates:--
		1. Magistrates of the first class.
		2. Magistrates of the second class.
		3. Magistrates of the third class.
		4. Special Judicial Magistrate.
	2. Executive Magistrates:-
		1. District Magistrates.
		2. Additional District Magistrates.
		3. Sub-Divisional Magistrates.
		4. Special Executive Magistrates.'] [(5) Magistrates of the first class.
5. Magistrates of the second class.
6. Magistrates of the third class.]

# Territorial Divisions

1. **Sessions divisions and districts.** (1) Each Province shall consist of session; and every session divisions shall, for the purposes of this Code, be a district or consist of districts.
2. **Power to alter divisions and districts.** The Provincial Government may alter the limits or the number of such divisions and districts.
3. **Existing divisions and districts.** The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.
4. **Power to divide districts into sub-divisions.** (1) The Provincial Government may divide any district into sub-divisions, or make any portion of any such district a sub-division, and may alter the limits of any sub-division.

(2) **Existing sub-divisions maintained.** All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

# Courts and Offices

1. **Court of Sessions.** (1) The Provincial Government shall establish a Court of Session for every session division, and appoint a judge of such Court.
2. The Provincial Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but until such order is made, the Court of Session shall hold their sittings as heretofore.
3. The Provincial Government may also appoint Additional Sessions Judges and Assistant Session Judges to exercise jurisdiction in one or more such Courts.
4. Sessions Judge of one sessions division may be appointed by the Provincial Government to be also an Additional Session Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Provincial Government may direct.
5. All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

# [10. District Magistrate:

1. In every district the Provincial Government shall appoint a District Magistrate
2. The Provincial Government may also appoint Additional District Magistrate to exercise jurisdiction in one or more Districts and such Additional District Magistrates shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the Provincial Government may direct.]

[(3) For the purposes of section 192, sub-section (1) and section [407, sub-section (2) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate].

**District Magistrate-** District Magistrate is not one of the Courts established under Cr.P.C. District Magistrate occupies dual position, he is the Chief Executive, Incharge of the administration of the District and as Magistrate of the First Class, he may exercise the powers conferred upon such Magistrate by the Cr.P.C. PLD 1988 Lah 352

Additional District Magistrate-District Magistrate a/one authorised by legislature to do certain acts. Additional District Magistrate is not empowered to exercise District Magistrate's power under S. 10(2), Cr.P.C. PLD 1958 Dacca 425. However, Additional District Magistrate is competent to exercise powers even after his transfer to some equal or higher office in same local area. PLD 1962 Lah 939.

1. **Officers temporarily succeeding to vacancies in office of District Magistrate.** Whenever in consequence of, the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Provincial Government, exercise all the powers and perform all the duties respectively conferred and imposed by the Code on the District Magistrate.

**Additional Deputy Commissioner**-Additional Deputy Commissioner as Chief Executive of District and Magistrate 1st Class can pass order under S. 144(1). 1980 P.Cr.L.J.851.

1. **[Subordinate] Magistrates.** (1) The Provincial Government may appoint as many persons as it thinks fit [\*\*\*] to be Magistrates of the first, second or third class in any district and may from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) **Local limits of their jurisdiction.** Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

**[Province of Balochistan.** The Government of Balochistan has fixed the limits of territorial jurisdiction for the Judicial Magistrates appointed in each Sessions Division to be the same as the territorial limits of the Sessions Divisions fixed vide Notification No.US(Judl)5(7)/87/674-716, dated the 28th February, 1994.

1. The Judicial Magistrate(s) appointed in a Session Division shall have the jurisdiction throughout that Division subject to the powers conferred upon them under section 12 of the Code of Criminal Procedure, 1898, as amended by the Law Reforms Ordinance, 1972, and further amended by the Law Reforms (Amendment) Ordinance, 1996, (XL of 1996).
2. Wherever, in any of the Sessions Divisions the number of Judicial Magistrates is more than one, the Sessions Judge of the Division, shall distribute the business amongst the Judicial Magistrates. (Gazette Extra dated 22nd March, 1996, PLD 1997 Bal. St. 5)].

**Jurisdiction of Magistrate.** Jurisdiction of Magistrate extends throughout District unless restricted by order. [71 DLR 839] It is essential that offence must be shown to be triable by Magistrate in the Schedule. [1972 P.Cr.L.J. 233]

**Balochistan Province-**See Notification No.US (Judl)4(10)/94/Vol.I, dated 22.3.1996. For text see Cr.P.C. by the same Author. .

**13. Power to put [Magistrate] in charge of sub-division.** (1) The Provincial Government may place any [Executive Magistrate] in charge of a sub-division, and relieve him of the charge as occasion requires.

1. Such Magistrates shall be called Sub-Division Magistrates.
2. **Delegation of powers to District Magistrate.** The Provincial Government may delegate its powers under this section to the District Magistrate.

# [14. Special Judicial and Executive Magistrates.

1. The Provincial Government may on the recommendation of the High Court, confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area.
2. Such Magistrates shall be called Special Judicial Magistrates, and shall be appointed for such term as the Provincial Government may, in consultation with the High Court by general or special order, direct.
3. The Provincial Government may also appoint Executive Magistrate for particular areas or for performance of particular functions and confer upon them or any of the powers conferred or conferrable by or under this Code on an Executive Magistrate.
4. Such Magistrates shall be called Executive Magistrates, and shall be appointed for such term as the Provincial Government may, by general or special order, direct: Provided that no powers shall be conferred under this sub-section on any police officer below the grade of Assistant Superintendent, and no powers shall be conferred on a police officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.
5. The Provincial Government may delegate, subject to such limitations as it thinks fit, to any officer under its control the powers conferred by subsection (3).']
6. **Benches of Magistrates.** (1) The Provincial Government may direct any two or more [Judicial Magistrates] in any place to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes only, and within such local limits, as the Provincial Government thinks fit.

(2) **Powers exercisable by Bench in absence of special direction.** Except as otherwise provided by any order under this section every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as for as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

1. **Power to frame rules for guidance of Benches.** The Provincial Government may ' from time to

time, make rules consistent with this Code for the guidance of Magistrates, Benches in any district respecting the following subjects:

1. the classes of cases to be tried:
2. the times and places of sitting;
3. the constitution of the Bench for conducting trials;
4. the mode of settling differences of opinion which may arise between the Magistrates in session.

# ['Subordination of Judicial Magistrates and Benches to Sessions Judge.

1. All Judicial Magistrates appointed under sections 12 and 14 and all Benches constituted under section 15 shall be subordinate to the Sessions Judge, and he may from time to time, make rules or give special orders consistent with this Code and any rules framed by the Provincial Government under section 16, as to the distribution of business among such Magistrates and Benches,
2. Subordination of Executive Magistrates to District Magistrate. All Executive Magistrates appointed under section i3[i2] 13 and 14 shall be subordinate to the District Magistrate and he may, from time to time, make rules or give special orders consistent with this Code and any rules framed by the Provincial Government under section 16, as to the distribution of business among such Magistrates.

(2-A) Subordination of Executive Magistrates to Sub-Divisional Magistrate.-Every Executive Magistrate (other than a Sub-Divisional Magistrate) in a sub-Division shall also be subordinate to the Sub-Divisional Magistrate, subject, however, to the general control of the District Magistrate',]

1. Subordination of Assistant Sessions Judges to Sessions Judge. All Assistant Judges shall be subordinate to the Session Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with his Code as to the distribution of business among such, Assistant Sessions Judges.
2. The Session Judge may also when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge and

such Judge shall have jurisdiction to deal with any such application.

# Courts of Presidency Magistrates

**18 to 21.** Appointment of Presidency Magistrates. Benches Local limits of jurisdiction, Chief Presidency Magistrate. Omitted by A.O., 1949 Sch.

# E-Justice of the Peace

**[22.** A Provincial Government so far as regards the territories subject to its administration may by notification in the official Gazette, appoint such persons resident within Pakistan and not being the subjects of any foreign State as it thinks fit to be justices of the Peace within and for the local area mentioned in such notification.]

# Punjab Amendment

**[22. Appointment of Justices of the Peace.** The Provincial Government may, by notification in the official Gazette, appoint for such period as may be specified in the notification, and subject to such rules as may be made by it any person who is a citizen of Pakistan and as to whose integrity and suitability it is satisfied, to be a Justice of the Peace for a local area to be specified in the notification, and more than one Justice of the Peace may be appointed for the same local area.

**22-A. Powers of Justice of the Peace.** (1) A Justice of the Peace for any local area shall, for the purpose of making an arrest, have within such area all the powers of a Police Officer referred to in section 54 and an officer in-charge of a police-station referred to in section 55.

1. A Justice of the Peace making an arrest in exercise of any powers under subsection (1) shall, forthwith, take or cause to be taken the person arrested before the officer in-charge of the nearest police-station and furnish such officer with a report as to the circumstances of the arrest and such officer shall thereupon re- arrest the person.
2. A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him:
	1. in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and
	2. in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquillity.
3. Where a member of the police force on duty has been called upon to render aid under subsection (3), such call shall be deemed to have been made by a competent authority.
4. A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government:
5. issue a certificate as to the identity of any person residing within such area, or
6. verify any document brought before him by any such person, or
7. attest any such document required by or under any law for the time being in force to be attested by a Magistrate, and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

**22-B. Duties of Justices of the Peace.** Subject to such rules as may be made by the Provincial Government, every Justice of the peace for any local area shall,

1. on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in writing the result of his inquiries to the nearest Magistrate and to officer in charge of the nearest police- station.
2. if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of any thing from, or the interference in any way with, the place of occurrence of the offence;
3. when so required in writing by a police-officer making an investigation under Chapter XIV in respect of any offence committed within such local area.
4. render all assistance to the police-officer making such an investigation.
5. record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed'.]

**23 & 24. Justice of the Peace for the Presidency-towns.** Present Justices of the Peace. Rep. by the Criminal Law Amendment Act, 1923 (XII of 1923) S. 4.

**25. Ex-officio Justice of the Peace.** In virtue of their respective offices, the Judges of the High Courts are Justice of the Peace within and for the whole of Pakistan, Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Provincial Government under which they are serving.

# F. Suspension and Removal

**26 & 27. Suspension and removal of Judges and Magistrates.** Suspension and removal of Justices of the Peace. Rep. by A.O., 1937.

# CHAPTER III POWERS OF COURTS

1. **Description of offences cognizable by each Court**
2. **Offences under Penal Code.** Subject to the other provisions of this Code any offence under the Pakistan Penal Code may be tried:
3. by the High Court; or
4. by the Courts of Sessions; or
5. by any other Court by which such offence is shown in the eighth column of the second schedule to be triable; [Provided that the offences falling under Chapters VIII, X, XIII and XIV of the Pakistan Penal Code (Act XLV of 1860), except offences specified in section 153A and section 281 of the said Code, shall be tried by the Executive Magistrates and the expression 'Magistrate' used in the said eighth column shall mean Executive Magistrate of the respective class.]

# Illustration

A is [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.

1. **Offences under other laws.** (1) Subject to the other provisions of this Code, any offence under any other law shall when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) **When no Court is so mentioned,** it may be tried by the High Court or 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; (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.]

**29-A. Trial of European British subjects by second and third class Magistrates.** Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950).

**[29-B. Jurisdiction of the case of juveniles.** Any offence, other than one punishable with death or transportation 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 a District Magistrate or by any Magistrate 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 has been wholly or in part repealed by any other law providing for the custody, trial or punishment youthful offenders, by any Magistrate empowered by or under such Saw to exercise all or any of the powers conferred thereby].

1. **Offences not punishable with death.** In the Punjab, the North-West Frontier, in Sind and in those parts of the Provinces in which there are Deputy Commissioners or Assistant Commissioners the Provincial Government may, notwithstanding anything contained in [sections 28 and 29. invest any Judicial] District Magistrate or any Magistrate of the first class with power to try as a Magistrate ail offences not punishable with death.

# Sentences which may be passed Courts of various Classes

1. **Sentences which High Courts and Session Judges may pass.** (1) A High Court may pass any sentence authorized by law.
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 24[imprisonment for a term exceeding seven years].
4. **Sentence which [Magistrate] may pass.** (1) The Courts of [Judicial Magistrates] may pass the following sentences namely:
5. Courts of Magistrates of the first class; Imprisonment for a term not exceeding [three years], including such solitary confinement as Is authorized by law; Pine not exceeding [fifteen] thousand rupees [arsh, daman} Whipping.
6. Courts of Magistrates of the second class; Imprisonment for a term not exceeding one year,including such solitary confinement as is authorized by law; Fine not exceeding (five)thousand rupees,
7. Courts of Magistrates of the third class; Imprisonment for a term not exceeding one month;Fine not exceeding (one 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 passs.

1. **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:

# Proviso as to certain cases.

1. The term is not in excess of the Magistrate's powers under this Code:
2. 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

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.

**[34. Higher powers of certain District Magistrates.** The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by Saw, except a sentence of death or.....

Imprisonment for a term exceeding seven years.]

**34-A. (Sentences which Court and Magistrates may pass upon European British subjects].** Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (11 of 1950),Sch.

1. **(1) Sentence in case of conviction of several offences at one trial.** When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Pakistan Penal Code sentence him, for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment 34. 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.

1. 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 higher Court; Provided as follows:

# Maximum term of punishment.

1. in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;
2. if the case is tried by a Magistrate, as the aggregate punishment shall not exceed twice the amount

of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

1. For the purpose of appeal, 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.

# Ordinary and Additional Powers

1. **Ordinary powers of Magistrates.** All ^[Judicial and Executive Magistrates] have the powers hereinafter respectively conferred upon them and specified in the third schedule Such powers are called their 'ordinary powers'.
2. **37['Additional powers conferrable on Magistrates.** In addition to his ordinary powers, any Magistrate may be invested by the Provincial Government with any powers specified in the Fourth Schedule;

Provided that 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 Magistrate to invest any Magistrate subordinate to him with any of the powers specified in Part 11 of the Fourth Schedule.']

1. **Control of District Magistrates investing power.** The powers conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Provincial Government.

# Conferment, Continuance and Cancellation of Powers

1. **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.

1. **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 appointed to an equal or higher office of the same nature, within a like local area under the same Provincial Government, he shall, unless the Provincial Government otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.
2. **Powers may be cancelled.** (1) The Provincial Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it; ('provided that, in the case of Judicial Magistrate, the withdrawal of such persons shall not be made except on the recommendation of the High Court.']

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.