

# **Union territories (Separation of Judicial and Executive Functions) Act, 1969**

UNION OF INDIA

India

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### **Act 19 of 1969**

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Union territories (Separation of Judicial and Executive Functions) Act, 1969(Act No. 19 of 1969)Last Updated 19th July, 2019Statement of Objects and Reasons. - The Bill seeks to separate the judiciary from the executive in the matter of administration of criminal law in the Union territories except Chandigarh where the Punjab Separation of Judicial and Executive Functions Act, 1964, is already in force, and has been brought forward in compliance with the directive principles of State policy embodied in Article 50 of the Constitution. The object is sought to be achieved by amendment of the Code of Criminal procedure, 1898, (vide clause 3 and the Schedule) by providing for the classification of the magistracy into judicial and Executive Magistrates and for the appointment of members of the Judiciary is Judicial Magistrates with the approval of the High Court. The Bill seeks to make changes in the various provisions of the Code with a view to giving effect to the classification and contains the necessary transitional and saving provisions. The Bill also sets out the respective cases other than those specifically covered by the proposed amendments to the Code, in which functions shall be exercisable under any law by Judicial and Executive Magistrates. Provision has been made in the Bill of the repeal of certain laws in force in areas transferred to Himachal Pradesh from Punjab so as to facilitate the enforcement of the Scheme of the Bill in such areas. Power has also been taken for the removal of difficulties, if any, in giving effect to the provisions of the Bill after it becomes an Act. Under section 21 of the Government of the Union Territories Act, 1963, the Legislative Assembly of a Union territory cannot amend any law enacted by Parliament after the commencement of that Act though the subject-matter of the law may be within the legislative competence of the Assembly. Clause 9 of the Bill seeks to confer on the Legislative Assembly of a Union territory the power to amend this law in its application to the Union territory if it is considered necessary to do so. [Dated 31.5.1969.] An Act to provide for the separation of judicial and executive functions in Union Territories. Be it enacted by Parliament in the Twentieth Year of the Republic of India as follows: -

## **1. Short title, extent and commencement.**

(1) This Act may be called the Union territories (Separation of Judicial and Executive Functions) Act, 1969. (2) It extends to all Union territories except the Union territory of Chandigarh. (3) It shall come into force in a Union territory to which it extends on such [date] [2nd October, 1969, vide notification No. S.O. 3836, dated 17th September, 1969 in respect of the Union territory of Delhi. 1st March, 1970, vide notification No S.O. 384, Dated 29 January, 1970 in respect of Union territory of Laccadive, Minicoy and Amindive Islands.] as the Central Government may, by notification in the Official Gazette, appoint in respect thereof: Provided that different dates may be appointed for different areas in a Union territory and any reference to the commencement of this Act in relation to a Union territory or an area therein shall mean the date on which it comes into force in that Union territory or area.

Himachal Pradesh.- In its application to the U.T. of Himachal Pradesh (now a State) after the word "Chandigarh" add the words "and Himachal Pradesh" - [H.P. A.I.O., 1973 (w.r.e.f. 35.1.1971).]

## **2. Definition.**

- In sections 3 to 9, "Union territory" means any Union territory other than the Union territory of Chandigarh.

## **3. Amendments to Code of Criminal Procedure, 1898.**

- For the purpose of separation of judicial and executive functions, the [Code of Criminal Procedure, 1898] [See now the Code of Criminal Procedure, 1973 (2 of 1974).] (5 of 1898), shall in its application to a Union territory, be amended in the manner and to the extent specified in the Schedule.

## **4. Amendments not to render invalid notifications, etc. before commencement of Act.**

- The provisions of this Act which amend the Code of Criminal Procedure, 1898 (5 of 1898), so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued or anything duly done before the commencement of this Act, and any such notification, order, commitment, attachment, bye-law, rule or regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances, as if it had been duly made, issued or done after the commencement of this Act by the competent authority and in accordance with the provisions then applicable to such case.

## **5. Functions exercisable by Judicial and Executive Magistrates.**

- Where under any law the functions exercisable by a Magistrate relate to matters which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment, or penalty, or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, such functions shall, subject to the provisions of this Act and the [Code of Criminal Procedure, 1898] [See now the Code of Criminal Procedure, 1973 (2 of 1974).] (5 of 1898) as amended by this Act, be exercisable by a Judicial Magistrate and where such functions relate to matters which are administrative or executive in nature, such as the grant of a licence, the suspension or cancellation of a licence, sanctioning a prosecution, or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

## **6. Repeal of laws in transferred areas in Himachal Pradesh.**

- On the commencement of this Act in the transferred areas in the Union territory of Himachal Pradesh, the Punjab Separation of Judicial and Executive Functions Act, 1964 (Punjab Act 25 of 1964) and the [Code of Criminal Procedure, 1898] [See now the Code of Criminal Procedure, 1973 (2 of 1974).] (5 of 1898), as in force immediately before such commencement in the said areas shall stand repealed except as respects things done or omitted to be done before such repeal under the said Punjab Act or under the provisions of the laws amended by the said Punjab Act and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such repeal as if such repeal were a repeal of an enactment by a Central Act; and on such commencement, the said Code as amended by this Act shall extend to, and come into force in, the said areas and the provisions of the laws (other than the said Code) amended by the said Punjab Act shall have effect in the said areas as if such provisions had not been amended by the said Punjab Act. Explanation. - In this section, "transferred areas" means the territories added to the Union territory of Himachal Pradesh by sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966 (31 of 1966), except the territories comprised in the districts of Lahaul and Spiti.

## **7. Saving.**

(1) Save as provided in this section, nothing in this Act shall be deemed to affect - (a) the validity, invalidity, effect or consequence of anything done or suffered to be done before the commencement of this Act; (b) any right, privilege obligation or liability already acquired, accrued or incurred before such commencement; (c) any penalty, forfeiture or punishment incurred or inflicted in respect of any act before such commencement; (d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed in accordance with the provisions of this Act and the Code of Criminal Procedure, 1898 (5 of 1898), as amended by this Act. (2) All legal proceedings pending before a Magistrate or Court immediately before the commencement of this Act shall, if such Magistrate or Court ceases to have jurisdiction in respect of such proceedings under the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) as amended by this Act, stand on such

commencement transferred to the Magistrate or Court having jurisdiction under the provisions of the [Code of Criminal Procedure, 1898] [See now the Code of Criminal Procedure, 1973 (2 of 1974).] (5 of 1898), as amended by this Act and shall be heard and disposed of by such Magistrate or Court and such Magistrate or Court shall have all the powers and jurisdiction in respect thereof as if they had been originally instituted before such Magistrate or in such Court, including the power of the succeeding Magistrate under section 350 of the [Code of Criminal Procedure, 1898] [See now the Code of Criminal Procedure, 1973 (2 of 1974).] (5 of 1898).

## **8. Power to remove difficulties.**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, in consultation with the High Court having jurisdiction in relation to the Union territory concerned, may, by order, do anything (including the specification of the appropriate Magistrate, whether judicial or executive, having jurisdiction under any law) not inconsistent with such provisions for the purpose of removing the difficulty: Provided that no such order shall be made after the expiration of three years from the commencement of this Act. Explanation. - In this section, "High Court" shall have the same meaning as in clause (i) of sub-section (1) of section 4 of the Code of Criminal Procedure, 1898 (5 of 1898). (2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made before each House of Parliament.

## **9. Power of Legislative Assembly of Union territory to amend this Act.**

- Notwithstanding anything contained in section 21 of the Government of Union Territories Act, 1963 (20 of 1963), the Legislative Assembly of a Union territory may by law amend this Act in its application to that Union territory.