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THE CODE OF CRIMINAL PROCEDURE, 1973

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THE CODE OF CRIMINAL PROCEDURE, 1973

(2 of 1974)

[25th January 1974]

An Act to consolidate and amend the law relating to Criminal Procedure

BE it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows: -

CHAPTER 1

PRELIMINARY

1. Short title, extent and commencement. –

(1) This Act may be called the Code of criminal Procedure, 1973.

(2) It extends to the whole of India except the State of Jammu and Kashmir:

Provided that the provisions of this code, other than those relating to chapters VIII, X and XI thereof, shall not apply-

(a) To the State of Nagaland,

(b) To the tribal areas,

But the concerned State Government may, by notification apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may, be, specified in the notification.

Explanation. - In this section, “tribal areas” means the territories, which immediately before the 21st day of January 1972 were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

(3) It shall come into force on the 1st day of April 1974.

2. Definitions. -In this Code, unless the context otherwise requires, -

(a) “Bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force: and “non-bailable offence” means any other offence.

(b) “Charge” includes any head of charge when the charge contains more heads than one:

(c) “Cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

(d) “Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. -A report made by a police officer in a case, which discloses, after investigation, the commission of a non-cognizable offence shall be deemed a complaint and the police officer by whom such report is made shall be deemed to be the complainant;

- (e) “High Court” means, -
- (i) In relation to any State, the High Court for that State;
- (ii) In relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;
- (iii) In relation to any other Union territory, the highest court of criminal appeal for that territory other than the Supreme Court of India;
- (f) “India” means the territories to which this Code extends;
- (g) “Inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;
- (h) “Investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf,
- (i) “Judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath;
- (j) “Local jurisdiction”, in relation to a court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code **1**[and such local area may comprise the whole of the state, or any part of the State, as the State Government may, by notification, specify];
- (k) “Metropolitan area” means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;
- (l) “Non-cognizable offence” means an offence for which, and “non-cognizable case” means a case

in which, a police officer has no authority to arrest without warrant;

(m) “Notification” means a notification published in the Official Gazette;

(n) “Offence” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);

(o) “Officer in charge of a police station” includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when, the State Government so directs, any other police officer so present;

(p) “Place” includes a house, building, tent, vehicle and vessel;

(q) “Pleader”, when used with reference to any proceeding in any court, means a person authorized by or under any law for the time being in force, to practice in such court, and includes any other appointed with the permission of the court to act in such proceeding.

(r) “Police report” means a report forwarded by a police officer to a magistrate under sub-section (2) of section 173;

(s) “Police report” means any post or place declared generally or specially by the state government, to be a police station, and includes any local area specified by the state government in this behalf;

(t) “Prescribed” means prescribed by rules made under this code;

(u) “Public prosecutor” means any person appointed under section 24, and includes any person acting under the directions of a public prosecutor;

(v) “Sub-division” means a sub-division of a district;

(w) “Summons – case” means relating to an offence, and not being a warrant-case;

(x) “Warrant-case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(y) Words and expression used herein and not defined but defined in the Indian penal code (45 of 1860) have the meanings respectively assigned to them in that code.

1. Ins. by Act 45 of 1978, sec. 2.

3. Construction of references: -

(1) In this code,

(a) Any reference, without any qualifying words to a magistrate shall be construed, unless the context otherwise requires, -

(i) In relation to an area outside a metropolitan area, as a reference to a judicial magistrate;

(ii) In relation to a metropolitan area, as a reference to a metropolitan Magistrate;

(b) Any reference to Magistrate of the second class shall, in relation to an area outside a metropolitan area, be construed as a reference to a

Judicial Magistrate of the second class, and, in relation to a Metropolitan area, as reference to a Metropolitan Magistrate;

(c) Any reference to a magistrate of the first class shall, -

(i) In relation to a metropolitan area, be construed as a reference to a metropolitan Magistrate exercising jurisdiction in that area;

(ii) In relation to any other area, be construed as reference to a judicial magistrate of the first class exercising Jurisdiction in that area;

(d) Any reference to the chief judicial magistrate shall, in relation to a metropolitan area, be construed as reference to the chief metropolitan Magistrate exercising jurisdiction in that area.

(2) In this code, unless the context otherwise requires, any reference to the court of a judicial magistrate shall, in relation to a metropolitan area, be construed as a reference to the court of the metropolitan magistrate for that area.

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this code, -

(a) To a magistrate of the first class, shall be construed as reference to a judicial Magistrate of the first class;

(b) To a magistrate of the second class or of the third class, shall be construed as a reference to a judicial Magistrate of the second class;

(c) To a presidency Magistrate or chief presidency magistrate, shall be construed as a reference respectively, to a metropolitan magistrate or the chief metropolitan magistrate;

(c) To any area, which is included in a metropolitan area, as a reference to such metropolitan area, and any reference to a magistrate of the first class or of the second class in relation to such area, shall be construed as reference to the metropolitan magistrate-exercising jurisdiction in such area.

(4) Where, under any law, other than this code, the functions exercisable by a magistrate relate to matters-

- (a) Which involve the appreciation or shifting 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, they shall, subject to the provisions of this code, be exercisable by a Judicial Magistrate; or
- (b) Which are administrative or executive in nature, such as, granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or with drawing from a prosecution, they shall, subject as aforesaid, be exercisable by an executive Magistrate.

STATE AMENDMENTS

Andaman and Nicobar Islands

-

- (1) After section 3, the following section shall be inserted, namely: -

“3-A. Special provision relating to Andaman and Nicobar Islands. –

- (1) Reference in this code to:
 - (a) The chief Judicial Magistrate shall be construed as references to the district Magistrate or, where the state government so directs, also to the additional District Magistrate:
 - (b) A Magistrate or Magistrate of the first class or of the second class or Judicial Magistrate of the first class or the second class shall be construed as references to such executive Magistrate as the State Government may, by notification in the official gazette, specify.
- (2) The State Government may, if it is of opinion that adequate number of persons or available for appointment as Judicial Magistrate, by notification in the Official Gazette, declare that the provisions of this section shall, on and from such day as may be specified in the notification, cease to be in force and different dates may be specified for different islands.

(3) On the cesser of operation of the provisions of this section every enquiry or trial pending, immediately before such cesser, before the District Magistrate or additional District Magistrate or any executive Magistrate, as the case may be, shall stand transferred, and shall be dealt with, from the stage which was reached before, such cesser, by such judicial Magistrate as the State Government may specify in this behalf.”

[Regulation 1 of 1974, sec. 3 (w.e.f.30.3. 1974)]

Arunachal Pradesh and Mizoram;

After sub-section (4), the following sub-section shall be inserted, namely; -

(5) Notwithstanding any thing contained in the foregoing provisions for this section; -

(i) Any reference in such of the provisions of this code, as applied to the Union territories of Arunachal Pradesh and Mizoram, to the courts mentioned in column (1) of the table below shall, until the courts of Session and Courts of Judicial Magistrate or constituted in the said Union Territories be construed as references to the court of Magistrate mentioned in the corresponding entry in column (2) of that table.

TABLE

| 1 | 2 |
|---|-----------------------|
| Court of Session or Sessions Judge or Chief Judicial Magistrate | District Magistrate. |
| Magistrate or. Magistrate of the First Class Or Judicial Magistrate of the First Class. | Executive Magistrate. |

(ii) The functions mentioned in clause (a) of sub-section (4) shall be exercisable by an Executive Magistrate.”

The Chief Commissioners and the Additional Deputy Commissioners, in the Union Territory of Arunachal Pradesh, were appointed to be Executive Magistrate].

[Vide Notification No .Jud. 25/74. dated 2nd April, 1974]

Nagaland:

After sub-section (4) insert the following sub-section which shall be deemed always to have been so; -

(5) Notwithstanding anything contained in the foregoing provisions of this section; -

(i) Any reference in such of the provisions of this Code, as applied to the State of Nagaland to the Court and authority mentioned in column (1) of the table below shall, until the

Courts of Session and Court of Judicial Magistrates are constituted in the said areas, be construed as references to the Court and authority mentioned in the corresponding entry in column (2) of that table.

TABLE

| 1 | 2 |
|--|--|
| Court of Session or Session Judge or Chief Judicial Magistrate. | District Magistrate or Additional District Magistrate. |
| Magistrate or Magistrate of the first class or Judicial Magistrate of the First Class. | Executive Magistrate |

(ii) References mentioned in Sub-section (3) to a Judicial Magistrate and functions mentioned in Sub-section (4) exercisable by a Judicial Magistrate and Executive Magistrate shall be construed as references to, and exercised by, Deputy Commissioner and Additional Deputy commissioner and

Assistant to Deputy Commissioner appointed under any law in force:

Provided that an Assistant to Deputy Commissioner shall exercise such powers of a Judicial Magistrate as may be invested by the Governor” Nagaland Gazette 19-6-1975 [Vide Nagaland Gazette, dated 19th June, 1975].

4. Trial of offences under the Indian Penal Code and other laws. -

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into tried, and otherwise dealt with according to the provision hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving. - Nothing contained in this Code shall in the absence of a specific provision to the contrary, affect any special or local law any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.