

BA-LLB 9th Semester
Criminal Procedure Code
BL-902

Constitution of Criminal Court and Power: -

Introduction: -

Supreme Court is the apex and appellate court, High Court is also appellate court.

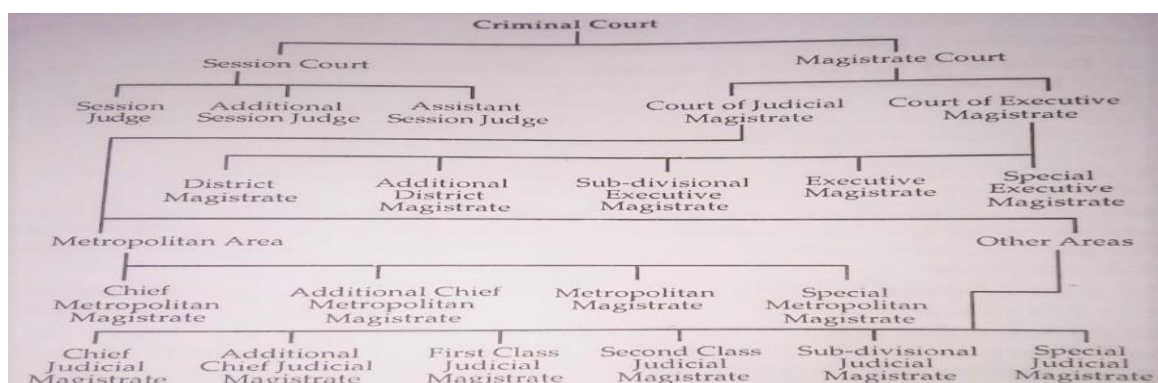
Court means the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction. Having jurisdiction to decide the questions forming the subject-matter. In this way this Code attempts to make balance between Judiciary and Executive. All court having own powers and jurisdiction. The meaning of District as used in section 7 and other section of the code is a district for the purpose of criminal administration, which shall have a District Magistrate according to section 20.the word District in this code does not necessarily mean revenue district.¹

Section 6 – Classification of criminal court.

Beside High court there are four courts in every state

- 1) Court of Session.
- 2) Judicial Magistrate of the first class and, in any Metropolitan area, Metropolitan Magistrates.
- 3) Judicial Magistrate of the second class.
- 4) Executive Magistrates.

These courts are in addition to the High court which is the creation of constitution of Indian and the other courts constituted under any law other than Cr.P.C like juvenile

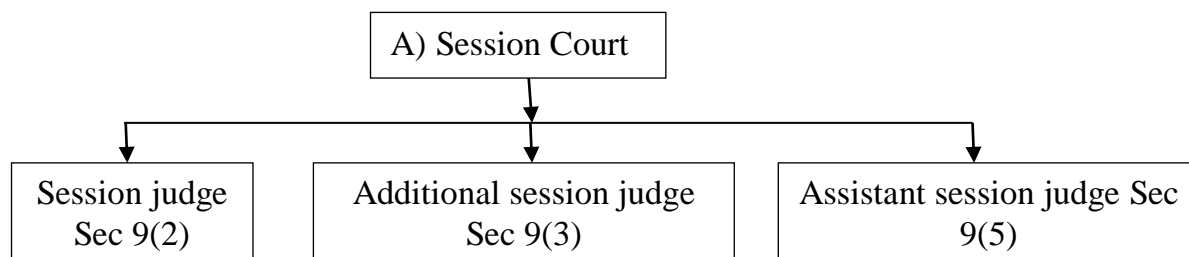


Board created under juvenile justice (care and protection of children) Act 2000.

Criminal Court:- A)Session court

B)Magistrate court

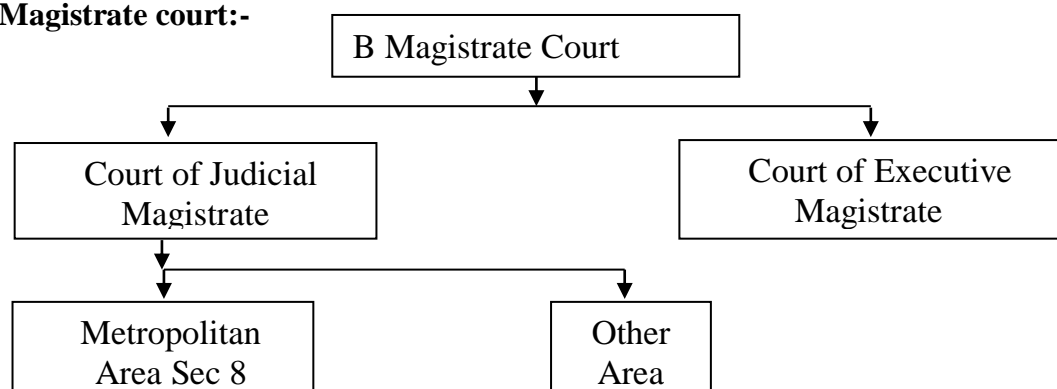
¹Lal Batuk, The Code of Criminal Procedure,1973.Central Law Agency Allahabad, Second Edition 2010 P.18.

A) Session Court: -

Session Judge and Additional Session Judge may pass any sentence authorized by law, but sentence of death is subject to the confirmation by High court.

Kameshwarsingh.v.Dharamdeosingh²In this case the court held that this section makes the provision for the appointment by the High Court of additional session judge and assistant session judge but as the meter of law there shall be only one session judge in a session division.

Abdul Mannan. v. State of west Bangal.³Additional sessions judge has all the powers and the jurisdictions of the sessions judge to try the offences given in the code.

B) Magistrate court:-**Court of Judicial Magistrate (Sec 11): -**

1) In every district the state government shall be established as many courts of judicial Magistrate of the first class and second class and at such places, as the State Government may, after consultation with the High Court, by notification specify. Provided that the State Government may after consultation with the High Court, establish for any local area, one or more special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases ,and where any such Special Court is established ,no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.⁴

2) The presiding officer of such courts shall be appointed by the High court.

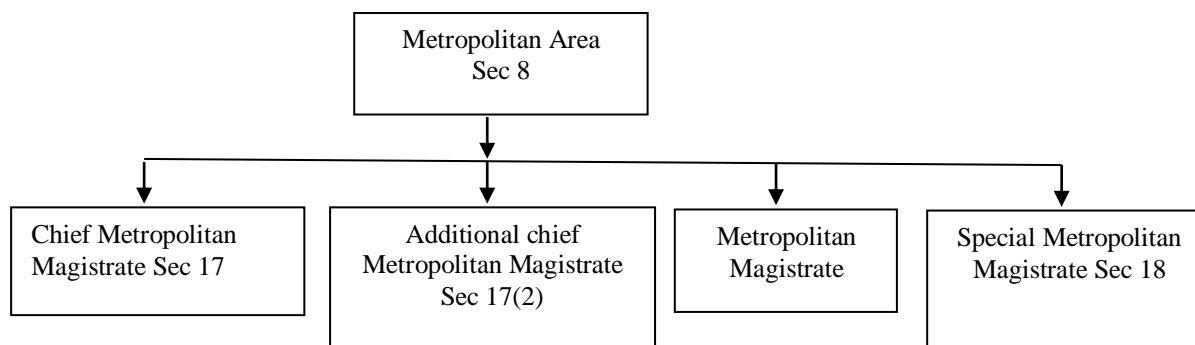
2- AIR 1957 Pat 375:1957BLLR 527:1957CrLJ879 (FB).

3-AIR 1996 SC 905

4- Inserted by Cr.P.C (Amendment) Act ,1978,Sec.3.

3)The High Court may, whenever it appears to it to be expedient or necessary, confer the power of a Judicial Magistrate of the first class or of the second class on any member of the judicial service of the State, functioning as a Judge in a Civil Court.⁵

Metropolitan area (sec 8): -



The State Government may by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purpose of this Code. In the presidency towns of Bombay, Madras and Calcutta, the Magistrate work was in the hands of a special category of Magistrate known as the Presidency Magistrate. Usually such persons appointed to these posts have had special qualifications or experience and were paid higher emoluments.

Metropolitan area-Any area in the state comprising a city or town whose population more than one million are called metropolitan area.

Courts of metropolitan Magistrates (sec 16): -

- 1) In every Metropolitan Area State government established as many Courts of Metropolitan Magistrate, after consultation with the High Court, by notification, specify
- 2) The presiding officers of such courts shall be appointed by the High Court.
- 3) The jurisdiction and power of every Metropolitan Magistrate shall extend throughout the Metropolitan Area.⁶

Chief Metropolitan Magistrate C.M.M. (sec 17): -The High Court shall appoint a Metropolitan Magistrate to be Chief Metropolitan Magistrate in Metropolitan Area. Power of CMM is Imprisonment up to 7 years and or fine authorized by law.

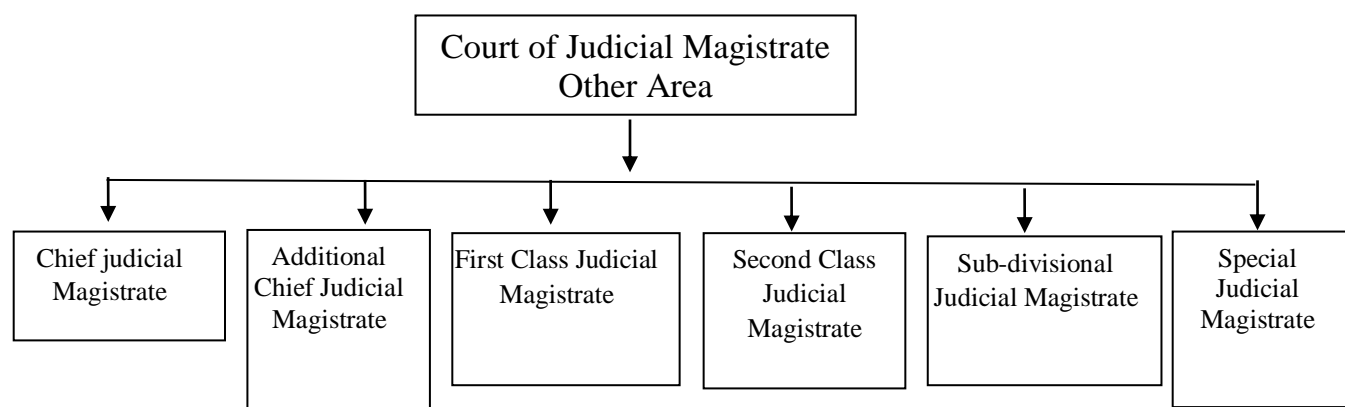
Additional chief Metropolitan Magistrate sec17(2):- The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this code.

5- Charturvedy Dr. M.D., The Code of Criminal Procedure, 1973, Allahabad Law Agency, 5th Edition 2015, P-30

6- Lal Batuk The Code of Procedure 1973, Central Law Agency, 2nd Edition 2010, P.26

Special Metropolitan Magistrate sec 18:-This sec makes provision for the conferment upon any person all or any of the powers conferred or conferrable by or under this code on a Metropolitan Magistrate in respect to particular case or to particular classes of cases in any Metropolitan area within local jurisdiction .Such Magistrate are called special metropolitan Magistrate, and be appointed for the term not exceeding one year at a time, as the High Court may by general or special order

Chief judicial Magistrate (sec 12)



- 1) In every district the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.
- 2) The Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate
- 3) The power of the chief Judicial Magistrate and Additional Chief Judicial Magistrate are 7 year imprisonment and or fine authorized by law 29(1).

First Class Judicial Magistrate: -the High Court may appoint one or more Judicial Magistrate of the first class, and he may sentence of imprisonment for a term not exceeding three years (3year) or fine not exceeding ten thousand rupees (10,000) or both⁷.

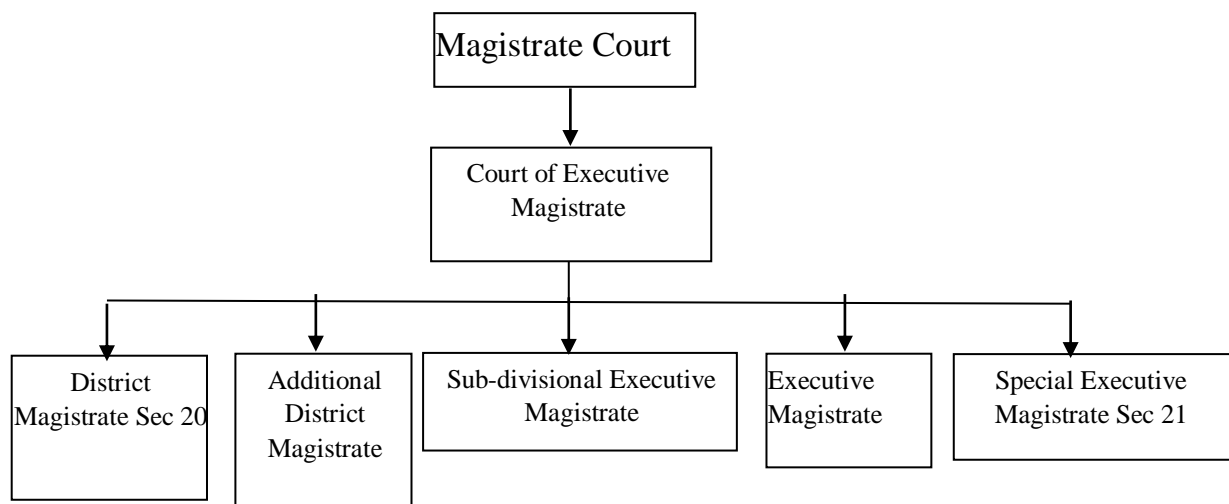
Second class Magistrate may pass a sentence of imprisonment for a term not exceeding one year (1year), or of fine not exceeding five thousand rupees (5000 rupees) or of both.⁸

Special Judicial Magistrate sec 13:- The High Court may appoint a special Judicial Magistrate on the request of the Central or state Government. Such Magistrate shall be appointed for such term, not exceeding one year at a time as the High Court may, by general or special order direct.⁹

7- Substituted by the code of criminal procedure (Amend).Act.2005.S.5(W.e.f.23-06-2006).

8-Substituted by the code of criminal procedure (Amend).Act.2005.S.5(W.e.f.23-06-2006).

9- Ratan Lal & Dhiraj Lal, The Code of Criminal Procedure. Lexis Nexis, 21stEdition 2013, P.24



Court of Executive Magistrate:-In every district (metropolitan area),The State Government may appoint as many persons as it thinks fit to be Executive Magistrate and shall appoint one of them to be the District Magistrate .(sec 20)

Additional District Magistrate:- The state Government may appoint any Executive Magistrate to be an Additional District Magistrate who shall exercise such of the powers of a District Magistrate as may be directed by the State Government

Sub-divisional Executive Magistrate:-The State Government may place an Executive Magistrate in -charge of a sub -division and such Magistrate shall be called as Sub – Divisional Magistrate.(Sec20(4).

The State Government may delegate its powers under sub-section (4)to the District Magistrate this delegation of power is to enable the District Magistrate to place an Executive Magistrate to be in-charge of a sub division

Special Executive Magistrates :-According to sec 21 the State Government may appoint for such term as it may think fit, such Executive Magistrate ,known as Special Executive Magistrate .He may appoint for particular area or for the performance of particular function ,Power of special Executive Magistrate are conferrable under this code on Executive Magistrate as it may deem fit .

Courts by which offences are triable sec. 26 - Subject to the other provisions of this Code,-

- a) any offence under the Indian Penal Code (45 of 1860) may be tried by -
 - i) the High Court, or
 - ii) the court of Session, or
 - iii) any other Court by which such offence is shown in the First Schedule to be triable;

¹⁰[Provided that any¹¹ [offence under Section 376,¹² [Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB] or Section 376-E of the Indian Penal Code (45 of 1860)] shall be tried as far as practicable by a Court presided over by a woman.]

b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no court is so mentioned, may be tried by-

Sentences which High Courts and Sessions Judges may pass Sec. 28-

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

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised 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 Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

Exercise: -

Q1. What do you understand by a court of session? What are the sentences which a Session Judge may pass?

Q2. What do you understand by the court of Executive Magistrate?

Q3. What are the various classes of Criminal Courts?

Q4. What are the sentence which High Court and Session judges may pass?

Q5. What is the sentence which a court of Chief Judicial Magistrate may pass?

Q6. What is the sentence which the Court of a Magistrate of First Class may pass?

Q7. What is the sentence which the Magistrate of a Magistrate of second Class may pass?

Q8. What is the sentence which the Court of a Chief Metropolitan Magistrate may pass?

Reference:-

- Lal Ratan & Lal Dheeraj, The code of Criminal Procedure.1973.
- Dr M.D Chaturvedy, The code of Criminal Procedure ,1973,Fifth Edition ,2015
- S.N.Mishra, The Code of criminal Procedure.1973.
- Batuk Lal The Code of Criminal Procedure 1973.

¹⁰ Inserted by the Code of Criminal Procedure (Amendment) Act, 2008, S.4.

¹¹ Substituted by the Crimnal Law (Amendment) Act, 2013 (w.e.f. 3-2-2013).

¹² Substituted by the Criminal Law (Amendment) Act, 2018 (w.e.f. 21-4-2018).

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