

## CHAPTER 30

# Judicial Powers—Criminal

### Part A

#### POWERS OF CRIMINAL COURTS

**1. Powers defined in the Criminal Procedure Code and other Acts**—The constitution and powers of the Criminal Courts are regulated by Chapters II and III, and Schedules III and IV, of the Code of Criminal Procedure. Column 8 of Schedule II of the Code indicates the class of Court competent to try each offence falling under the Indian Penal Code. In regard to offence falling under Local and Special Laws, the classes of Courts by which such offences are triable are usually specified in the Act creating the offences. Where, in any such Act, the term ‘Magistrate\* is used without qualification, it includes all persons exercising all or any of the powers of a Magistrate under the Code [*vide*, Section 2(32) of the Punjab General Clauses Act, 1898 or Section 3(32) of the General Clauses Act, 1897].

**2. Special powers**—The general powers which Magistrates are entitled to exercise in addition to those conferred upon them by Sections 32 and 33 of the Code (*See* Sections 29-30 of new Code) will be found in the third and fourth Schedules of the Code. Besides their ordinary powers detailed in the third Schedule Magistrates of the first class may (1) require security for good behaviour under Section 110, and (2) issue process for a person who within local jurisdiction has committed an offence outside such local jurisdiction. Section 186 (Punjab Government Notification No. 507, dated 5th April 1904). The same notification empowers all Magistrates of the first and second classes (1) to make orders prohibiting repetitions of nuisances, Section 143; (2) to make orders under Section 144 as regards nuisances; and (3) to take cognizance of offences upon information Section 190. All Magistrates are empowered to take cognizance of offences upon (1) Complaint, or (2) Police report, Section 190.

**3. Powers conferred by Government**—For powers conferred by the State Government upon certain classes of officers, either under the Code of Criminal Procedure or any other Act, see Schedules A and B attached to this order.

Schedule A

**MAGISTERIAL POWERS**

Serial No.	Officer	Powers Conferred	Limits	No. and Date
1.	Registrar, High Court, Punjab.	Magistrate, 1st Class.	Within the limits of High Court building and compound.	No. 1004, dated 2
2.	Tahsildars (Permanent or Temporary).	Magistrates, 2nd Class.	Within the limits of any District to which the person may be posted.	No. 1081, dated 2
3.	Assistant Commissioners and Extra Assistant Commissioner (not invested with any higher powers).	Ditto	Ditto	No. 3, dated 2nd J
4.	Naib-Tahsildars holding the office of Naib-Tahsildar of a Sub-Tahsil.	Ditto	Ditto	No. 28643-Gaz., c
5.	Naib-Tahsildars (Permanent).	Ditto	Ditto	No. 1536, dated 8
6.	Settlement Tahsildars employed in the work of colonization or settlement.	Magistrates, 3rd Class.	Within the limits of any district or districts in which the person may from time to time be employed, and only for the purposes of disposing of complaints brought by or against members of the District and Settlement of Colony Establishment working under their orders.	No. 1108, dated 1

*Note*—Permanent Naib-Tahsildars will, under serial No. 4, exercise 3rd Class Magisterial powers. Officiating Naib-Tahsildars will not ordinarily be re-invested, but if likely to continue to act for a considerable period, an Officiating Naib-Tahsildar who has passed the prescribed examination, may be specially recommended.

Schedule B

**SPECIAL PROCESS**

Serial No.	Officer	Powers Conferred	Limits	
1.	Registrar, High Court, Lahore.	To try summarily under Section 260, Criminal Procedure Code of 1882, offences against the Police Act.	Within the limits of High Court building and compound.	N
2.	All Magistrates, 1st Class.	(i) To require security for good behaviour (Section 110, Criminal Procedure Code.)		N
		(ii) To make orders as to local nuisances (Section 133).		
		(iii) To issue process for person within local jurisdiction who has committed an offence out side the local jurisdiction (Section 186).		
		(iv) To sell property alleged or suspected to have been stolen (Section 524).		
3.	All Magistrates of the 1st and 2nd Classes.	(i) To make order prohibiting repetition of nuisances (Section 143).		N
		(ii) To make orders under Section 144.		
		(iii) To hold inquests (Section 174).		
		(iv) To take cognizance of offences upon information received from any person other than a Police Officer or upon their own knowledge or suspicion [Section 190(1)(c)].		
4.	All Magistrates.	To take cognizance of efficiencies		N

Serial No.	Officer	Powers Conferred	Limits	
		upon complaint or Police report. [Section 190(i)(a) and (b)].		
5.	All Sub-divisional Magistrates.	To Call for records (Section 435).		
6.	All Magistrates, 1st Class.	Powers mentioned in Section 8(1) of the Reformatory Schools Act, 1897.	Within the local limits of their jurisdiction.	N 1
7.	All Stipendiary Magistrates 2nd Class.	Powers to authorise the detention of accused persons in the custody of the Police under Section 167(2) of the Code of Criminal Procedure.		N 1
8.	All District Magistrates.	Power to withdraw class of cases from the Magistrates subordinate to them (Section 528 of the Code of Criminal Procedure)		N 1
9.	All Magistrates, 2nd Class.	Powers to take exercise all or any of the powers conferred upon Court by the provisions of Section 562 of the Code of Criminal Procedure.		N 1

*Note*—All the powers mentioned in Serial Nos. 2 to 5 will be exercised subject to the general control of the District Magistrates.

Part B  
CONFERMENT OF CRIMINAL MAGISTERIAL POWERS

**Instructions in re recommendation for conferment of criminal magisterial powers**—The Hon'ble Judges have been pleased to issue the following instructions, which have been approved by the State Government, in regard to recommendations for the conferment of criminal magisterial powers:

(1) *For I.C.S., and Punjab Civil Service Officers*—Recommendations for the conferment of criminal magisterial powers upon officers of the Indian Civil Service and Punjab Civil Service should ordinarily originate, as the circumstances of each case may require, with either the District Magistrate, the District and Sessions Judge, the Commissioner of the High Court.

**For Tahsildars**—Proposals for the investiture of tahsildars and Naib- Tahsildars with higher magisterial powers than those which they exercise *ex-officio* should be made to the High Court through the Commissioner and the Financial Commissioners for transmission to Government.

(2) *Channel of recommendation*—Except when it is desired to confer enhanced powers, *e.g.*, the powers of a Section 30 or 260 Magistrate, Additional District Magistrates, etc., upon an Assistant Commissioner or Extra Assistant Commissioner, the District Magistrate may address the Commissioner either direct or through the District and Sessions Judge. A proposal for the conferment of enhanced powers upon an Assistant Commissioner or Extra Assistant Commissioner, should, however, be initiated by the District Magistrate, who will forward his recommendation to the Commissioner *through* the District and Sessions Judge. The Commissioner will then address the High Court. It is definitely irregular for officers desirous of obtaining these powers to address the Registrar, High Court, direct. In the rare case where it is proposed to confer magisterial powers upon a Subordinate Judge, the proposal should originate with the District Magistrate and should be forwarded through the District and Sessions Judge and the Commissioner to the High Court.

*Note*—In Districts where the Judiciary has been separated from the Executive, such proposals will be initiated by the Additional District Magistrate who will submit the same to the District and Sessions Judge who in turn will forward his recommendation to the High Court.

(3) *When Commissioner shall consult Sessions Judge*—In other cases, the Commissioner, before forwarding the proposal to the High Court, may consult the District and Sessions Judge if he thinks it necessary to do so; but he shall do so whenever it is proposed to confer on any person the enhanced powers mentioned in paragraph 2 and—

(a) first class magisterial powers ; or

(b) the powers to commit persons for trial to the Court of Sessions under Section 206 of the Code of Criminal Procedure.

(4) *Statement of previous exercise of powers to be sent along with recommendation*—When recommendations for the investiture of Extra Assistant Commissioners and Tahsildars with criminal powers are submitted to the High Court, it should invariably be specified whether the officer recommended has exercised powers before of the same or of a lower class, and for what periods : the Government, notification conferring such powers should be quoted in each case. If the officer has never exercised criminal powers before, the fact should be stated.

(5) *Necessary qualifications for exercise of special powers*—Special care should be taken when recommending the investiture of officers with the important powers of a Section 30 or 260 [See Section 278 of new Code] Magistrate, or with the powers of an Additional District Magistrate. Ordinarily the qualifications necessary for the conferment of powers under Section 30 of the Code of Criminal Procedure are—

(a) the exercise of first class magisterial powers for at least ten years;

(b) the officer recommended must be reported to be a capable and reliable Magistrate,

(c) he should keep his records and write judgments in English; and

(d) his English should be intelligent and his hand-writing legible.

For summary powers under Section 260 of the Code [See Section 278 of new Code] of Criminal Procedure, the qualifications are the same except that the officer may have exercised first class magisterial powers for three years and should have at least seven years service. An officer recommended for the exercise of the powers of an Additional District Magistrate should have not less than ten years' service.

*Note*—These conditions are not applicable to officers of the Indian Civil Service or the Indian Administrative Service who are governed by the order regulating the training of Assistant Commissioners, the condition that first class magisterial powers should have been exercised for at least ten years before an officer can be invested with powers under Section 30 would however apply in their case also in view of the amendments of that section by Act No. 26 of 1955.

(6) *Recommendations should ordinarily be made at the time of revision of annual confidential powers lists*—Government maintain confidential lists of officers of the Indian Administrative Service and Punjab Civil Service who are considered qualified to exercise or to be tried with certain enhanced civil and criminal powers. These lists are revised annually under instructions which are issued separately by the High Court. The channel prescribed in paragraphs 2 and 3 for the transmission of proposals applies only to the case of individual recommendations made from time to time during the year and not to the procedure for the revision of the annual confidential powers lists.

Normally, recommendations for the investiture of officers with enhanced powers should be confined to the time of the annual revision of lists, save when enhancement of powers is essential in the interests of work. The records of all officers recommended at the time of such revision are

very carefully examined and it means extra work and less accurate results if individual cases are taken up at other times.

(8) *Conferment of higher powers in emergency does not qualify permanently*—It sometimes happens that higher powers are conferred in an emergency upon officers not in every way competent to exercise them permanently : this, however confers no claim to be given such powers permanently at the next revision of lists. Some officers are apt to consider that because they do not get higher powers, or their names do not appear on the confidential lists of officers qualified to exercise or to be tried with higher powers, as soon as they expect to, there are some undisclosed complaints against them, when the real reason may merely be that the High Court does not consider that they are quite ready to exercise them.

Part C  
CONFERMENT OF CRIMINAL MAGISTERIAL POWERS  
ON OFFICERS POSTED AT DELHI

With the approval of the Delhi State Government, the Hon'ble Judges have been pleased to issue the following instructions in regard to the conferment of criminal Magisterial powers on officers posted at Delhi:—

(1) Instructions contained in Part 3 of this Chapter will apply *mutatis mutandis* to Punjab Officers posted at Delhi. Copies of the lists mentioned in paragraph 6 thereof will be forwarded to Delhi State Government for information. Officers whose names are included in the various powers lists may be invested with such powers without any reference to the High Court. If, however, the name of any officer is not included in any list, the procedure laid down in paragraph 7 of Part 3 of that Chapter will be followed.

(2) The procedure regarding conferment of magisterial powers on Officers who do not belong to the Punjab Service will be as under:—

(a) first and second class magisterial powers may be conferred by Government on the recommendation of the Deputy Commissioner provided that the officer concerned has exercised 3rd or 2nd Class powers, as the case may be, for six months. If it is considered necessary to confer first class powers on any officer who has not exercised second class powers for six months, a reference will be made to the High Court and its approval obtained;

(b) higher powers, *e.g.*, the powers of Section 30 or 260 [*See* Section 278 of new Code] Magistrate, Additional District Magistrate etc., will be conferred with the approval of the High Court. While making a reference to the High Court in this behalf, the fact that the officer concerned has already exercised such powers before his posting at Delhi will be communicated and the personal file containing annual reports on the work of the officer will be forwarded to the High Court along with such other information as may be necessary;

(c) the procedure outlined at (b) above will also be followed in the case of conferment of powers of District Magistrate on any Officer.

(3) In accordance with the rules published with Delhi State Government Notification No. F. 2 (77) 54-Home, dated the 6th/8th July, 1955 (a copy of which forms as annexure to this Chapter) Honorary Magistrates are also appointed at Delhi. Rule 5 of these rules provided that summary powers will not ordinarily be conferred upon Honorary Magistrates. If, however, it is, considered necessary to confer such powers on any Honorary Magistrate, a reference will be made to the High Court and the procedure laid down in paragraph 2 (b) above will be followed. A reference will also be made to the High Court, if and when it is considered necessary to confer Section 30 powers on an Honorary Magistrate.

(4) In all cases where a reference is made to the High Court by Delhi State Government for conferment of higher powers on a Magistrate already posted at Delhi, the views of the District and Sessions Judge, Delhi will be obtained and forwarded to this Court.

As far as possible, the qualifications mentioned in paragraph 5 in Part 'B' of this Chapter will be taken into consideration while conferring the powers of Section 30 or 260 Magistrate, Criminal Appellate Powers of an Additional District Magistrate.

## ANNEXURE

OFFICE OF THE CHIEF COMMISSIONER, DELHI

### Notification

*Delhi, Dated the 8th July, 1955*

**No. F.-2. (77)/54—Home**—The Commissioner of Delhi is pleased to make the following revised rules for the appointment of Honorary Magistrates in the State of Delhi.

Revised rules regarding appointment of Honorary Magistrates. These rules are subject to any rules that may be framed by the High Court regarding appointment, training or removal of Honorary Magistrates.

1. (a) *Competent authority to make appointments of Honorary Magistrates*—Appointments of Honorary Magistrates shall be made by the State Government on the recommendation of the Selection Committee consisting of the following:—

1. District and Sessions Judge, Delhi
2. District Magistrate, Delhi
3. Home Secretary to Government Delhi State, Delhi.

The District and Sessions Judge will preside over the deliberation of the Committee and the District Magistrate will be the convenor. The proceedings of the Committee shall be confidential.

The Committee shall consider names and suggestions which may be received by the District Magistrate from the individual desiring to be appointed as Honorary Magistrate or by way of



recommendation from other sources, or put forward by any member of the Committee. In all cases, the necessary enquiry shall be held by the District Magistrate and each case shall be put up before the Committee with all the information and facts available. The Committee shall draw up approved lists separately for persons considered suitable for appointment as 1st and 2nd Class Magistrates in case the number of candidates exceeds the number of vacancies. This list shall be prepared in order of merit. In the event of a vacancy occurring the Convenor of the Committee shall notify the same to the other members indicating the person on the waiting list eligible for appointment to the vacancy. The members shall communicate their views to the Convenor and in case there is unanimity of views and the appointment is not for the post of a First Class Magistrate, the District Magistrate shall submit the recommendation to the State Government without calling a formal meeting of the Committee.

(b) The Committee shall meet once in every quarter, the first meeting being held in month of February.

2. *Qualifications of candidates*—Before recommending a person for appointment as an Honorary Magistrate, the Committee shall satisfy itself that he fulfils the following requirements :—

(a) *Age*—He is not less than 30 years and more than 60 years of age.

(b) *Educational Qualifications*—He has passed an examination equivalent to or higher than Intermediate or Higher Secondary Examination and is able to record the evidence and write judgments in English, Urdu or Hindi in his own hand and is capable of appreciating the evidence and forming a reasoned judgment. In case of those who have exercised powers as Honorary Magistrate before the educational qualifications shall be relaxed to a minimum of High School or equivalent standard.

(c) *Reputation*—He has a good reputation and is a person of such character as to command the confidence of the public.

(d) *Physical Condition*—He should be in good physical and mental health.

(e) *Indebtedness*—He is not heavily indebted. In determining whether the indebtedness is so heavy as to be a disqualification, regard shall be had to his assets and his ability to pay off his debts. In particular, the Committee shall consider whether the indebtedness is such that it may, in the opinion of the Committee, be a source of embarrassment to the Honorary Magistrate in the honest and impartial discharge of his duties or impair his usefulness as an Honorary Magistrate.

(f) *Sufficient Time and Leisure at his disposal*—He has sufficient time and Leisure at his disposal to be able to hold Court for at least three days in the week during normal court hours.

*Note*—Ladies are eligible for appointment as Honorary Magistrates.

3. (a) *Persons not eligible for appointments as Honorary Magistrates*—No member of Parliament or State Legislature shall be eligible for appointment as an Honorary Magistrate.

(b) No person who is the President or Chairman or member of a Local body or Gaon Sabha or holds an elected public office or is in active political life shall be eligible for appointment as Honorary Magistrate.

(c) No person who has been disqualified for having committed a corrupt practice in connection with an election to the Parliament or the State Legislature or to a Local Body and no legal practitioner who has been debarred from practice, shall be eligible for appointment as an Honorary Magistrate.

(d) No person who has been convicted of an offence involving moral turpitude shall be eligible for appointment as Honorary Magistrate.

(e) Ordinarily, a member of the legal profession shall not be eligible for appointment as an Honorary Magistrate. However, on the recommendation of the Committee, a Practising member of the Legal profession may be appointed as an Honorary Magistrate on his giving up the practice.

4. *Training to persons appointed as Honorary Magistrates*—Unless the person recommended has previous experience of law and procedure in criminal courts or has already served as an Honorary Magistrate, his appointment shall be subject to his undergoing a course of practical training under a senior Stipendiary Magistrate. In the beginning he should familiarise himself with the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act under the guidance of such Stipendiary Magistrate and should watch the progress of trials in his court. After that he should be asked to take notes of evidence in criminal cases and write out his own judgment and submit them for the approval of the Magistrate. The period of such training shall normally be three months but may at the discretion of the District Magistrate be extended by a period not exceeding 6 months. At the end of this period if the Magistrate certifies that the person selected is competent to conduct criminal trials and write proper judgments. Magisterial powers may be conferred.

The District Magistrate, shall prescribe the mode and details of the training such as the type and number of cases each trainee is required to submit with notes and judgment to be recorded by him independently.

5. *Powers to be conferred on Honorary Magistrates*—On first appointment as an Honorary Magistrate will generally be invested with Second Class Powers. But a person who has previously exercised second class powers as an Honorary Magistrate at least for a period of one year or is a graduate of a recognised University or has practised as a lawyer may, if he is considered fit by the Selection Committee, be originally invested with first class Magisterial powers. Summary powers will not ordinarily be conferred upon Honorary Magistrates unless they are retired Judicial Officers.

6. *Term of appointment of Honorary Magistrate*—The first appointment of an Honorary Magistrate shall be for a period of one year or less, terminable on 31st March next following. After this period he may be appointed for a further term not exceeding three years. Thereafter the term may be renewed from time to time for further period not exceeding three years. The term of

an Honorary Magistrate should not be renewed beyond the age of 62 years. Any Honorary Magistrate shall be liable to be called upon to do law and order duties under instructions from the District Magistrate. The Government may, if it considers necessary, grant an Honorary Magistrate such conveyance allowance as it may consider reasonable. An Honorary Magistrate will take the oath of loyalty when he assumes office. He will comply with such directions as may be issued to him by the District Magistrate or such senior Magistrate as may be empowered in this behalf by the District Magistrate. An Honorary Magistrate desiring to resign his office shall be required to give the District Magistrate a month's notice.

7. *Recommendations for renewal, enhancement and withdrawal of powers*—All recommendations for the renewal of the terms of Honorary Magistrates and for the enhancement of their powers shall be made by the Selection Committee at least one month in advance of the date of expiry of the term. Recommendations for the withdrawal of powers of Honorary Magistrates shall be made by the District Magistrate with the concurrence of the Selection Committee. Such a recommendation will be made only in exceptional cases such as abuse of position or patent unfitness of the individual.

8. *Location of Courts*—The Court of an Honorary Magistrate or a Bench of Honorary Magistrates shall, unless otherwise permitted by Government, be held at the District or Tahsil headquarters or in Government or Government rented buildings.

9. *Courts hours*—Every Honorary Magistrate or Bench of Honorary Magistrates shall hold Court during the hours prescribed by the District Magistrate, which should ordinarily be within the hours fixed for the sittings of Stipendiary Magistrates. The hours fixed by the District Magistrate, shall not be changed without his previous sanction.

10. *Fixation of days for holding Courts by Honorary Magistrates*—The District Magistrate shall fix at least three days in the week on which every Honorary Magistrate or Bench of Honorary Magistrates shall hold Court. The days fixed by the District Magistrate shall not be changed without his previous sanction.

11. *Disabilities of Honorary Magistrates*—No Honorary Magistrate shall take part in any election to a local body or to State Legislature or to the Parliament otherwise than by casting his vote as an elector.

12. *Disqualifications of Honorary Magistrates*—Should any Honorary Magistrate subsequent to his appointment incur any of the disqualifications imposed in these rules he will render himself liable to the withdrawal of his Magisterial powers.

13. *Inspection of Honorary Magistrate's Courts*—The Court of every Honorary Magistrate or Bench of Honorary Magistrates should be inspected at least once a year by the District Magistrate or the Additional District Magistrate, whose report should be sent through the District and Sessions Judge to the State Government.

14. Rule 2 will not be applicable to persons appointed as Honorary Magistrates prior to the coming into force of these rules for their current term of office.

*The Chief Commissioners' Notification No. F.-2(83)/49 R & J, dated the 8th September, 1949 and No. F.-2(83)/49-R & J, dated 18th February, 1950 are hereby cancelled.*