



LAW COMMISSION
OF INDIA

THIRTY-SECOND REPORT

**SECTION 9 OF THE CODE OF CRIMINAL
PROCEDURE, 1898—Appointment of Sessions
Judges, Additional Sessions Judges and Assistant
Sessions Judges.**

May, 1967

GOVERNMENT OF INDIA : MINISTRY OF LAW

Chairman,
LAW COMMISSION,
5, Jorbagh, New Delhi-3.
May 29, 1967.

Shri P. Govinda Menon,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Thirty-Second Report of the Law Commission on section 9 of the Code of Criminal Procedure, 1898—Appointment of Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges.

2. The Law Commission took up the subject for a consideration on receipt of the suggestion of the High Court of Mysore, which was forwarded to the Commission by the Ministry of Home Affairs. As explained in the Report, the Commission decided to submit a separate Report on the subject, in view of its urgency.

3. As the matter was urgent, a draft amendment of section 9, Code of Criminal Procedure, 1898 was prepared, which was circulated to State Governments, High Courts, Administrations of Union Territories and Courts of Judicial Commissioners for comments (along with the suggestion of the Mysore High Court and a copy of the Supreme Court's judgment in *State of Assam v. Runga Muhammad*, which was referred to in the suggestion). Thereafter, a draft Report on the subject was prepared, examining the provisions of articles 233 to 237 of the Constitution as interpreted in various judicial decisions, and their impact on section 9 (and other sections) of the Code of Criminal Procedure, 1898, relating to the appointment, etc., of Sessions Judges (and other presiding officers of criminal courts), and incorporating a study of the provisions in various Acts or statutory orders as to the creation of courts and appointment of presiding officers in several States. A detailed study of the provisions applicable to Union territories also became necessary, in view of the fact that section 9 of the Code applies to Union territories also.

(ii)

4. As usual, a Press Communique was also issued, inviting persons and bodies interested in the subject to send their views to the commission.

5. The draft Report was discussed at the eighty-fourth meeting of the Commission on the 28th and 29th March, 1967, and approved tentatively. The draft amendment to section 9 proposed in the Report was also tentatively approved, subject to such modifications as might result from a consideration of the comments of State Governments, etc., on the draft amendment.

6. Comments of State Governments, High Courts, Administrations of Union territories and Courts of Judicial Commissioners on the draft amendment were considered at the eighty-fifth meeting of the Commission on the 24th and 28th April, 1967. After some discussion the Commission was of the opinion that no further changes or modifications were necessary in the draft tentatively approved at the previous meeting. It was, in particular, decided that the power to determine the initial posting of a Session Judge to a particular Sessions Division must also vest in the High Court (as proposed in the draft Report). The draft Report was finally approved, and it was decided that a gist of the comments received so far be included in the Report.

7. Accordingly, the draft Report was revised, and the Report was signed at the eighty-sixth meeting of the Commission on 20th May, 1967. (Certain further comments received before that meeting had been circulated to Members, and no changes were considered necessary in the Report).

8. I wish once again to acknowledge with gratitude the help we received from Mr. P. M. Bakshi, our Secretary, whose researches in the subject and whose hard-work in placing all the material with a draft helped the Commission to arrive at its final decisions and giving a final shape to the Report.

Yours sincerely,

J. L. KAPUR.

(iii)

EXPLANATION OF ABBREVIATION

S. No.———Serial No. in Law Commission's File on the subject.

CONTENTS

PARAGRAPH	SUBJECT-MATTER	PAGE
1	Genesis of the Report and question considered in the Report .	1
2	Why the subject taken up separately	2
3	Section 9 of the Code of Criminal Procedure, 1898	2
4	Case-law on section 9	2
5	Articles of the Constitution	2
6—21	Case-law on Articles 233 to 235	3
22	Article 236 of the Constitution	10
23	Case-law on article 237 of the Constitution	11
24	Article 233A of the Constitution	11
25	Inter-relationship of section 9 in the Code of Criminal Procedure, 1898 and the articles in the Constitution—Changes needed in section 9	12
26	Various modes of assignment by control considered	12
27	<i>Prem Nath's</i> case	14
28—30	Changes required in section 9	15
31	Punjab and Bombay Amendments	17
32	Section 40, Code of Criminal Procedure, 1898	17
33	Recommendation in the Fourteenth Report	18
34—36	Position in Union territories	18
37—49	Comments received on the draft amendments considered	20
50	Other sections of the Code of Criminal Procedure, 1898—whether amendment needed	23
51	Provisions in Civil Courts Acts	24
52	Appendices	

APPENDICES

APPENDIX	SUBJECT-MATTER
APPENDIX 1	Draft Amendment.
APPENDIX 2	Notes on Clauses.
APPENDIX 3	Section 9, Code of Criminal Procedure, as amended by Bombay Act 23 of 1951.
APPENDIX 4	Amendments to sections 9 to 12 and 17—Code of Criminal Procedure, 1898 made by Punjab Act 25 of 1964.
APPENDIX 5	Important cases under articles 233 to 237 of the Constitution.
APPENDIX 6	Important cases under section 9, Code of Criminal Procedure, 1898.
APPENDIX 7	Extracts from the Bengal, etc., Civil Courts Act, 1887.
APPENDIX 8	Extract from the Bhopal, etc., (Courts) Act, 1950.
APPENDIX 9	Extracts from the Dadra and Nagar Havel Act, 1961 (35 of 1961).
APPENDIX 10	Extracts from the Dadra, etc. (Civil Courts, etc.) Regulation 1963 (8 of 1963).
APPENDIX 11	Extracts from the Delhi High Court Act, 1966 (26 of 1966).
APPENDIX 12	Extracts from the Goa, Daman and Div (Judicial Commissioners' Court) Regulation, 1963 (10 of 1963).
APPENDIX 13	Extracts from the Goa, etc., Judicial Commissioners' Court (Declaration as High Court) Act, 1964 (16 of 1964).
APPENDIX 14	Extracts from the Himachal Pradesh Courts Order, 1948.
APPENDIX 15	Extracts from the Manipur (Courts) Act, 1955 (56 of 1955).
APPENDIX 16	Extracts from the Pondicherry (Administration) Act, 1962 (49 of 1962).

APPENDIX	SUBJECT-MATTER
APPENDIX 17	Extracts from the Punjab Courts Act, 1918.
APPENDIX 18	Extracts from the Punjab Re-organisation Act, 1966 (31 of 1966).
APPENDIX 19	Extract from the States Re-organisation Act, 1956 (37 of 1956).
APPENDIX 20	Extracts from the Tripura Courts Order, 1950.
APPENDIX 21	Statement of Objects and Reasons to the Constitution (Twenty-third Amendment) Bill, 1966.

REPORT ON SECTION 9, CODE OF CRIMINAL
CRIMINAL PROCEDURE, 1898

1. The circumstances in which this Report came to be prepared may be briefly stated. In connection with the revision of the Code of Criminal Procedure, 1898, which is under the consideration of the Law Commission, the Ministry of Home Affairs¹ forwarded to the Law Commission the suggestion made by the High Court of Mysore for amending section 9 of the Code. The suggestion may be briefly summarised. Under section 9(1) of the Code of Criminal Procedure, 1898, the State Government has to establish a Court of Session for every sessions division, and to appoint a judge of such Court. This provision, it is stated in the suggestion, conflicts with article 233 of the Constitution under which the appointment of Sessions Judges must be made in consultation with the High Court. Difficulty, (it is stated), in the matter arises in regard to the transfer of Sessions Judges from one division to another. As held by the Supreme Court², the power of transferring District Judges (which includes Sessions Judges) is vested exclusively in the High Court. If, therefore, the District Judge who is also a Sessions Judge is transferred by the High Court from one district to another district which ordinarily coincides with a sessions division, the said District Judge would not be a Sessions Judge for that district unless he is so appointed by the State Government under section 9(1) of the Code of Criminal Procedure, 1898. The reason is, that the powers of a Sessions Judge are derived by virtue of appointment by the State Government under section 9(1) of the Code of Criminal Procedure, 1898, and extend only to the sessions division to which he was appointed by the State Government. He does not carry his powers wherever he is transferred. The anomaly arising out of this situation because of the conflict between section 9(1) of the Code and the constitutional provisions contained in article 235 can (it has been stated), be solved by suitably amending section 9(1) of the Code.

Genesis of
the Report
and question
considered in
the Report.

The High Court has, therefore, suggested that section 9(1) of the Code may be amended so as to empower the High Court to appoint a Sessions Judge to a Court of Session.

It is this suggestion which is being considered in this Report.

1. Home Ministry O.M. No. 19/71/66-Judl. II, dated 31st January, 1967, forwarding a summary of the suggestion of the High Court of Mysore.

2. *State of Assam v. Ranga Muhammad* (21st September 1966), Civ. ii Appeal No. 1367 of 1966 (Supreme Court).

Why the subject taken up separately. 2. As the matter appeared to require urgent consideration, it was decided to take it up separately from the general revision of the Code of Criminal Procedure, 1898.

Section 9 of Code of Criminal Procedure, 1898. 3. We shall first discuss the provision in the Code of Criminal Procedure.

Section 9 of the Criminal Procedure Code deals with the following matters:—

(1) Establishment of a Court of Session¹,

(2) Appointment of a Judge of such Court², (later referred to as the Sessions Judges)

(3) Place of sitting of the Court of Session³,

(4) Appointment of Additional Sessions Judges and Assistant Sessions Judges⁴,

(5) Appointment of a Sessions Judge to be the Additional Sessions Judge of another division, and the place where he may sit for the purpose⁵,

(6) Continuance of existing Courts of Session⁶.

Case-law on section 9. 4. Some of the important decisions under section 9 of the Code of Criminal Procedure, 1898 have been studied by us.⁷ The need for formal appointment of a Sessions Judge under section 9(1) is discussed at length in a Bombay case⁸, which came before the High Court at three stages.

Articles of the Constitution. 5. The articles of the Constitution relevant to the subject may be referred to—

Articles 233—237 of the Constitution deal with Subordinate Courts. Article 233(1) runs as follows:—

Appointment of District Judges.

“233. (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.”.

1. Section 9(1), earlier half.

2. Section 9(1), later half.

3. Section 9(2).

4. Section 9(3).

5. Section 9(4).

6. Section 9(5).

7. For a list of important decisions under section 9, see Appendix 6.

8. *Queen Empress v. Mangal Tek Chand* (1885) I.L.R. 10 Bom. 258, 263, 273, 282, 283.

Article 233(2) is not relevant for our purpose, as it deals with the eligibility for appointment as a district judge of a person not already in the service of the Union or the State.

Article 233A, inserted by a recent amendment¹, seeks to validate² appointments, postings, promotions and transfers made in the past in the posts of District Judges without complying with articles 233 and 235.

Article 234 deals with the recruitment of persons other than district judges to the judicial service, and is not directly relevant for the present purpose.

Article 235, which deals with the "control over subordinate courts", is the most important article for our purpose, and will be discussed in detail later³.

Article 236, is an interpretation clause, applicable to the groups of articles (233 to 237) with which we are concerned, and defines the expression "district judge" as including, *inter alia*, a chief presidency magistrate, an additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

Article 237 deals with the applicability of the provisions of the Chapter to certain classes of magistrates, on a public notification being issued under the article by the Governor.

6. Some important decisions on articles 233 to 237 may be referred to. Under article 233(1), it has been held by the Supreme Court⁴ that consultation with the High Court, in the appointment, posting and promotion of district judges is mandatory, and appointments made in pursuance of rules which empower the Government to appoint a person as district judge in consultation with a person or authority other than the High Court would not be in accordance with article 233(1). The following observations made in the judgment are important:—

Casc-law on articles 233 to 235.

"The constitutional mandate is clear. The exercise of the power of appointment by the Governor is conditioned by his consultation with the High Court, that is to say, he can only appoint a person to the post of a district judge in consultation with the High Court. The object of consultation is apparent. The High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person, belonging either to the "judicial service" or to the Bar, to be appointed as a district judge. Therefore, a duty is

1. The Constitution (Twentieth Amendment) Act, 1966 (22nd December, 1966).

2. See paragraph 24, *infra* for the text of article 233A.

3. See paragraph 9 etc seq., *infra*.

4. *Chandra Mohan v. State of U.P.*, A.I.R. 1966 S.C. 1987, 1993, paragraph 7 (December Issue of the A.I.R.).

enjoined on the Governor to make the appointment in consultation with a body which is the appropriate authority to give advice to him. This mandate can be disobeyed by the Governor in two ways, namely, (i) by not consulting the High Court at all, and (ii) by consulting the High Court and also other persons. In one case he directly infringes the mandate of the Constitution and in the other he indirectly does so, for his mind may be influenced by other persons not entitled to advise him. That this constitutional mandate has both a negative and positive significance is made clear by the other provisions of the Constitution. Wherever the Constitution intended to provide more than one consultant, it has said so¹. Wherever the Constitution provided for consultation of a single body or individual it said so². Article 124(2) goes further and makes a distinction between persons who may be consulted. Those provisions indicate that the duty to consult is so integrated with the exercise of the power that the power can be exercised only in consultation with the person or persons designated therein. To state it differently, if A is empowered to appoint B in consultation with C, he will not be exercising the power in the manner prescribed if he appoints B in consultation with C and D."

In the same case, article 233(2) was also considered, but that is not relevant for the present purpose.

7. In the *State of Assam v. Ranga Muhammad*³, the Supreme Court held that in article 233, the word "posting" means not "to station someone at a place" but "to assign someone to a post" i.e. a position or a job, especially one to which a person is appointed. It was held in that case, that "transfer" operates at a stage beyond appointment and promotion, and "posting" is not intended to mean transfer. Under article 233, the Governor is concerned only with the appointment, promotion and posting to the cadre of district judges, but not with the transfer of district judges already appointed or promoted and posted to the cadre. The latter is obviously a matter of "control" of district judges, which is vested in the High Court under article 235.

These two decisions are referred to in the Statement of Objects and Reasons to the Bill⁴⁻⁵ which became the Constitution (Twentieth) Amendment Act, 1966, whereby article 233A was inserted in the Constitution.

1. See article 124(2) and 217(1).

2. See article 222.

3. *State of Assam v. Ranga Muhammad* (21st September, 1966), Civil Appeal No. 1367 of 1966. (S.C.).

4. Statement of Objects and Reasons to the Constitution (Twenty-third Amendment) Bill, 1966 (Lok Sabha Bill No. 89 of 1966), dated 20th November, 1966, introduced on 25th November, 1966.

5. Appendix 21.

8. Article 234 provides that the appointment of persons other than district judges to the judicial service of a State will be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. The case-law under this article need not be discussed, for the present purpose¹.

9. We now proceed to article 235 which is the most important one. The manifold implications of article 235 have been brought out in a number of recent decisions of the Supreme Court. The opening part of article 235 vests in the High Court "control over district courts and courts subordinate thereto". This "control" is stated in the article to include the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge.

The opening part of the article—"The control over district courts.....shall be vested in the High Court....." has assumed an important significance, under the case-law pertaining to this article.

In a case which related to disciplinary jurisdiction over district judges, the Supreme Court held², that "control" must include disciplinary jurisdiction. It also pointed out, that article 235 goes a little further than sections 254 to 256 of the Government of India Act, 1935, which Act was silent about the control over the district judges and the subordinate judicial services, and under which the independence of the subordinate judiciary and of the district judges was assured to a certain extent, but not fully. The following observations in the judgment of the Supreme Court are apposite:—

"When the Constitution was being drafted the advance made by the 1935 Act was unfortunately lost sight of. The Draft Constitution made no mention of the special provisions, not even similar to those made by the Government of India Act, 1935, in respect of the Subordinate Judiciary. If that had remained, the Judicial Services would have come under Part XIV dealing with the services in India. An amendment, fortunately, was accepted and led to the inclusion of articles 233 to 237. These articles were not placed in

1. For a list of important cases under articles 233 to 237, see Appendix 5.

2. *State of West Bengal v. Nripendra Nath Bagehi*, (1966) 1 S.C.R. 771, 784. (1966 July) 2 S.C.J. 59, 66.

the Chapter on Services but immediately after the provisions in regard to the High Courts. The articles went a little further than the corresponding sections of the Government of India Act. They vested the "control" of the District Courts and the Courts subordinate thereto in the High Courts and the main question is what is meant by the word "control". The High Court has held that the word "control" means not only a general superintendence of the working of the Courts but includes disciplinary control of the presiding judges, that is to say, the District Judge and Judges subordinate to him. It is this conclusion which is challenged before us on various grounds."

10. In *Chandra Mohan v. State of U.P.*¹, it was stated, that the makers of the Constitution realised that "it is the subordinate judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question as in the case of the superior judges". The Supreme Court stated, that presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in Chapter VI of Part VI under the heading "Subordinate Courts".

11. In *State of Assam v. Ranga Muhammad*², the transfer of one District and Sessions Judge from Jorhat to Gauhati and the appointment and posting of another District and Sessions Judge at Jorhat was questioned by the petitioner Ranga Muhammad, on the ground that the High Court alone could make the transfer, and, in any event, the High Court had to be consulted, and was not consulted before making the orders. The High Court of Assam held, that there had been no consultation in both the cases, and, therefore, the transfers were irregular for that reason. Holding, however, that none of the Judges could be said to occupy wrongly the office of District and Sessions Judge, the High Court declined the writ of *quo warranto*.

12. The State Government (after obtaining a certificate under article 132 of the Constitution) appealed to the Supreme Court, and sought the reversal of the opinion of the High Court on the interpretation of articles 233 and 235. Its main contention was, that the High Court was in fact consulted, and, alternatively, that the power to transfer district judges lay with the State Government and not with the High Court. (The State Government also asked

1. *Chandra Mohan v. State of U.P.*, A.I.R. 1966 S.C. 1987, 1993, paragraph 14.

2. *State of Assam v. Ranga Muhammad* (21st September, 1966), (Civil Appeal No. 1387 of 1966), (S.C.).

for the expunction of certain remarks made by one of the Judges of the High Court of Assam, but that part of the controversy is not relevant for our purpose.)

13. The Supreme Court formulated the questions for consideration thus:—

“Three questions arise and they are:—

(a) who is to order transfer of a District Judge —the State Government or the High Court;

(b) is the provision regarding consultation in Articles 233 and 235 mandatory or directory and if the former, whether the High Court was not in fact consulted; and

(c) should the remarks of Mr. Justice Dutta about the State Government be expunged?”.

14. As regards the first question, the Supreme Court stated, that the answer depended on the true construction of articles 233 and 235 of the Constitution. It observed, “The question we have posed resolves itself into a question of a very different but somewhat limited form, namely, whether the power to transfer District Judges is included in the “control” exercisable by the High Court over District Judges under article 235, or in the power of “appointment of persons to be and the posting and promotion of, district judges” which is to be exercised by the Governor under article 233, albeit in consultation with the High Court. If the sense of the matter be the former, then the High Court and if the latter, the Governor, would possess that power. The right approach is, therefore, to enquire what is meant by “posting” and whether the term does not mean the initial posting of a District Judge on appointment or promotion to a vacancy in the cadre, permanent or temporary. If this be the meaning, as the High Court holds, then the transfer of District Judges already appointed or promoted and posted in the cadre must necessarily be outside the power of the Governor and fall to be made by the High Court as part of the control vested in it by article 235.’

15. The Supreme Court then referred to the judgment in *State of West Bengal v. Nripendranath Bagchi*¹, where it was pointed out, that the articles in question were intended to make the High Court the sole custodian of control over the judiciary except in so far as exclusive jurisdiction was conferred upon the Governor in regard to the

1. *State of West Bengal v. Nripendranath Bagchi*, (1966) 1 S.C.R. 771; (1966) 2 S.C.J. 59.

appointment and posting and promotion of District Judges. Therefore unless the transfer of a District Judge can be said to be a "posting" of a District Judge, the High Court must obviously enjoy the exclusive power.

16. The Supreme Court then stated, that the word "to post" may denote either (a) to station someone at a place, or (b) to assign someone to a post, i.e. a position or a job, especially one to which a person is appointed. The State Government applied the first meaning, and the High Court the second. According to the Supreme Court, in article 233, the word "posting" clearly bore the second meaning, because it occurred in association with the words "appointment" and "promotion" and took its colour from them. "These words indicate the stage when a person first gets a position or job and "posting" by association means the assignment of an appointee or promotee to a position in the cadre of district judge. If "posting" was intended to mean transfer, the draftsman would have hardly chosen to place it between "appointment" and "promotion" and could have easily used the word "transfer" itself."

17. After pointing out that the High Court was in the day to day control of the courts and was better suited to make transfers than a Minister, the Supreme Court observed as follows:—

"The High Court was thus right in its conclusion that the powers of the Governor cease after he has appointed or promoted a person to be a district judge and assigned him to a post in cadre. Thereafter, transfer of incumbents is a matter within the control of District Courts including the control of persons presiding there as explained in the cited case¹."

18. This finishes the first question² dealt with by the Supreme Court. As regards the second question, the Supreme Court held, "As the High Court is the authority to make transfers, there was no question of consultation on this account. The State Government was not the authority to order the transfers." The Supreme Court added, however, that there was need for consultation before one of the persons appointed as a District and Sessions Judge was "promoted" and "posted" as a district judge. The consultation was mandatory, as had been laid down quite definitely in *Chandra Mohan's case*³, and there had been no consultation in fact.

1. The cited case was *State of West Bengal v. N. N. Bagchi*, (1966) 1 S.C.R. 771; (1966) 2 S.C.J. 59.

2. Paragraph 13, *supra*.

3. *Chandra Mohan v. State of U.P.*, A.I.R. 1966 S.C. 1987.

19. The inter-relationship of articles 233 and 309 to 311 has been the subject-matter of instructive discussion before the Supreme Court. The Supreme Court has held¹, that the control which is vested in the High Court (under article 235)" is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges".

Case-law on articles 233 and 309-311.

20. As regards the inter-relationship of articles 233 and 235, the Supreme Court has stated the position in these words².

Inter-relationship of articles 233 and 235.

"Articles 233 and 235 make a mention of two distinct powers. The first is power of appointment of persons, their postings and promotion and the other is power of control. In the case of the District Judges, appointments of persons to be and posting and promotion are to be made by the Governor but the control over the District Judge is of the High Court. We are not impressed by the argument that the term used is "district court" because the rest of the article clearly indicates that the word "court" is used compendiously to denote not only the court proper but also the presiding Judge. The latter part of article 235 talks of the man who holds the office. In the case of the judicial service subordinate to the District Judge the appointment has to be made by the Governor in accordance with the rules to be framed after consultation with the State Public Service Commission and the High Court but the power of posting, promotion and grant of leave and the control of the courts are vested in the High Court. What is vested includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It is not to be expected that the High Court would run to the Government or the Governor in every case of indiscipline however small and which may not even require the punishment of dismissal or removal. These articles go to show that by vesting "control" in the High Court the independence of the subordinate judiciary was in view. This was partly achieved in the Government of India Act, 1935 but it was given effect to fully by the drafters of the present Constitution. This construction is also in accord with the Directive Principles in article 50 of the Constitution which reads :—

"50. The State shall take steps to separate the judiciary from the executive in the public services of the State".

1. *State of West Bengal v. N. N. Bagchi*, (1966) 1 S.C.R. 771, 790.

2. *State of West Bengal v. N. N. Bagchi*, (1966) 1 S.C.R. 771, 786, 787; 1966) 2 S.C.J. 59, 67.

21. To illustrate and elaborate the amplitude of the expression "control" in article 235, we might also usefully refer to certain broad conclusions drawn by the Calcutta High Court, in a judgment which was affirmed by the Supreme Court¹—

(i) The Constitution vests in express language in the High Court "the control over District Courts", etc.

Adequate meaning, due regard and appropriate effect should be given to this new constitutional provision.

(2) The control does not take away the right of appeal of any person under the law regulating the conditions of service nor does it authorise the High court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

(3) The words "including inferior to the post of District Judge" in article 233 mean, that posting, promotion and leave are only illustrative of the types of "control" mentioned in the article, and are not exhaustive. The word "control" in article 235 "means all residuary controls except those which are already expressly provided for in the two preceding articles 233 and 234."

(4) The expression "control over District Courts" must necessarily include control over District Judges, they being the presiding officers of the District Courts.

(5) In addition to this control, the High Court has "superintendence over all Courts", etc., under article 227, and this superintendence also imports control, as there can be no superintendence without control.

"Article 227 also includes power of control in the High Court in respect of its Subordinate Courts including control by disciplinary proceedings and action."

Article 236.

22. Article 236 constitutes a dictionary for the interpretation of articles 233 to 235 and 237. For the present purpose, its importance lies in this, that it includes Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges, Chief Presidency Magistrates and Additional Chief

1. *Nripendra Nath v. Chief Secretary, Government of West Bengal*, A.I.R. 1961, Cal. 1, 7, 8, paragraphs 21 to 25, affirmed in *State of West Bengal v. Nripendra Nath Bagchi*, (1966) 1 S.C.R. 771; (1966) 2 S.C.J. 59.

Presidency Magistrates within the expression "District Judges." It may be added, that some of these are dealt with by section 9 of the Code of Criminal Procedure, 1898.

23. Article 237 is an enabling provision, under which the Governor can implement the separation of judiciary from the executive in relation to the magistracy of the States. The effect of this article was discussed in *Chandra Mohan's* case¹, where the following observations occur:—

Case-law on article 237.

"Article 237 enables the Governor to implement the separation of the judiciary from the executive. Under this article, the Governor may notify that articles 233, 234, 235 and 236 of the Constitution will apply to Magistrates subject to certain modifications or exceptions; for instance, if the Governor so notifies, the said Magistrates will become members of the judicial service, they will have to be appointed in the manner prescribed in article 234, they will be under the control of the High Court under article 235 and they can be appointed as District Judges by the Governor under article 233(1). To state it differently, they will then be integrated in the judicial service which is one of the sources of recruitment to the post of District Judges. Indeed, article 237 emphasises the fact that till such an integration is brought about, the Magistrates are outside the scope of the said provisions. The said view accords with the constitutional theme of independent judiciary and the contrary view accepts a retrograde step."

24. Article 223A, which was introduced as a result of the decisions in *Chandra Mohan v. State of U.P.*² and *State of Assam v. Ranga Muhammad*³, by the Constitution (Twentieth Amendment) Act, 1966⁴, seeks to validate appointments, postings and transfers of certain persons as district judges made in the past.

Article 233A.

Article 233A runs as follows:—

"233A. Notwithstanding any judgment, decree or order of any court,—

Validation of appointments of and judgments, etc., delivered by certain district judges.

(a) (i) no appointment of any person already in the judicial service of a State or of any person

1. *Chandra Mohan v. State of U.P.* A.I.R. 1966 S.C. 1987, 1994, paragraph 19. (December issue).

2. See the Statement of Objects and Reasons to the Constitution (Twenty-third Amendment) Bill, 1966 (Lok Sabha Bill 89 of 1966).

3. See paragraphs 6 to 21, *supra*.

4. The Constitution (Twenty-third Amendment) Bill, 1966 was introduced in the Lok Sabha on 25th November, 1966 and became law on receiving the President's assent on 22nd December, 1966.

who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(ii) no posting, promotion or transfer of any such person as a district judge,

made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;

(b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions."

Inter-relationship of section 9 in the Code of Criminal Procedure, 1898 and the articles in the Constitution—Changes needed in section 9.

25. We now address ourselves to the specific problem which we have to consider, namely, the effect of articles 233 *et seq.* of the Constitution on section 9 of the Code of Criminal Procedure. The expression "appoint a judge of such court" in section 9(1) does not seem to connote an appointment to a cadre, but seems to connote assignment to a particular Court. In view of articles 233 *et seq.* as interpreted by the Supreme Court, a distinction has to be made between appointment to the cadre and assignment to a Court¹. The former is a matter falling within the region of articles 233-234 of the Constitution (and rules made thereunder). The latter seems to fall under "control" within article 235. We have, therefore, to examine whether section 90, which gives the power to the State Government, should be altered. Other sub-sections of section 9 also have to be examined, from this point of view.

Various modes of assignment by control considered.

26. Before making such a detailed examination, we should like to dispose of a possible preliminary query that might be raised. The decision in *State of Assam v. Ranga Muhammad*², it may be argued, relates only to transfers,

1. Paragraphs 7 and 11 to 15, *supra*, and paragraphs 26-27, *infra*.

2. *The State of Assam v. Ranga Muhammad* (21st September, 1966)—Civil Appeal No. 1367 of 1966 (S.C.).

while there are many other modes of assigning a Sessions Judge to a particular court. Therefore, (it may be contended), the amendment should be confined to transfers and should not cover initial assignment of a Sessions Judge.

Now, it is true that the decision in *State of Assam v. Ranga Muhammad* related to transfers; but the reasoning on which the Supreme Court's decision is based must, we think, apply to all the various modes of assignment of a Sessions Judge to a Sessions Court, for example—(i) assignment to a Sessions Court of a person appointed for the first time in the cadre, (ii) assignment to a Sessions Court on transfer from another Sessions division, (iii) assignment to a Sessions Court on promotion, and (iv) appointment as Additional Sessions Judge under section 9(4).

Following passages from the Supreme Court's judgment¹ may be referred to in this connection:

'In its ordinary dictionary meaning the word "to post" may denote either (a) to station someone at a place, or (b) to assign someone to a post, i.e., a position or a job, especially one to which a person is appointed. See Webster's New World Dictionary (1962). The dispute in this case has arisen because the State Government applies the first of the two meanings and the High Court the second. In article 233 the word "posting" clearly bears the second meaning. *This word occurs in association with the words "appointment" and "promotion" and takes its colour from them. These words indicate the stage when a person first gets a position or job and "posting" by association means the assignment of an appointee or promotee to a position in the cadre of district judges.*'

"The High Court was thus right in its conclusion that the powers of the Governor cease after he has appointed or promoted a person to be a district judge and assigned him to a post in cadre. Thereafter, transfer of incumbents is a matter within the control of District Courts including the control of persons presiding there as explained in the cited case."

We may, in this connection, refer to another passage in the judgment.

"If "posting" was intended to mean "transfer", the draftsman would have hardly chosen to place it between "appointment" and "promotion" and could have

1. *State of Assam v. Ranga Muhammad*, Civil Appeal No. 1367 and 1368 of 1966, decided 21-9-66 appeal (from Assam High Court judgment dated 19th April, 1966 in Civil Rules 171-236 of 1965).

easily used the word "transfer" itself. It follows, therefore, that under article 233, the Governor is only concerned with the appointment, promotion and posting to the cadre of district judges but not with the transfer of district judges already appointed or promoted and posted to the cadre. The latter is obviously a matter of control of district judges which is vested in the High Court. This meaning of the word "posting" is made all the more clear when one reads the provisions of articles 234 and 235. By the first of these Articles the question of appointment is considered separately but by the second of these articles posting and promotion of persons belonging to the judicial service of the State and holding any post inferior to the post of a district judge is also vested in the High Court. The word "post" used twice in the article clearly means the position or job and not the station or place and "posting" must obviously mean the assignment to a position or job and not placing in-charge of a station or Court. The association of words in article 235 is much clearer, but as the word "posting" in the earlier article deals with the same subject matter, it was most certainly used in the same sense and this conclusion is thus quite apparent.

Prem Nath's
Case.

27. We had the opportunity of considering a judgment of the Supreme Court which was pronounced after we undertook the preparation of this Report. In that case¹, the appeal, by certificate, raised two questions, namely, (1) whether the Rajasthan Higher Judicial Service Rules, 1955 were *ultra vires* article 233 of the Constitution, and, therefore, the selections made by the Selection Committee appointed thereunder and appointments made on the basis of such selections were invalid, and, (2) if so, whether the appointments were validated by the Constitution (Twentieth Amendment) Act, 1966.

The appointments in question were to the posts of Civil and Additional Sessions Judges. By a notification dated 2nd June, 1950, the Government of Rajasthan appointed, (with effect from July 1, 1950), Civil Judges by virtue of their office to be Additional Sessions Judges to exercise jurisdiction in the Courts of session mentioned in column 2 of the notification. The point (so far as is relevant to the present subject), which the Supreme Court had to consider was, whether, when a person is appointed both as a Civil Judge and as an Additional Sessions Judge, the appointment falls under article 233. The Supreme Court answered the question in the affirmative, and the points made in the judgment may be thus summarised.

1. *Prem Nath v. State of Rajasthan*, Civil Appeal No. 93 of 1966, decided 15th March, 1967 (Supreme Court).

(1) When a Civil Judge is also appointed an Additional Sessions Judge or when a person is appointed both as a Civil Judge and as an Additional Sessions Judge, the appointment to the post of Additional Sessions Judge is under section 9, Code of Criminal Procedure. Such a Civil Judge exercises the powers of an Additional Sessions Judge, not because he is a Civil Judge, but because he is appointed as an Additional Sessions Judge under section 9 of the Code of Criminal Procedure, 1898.

(2) From the fact that, when such an appointment is made, the appointee exercises both the powers of a Civil Judge and those of an Additional Sessions Judge, it does not follow that he is not an Additional Sessions Judge or that he is (only) a Civil Judge.

(3) Since the post of an Additional Sessions Judge falls under the definition of a "District Judge" under article 236(a), it will be article 233 of the Constitution that would apply, and not article 234.

(4) Since the appointments in question were made in contravention of article 233, and were, therefore, illegal, they must be held to have been validated by the Constitution (Twentieth Amendment) Act, 1966.

To put it more briefly, *in so far as a Civil Judge* is also appointed as an Additional Sessions Judge, the appointment must comply with article 233.

28. In the light of the above discussion¹, we now proceed to consider the detailed changes required in section 9. Coming, first, to section 9(1), we find that it deals with two matters, namely, (i) establishment of a Court of Session, and (ii) appointment of a Judge of such Court. We are concerned only with the second. The appointment of a Judge of such Court. We are concerned only with the second. The appointment is to be made by the State Government under section 9(1). But, under article 235 of the Constitution, as interpreted by the Supreme Court², this "appointment", i.e. an assignment to a particular Court, is entirely within the "control" of the High Court. Now, the difficulty (as stated in the suggestion³ which is under consideration) is, that the power of a Session Judge is derived by virtue of the appointment under section 9(1), and extends only to the Sessions division to which he is appointed. He does not carry his power wherever he is transferred. To put it more concretely, while the latter half of section 9(1) is now of no effect, there is no valid provision to take its place.

Changes re-
quired in
section 9.

1. Paragraphs 25 to 27, *supra*.

2. Paragraphs 6 to 21, *supra*, and paragraph 25 *supra*.

3. Paragraph 1, *supra*.

29. The following observations in a Madras case¹ would seem to support the apprehension expressed above:—

“We may mention in passing an argument of the learned public Prosecutor based on certain decisions of civil cases that although Mr. Nainar was no longer the Sessions Judge of Chittoor he was still a Sessions Judge possessing certain powers on account of holding that office; but we find no ground for thinking that a Session Judge who has ceased to be the Sessions Judge of one division and has not become the Sessions Judge of another has any power as a Session Judge *simpliciter*; he has jurisdiction to exercise the powers of a Sessions Judge only by virtue of his appointment to a particular Session division.”

For the purposes of the present Report, we shall assume that the mere transfer of a Sessions Judge by the High Court by virtue of its power under article 235 may not have the effect of clothing him with the robe of the Sessions Judge in the Court of Session for the division to which he is transferred. In other words, we shall assume, that the scheme of the Constitution has to be worked out in detail and translated in section 9, so that it forms part of the enacted law of the land. On this assumption, the latter part of section 9(1) should, obviously, be modified by substituting the “High Court” for the “State Government”.

30. We now proceed to consider section 9(2) and the succeeding sub-sections. Section 9(2) deals with the place of the sitting of the Court of Session. The earlier half leaves the power with the State Government. This also is an aspect of “control”, and should be vested in the High Court.

Section 9(3) deals with the appointment of Additional Sessions Judges and Assistant Sessions Judges to a Court of Session, and the power given to the State Government must now be vested in the High Court, as it is a part of “control”, on the analogy of the power under section 9(1)².

Section 9(4) provides that a Session Judge of one Session division may be appointed by the State Government to be also an Additional Sessions Judge of another division, and in such a case he may sit for the disposal of cases at such place, etc. as the State Government may direct. Thus, it deals with two matters, namely, first,

1. *In re Patan Ali Khan*, I.L.R. 1947 Mad. 365; A.I.R. 1947 Mad. 248, 252, paragraph 10.

2. Paragraph 28, *supra*.

3. Paragraphs 25 to 27, *supra*.

“appointing” a Sessions Judge of one sessions division as an Additional Sessions Judge of another division, and secondly, his place of sitting. The first is analogous to the assignment of a Judge to a particular Court, and, thus, is a part of “control”. The second also seems to fall under “control”. But these powers must now be vested in the High Court.

Section 9(5) deals with the continuation of all Courts of Session, and need not be disturbed.

31. In the States in which separation has been introduced by legislation, certain amendments have been made to section 9. By way of example, we may refer to section 9 as amended by the Bombay Separation of Judicial and Executive Functions Act, 1951¹⁻², and section 9 as amended by the Punjab Separation of Judicial and Executive Functions Act, 1964³⁻⁴.

Punjab and
Bombay am-
endments.

These amendments were made before the judgments of the Supreme Court interpreting article 233 *et seq.* were pronounced. Nevertheless, they seem to have anticipated some, though not all, of the changes which we are recommending⁵. In a way, they reflect the tendency in which the law has been developing. They illustrate (to borrow the language of the Supreme Court⁶, used in another context), the policy which has moved determinedly in this direction.

32. Before taking a decision regarding the change which we recommend⁷, we considered the provisions of section 40 of the Code of Criminal Procedure, 1898. The position under that section⁸ is, that (subject to certain qualifications), a person holding an office in the service of the Government, who has been invested with any powers under this Code, throughout any local area”, carries these powers with him on his being “appointed to an equal or higher office of the same nature, within a like local area under the same State Government”. The language of the section is not applicable to Sessions Judges, and the section is, in practice, understood as confined to Magistrates. The relationship of section 4 with section 12 will be well understood from the observations which Mr. Justice Plowden made in his judgment in

Section 40,
Code of Cri-
minal Proce-
dure, 1898.

-
1. Bombay Act 23 of 1951.
 2. See Appendix 3.
 3. Punjab Act 25 of 1964.
 4. See Appendix 4.
 5. Appendix 1.
 6. *State of West Bengal v. Nripendra Nath Bagchi*, (1966) 1 S.C.R. 711 790; (1966) 2 S.C.J. 59, 69.
 7. Appendix 1.
 8. Section 40, Code of Criminal Procedure, 1898.

*Bishashar Nath v. Empress*¹

"Under section 12 of the Code of Criminal Procedure, 1862, the appointment of Magistrate... rests with the local Government, which may appoint such persons as it thinks fit to be Magistrates of the first, second or third class in any District. The local area of the jurisdiction of a Magistrate so appointed may extend to the whole District, but does not, by force of that section extend beyond it. A Magistrate appointed under section 12 may, however, be competent to exercise magisterial functions in a District, other than that in which he is a Magistrate, by appointment under section 12, without being appointed to be a Magistrate in that District. This is brought about by section 40 operating upon officers of Government, who, being invested with magisterial powers under the Code, are transferred from the District to an office in another District. In this case, such officer is competent to exercise magisterial functions in the latter District, not by appointment to be Magistrate in that District, but by virtue of his holding some office in that District. When therefore, the question is whether a particular person is competent to exercise the powers of a Magistrate of any class described in section 12 at a particular moment of time in a particular District, the answer cannot be in the affirmative unless either first he has been appointed by the Local Government under section 12 to be a Magistrate in such District and such appointment is still in force, or secondly he holds in that District, at the time when he assumes to act as Magistrate, some office in the service of Government on which section 40 can operate."

Recommendation in the Fourteenth Report,

33. Certain recommendations regarding the amendment of articles 234 and 235 (which also seem to involve an amendment of article 233) were made in a previous Report of the Law Commission². If and when these amendments are made, the entire control over the judiciary will be transferred to the High Court.

Position in Union territories.

34. We shall now consider a matter of detail relating to Union territories. Articles 233 et seq. of the Constitution appear in a Part³ which does not apply to Union territories. The expression "High Court", as defined in the Code of Criminal Procedure⁴, would, however, cover

1. *Bishashar Nath v. Empress*, (1864) Pun. Re No. 15 Cr., pages 20, 22, 23 (D.B.) (*per Plowden J.*)

2. Law Commission of India, Fourteenth Report (Reform of Judicial Administration), Vol. 1, pages 217-220, paragraphs 111 to 119, particularly paragraphs 113 and 119.

3. See Heading of Part VI of the Constitution—"The States".

4. Section 4(1)(i), Code of Criminal Procedure, 1898.

the highest court of criminal appeal for an area, even if it is not a "High Court" as defined in article 366(14) of the Constitution. We had, therefore, to consider the question whether the amendments which we propose¹ in section 9 the Code of Criminal Procedure, 1898 should be so framed as to confine them to "High Courts" proper, or to leave them to be governed by the definition of "High Court" in the Code of Criminal Procedure, 1898.

35. The Courts of highest criminal appeal, in most of the Union territories, fall under one of the following categories:—

1	2
(1) A full-fledged High Court. [Article 241(1), earlier half]	<i>Example</i> —Delhi ¹ (Its jurisdiction can be extended to Himachal Pradesh also). ²
(2) A common High Court for States and a Union territory. [Article 231(i)]	<i>Example</i> —The High Court of Punjab and Haryana, in relation to Chandigarh ³
(3) High Court of a neighbouring State [Article 230(1)]	<i>Examples</i> —(i) The High Court of Calcutta, in relation to the Andaman and Nicobar Islands. ⁴ (ii) The High Court of Kerala in relation to the Laccadive etc. Islands. ⁵ (iii) The High Court of Madras, in relation to Pondicherry. ⁶ (iv) The High Court at Bombay, in relation to Dadra and Nagar Haveli. ⁷
(4) Courts of Judicial Commissioners [Article 241(1), latter half].	<i>Example</i> —The Courts of Judicial Commissioners for Goa, ⁸ Manipur ⁹ , Tripura. ¹⁰

1. Appendix 1.

1 A. See the Delhi High Court Act, 1966 (26 of 1966); Appendix 11.

2. See sections 17, 19 and Schedule, the Delhi High Court Act, 1966 (26 of 1966), Appendix 11.

3. Sections 29 and 30, Punjab Reorganisation Act, 1966 (31 of 1966); Appendix 18.

4. See section 4(1)(i), Code of Criminal Procedure, 1898, and the Calcutta High Court (Extension of Jurisdiction) Act, 1953 (41 of 1953), section 2.

5. See section 60, States Reorganisation Act, 1956 (37 of 1956); Appendix 19.

6. See the Pondicherry Administration Act, 1962 (49 of 1962), sections 9 and 10 Appendix 16.

7. See section 11, Dadra & Nagar Haveli Act, 1961 (35 of 1961); Appendix 9.

8-9-10; These are constituted under relevant enactments or statutory orders; see Appendices 12, 13, 15 and 20.

(5) Others Now obsolete.¹

36. Now, Courts of Judicial Commissioners, though declared to be "High Courts" for certain purposes^{2,3,4} are not "High Courts" for the purposes of articles 233 to 237 of the Constitution, as Union territories are not governed by those articles⁵.

We do not, however, think, that this difference between the position of a High Court and that of a Court of Judicial Commissioner should stand in the way of applying the proposed amendment⁶ in section 9 of the Code of Criminal Procedure to Union territories also.

Comments received on the draft amendment considered.

37. We had circulated the draft amendment prepared by us⁷ to State Governments, High Courts, Administrations of Union territories and courts of Judicial Commissioners for comments. Along with the draft amendment, we had circulated the suggestion of the Mysore High Court which forms the background of this report⁸ and a copy of the judgment in *State of Assam v. Runga Muhammad*⁹. Comments received from State Governments, High Courts, etc., on the draft amendment so circulated may be grouped under three categories, namely, those in favour of the draft amendment, those opposed to it, and those favouring it with some modification or addition.

38. Most of the comments are in favour of the proposed amendment. Thus, it has been stated¹⁰, that the proposed

1. For an example of another Court which was "High Court" under the Code of Criminal Procedure, see *Anwar Ali v. Deoghar Municipality* I.L.R. 6 Pat. 83; A.I.R. 1926 Pat. 449, referring to section 4(1)(ii)(b). *Santal Parganas Justice Regulation 5 of 1893*.

2. The Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950 (15 of 1950).

3. The Goa, etc. (Judicial Commissioners' Court) Declaration as High Court Act, 1964 (16 of 1964); Appendix 13.

4. See also the Union Territories Act, 1963 (20 of 1963), section 2(1)(c) 22, 27(3)(d), 33, etc.

5. Paragraph 34, *supra*.

6. Appendix 1.

7. The draft amendment circulated was the same as that in Appendix I.

8. See paragraph 1, *supra*.

9. See paragraphs 7 and 11, *supra*.

10. S. No. 20 (a State Government).

amendment will certainly bring the law in conformity with the view expressed in the *State of Assam v. Runga Muhammad*; that section 9(1) may be suitably amended as suggested¹⁻²; that the amendments proposed are in order and the (court approves the same³; that the proposed amendment is in conformity with the suggestion made by the High Court itself⁴; that the amendment of section 9 is in the right direction⁵; that for the purpose of removing any doubt or anomaly, the proposed amendment to section 9 may be made⁶, that the High Court agrees with the proposed amendment of section 9 for the purpose which the Law Commission has in view⁷; that the proposed amendment is welcome, since the district judges and other subordinate judges are subordinate to the High Courts and Courts of Judicial Commissioners, and they must have fair knowledge about the qualities and standard of these officers⁸; that the State Government has no objection to the proposed amendment⁹; that the State Government is in favour of it¹⁰.

39. One comment received from the Administration of a Union territory¹¹ states, that article 235 does not apply to Union territories, and that the Courts of the Judicial Commissioners have not been declared High Courts for the purposes of the said article, and therefore the Administration of the Union territory is not directly concerned with the proposed amendment, but in principle it has no objection to it.

40. We now come to comments opposing the draft amendment. It has been stated¹² that it is not understood what connection there is between the decision of the Supreme Court in the *State of Assam v. Ranga Muhammad* and the amendment of the Code of Criminal Procedure, and that the proposed amendment has far-reaching consequences and it is not considered advisable to effect the amendment just now, particularly in view of the fact that section 9 of the Criminal Procedure Code has presented no difficulty in regard to the administration of criminal justice under the Code during the past.

41. Some replies say that they have no comments to offer^{13,14}.

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- 1—2. S. No. 21 (a High Court).
 3. S. No. 22 (a High Court).
 4. S. No. 23 (High Court of Mysore).
 5. S. No. 24 (Court of a Judicial Commissioner).
 6. S. No. 26 (a High Court).
 7. S. No. 27 (a High Court).
 8. S. No. 28 (Court of a Judicial Commissioner).
 9. S. No. 41 (a State Government).
 10. S. No. 45 (a State Government).
 11. S. No. 30 (Administration of a Union territory).
 12. S. No. 37 (a High Court).
 13. S. No. 29 (a High Court).
 14. S. No. 43 (a State Government).

42. One High Court¹ has no comments to offer, but has sent a note of one of its Judges² where it has been stated that the reasons which have necessitated amendment of section 9 also necessitate amendment of section 18 in relation to the power of appointment of Chief Presidency Magistrates and Additional Chief Presidency Magistrates.

43. We now come to comments which seem to approve of the proposed amendment with some modification or addition. Thus, one comment³, while remaining silent about the main amendment in section 9(1), states that since the place of sitting of the district court is fixed by the State Government in consultation with the High Court under the Civil Courts Act of the State, and since the District Judge is also the Sessions Judge, to avoid anomaly it is necessary to empower the State Government to fix the place or places of sitting of a Court of Session.

We have already referred to the comment⁴ indicating the need for amendment of section 18.

44. Another comment states⁵, that in the draft of section 9 as proposed to be amended, it should be made clear that the first appointment of District and Sessions Judge need not be made, by the High Court, but by the State Government in consultation with the High Court. Accordingly, that comment has suggested the addition of an *Explanation* to proposed section 9(1) and section 9(3) as follows:—

Explanation—The word “appoint” shall not be taken to include first appointment to the post.

45. A State Government⁶, while agreeing that section 9(1) conflicts with the decision in the *State of Assam v. Ranga Muhammad* inasmuch as it empowers the State Government to appoint a Judge of a particular Court of Session, and therefore stating that the amendments to section 9(1) and section 9(3) are in order, objects to the amendment proposed in section 9(2). It is stated, that the decision in *State of Assam v. Ranga Muhammad* does not suggest that the power of the State Government to decide at what place or places a Court of Session should sit.

1. S. No. 44 (a High Court Judge).
2. Enclosure to S. No. 44.
3. S. No. 36 (a State Government).
4. Paragraph 42, *supra*.
5. S. No. 39 (Administration of a Union Territory).
6. S. No. 42 (a State Government).

should be transferred to the High Court. The comment adds, that the State Government can be expected to know which place would be suitable having regard to the public convenience; financial implications also may be involved, as suitable buildings have to be found or constructed for a court. Therefore, the amendment to section 9(2) and to the latter part of section 9(4) is not considered as necessary by that Government, and it is of the opinion that the power of deciding the place should continue with the State Government and need not be transferred to the High Court as proposed.

46. Some of the points made in the comments which approve of the amendment proposed may be dealt with. As regards the place of sitting¹, in our opinion, that is as much a part of "control" within article 235 as the power of appointing judges to a particular Court of Session, and must accordingly be transferred to the High Court. Financial, administrative and other considerations would be taken into account by the High Court also, and, in any case, in view of the provisions of article 235, it will not be permissible to keep this power with the State Government.

47. As regards the point ^{1a} that amendments may be required in section 18, we have elsewhere dealt with the amendments required in the other provisions² of the Code.

48. As regards the difficulty³ that the place of sitting of the Court of District Judge is (under the local Civil Courts Act) fixed by the State Government, we should draw attention to the discussion wherein we have not ruled out an amendment of the Civil Courts Act⁴.

49. As regards initial posting⁵, that power also must now vest in the High Court⁶.

50. Besides section 9 of the Code of Criminal Procedure, there may be other provisions in the Code which may require amendment in the light of the meaning of the expression "control" as interpreted by the Supreme Court.

Other sections of the Code of Criminal Procedure, 1898—whether amendment needed.

1. Paragraph 40, *supra* and paragraph 45, *supra*.

1 a. Paragraphs 42 and 43, *supra*.

2. Paragraph 50, *infra*.

3. Paragraph 43, *supra*.

4. Paragraph 51, *infra*.

5. Paragraph 44, *supra*.

6. See paragraphs 26 and 27, *supra*.

The provisions dealing with the following matters may have to be considered in this context—

(i) Chief Presidency Magistrates and Additional Chief Presidency Magistrates¹; (ii) Presidency Magistrates^{1a}; (iii) subordination of Presidency Magistrates²; (iv) other Magistrates, where a notification under article 237 of the Constitution is issued³; (v) conferment of enhanced powers on Judicial Magistrates, where a notification under article 237 is issued⁴; (vi) conferment of ordinary powers on Judicial Magistrates, where a notification under article 237 is issued⁵; (vii) language of the courts⁶; (viii) place of sitting⁷⁻⁸.

The above list is illustrative only. Most of these are, however, matters of local detail, in respect of which the position varies from State to State⁹. The rest—like place of sitting or language—are not urgent. We do not, therefore, in this Report, propose to deal with them.

Provision in Civil Courts Acts. 51. There are provisions in the Civil Courts Act applicable to each State (or part thereof) relating to the appointment of district judges, etc¹⁰. The matter, however, falls within the State List, and appropriate action will have to be taken by the States.

Appendices. 52. In order to give a concrete picture of our recommendations, we have, in Appendix I, put them in the form of a draft amendment to the *Code of Criminal Procedure, 1898*.

Appendix 2 contains Notes on Clauses, elucidating the draft Amendment in Appendix 1.

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1. Section 18(1) and 18(4), Code of Criminal Procedure, 1898.
 - 1a. Section 18(1) and 18(2) and 18(3), Code of Criminal Procedure, 1898.
 2. Section 21(2), Code of Criminal Procedure, 1898.
 3. Section 12 to 17, Code of Criminal Procedure, 1898.
 4. Section 30, Code of Criminal Procedure, 1898.
 5. Sections 36, 37 and 39 to 41, Code of Criminal Procedure, 1898.
 6. See section 558 and sections 356(1), 357 and 366(1)(b) and 367(i), Code of Criminal Procedure, 1898.
 7. Cf. *Ibadat Ali v. State*, A.I.R. 1956 All. 443.
 8. See also sections 178 and 541, Code of Criminal Procedure, 1898.
 9. For example, provisions relating to Magistrates.
 10. For examples, see Appendices 7 and 17.

The other Appendices contain certain materials which are useful for a study of the subject under consideration.

1. J. L. KAPUR—*Chairman*.

2. K. G. DATAR,

3. S. S. DULAT,

4. T. K. TOPE,

5. RAMA PRASAD MOOKERJEE.

}
} *Members.*
}

P. M. BAKSHI,

Joint Secretary and Legislative Counsel.

NEW DELHI,

The 20th May, 1967.

APPENDIX 1

PROPOSED AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE,
1898.

(This is a tentative draft only).

Draft amendment¹

For section 9 of the Code of Criminal Procedure, 1898, ^{5 of 1898.}
substitute the following section, namely:—

Existing section 9	Proposed section 9
<p>'9. <i>Court of Session.</i>—(i) The State Government shall establish a Court of Session for every sessions division, and appoint a judge of such Court.</p>	<p>"9. <i>Court of Session.</i>—(1) The State Government shall establish a court of Session for every sessions division.....</p>
<p><i>Cf.</i> s. 9(1), latter part.</p>	<p>(1A) <i>The High Court</i> shall appoint a judge of such Court.</p>
<p>(2) The State Government may, by general or special order in the Official Gazette, direct at what place or places the Court of Session shall ordinarily hold its sittings but if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case of the examination of any witness or witnesses therein.</p>	<p>(2) <i>The High Court</i> may, by general or special order in the Official Gazette, direct at what place or places the Court of Session shall ordinarily hold its sittings; but if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.</p>

1. The draft proceeds on the assumption that "appointment" and "posting" and "promotion" in article 233 of the Constitution are confined to appointment to the cadre, and do not cover what may be called allotment or assignment to a particular area or Court.

Existing section 9	Proposed section 9
(3) The State Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.	(3) The <i>High Court</i> may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such courts.
(4) A Sessions Judge of one sessions division may be appointed by the State Government to be also an Additional Sessions 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 State Government may direct.	(4) A Sessions Judge of one Sessions division may be appointed by the <i>High Court</i> to be also an Additional Sessions 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 <i>High Court</i> may direct.
(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act."	(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act."

APPENDIX 2

Notes on clauses

Section 9

The important changes have been already explained¹.

It may be added, that the draft goes further than the Bombay and Punjab Amendments^{2,3}, inasmuch as, in respect of all the powers under the section, it is now proposed to substitute the High Court, (except in respect of the creation of a Court of Session).

APPENDIX 3

Extract of section 9, Code of Criminal Procedure, 1898 as amended by Bombay Act 23 of 1951.

Existing section 9	Bombay amendment
"9. <i>Court of Session.</i> —(1) The State Government shall establish a Court of Session for every sessions division, and appoint a judge of such Court.	"9. <i>Court of Session.</i> —(1) The State Government shall establish a Court of Session for every sessions division and in consultation with the High Court appoint a judge of such Court.

1. See body of the Report, paragraphs 28 to 30.
2. Appendix 3.
3. Appendix 4.

- (2) The State Government may, by general or special order in the Official Gazette, direct at what place or places the Court of Session shall ordinarily hold its sittings, but if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.
- (3) The State Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.
- (4) A Sessions Judge of one sessions division may be appointed by the State Government to be also an Additional Sessions 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 State 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."
- (3) The State Government may also in consultation with the High Court appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.
- (4) A Sessions Judge of one sessions division may in consultation with the High Court be appointed by the State Government to be also an Additional Sessions 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 State Government may direct."

APPENDIX 4

Amendments to sections 9 to 12 and 17—Code of Criminal Procedure, 1898 made by Punjab Act 25 of 1964.

"4. In section 9—

(i) in sub-section (1), after the words "sessions division, and", the words "in consultation with the High Court" shall be inserted;

(ii) in sub-section (2), after the words "State Government", the words "in consultation with the High Court" shall be inserted;

(iii) in sub-section (3), after the words "may also", the words "in consultation with the High Court" shall be inserted; and

(iv) in sub-section (4), after the words "State Government", occurring twice, the words "in consultation with the High Court" shall be inserted.

5. In section 10—

(i) in sub-section (1), for the words "a Magistrate", the words "an Executive Magistrate" shall be substituted; and after that sub-section as so amended, the following sub-section shall be inserted, namely:—

"(1A) In every district the High Court shall invest a Judicial Magistrate of the first class with the powers of a Chief Judicial Magistrate under this Code or any other law for the time being in force.";

(ii) in sub-section (2), for the words "any Magistrate of the first class to be an Additional District Magistrate", the words "any Executive Magistrate of the first class to be an Additional District Magistrate shall be substituted; and

(iii) the marginal heading shall be substituted, namely:—

"District Magistrate and Chief Judicial Magistrate".

6. For section 12, the following shall be substituted, namely:—

"12. (1) The State Government may appoint such persons as it thinks fit besides the District Magistrates, to be Executive Magistrates of the first or second class in any district, and the State Government or the District Magistrate, subject to the control of the State Government, may, from time to time, define local areas within which they may respectively be invested under this Code. Executive and Judicial Magistrates.

(2) The High Court may confer on any person who is a member of the Punjab Civil Service (Judicial Branch) the powers of any class of a Judicial Magistrate in any district; and the High Court or the Chief Judicial Magistrate, subject to the control of the High Court, may, from time to time, define local areas within which he may exercise all or any of the powers with which he may be invested under this Code.

(3) The State Government, in consultation with the High Court may, for such period not exceeding six months from the commencement of the Punjab

Separation of Judicial and Executive Functions Act, 1964 as it may think fit, appoint as many persons, who are members of the Punjab Civil Service (Executive Branch), as may be considered necessary to be Judicial Magistrates in any district; and the State Government, in consultation with the High Court, may 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.

(4) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

(5) The power of appointment of Judicial Magistrates under sub-sections (2) and (3) shall, on the issue of a public notification under article 237 of the Constitution of India, be exercised subject to the terms of the said notification."

Subordina-
tion of Assis-
tant Sessions
Judges, Judi-
cial Magis-
trates and
Benches to
Sessions
Judge and
Chief
Judicial
Magistrate.

11. For section 17, the following section shall be substituted, namely:—

"17. (1) All Judicial Magistrates appointed under sub-sections (2) and (3) of section 12 and section 14 and all Benches constituted under section 15, shall, subject to the control of the Sessions Judge be subordinate to the Chief Judicial Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches.

(2) All Chief Judicial Magistrates shall be subordinate to the Sessions Judge.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions 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, by the Chief Judicial Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application."

APPENDIX 5

Important cases under articles 233 to 237 of the Constitution

SUPREME COURT

Mohd. Ghouse v. Andhra State,
(1957) S.C.R. 414; A.I.R. 1957 S.C. 246.

(Suspension of Subordinate Judge by the High Court—the matter need not be referred to the Tribunal constituted under Andhra Civil Service Rules, 1953).

Rameshwar v. State,
(1961) 2 S.C.R. 874; A.I.R. 1961 S.C. 816.

(Article 233(2)—Eligibility of Advocate—Period of practice in Punjab High Court).

High Court v. Amal Kumar,
A.I.R. 1962 S.C. 1704, 1708.

(Article 235—Promotion from Munsif to Subordinate Judge).

Panduranagrao v. Andhra Pradesh,
(1963) 1 S.C.R. 707; A.I.R. 1963 S.C. 268, 271.

(Validity of rules made under article 234).

State of Mysore v. K. N. Chandrasekhara,
A.I.R. 1965 S.C. 532.

(Decided 31 July, 1964, on appeal from A.I.R. 1963 Mysore 292 and other decisions).

(Article 234 and Mysore Munsifs Recruitment Rules 1958—High Court, while finding the list vitiated, directed inclusion of petitioners therein—Order was held by the Supreme Court not to be authorised by article 226).

State of West Bengal v. Nripendra Nath Bagchi,
(Decided on 10th September 1965)
(1966) 1 S.C.R. 771, 786.

(Disciplinary powers over District Judges)

(Traces history of articles 233 to 237 also)

(On appeal from *Nripendra v. Chief Secretary*,
A.I.R. 1961 Cal. 1).

Chandra Mohan v. State of U.P.,

(decided on 8th August, 1966)

A.I.R. 1966 S.C. 1987, 1990, 1993.

(paragraphs 7 and 15) (December issue).

(On appeal from 1966 A.L.J. 599).

State of Assam v. Runga Muhammad,

(decided on 21st September, 1966).

Note reported in full. For summary, see (1967 Feb.) S.C.J., Notes of recent cases, page 14, and (1967 January) 69 Bom. L.R. page 9, Note 6.

HIGH COURTS

Mohammad Ghouse v. State of A.P.,

A.I.R. 1955 Andhra 65, 68, paragraphs 7-8.

(Subba Rao C. J. and Satyanarayana Raju J.)

(There was an appeal to the Supreme Court on certain points). See—

Mohammad Ghouse v. State of A.P.,

(1957) S.C.R. 414; A.I.R. 1957 S.C. 246.

(Articles 227 and 309 also discussed)

Later stage of the same case—*Mohammad Ghouse v. State*, A.I.R. 1959 Andhra 497, 500, 503, paragraph 4 and 6.

(High Court was held competent to hold inquiry against Assistant Sessions Judge—Articles 227 and 235 discussed)

Mohammad Ilyas v. State of Maharashtra,

A.I.R. 1965 Bom. 156, 161 to 163.

(Articles 233 and 235—Disciplinary jurisdiction over Assistant Judge and Additional Sessions Judge—Articles 310 and 311 also considered).

Nripendra Nath v. State of W.B.,

A.I.R. 1961 Cal. 1.

(affirmed on appeal by the Supreme Court, *State of W.B. v. Nripendra Nath*)

In re Palaniswamy,

I.L.R. 1957 Mad. 597; A.I.R. 1957 Mad. 351, 352, 353, paragraph 4.

(Article 233—*ex-officio* appointment of District Magistrate (by designation) as Assistant Sessions Judge, after consulting the High Court—held valid.).

N. Devasahayam v. State,

I.L.R. 1958 Mad. 158;

A.I.R. 1958 Mad. 53, 60, 62, paragraphs 22 and 33.

(Articles 224 and 237—Integration of Civil and Criminal judiciary—valid).

Desava v. State of Mysore,

I.L.R. 1955 Mysore 597;

A.I.R. 1956 Mysore 20, 25, paragraph 14.

(Article 234—Promotion of subordinate judiciary—“Appointment” includes appointment for promotion).

K. N. Chandra Sekhara v. State of Mysore,

A.I.R. 1963 Mysore 292.

(For decision on appeal see *State of Mysore v. K. N. Chandra Sekhara*). A.I.R. 1965 S.C. 532.

(Article 234—Rules under article 234—consultation with Public Service Commission—Nature of Governor's power).

V. K. Kulkarni v. State of Mysore,

A.I.R. 1963 Mysore 303.

(Article 234, Rules under—rules made without consultation—void).

S. Ranga Rao v. State of Mysore,

A.I.R. 1959 Mysore 199, 200, paragraph 3.

(K. S. Hegde J.).

(Article 237—On issue of a notification under article 237 Judicial Magistrates are brought in line with other members of the Judicial service, and the High Court has the power to post not merely members of the Judicial service, but also Magistrates in the district).

M. I. Nadaf v. State,

A.I.R. 1967 Mad. 77 (January Issue).

(Article 234).

Anandilal Verma v. State,

I.L.R. (1966) 16 Rajasthan 326.

(Article 235 and disciplinary jurisdiction).

APPENDIX 6

Important Cases under section 9, Code of Criminal Procedure, 1898.

Q.E. v. Mangal Takchand,

(1885) I.L.R. 10 Bom. 258, 263, 273, 282, 283 [(Need for formal appointment under section 9(1)—Resident of Aden not a Judge of the Court of Session in the absence of an appointment as a Sessions Judge.]

Lakshman v. Emp., I.L.R. 55 Bom. 576; A.I.R. 1931 Bom. 313, 319, 321 (S.B.) [Section 9(2) Code of Criminal Procedure, 1898—State Government's order under—whether High Court can transfer the case under section 526].

Supdt. and Legal Remembrancer v. Iijabullah,

I.L.R. 58 Cal. 117; A.I.R. 1931 Cal. 190, 191.

[".....there is only one Court of Session in each Sessions Division sitting at different places and manned by a number of Judges"].

In re Shaik Silar, A.I.R. 1941 Mad. 681 (Lakshman Rao J.).

(Predecessors of a Subordinate Judge were appointed Assistant Sessions Judge, Kistna, by name. Their successor Subordinate Judge was not appointed as Assistant Sessions Judge, by name or designation. Trial by him of a Sessions case held illegal).

In re Petan Ali Khan, I.L.R. 1947 Mad. 365; A.I.R. 1947 Mad. 248, 255. (Successor Sessions Judge cannot pronounce judgment written by predecessor).

In re Palaniswamy,

I.L.R. 1957 Mad. 597;

A.I.R. 1957 Mad. 351, 352, paragraphs 2 and 3 (D.B.).

(District Magistrates appointed *ex-officio* Assistant Sessions Judges—held, appointment is valid).

Kamleshwar v. Dharam Deo,

I.L.R. 36 Pat. 995;

A.I.R. 1957 Pat. 375, 377, 378, paragraphs 7, 8, 16 and 18.

Nawab Khambakhan v. Emp.,

A.I.R. 1943 Sind 39, 45 (F.B.).

[Section 9 does not require a formal publication. The notification does not confer the power. Section 9 confers the necessary powers. Government notification merely declares or records the acts of Government.]

APPENDIX 7

Extracts of sections 6(1) and 9, Bengal, Agra and Assam Civil Courts Act, 1887 (Central Act 12 of 1887)

“36. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever an increase in the number of District or Subordinate Judges has been made under the provisions of section 4, the State Government or, as the case may be, the High Court¹ may fill up the vacancy or appoint Additional District Judges or Subordinate Judges.

Vacancies among District or Subordinate Judges.

9. Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act, within the local limits of his jurisdiction.”

Administrative Centre of Courts.

APPENDIX 8

Extract of section 15, Bhopal and Vindhya Pradesh (Courts) Act, 1950 (Central Act 41 of 1950).

(Assented to on 10 May 1950) (As adapted)

“15. (1) For the purposes of this Chapter the State Government may, by notification in the Official Gazette, divide Bhopal and Vindhya Pradesh into civil districts and may alter the limits or the number of such districts and may determine the headquarters of each such district.

Civil District and District Judges.

(2) The State Government shall, after consultation with the High Court, appoint as many persons as it thinks necessary to be District Judges and shall post one such person to each district as District Judge of that district:

Provided that the same person may, if the State Government thinks fit, be appointed to be the District Judge of two or more districts.”

1. Before the Adaptation of Laws Order, 1937, the wording in section 6(1) was “the local Government may fill up, etc.” See India Code, Vol. 3, Part 3, page 73.

APPENDIX 9

Extracts of sections 10 and 11, of the Dadra and Nagar Haveli Act, 1961 (35 of 1961).

Power to extend enactments to Dadra and Nagar Haveli. "10. The Central Government may, by notification in the Official Gazette, extend with such restrictions or modifications as it thinks fit, to Dadra and Nagar Haveli any enactment which is in force in a State at the date of the notification.

Extension of the jurisdiction of Bombay High Court to Dadra and Nagar Haveli. "11. As from such date as the Central Government may, by notification in the Official Gazette, specify the jurisdiction of the High Court at Bombay shall extend to Dadra and Nagar Haveli."

APPENDIX 10

Extracts of sections 2, 3 and 5, Dadra and Nagar Haveli (Civil Court and Miscellaneous Provisions) Regulations, 1963 (8 of 1963).

Classes of courts. "2. (1) On and from the commencement of this Regulation, in addition to the courts established under any other law for the time being in force, there shall be in the Union territory of Dadra and Nagar Haveli (which shall be a district for the purposes of this Regulation) —

(a) a court of the District Judge; and

(b) a court of the Civil Judge.

(2) The District Judge and the Civil Judge shall be appointed by the Central Government after consultation with the High Court at Bombay (hereinafter referred to as the High Court).

Situation of courts. "3. The place at which any court under this Regulation shall be held may be fixed and may from time to time be altered by the Administrator of Dadra and Nagar Haveli.

Jurisdiction of courts of the District Judge and the Civil Judge. "5. (1) The court of the District Judge shall be the principal civil court of original jurisdiction in the district within the meaning of the Code of Civil Procedure, 1908. (2) The jurisdiction of the court of the District Judge and the court of the Civil Judge shall extend to all original suits and proceedings of a civil nature.

(3) The court of the Civil Judge shall be subordinate to the court of the District Judge and subject to the general superintendence and control of the High Court, the court of the District Judge shall have general control over the court of the Civil Judge and its establishment, and the District Judge may give such directions with respect to matters not provided for by law as he may think necessary."

APPENDIX 11

Extracts from the Delhi High Court Act, 1966 (26 of 1966), sections 3, 17, 19.

“3. (1) As from such date as the Central Government ^{High Court.} may, by notification in the Official Gazette, appoint, there shall be a High Court for the Union territory of Delhi (hereinafter referred to as the High Court of Delhi).

(2) The principal seat of the High Court of Delhi shall be at Delhi or at such other place as the President may, by notified order, appoint.

(3) Notwithstanding anything contained in sub-section (2), the Judge and Division Courts of the High Court of Delhi may sit at such other place or places other than its principal seat as the Chief Justice may, with the approval of the President, appoint.

17. (1) As from such date as the Central Government ^{Extension of} may, by notification in the Official Gazette, appoint (hereinafter referred to as the prescribed date), the jurisdiction ^{the jurisdiction} of the High Court ^{of the} of Delhi shall extend to the Union ^{High Court} territory of Himachal Pradesh. ^{of Delhi.}

(2) As from the prescribed date the Court of the Judicial Commissioner for Himachal Pradesh shall cease to function and is hereby abolished:

Provided that nothing in this sub-section shall prejudice or affect the continued operation of any notice served, injunction issued, direction given, or proceedings taken before the prescribed date by the Court of the Judicial Commissioner for Himachal Pradesh abolished by this sub-section.

(3) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union territory of Himachal Pradesh,—

(a) all such original, appellate and other jurisdiction as under the law in force immediately before the prescribed date, is exercisable in respect of the said territories by the Court of the Judicial Commissioner for Himachal Pradesh; and also

(b) ordinary original civil jurisdiction in every suit, the value of which exceeds twenty-five thousand rupees, notwithstanding anything contained in any law for the time being in force.

(4) All proceedings pending in the Court of the Judicial Commissioner for Himachal Pradesh before the prescribed date shall stand transferred to the High Court of Delhi.

(5) Any order made before the prescribed date by the Court referred to in sub-section (4) shall for all purposes have effect not only as an order of that Court but also as an order of the High Court of Delhi.

(6) For the removal of doubts, it is hereby declared that the provisions of sections 6 to 11 and 13 shall, with the necessary modifications, apply to the High Court of Delhi in the exercise of jurisdiction conferred upon it by this section.

(7) All proceedings pending immediately before the prescribed date in any subordinate court in the Union territory of Himachal Pradesh in or in relation to any such civil suit as is referred to in clause (b) or sub-section (3) shall on that date stand transferred to the High Court of Delhi which shall proceed to try, hear and determine the matter as if it had been pending therein."

APPENDIX 12

Extracts of sections 8(1), 11 and 17(2) Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 (10 of 1963).

Civil and Criminal jurisdiction of the Court of the Judicial Commissioner.

8. (1) The Court of the Judicial Commissioner shall be the highest civil and criminal court of appeal and revision in Goa, Daman and Diu and shall have all such jurisdiction as under the law in force immediately before the commencement of this Regulation was exercisable in respect of that territory by the Tribunal de Relacao.

Superintendence and control of Subordinate Court and tribunals.

11. (1) The general superintendence and control over all courts and tribunals in Goa, Daman and Diu shall vest in, and all such courts and tribunals shall be subordinate to the Court of the Judicial Commissioner.

(2) In exercise of the powers of superintendence and control vested in it, but without prejudice to the generality of such powers, the Court of the Judicial Commissioner may do any of the following things, that is to say—

(a) call for returns;

(b) direct the transfer of any suit or appeal from any subordinate court to any other court of equal or superior jurisdiction;

(c) make rules and issue general directions and prescribe forms for regulating the practice and procedure of subordinate courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such court.

17. (2) The Administrator may, in consultation with the Judicial Commissioner, make rules relating to the recruitment and condition of service of persons to be appointed as Judges of the subordinate courts.

APPENDIX 13

Extracts from the Goa, etc, Judicial Commissioner's Court (Declaration as High Court) Act, 1964 (16 of 1964) sections 3 and 6.

"3. The Court of the Judicial Commissioner for the Union territory of Goa, Daman and Diu (hereinafter referred to as the Judicial Commissioner's Court) is hereby declared to be a High Court for the purposes of articles 132, 133 and 134.

Declaration of Goa, Daman and Diu Judicial Commissioner's Court as High Court for certain purposes.

6. The provisions of Chapter V of Part VI of the Constitution shall in their application to the Judicial Commissioner's Court have effect subject to the following exceptions and modifications, namely:—

Exceptions and modifications subject to which provisions of Chapter V of Part VI of the Constitution apply to the Judicial Commissioner's Court

(a) the provisions of articles 216, 217, 218, 220, 221, 222, 223, 224, 224A, 225, 230 and 231 shall not apply;

(b) references—

(i) in article 219, in the proviso to clause (3) of article 227 and in article 229, to the Governor shall be construed as references to the administrator of the Union territory of Goa, Daman and Diu;

(ii) in articles 219 and 229 to the State (except in the expression "the State Public Service Commission") shall be construed as references to the Union territory of Goa, Daman and Diu;

(c) the reference to the State Public Service Commission in the proviso to clause (1) of article 229 shall be construed as a reference to the Union Public Service Commission."

APPENDIX 14

Extracts from the Himachal Pradesh Courts Order, 1948 (10th August, 1948) (Preamble, and paragraphs 3, 4, 8, 10, 16, 17 and 18).

No. 270-I.B., dated the 10th August, 1948.—

WHEREAS the Central Government has full and exclusive authority, jurisdiction and powers for and in relation to the governance of Himachal Pradesh;

AND WHEREAS it is expedient to consolidate and amend the law relating to Courts in Himachal Pradesh;

Now, THEREFORE, in exercise of the powers conferred by sections 3 and 4 of the Extra-Provincial Jurisdiction Act, 1947 (47 of 1947), and of all other powers enabling it in this behalf, the Central Government is pleased to make the following Orders:—

Establishment of the Court of the Judicial Commissioner.

3. On and from the commencement of this Order, there shall be established for Himachal Pradesh a Court to be known as the Court of the Judicial Commissioner for Himachal Pradesh which shall consist of the Judicial Commissioner and the Additional Judicial Commissioner, if any¹.

Appointment of Judicial Commissioner and Additional Judicial Commissioner.

4. (1) The Judicial Commissioner and the Additional Judicial Commissioner, if any, shall be appointed by the Central Government and shall hold office at the pleasure of the Central Government.

(2) No person shall be appointed as the Judicial Commissioner or the Additional Judicial Commissioner who is not qualified to be appointed as a Judge of a High Court under sub-section (3) of section 220 of the Government of India Act, 1935, or who is not, immediately before the commencement of this Order, the Chief Judge of a State comprising Himachal Pradesh.

8. Save as otherwise provided by this Order or any other law for the time being in force, the Court of the Judicial Commissioner shall be the highest civil and criminal court of appeal and revision for Himachal Pradesh.

10. (1) The general superintendence and control over all Courts in Himachal Pradesh shall vest in, and all such Courts shall be subordinate to, the Court of the Judicial Commissioner².

(2) In exercise of the power of superintendence and control vested in it, but without prejudice to the generality of such power, the Court of the Judicial Commissioner may do any of the following things, that is to say,—

(a) call for returns;

1. Under sections 17-19 and Schedule to the Delhi High Court Act (6 of 1966) from the prescribed date by the Court of Judicial Commissioner is to be abolished.

2. Under sections 17-19 and Schedule of the Delhi High Court Act, 1966 (26 of 1966) references to Judicial Commissioner are from the prescribed date to be considered as references to the High Court and reference to Chief Commissioner as reference to Commissioner.

(b) direct the transfer of any suit or appeal from any Subordinate Court to any other Court of equal or superior jurisdiction;

(c) make rules and issue general directions and prescribe forms for regulating the practice and procedure of Subordinate Courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Court.

16. (1) For the purposes of this Chapter, the Chief Commissioner may, by notification in the Official Gazette, divide Himachal Pradesh into civil districts and may alter the limits or the number of these districts and may determine the headquarters of each such district. ^{Civil districts and District Judges.}

(2) The Chief Commissioner shall, after consultation with the Judicial Commissioner, appoint as many persons as he thinks necessary to be District Judges and shall post one such person to each district as District Judge of that district:

Provided that the same person may, if the Chief Commissioner thinks fit, be appointed to be the District Judge of two or more districts.

17. (1) When the business pending before the Court of a District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the Chief Commissioner may, after consultation with the Judicial Commissioner, appoint such Additional District Judges as may be necessary. ^{Additional District Judges.}

(2) An Additional District Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of his functions he shall exercise the same powers as the District Judge.

18. (1) The Chief Commissioner may, after consultation with the Judicial Commissioner, fix the number of Subordinate Judges to be appointed and, if there is a vacancy in that number, may subject to the rules, if any, made under sub-paragraph (2), appoint such person as is nominated by the Judicial Commissioner to the vacancy. ^{Subordinate Judges.}

(2) The Chief Commissioner may, after consultation with the Judicial Commissioner, make rules as to the qualifications of persons to be appointed Subordinate Judges.

(3) A Subordinate Judge may be suspended from office by the Judicial Commissioner subject to the confirmation of the Chief Commissioner and may be removed from office by the Chief Commissioner on the report of the Judicial Commissioner.

APPENDIX 15

*Extracts from sections 3, 4, 8, 10(1), 17(2), 18(1), 19, 27
Manipur (Courts) Act, 1955 (56 of 1955).*

Establishment of the Court of the Judicial Commissioner. "3. There shall be established for the State of Manipur a court to be known as the Court of the Judicial Commissioner for Manipur which shall consist of the Judicial Commissioner and the Additional Judicial Commissioner, if any.

Appointment of Judicial Commissioner and Additional Judicial Commissioner. 4. (1) The Judicial Commissioner and the Additional Judicial Commissioner, if any, shall be appointed by, and shall hold office during the pleasure of, the President.

(2) A person shall not be appointed as Judicial Commissioner or Additional Judicial Commissioner unless he is qualified to be appointed as a Judge of a High Court under clause (2) of article 217 of the Constitution or unless he was, immediately before the commencement of this Act, the Judicial Commissioner of Manipur.

Civil and criminal jurisdiction of the Court of the Judicial Commissioner. 8. Save as otherwise provided by this Act or any other law for the time being in force, the Court of the Judicial Commissioner shall, with reference to any civil or criminal proceeding under any law for the time being in force in the State of Manipur, be the highest court of appeal, revision or reference.

Superintendence and control of subordinate courts. 10.(1) The general superintendence and control of all courts in the State of Manipur shall vest in, and all such courts shall be subordinate to, the Court of the Judicial Commissioner.

Civil district and district judges. 17. (2) The Chief Commissioner shall, after consultation with the Judicial Commissioner, appoint as many persons as he thinks necessary to be district judges and shall post one of these persons to each district as district judge of that district:

Provided that the same person may, if the Chief Commissioner thinks fit, be appointed to be district judge of two or more districts.

Additional district judges. 18. (1) When the business pending before the court of a district judge requires the aid of an additional district judge for its speedy disposal, the Chief Commissioner may, after consultation with the Judicial Commissioner, appoint such number of additional district judges as may be necessary.

19. (1) The Chief Commissioner may, after consultation with the Judicial Commissioner, fix the number of subordinate judges and munsifs to be appointed and if there is a vacancy in that number may, subject to the rules, if any, made under sub-section (2), appoint such person as is nominated by the Judicial Commissioner to the vacancy.

Subordinate
judges and
munsifs.

(2) The Chief Commissioner may, after consultation with the Judicial Commissioner, make rules as to the qualifications of persons to be appointed as subordinate judges and munsifs.

27. Subject to the general superintendence and control of the Court of the Judicial Commissioner, the district judge shall have administrative control over all the civil courts under this Chapter within the local limits of his jurisdiction."

Administra-
tive control
of courts.

APPENDIX 16

Extracts of sections 9 and 10, Pondicherry (Administration) Act, 1962 (49 of 1962)

9. As from the 6th day of November 1962, the jurisdiction of the High Court shall extend to Pondicherry.

Extension of
the jurisdic-
tion of Mad-
ras High
Court to
Pondicherry.

10. (1) Without prejudice to the generality of the provisions of section 9, the High Court shall have, in respect of Pondicherry, all such jurisdiction as under the law in force immediately before the appointed day was exercisable in respect of the former French Establishments by the Cour de Cassation, the Cour Superieur d' Arbitrage and the Conseil d' Etat of France:

Jurisdiction
of High
Court.

Provided that while determining appeals from decisions of courts and tribunals in Pondicherry, the High Court shall, as far as may be, follow the same procedure and have the same power to pass any judgment, decree or order thereon, as it follows and has while determining appeals from decisions of courts in the State of Madras.

(2) All appeals and other proceedings from or in respect of any judgment, decree or order of any court or tribunal in the former French Establishments pending immediately before the appointed day before the Cour de Cassation or the Cour Superieur d' Arbitrage or the Conseil d' Etat of France and all original proceedings in relation to those Establishments pending immediately before the appointed day before the Conseil d' Etat shall, by virtue of this Act, stand transferred to the High Court and shall be disposed of by the High Court in the exercise

of jurisdiction conferred on it by this Act, as if such appeals and other proceedings had been filed before the High Court.

Explanation.—All appeals and other proceedings filed before the appointed day but not transmitted to the Cour de Cassation or the Cour Supérieur d' Arbitrage or the Conseil d' Etat shall be deemed to be appeals or proceedings, as the case may be, pending before that Court for the purposes of this sub-section.”.

APPENDIX 17

Extracts of sections 20, 21, 31, Punjab Courts Act, 1918 (Punjab Act 6 of 1918).

District Judges. “20. The State Government¹ shall appoint as many persons as it thinks necessary to be District Judges, and shall post one such person to each district as District Judge of that district:

Provided that the same person may, if the State Government thinks fit, be appointed to be District Judge of two or more districts.

Additional Judges. 21. (1) When the business pending before any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the State Government may appoint such Additional Judges as may be necessary.

(2) An Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge.

Place of sitting of Court. 31. (1) The High Court may fix the place or places at which any Court under this Part is to be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Court under this Part may be held at any place within the local limits of its jurisdiction.”.

APPENDIX 18

Extracts of sections 29 and 41 of the Punjab Reorganisation Act, 1966 (31 of 1966)

Common High Court for Punjab, Haryana and Chandigarh.

“29. (1) On and from the appointed day,—

(a) there shall be a common High Court for the States of Punjab and Haryana and for the Union

1. In its application to Delhi, the Central Government is substituted for “State Government” in section 20. See Notification No. 189/30 dated 30 May, 1959 (under section 7 Delhi Laws Act, 1918). Schedule.

territory of Chandigarh to be called the High Court of Punjab and Haryana (hereinafter referred to as the common High Court);

(b) the Judges of the High Court of Punjab holding office immediately before that day shall, unless they have elected otherwise, become on that day the Judges of the common High Court.

(2) The expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the States of Punjab and Haryana and the Union in such proportion as the President may, by order, determine.

41. Nothing in this Part shall affect the application to the common High Court of any provisions of the Constitution, and this Part shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by any Legislature or other authority having power to make such provision." *Savings.*

APPENDIX 19

Extract of section 60 of the States' Re-organisation Act 1956 (37 of 1956).

"60. (1) As from the appointed day the jurisdiction of the High Court for the State of Kerala (referred to in this Act as the High Court of Kerala) shall extend to the Union territory of the Laccadive, Minicoy and Amindivi Islands. *Extension of jurisdiction of and transfer of proceedings to Kerala High Court.*

(2) Except as hereinafter provided, the High Court at Madras shall, as from the appointed day, have no jurisdiction in respect of the said Union territory or in respect of any territory transferred from the State of Madras to the State of Kerala.

APPENDIX 20

Extracts of Preamble to and paragraphs 8, 10, 16(2), 17(1), 18, 25 and 26 of the Tripura Courts Order, 1950 (14th January, 1950).

THE TRIPURA (COURTS) ORDER, 1950.

No. 1 3-J, dated the 14th January, 1950,—

WHEREAS the Central Government has full and exclusive authority, jurisdiction and powers for and in relation to the governance of Tripura;

AND WHEREAS it is expedient to consolidate and amend the law relating to Courts in Tripura;

1. Published in the Gazette of India, extraordinary, 1950, p. 45.

Now, THEREFORE, in exercise of the powers conferred by sections 3 and 4 of the Extra-Provincial Jurisdiction Act, 1947 (47 of 1947), and of all other powers enabling it in this behalf, the Central Government is pleased to make the following order:—

8. Save as otherwise provided by this Order or any other law for the time being in force, the Court of the Judicial Commissioner shall be the highest civil and criminal court of appeal and revision for Tripura.

(1) The general superintendence and control over all Courts in Tripura shall vest in, and all such Courts shall be subordinate to, the Court of the Judicial Commissioner.

(2) In exercise of the powers of superintendence and control vested in it, but without prejudice to the generality of such power, the Court of the Judicial Commissioner may do any of the following things, that is to say,—

(a) call for returns;

(b) direct the transfer of any suit or appeal from any Subordinate Court to any other Court of equal or superior jurisdiction;

(c) make rules and issue general directions and prescribe forms for regulating the practice and procedure of Subordinate Courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Court.

16. (2) The Chief Commissioner shall, after consultation with the Judicial Commissioner, appoint as many persons as he thinks necessary to be District Judges and shall post one such person to each district as District Judge of the district:

Provided that the same person may, if the Chief Commissioner thinks fit, be appointed to be the District Judge of two or more districts.

17. (1) When the business pending before the Court of a District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the Chief Commissioner may, after consultation with the Judicial Commissioner, appoint such Additional District Judges as may be necessary.

18. (1) The Chief Commissioner may, after consultation with the Judicial Commissioner, fix the number of Subordinate Judges and Munsifs to be appointed and if there is a vacancy in the number, may, subject to the

rules, if any, made under sub-paragraph (2), appoint **such person as is nominated by the Judicial Commissioner to the vacancy.**

(2) The Chief Commissioner may, after consultation with the Judicial Commissioner, make rules as to the qualifications of persons to be appointed Subordinate Judges and Munsifs.

(3) A Subordinate Judge or Munsif or Registrar may be suspended from office by the Judicial Commissioner subject to the confirmation of the Chief Commissioner and may be removed from office by the Chief Commissioner on the report of the Judicial Commissioner.

25. (1) The Chief Commissioner may fix the place or places at which any Court constituted under this Chapter is to be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Save as otherwise provided by an order under this paragraph, a Court constituted under this Order may be held at any place within the local limits of its jurisdiction.

26. Subject to the general superintendence and control of the Judicial Commissioner, the District Judge shall have control over all the Civil Courts within the local limits of his jurisdiction.

APPENDIX 21

Statement of Objects and Reasons to the Constitution (Twenty-third Amendment) Bill, 1966 (Introduced in Lok Sabha on 25th November, 1966).

“Appointments of district judges in Uttar Pradesh and a few other States have been rendered invalid and illegal by a recent judgment of the Supreme Court on the ground that such appointments were not made in accordance with the provisions of article 233 of the Constitution. In another judgment, the Supreme Court has held that the power of posting of a district judge under article 233 does not include the power of transfer of such judge from one station to another and the power of transfer of a district judge is vested in the High Court under article 235 of the Constitution. As a result of these judgments, a serious

situation has arisen because doubt has been thrown on the validity of the judgments, decrees, orders and sentences passed or made by these district judges and a number of writ petitions and other cases have already been filed challenging their validity. The functioning of the district courts in Uttar Pradesh has practically come to a standstill. It is, therefore, urgently necessary to validate the judgments, decrees, orders and sentences passed or made heretofore by all such district judges in those States and also to validate the appointments, postings, promotions and transfers of such district judges barring those few who were not eligible for appointment under article 233.

2. The Bill seeks to give effect to the above proposals.

Y. B. CHAVAN.

NEW DELHI;

The 20th November, 1966.

NOTE: *The Bill was introduced on 25th November, 1966 and on receiving assent on 22nd December, 1966 became law as the Constitution (Twentieth Amendment) Act, 1966.*