

WEST BENGAL SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS ACT, 1968

O of 1968. THE WEST BENGAL SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS ACT, 1968 No. 8 of 1968 [26th March 1968.] Enacted by the President in the Nineteenth Year of the Republic of India. An Act to provide for the separation of the Judiciary from the Executive in the public services in the State of West Bengal. In exercise of the powers conferred by section 9) of the "West Bengal State Legislature (Delegation of Powers) Act, 1968, the President is pleased to enact as follows : (1) This Act may be called the West Bengal Separation of Judicial and Executive Functions Act, 1968. (2) It extends to the whole of the State of West Bengal. (3) This section and section 8 shall come into force at once, and the remaining provisions of this Act shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different districts and any reference in this Act to its commencement shall, in relation to a district, be construed as a reference to the coming into force of those provisions therein

2. In this Act, "Code of Criminal Procedure" means the Code of Criminal Procedure, 1898

3. The Code of Criminal Procedure shall, in its application to the State of West Bengal, be amended in the manner and to the extent specified in the Schedule

4. Notwithstanding anything to the contrary contained in any other law for the time being in force, the word "Magistrate" shall include the following two classes of Magistrates, namely : (1) Magistrates appointed by the State Government in consultation with the High Court under any of the provisions of the Code of Criminal Procedure as amended by this Act, to be referred to as Judicial Magistrates; and (2) Magistrates appointed by the State Government without such consultation under any of the provisions of the Code of Criminal Procedure as amended by this Act, to be referred to as Executive Magistrates.

Short title, extent and commencement. Definition. Amendments in the Code of Criminal Procedure, 1898. Classes of Magistrates. 2 The West Bengal Executive 5. Notwithstanding Separation of Functions Act, Judicial and 1968. [President's Act functions exercisable by Judicial Executive Magistrates. Saving. anything to the contrary contained in any other law for the time being in force but subject to the other provisions of this Act and the Code of Criminal Procedure, including Schedules I to IV to the said Code as amended by this Act, where under any law the functions exercisable by a Magistrate relate to inquiry into, or cognizance, investigation or trial of, an offence, such functions shall be exercisable by a Judicial Magistrate, and where such functions relate to matters which are administrative or executive in nature, or relate to prevention of an offence, they shall be exercisable by an Executive Magistrate : Provided that any reference to a Magistrate in the Code of Criminal Procedure, as amended by this Act, which by express provision or necessary implication does not refer to a Judicial Magistrate or an Executive Magistrate, shall be construed as a reference to a Magistrate of either class : Provided further that where a doubt arises as to whether a reference to a Magistrate should be construed as a reference to a Judicial Magistrate or an Executive Magistrate, the decision of the Sessions Judge of the district in which such doubt arises shall, subject to any direction given in this behalf by the State Government, in consultation Court, be final. (I) Save as provided in this section, 6. Act shall be deemed to affect— (a) the validity invalidity, effect or anything done or suffered to be commencement of this Act ; with the High nothing in its consequence of done before the (b) any right, privilege, obligation or liability already acquired, accrued or incurred before such commencement ; (c) any penalty, forfeiture or punishment incurred or inflicted in respect of any act before such commencement ; (d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment, and a civil investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be Imposed in accordance with the provisions of the Code of Criminal Procedure as amended by this Act. 18 The West Bengal Separation of Judicial and Executive Functions Act, 1968. 8 of 1968. 13 (2) All legal proceedings pending before a Magistrate or a Court at the commencement of this Act shall, if such Magistrate or Court ceases to have jurisdiction in respect of such proceedings under the provisions of the Code of Criminal Procedure, as amended by this Act, stand transferred to the Magistrate Court having jurisdiction under the provisions of the said Code, as amended by this Act, and shall be heard and disposed of by such Magistrate or Court and such Magistrate or Court shall have all the powers and jurisdiction in respect thereof as if they have :

beéti; originally instituted before such Magistrate or any . yuch Court, including the power of the succeeding Magistrate under section 350 of the said Code. (3) The provisions of this Act which- amend the Code of Criminal Procedure, so as to alter the manner In which, the authority by which or the law under or in accordance with which any powers are exercisable shall not render invalid any notification, bye-law, rule, regulation, order, commitment or attachment duly made or issued or anything duly done beffore the commencement of this Act and any such no tification, bye-law, rule, régula- tion, order, commitment- or attachnnent or thing, may be revoked, varied, rectified or reversed in the like manner, to the like extent and in the like circumstances, as if it had been duly made, issued or done after such commencement by the competent authority and in accordance with the provisions then applicable to such case. (4) Where, before the commencement of this Act any power was exercisable under the Code of Criminal Pro- cedure by any Magistrate to make any alteration any order made in a proceeding thereunder and the jurisdiction in respect of such proceeding comes to be vested, after -such commencement, in a magistrate specified in clause (1) of section 3, such power shall, after. such commencement, be exercised by such Magisrtate in accordance with the provi- sions of the Code of Criminal Procedure, as amended by this Act

7. If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by remove order or rule, do anything not inconsistent with the provi- diffoultiæ.sions of this Act (including the specification of a Magistrate, whether appointed in consultation with the High Couri or without such consultation, to he the appropriate Macistrate, having jurisdiction in the matter under the law concerned) which appears to it to be •necessary or expedi enti for removing the difficulty

8. The West Beugal Sepa ral ion of Judicial and I Vest Ben.gal Ordi- Executive Functions Ordinance, 1968, is hereby repealed. VII of tg68. The West Bengal Sepafdtion . of Judicial and Daecutive Funations Act, 1968. [President'S Act THE SCHEDULE (Seg section 3) Classes of Magis- trbteg and their func- tione. Amendments in the Code of Criminal Procedure, 1898 1. After section G, the following section shall be inserted. namely : shall include two 'GA. (1) The word -"Magistrate" classes of Magistrates, namely : — (i) Magistrates appointed in consultation with the High Court, under any of the provisions of this Code, hereinafter referred to as Judicial Magistrates; and (ii) Magistrates appointed without such consultation, under any of the provisions of this Code, here- inafter referred to as Executive Magistrates. (2) Notwithstand ing anything to the contrary contained in any other law for the time being in force but subject to the other provisions of this Code, includ- ing Schedules 1 to IV to the said Code, where under any law the functions exercisable by a Magistrate relate to inquiry into, or cognizance, investigation or trial of, an offence, such function:~ shall be exercisable by a Judicial Magistrate, and where such functions are administrative or execu- t:~ve In nature, or rerate teo prevention of offences, they shall be exercisable by an Executive Magistrate : erovided that any reference to a Magistrate in this Code which by express provision or necessary implication does not refer to a Judicial Magistrate or an Executive Magistrate, shall be construed as a reference to a Magistrate of either class : Provided further that where any doubt. arises whether any reference to a Magistrate should be construed as a reference to a Judicial Magistrate or an Executive Magistrate, the decision of the Sessions Judge of the district in which such doubt arise* shall, subject to any direction given in this behalf by the State Government in consultatiow with the High Court, be final. (3) Nothing contained in sub-sections (1) and (2) shall apply to a Presidency Magistrate who shall -exercise such functions as are provided elsewhere in this Code or under any other law for the time bei_ næ in force.' . The West Bengal Sepa.ration 'of Judicial ahd Daecutivg-- Funations Act; • 1968. 8 of 1968.] 5

2. In sub-section (2) of section 7, for the words "State Governments" , the words "State Government, in consultation with the High Court, " shall be substituted

3. In section 9, for thé words ' 'State Govern_ ment", wherever they occur, the words "State Government, in con- sulcation with the High Court,' shall be substitu ted

4. In section 10,—(1) in sub-section (I), for the ivords "a Magistrate", the words "an Executive Magistrate" shall be sub- stituted ; (2) in sub-section (2), for the words "any Magistrate", the words "'any Executive Magistrate" shall be substituted; and (3) in sub-section (4), after the word "sections", the figures, . word, brackets and. letter ' 88, sub— section (6C), 124, 125," shall be inserted. 50 For section 12, the following section shall be substi- tuted, namely :— "12. (1) The State Government may appoint as many persons as it thinks fit besides the District Magistrate, to be Magistrates of the-first, second or •third class in any district, outside the Presi- dency-town, to be referred to as Executive Magistrates and the State

Government or the District Magistrate, subject to the control of the State Government, may, from time to time, define the local areas within which such Executive Magistrate may exercise all or any of the powers with which they may respectively be invested under this Code. (2) The State Government may, in consultation with the High Court, appoint as many persons as it thinks fit, from among members of the Judicial Service of the State, to be Magistrates of the first, second or third class in any district, outside the Presidency-town, to be referred to as Judicial Magistrates and the State Government in consultation with the High Court or the Sessions Judge, subject to the control of the State Government in consultation with the High Court, may, from time to time, define the local areas within which such Judicial Magistrates may exercise all or any of the powers with which they may be invested under this Code. Appointment of subordinate Magistrates —Judicial and Executive.. The West Bengal Separation of Judicial and Executive Functions Act, 1968. [President's Act (3) The State Government may, in consultation with the High Court, appoint for such period not exceeding five years as many persons, as it considers necessary, who are or had been members of the West Bengal Civil Service (Executive) or the West Bengal Junior Civil Service, to be Judicial Magistrates in any district, outside the Presidency-town and the State Government in consultation with the High Court or the Sessions Judge, subject to the control of the State Government in consultation with the High Court, may define the local areas within which such Judicial Magistrates may exercise all or any of the powers with which they may be invested under this Code. *4) Except as otherwise provided in sub-sections (1), the jurisdiction and powers of Executive Magistrates and Judicial Magistrates so appointed shall extend throughout such district. 5) Appointment and control 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 in accordance with the terms of the said notification."

6. In section 13 the (Z) in sub-section (1), for the word '(Magistrate)', shall be substituted the words "Executive Magistrate" substituted; (2) for sub-section (2), the following sub-section shall be substituted, namely : —"(2) Such Executive Magistrates shall be called Sub-divisional Executive Magistrates." and (3) in the marginal note, for the word "Magistrate" shall be substituted the words "Executive Magistrate" the words substituted

7. After section 13. the following section shall be inserted, namely : "13A. (1) The High Court may place any Judicial Appointment of Sub-divisional Judicial Magistrates. (3) Magistrate of the first or second class, in charge of a sub-division and relieve him of the charge as occasion requires. Such Judicial Magistrates shall be called Sub-divisional Judicial Magistrates. The High Court may delegate its powers under this section to the Sessions Judge of the district where the appointment is to be made, subject to such conditions, if any, as it thinks fit." The West Bengal Separation of Judicial and Executive Functions Act, 1968. 7 Special Executive and Judicial Magistrates. 6 8, For section 14, the following section shall be substituted, namely ' 14. (1) The State Government may confer upon any person who possesses such qualifications as may be specified in this behalf by the State Government, by notification in the Official Gazette, all or any of the powers conferred or conferrable by or under this Code, on an Executive Magistrate of second or third class for a particular purpose or for particular purposes, in any local area, outside the Presidency-town. 2) Such Magistrates shall be called Special Executive Magistrates and shall be appointed for such term the State Government may, by general or special order, direct. (3) The State Government may delegate, with such limitation as it thinks fit, to any officer under its control the powers conferred by sub-section (1). (4) The State Government may, in consultation with the High Court, confer upon any person who holds or has held any judicial post under the Union or a State, or possesses such other qualifications, as may, in consultation with the High Court, be specified in this behalf by the State Government by notification in the Official Gazette, all or any of the powers conferred or conferrable by or under this Code, on a Judicial Magistrate of the first, second or third class in regard to a particular case or class of cases, or in regard to cases generally, in any local area outside the Presidency-town. (5) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term as the State Government may, in consultation with the High Court, by general or special order, direct (6) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before an appropriate Magistrate and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.' 8 The West Bengal Separation of Judicial and Executive Functions Act, 1968. [President's Act 9. In section 15,— wherever it

occurs, the (a) for the word 'Magistrate', words "Judicial Magistrate" shall be substituted ; (b) in sub-section (1)— (i) after the words "State Government" wherever they occur, the words "High Court" shall be inserted; and the words 'Judicial (ii) for the word "Magistrates", "Magistrates" shall be substituted; and (c) in the marginal note, for the word "Magistrates" the words "Judicial Magistrates" shall be substituted.

10. In section 16,—(1) for the words "State Government may, or, subject to the control of the State Government, the the words 'High Court? District Magistrate" , with the previous approval of the State Government" shall be substituted ; the words (2) for the words "Magistrates' Benches", 'Benches of Judicial Magistrates' substituted: and (3) for the words "Magistrates in Session", in Session" " Judicial Magistrates substituted. shall be the words shall be Subordination of Executive Magistrates. Subordination of Judicial Magistrates and Benches

11. For section 17, the following sections shall be substituted, namely : —"17. (Z) All Executive Magistrates appointed under sections 12, 13 and 14 shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business amongst such Magistrates. (2) Every Executive Magistrate in a sub-division shall be subordinate to the Sub-divisional Executive to the general Magistrate, subject, however; control of the District Magistrate. 17 A. (1) All Judicial Magistrates appointed under sections 12, 13A and 14 and all Benches constituted under section 15 shall, subject to the control of (the Sessions Judge, be subordinate to the Sub-divisional Judicial Magistrate and the Sub-divisional Judicial Magistrate may from time to time distribute the business amongst such Judicial Magistrates and Benches consistent with this Code and the rules framed by the High Court. o The West Bengal Separation of Judicial and Executive Functions Act, 1968. 8 of 1968.] 9 (2) The Sub-divisional Judicial Magistrate shall be subordinate to the Sessions Judge. 17B. (1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose court they exercise jurisdiction and the Sessions Judge may from time to time distribute the business amongst such Assistant Sessions Judges consistent with this Code and the rules framed by the High Court. (2) The Sessions Judge may also, when he himself is 17C. 171). unavoidably absent or incapable of acting, make provisions for the (the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Sessions Judge, by the Sub-divisional Judicial Magistrate, and any such Judge or Magistrate shall have jurisdiction to deal with any such application. The High Court, and subject to its control the Sessions Judge. may authorize an Additional Sessions Judge to perform within its jurisdiction all or any of the powers of the Sessions Judge including the powers of supervision and control over the Magistrates appointed in consultation with the High Court. Courts of Sessions and Courts of Judicial and (including Courts of Executive Magistrates Presidency Magistrates) shall be criminal courts inferior to the High Court and Courts of Judicial (excluding Courts of and Executive Magistrates Presidency Magistrates) shall be criminal courts inferior to the Court of Session.". Subordination of Assistant Sessions Judge to the Sessions Judge. Delegation of powers by the High Court,. In Criminal Court,B

12. In section 18,—(1) for sub-section (1), the following sub-section shall be substituted, namely (1) The State Government shall, from time to time, appoint, in consultation with the High Court, a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for the Presidency-town of Calcutta, and shall appoint one of such persons to be Chief Presidency Magistrate." ; (2) in sub-section (2), after the words "State Government the words in consultation with the ment", shall be inserted ; High court," (3) in sub-section (3), after the words 'State Government", the words , in consultation with the High shall be inserted ; Court, ' ' 10 The West Bengal, Separation of Judicial and Executive Functions Act, 1968. [President's Act (4) in sub-section (4), after the words "State Government may", wherever they occur, the words consultation with the High Court, shall be inserted; and (5) after sub-section (4), the following sub-section shall be inserted, namely : — ' (5) The State Government may appoint for such term, 13. [n (7.) in (i) (ii) J) in as it may, by general or special order, direct any person as a Presidency Magistrate specially empowered to carry out all or any of the functions of a Presidency Magistrate except those relating to inquiry into, or cognizance, investigation or trial of, any offence.' section 21, sub-section (1) for the words 'with the previous sanction of the State Government, make", the words 'make, with the previous approval of the High Court," shall be substituted ; in clause (e), for the words "could he

dealt with by a District Magistrate", the words should be dealt with by him" shall be substituted; and sub-section (2), after the word "declare" the words in consultation with the High Court," shall be inserted

14. For sub-section (1) of section 29, the following sub- section shall • be substituted, namely : —'(1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court : Provided that if the Court so mentioned is a Court specified in column (1) of the Table below, such offence shall be tried by the Court of Judicial Magistrate specified against it in column thereof. •The West Bengal Separation of Judicial and Executive Functions Act, 1968. 8 or 1968.] THE, TABLE 11 Name of Court specified in the law Court by which triable (2) Sub-divisional Magistrate. 1. 2. 3. 5. 6. 7. (1) District Magistrate Magistrate of the first class Sub-divisional Magistrate Magistrate of the second class Magistrate of the third class Magistrate Presidency Magistrate 15. In section 29B,— I. 2. 3. 4. 5. 6

7. Judicial Magistrate of the first class. Sub-divisional Magistrate. Judicial Magistrate of the second class. Judicial Magistrate of the third class. Judicial Magistrate. Magistrate Presidency appointed in consultation with the High Court.' Offences with imprisonment not exceeding seven years. (1) for the words 'a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the State Government' , the words "a Sub-divisional Judicial Magistrate or a Chief Presidency Magistrate, or any other Judicial Magistrate specially empowered by the State Government in consultation with the High Court" shall be substituted; and (2) for the words "exercise all or any of the powers conferred thereby". the words 'try such persons' shall be substituted

16. For section 30, the following section shall be substituted, namely :—'30. Notwithstanding anything contained in section 28 or section 29, the State Government may, in consultation with the High Court, invest any Judicial Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years : Provided that no such Judicial Magistrate shall be invested with such powers unless he has, for not less than ten years, exercised powers not inferior to those of a Judicial Magistrate of the first class : 12 The West Bengal Separation of Judicial and Executive Functions Act, 1968. [President's Act Provided- further that if any Judicial Magistrate of the first class had, prior to his appointment as such Magistrate, exercised the powers of an Assistant Sessions Judge, he may be invested with the powers under this section notwithstanding that he had not exercised the powers of a Judicial Magistrate of the first class for ten years."

17. In the marginal note of section 34, for the word 'District' the words 'Sub-divisional Judicial' shall be substituted

18. For section 36, the following section shall be substituted, namely : —'36. All District Magistrates, Sub-divisional Executive Magistrates and Executive Magistrates of the first, second and third classes and all Sub-divisional Judicial Magistrates and Judicial Magistrates of the first, second and third classes have powers hereinafter respectively conferred upon them and specified in the Third Schedule. Such powers are called their "ordinary powers" 19. For section 37, the following section shall be substituted, namely : — - "37. In addition to his ordinary powers— (i) any Judicial Magistrate may be invested by the State Government in consultation with the High Court with any of the powers specified in Part IA of the Fourth Schedule as powers with which he may be invested by the State Government in consultation with the High Court ; (ii) any Judicial Magistrate may be invested by the Sessions Judge to whom he is subordinate with any of the powers specified in Part IB of the Fourth Schedule as powers with which he may be invested by the Sessions Judge ; (iii) any Executive Magistrate may be invested by the State Government with any of the powers specified in Part IIA of the Fourth Schedule as powers with which he may be invested by the State Government ; (iv) any Executive Magistrate may be invested the District Magistrate to whom he is subordinate with any of the powers specified in Part IIB of the Fourth Schedule as powers with which he may be invested by the District Magistrate. ' Ordinary powers of Magistrates —Judicial and Executive. Additional Judicial and Executive Magistrates. 2 Magistrates. c, The West Bengal Separation of Judicial and Executive 1968. 8 1968. 13 Control of the investing powers of the Sessions Judge and the District Magistrate. Powers of Sessions Judge, etc., to be conferred in consultation with the High Court

20. For section 38, the following section shall be substituted, namely : "38.The power conferred on the Sessions Judge by clause (zi) of section 37 shall be exercised subject to the control of the High Court and

the State Government and the power conferred on the District Magistrate by clause (Qh•) o? that section shall' be exercised subject to the con Crol of the State Government."

21. After section 38, the following section shall be inserted, namely : '38A. Whenever, under any provision of this Code, law for any other the time being or in force, any jildicial power is to be conferred by the State Government on a Sessions J udge or an Additional or Assigtant Sessions Judge or Sub-divisional Judicial Magistrate or the Chief Presidency Magistrate or any other Judicial Magistrate, any such Judicial or Magistrate is specially empowered to exercise such power, the order conferring sue h power or empowering the exercise of such power shall be made by the State Government in consultation with the High Court no twith- standing that such provision may not expressly so provide. Erptanation.— For the purpose of this section the question whether any power is judicial shall be decided by the State Government in consultation with the High Court and such decision shall be final."

22. In section 40, for the words ' 'State Government otherwise' the words "State Government, in consultation with the High Court, where necessary, otherwise" shall be substituted

23. In section 41, (1) in sub-section (1), after the words State Government' , the words where the or, conférment of power was in consultation with the High Court, the State Government, in consultation with the High Court, " shall be inserted; and (2) for sub-section (2), the following sub-section Shall be substituted, namely : —(2) Any power conferred by the Sessions Judge or the District Magistrate may be withdrawn by the Sessions Judge or the District Magistrate, as the case may be." The 24. In Magistrate, ' West BengãZ Separation of Judiciaz and Dcecutiõe Funations Act, 1968. [president's Act ' ' Sub-divisional section 62, for the words ' 'Sub-divisional Executive the words Magis irate, or to the Sub-divisional Judicial Magistrate" shall be substituted. section 75, for the word 25. In sub-section (1) of shall be the words "Judicial Magistrates" "Magistrates' substituted

26. In sub-section (1) of section 78, for the words ' 'or Sub-divisionai the words Sub-divisional Magistrate Judicial Sub-divisional 'Magistrate or Magistrate" shall be substituted

27. In section the words "District.(1) In sub-section (2), after Sub-divisionai the words Magistrate", shall be inserted ; Judicial Magistraie" (2) iu sub-section (6B), after the words "Distriel Sub-divisionai words Magistrate' Judicial Magistrate" sha.ll be inserted; and (3) for the proviso to sub-section (6C), the following proviso shall be substituted, namely : — "Provided that if it is preferred or made in the Court of a District Magistrate or a Sub-divisional Judi- Cial Magistrate or Chief Presidency Magistrate. such District Magistrate, Sub-divisional Judicial Magistrate or Chief Presidency Magistrate Inay make it over for disposal to anv Magistrate subordinate to him, and such Maugistrate shall have all the powers and jurisdiction in respect of such claim or objection as if the order of attachment had been issued by such Magis- trate and the claim or objection had been originally preferred or made before him." 28. In section 95, before the words "District Magis- trate", wherever they occur, the words "Sub-divisional Judi- Cial Magistrate," shall be inserted

29. In sub-section (2) of section 96, before the words the words "Sub-divisional Judicial "District Magistrate" , shall be inserted.Magistrate, ' 30. In sub-section (1) of section 98, (7) in the first paragraph, for the words ' 'Sub-divisional Magistrate, Presidency Magistrate or", the words "Sub-divisional Judicial or Executive Magistrate, Presidency Magistrate or Judicial or Executive" shall be substituted; and (2) in the fourth paragraph. for the words ' 'Sub-divisional fhf5 wards "Sub-divisional Judicial Magistmni e' or Executive Magistrate" shall be substituted. The Wejt- Bengal Separation of Judicial and' Egeoutive Funations Abt, 1968; 8 of 1968.] 15 e e 31. Tn sub-section (1) of section 106, for the words "District Magistrate, a Sub-divisional - Magistrate or a Magistrate" ' , the words ' 'Sub-divisional Judicial Magistrate or a Judicial- Magistrate" shall be substituted

32. In sub-section (lh of section 167, after the words 'nearest Magistrate" the words ' 'having jurisdiction" shall Oe inserted

33. In sub-section (3) of section 170, for the words "District •Magistrate or Sub-divisional Magistrate" words ' 'Sub-divisional Judicial Magistrate" shall he substituted

34. In sub-section (1) of section 186, for the words "District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the State Govern- ment, a" the words "Sub-divisional Judicial

Magistrate, or, if he is specially empowered in this behalf by the State Government, in consultation with the High Court, a Judicial" shall be substituted

35. In sub-section (1) of section for the words "District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate" the words "Sub-divisional Judicial Magistrate, such Magistrate, shall send the person arrested to the Sub-divisional Judicial Magistrate" shall be substituted

36. In section 190,—(1) in sub-section (1), for the words "District Magistrate or Sub-divisional Magistrate, and any other" , the words "Sub-divisional Judicial Magistrate, and any other Judicial" shall be substituted ; (2) after sub-section (1), the following sub-section shall be inserted, namely : '(IA) Any District Magistrate or Sub-divisional Executive Magistrate or any other Executive Magistrate of the first or second class specially empowered in this behalf by the State Government may take cognizance of any offence upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.' , (3) for sub-section (2), the following sub-section shall be substituted, namely : (2) The State Government, in consultation with the High Court, or the Sessions Judge subject to the or special orders of the State Government in consultation with the High Court, may empower any Judicial Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial." , (d) in sub-section (3), for the words "State Government may empower any", the words "State Government, in consultation with the High Court, may empower any Judicial" shall be substituted

37. Section 191 shall be re-numbered as sub-section (1) thereof and,—(1) in sub-section (1) as so re-numbered, for the word wherever it occurs, the words "Magistrate" , "Judicial Magistrate" shall be substituted; and as so re-numbered, the (2) after sub-section (1) inserted, be shall following sub-section namely : ' (2) When an Executive Magistrate takes cognizance of an offence under sub-section (IA) of section 190, he shall transfer the case to a Judicial Magistrate having jurisdiction to try the same and shall send the accused to such Magistrate, or may, subject to the provisions of this Code, release him on bail on taking from him a bond with or without surety for his appearance before such Magistrate." 38. In section 192,— (1) in sub-section (1), for the words "or Sub-divisional Executive Magistrate" , the words "Magistrate or Sub-divisional Judicial Magistrate" shall be substituted ; (2) for sub-section (2), the following sub-section shall be substituted, namely : — (2) Any District Magistrate may empower any Executive Magistrate of the first class who has taken cognizance of any case to transfer the same for inquiry to any other specified Executive Magistrate within the district who is competent under this Code to hold such inquiry and (3) after sub-section (9), the following sub-section shall be inserted, namely : (3) Any Chief Presidency Magistrate or Sessions Judge may empower a Presidency Magistrate or any Judicial Magistrate of the first class, as the case may be, subordinate to him who has taken cognizance of any case to transfer the case to any other Presidency Magistrate or Judicial Magistrate, as the case may be, who is competent under this Code to try the accused or commit him for trial, and such Presidency Magistrate or Judicial Magistrate may dispose of the case accordingly." . 3B. section 193,— (1) in sub-section (1), for the word "Magistrate", the words "Judicial Magistrate" shall be substituted; and (2) in sub-section (2), after the words "State Government, in consultation with the High Court," shall be inserted. 40, In section 206, for sub-section (1), the following sub-section shall be substituted, namely : — Sub-divisional or any Presidency Magistrate, Judicial Magistrate or Judicial Magistrate of the first class or any Judicial Magistrate not being a Judicial Magistrate of the third class, empowered in this behalf by the State Government, in consultation with the High Court, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court." . 41, In section 249, for the words "a Magistrate of the first class, or with the previous sanction of the District Magistrate" the words "a Judicial Magistrate, any other Magistrate of the first class, or with the previous sanction of the Sessions Judge, any other Judicial Magistrate" shall be substituted

42. In section 260,—(1) in sub-section (1), for clauses shall following clauses namely : '(a) the Sub-divisional Judicial (b) any Judicial Magistrate specially empowered in this behalf by the State Government in consultation with the High Court, and (c) any Bench of Judicial Magistrates vested with the powers of a Judicial Magistrate

of the first class and specially empowered in this behalf by the State Government in consultation with the High Court", 18 The West Bengal Separation of Judicial and Executive Functions Act, 1968. [President's Act for the word (2) in the proviso to sub-section (1), "Judicial Magistrate" "Magistrate", the words shall be substituted; and (3) in sub-section (i) for the word "Magistrate" wherever it occurs, the words shall be substituted; and (ii.) for the word "Bench", wherever it occurs, the words 'Bench of Judicial Magistrates' shall be substituted]

43. In section 261, for the words "State Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class", the words 'State Government, in consultation with the High Court, may confer on any Bench of Judicial Magistrates vested with the powers of a Judicial Magistrate of the second or third class' shall be substituted

44. In section 263,—the words. (1) for the words "Magistrate or Bench of", 'Judicial Magistrate or Bench of Judicial' shall be substituted; and (2) after the words "State Government may", the words shall be— in consultation with the High Court," inserted

45. In sub-section (2) of section 265, for the words—'authorize any Bench of', the words "in consultation with the High Court, authorize any Bench of Judicial" shall be substituted

46. In section 269, after the words "State Government", in consultation with the High Court, wherever they occur, the words "High Court" shall be inserted

47. In section 387 (1) in sub-section (i) for the words "District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or 'Sub-divisional Judicial Magistrate or any Judicial" shall be substituted; and (ii) in the proviso, for the words 'District Magistrate', wherever they occur, the words 'Sub-divisional Judicial Magistrate' shall be substituted; and (2) in the proviso to sub-section (1) and in the remaining sub-sections, for the word 'Magistrate', wherever it occurs, the words "Judicial Magistrate" shall be substituted. The West Bengal Separation of Judicial and Executive Functions Act, 1968. 8 1968a. 19 48. In section 338, for the words "Magistrate or the words 'Judicial Magistrate or the Sub-District', divisional Judicial" shall be substituted. 49. (1) (2) 50. (1) (2) 51. "rates", In section 346,— wherever it occurs, the word "Magistrate", the words "Judicial Magistrate" shall be substituted, and in sub-section (1), for the words 'District Magistrate' the words "Sub-divisional Judicial Magistrate" shall be substituted. In section 349, in sub-sections (1) and (IA),— for the word "Magistrate", wherever it occurs, the words "Judicial Magistrate" shall be substituted; and for the words "District Magistrate or Sub-divisional wherever they occur, the words "Magistrate", shall be "Sub-divisional Judicial Magistrate" substituted. In section 35DA, for the words "Bench of Magistrate" the words "Bench of Judicial Magistrates" shall be substituted. 52. (1) (2) (3) 53. In section 357,— after the words "State Government may", wherever in consultation with the High Court, for the word "Magistrate" wherever it occurs, the words "Judicial or Executive Magistrate" shall be substituted; and for the word "Magistrates", the words "Judicial or Executive Magistrate" shall be substituted. In section 387, for the words "District Magistrate", the words "Sub-divisional Judicial Magistrate" shall be substituted

54. In section 406, for the words "other Magistrate", the words "other Executive Magistrate" shall be substituted

55. In section 406A,—the District Magistrate (1) in clause (b); for the words "other Magistrate", the words "any other Magistrate" shall be substituted; and (P) clause (c) shall be omitted. 20 The West Bengal Separation of Judicial and Executive Functions Act, 1968. [President's Act In section 408,— a District Magistrate or any for the words or any Judicial" shall be the words other", substituted; and in clause (c) of the proviso, for the word 'Magistrate' the words "Judicial Magistrate" shall be substituted. In section 413,— for the words "District Magistrate", 'Sub-divisional Judicial Magistrate' substituted; and for the word "Magistrate", wherever it occurs, the words "Judicial Magistrate" shall be substituted. In sub-section (1) of section 425, for the following shall be substituted, 'passed by a Magistrate other than the Sub-divisional Judicial Magistrate, the certificate shall be sent through the Sub-divisional Judicial Magistrate and if the finding, sentence or order was recorded or passed by an Executive'

59. In section 435, (7) in sub-section (1),—(i) for the words 'District Magistrate, or any Sub-divisional Magistrate empowered by the State Government' the words "any Sub-divisional Government" , Judicial Magistrate

empowered by the State Government in consultation with the High Court" shall be substituted; and (ii) in the Eoptanation, for the words "Magistrates, whether exercising original or appellate juris- ' ' Judicial Magistrates" diction," , the words shall be substituted ; (2) in sub-section the (i) for the words "Sub-divisional Magistrate" , words "Sub-divisional Judicial Magistrate" shali be substituted; and the words (ii) for the words ' 'District Magistrate", "Sessions Judge" {hall be Substituted ; The. Wust BenŪaL Sépbrâtiop of Judicial and. Daccutive Funations Abt, 1968. 8 of 1968.] (3) in sub-section (4), for the . -words "Distriet Magis- trate" , the • words ' 'Sub-divisional Judicial Magistrate" Bhall be substituted; and after sub-section (4), the following sub-sections shall be inserted, namely : — ') The Hiffh Comt or the Court of Session or any District Magistrate or, any Sub-divisional Executive Mao•istrate empowered by the State Government in this behalf, may call, for and examine the record of any proceeding before any subordinate Executive Magistrate for the purpose of satisfying itself or himself, as the case may be , as to the correctness, legality or propriety of any order recorded or passed and as to the regularity of any proceeding before such subordinate Magistrate and may., when calling for such record, direct that the execution of any order be suspended and if the person is in confinement, that he be released on bail or On his own bond pending the examina- tion of the record. (6) If any Sub-divisional .Executive Magistrate, acting 60. (1) (2) (3) 61. (1) (2) 62. District under sub-section (5), considers that any such proceeding or order is illegal or improper, he shall forward the record with such remarks thereon as he thinks fit, to the. District Magistrate. ". In section 436,— for the words "District Magistrate", whoyever they occur, the words "Sub-divisional Judicial Magis- trate" shall be substituted; for the word "Magistrates" , the words Magistrates" shall be substituted; and for the word "Magistrate", the words Magistrate" shall be substituted. In section 437 for the words "Judicial ' ' Judicia L "District Magistrate" wherever they occur, the words ' 'Sub-divisional Judicial Magi8- trate" shall be substituted; and for the word "Magistrate", wherever it occurs, the words Q'Judicial Magistrate" shall be substitu- ted. In sub-section (1) of section 498, for the words ' 'or Magistrate" , the words District Magistrate or Sub-divisional Judicial Magistrate" shall be substituted. 22 The West Bengal Separation of Judicial and E cecitti've In section 479,—•• for the words G 'Sub-divisional Judicial Magistrate" shall be substituted ; aud for the word "Magistrate", wherever it oco•ars, the words "Judicial Magistrate" shall be substituted. 111 section 488,— ill sub-section (1), for the words ' 'District Magis- trate, a Presidency Magistrate, a Sub-divisional Magistrate", the words "Sub-divisional Judicial Magistrate, a Presidency Magistrate" shall be substituted ; aud Functions Act, 1968. [President's Act ' 'District Magistrate" , the words 63. (1) (2) 64. (1) (2) for the word ' 'Mlagistrate", whéréver it occurs, the words "Judicial Magistrate" shall be substituted

65. In sub-section (1) of section 504, for the words "to the District Magistrate", the words and figures if the -purpose referred to in section 503 relates to functions exereis- able by Executive Magistrates, to the District Magistrate within the local limits of whose jurisdiction the witness is to be found aud in other cases to the Sub-divisional Judicial Magistrate" shall be substituted

66. In section 505, after sub-section (2), the following sub-section shall be inserted, namely : — " (3) Upon receipt of the Commission, the Sub-divisional Judicial Magistrate, or such Judicial Magistrate subordinate to him as he may appoint in this be- half, may compel the attendance of, and examine, the witness as if he were a witness 111 a case pend- ing before himself." 67. 111 section 515 for the words ' 'or District Magis- irate shall be appealable to the District Magistrate", the words "shall be appealable to the Sessions, Judge" shall be substituted

68. In section 518,—(1) for the words "District Magistrate or to a Sub- divisional Magistrate" , the words "Sub-divi - sional Judicial Magistrate" shall be substituted ; and (2) ill the marginal note, for the words "District or Sub-divisional Magistrate" the words "Sub- divisional Judicial Magistrate" shall be substituted. o 6 The Deqgal _ Separation. and' Bæöuti've Fun,ctiqni IA ct, 1968. a of 1968.1 69. For sub-section (2) of section 524, the following sub* section shall be substituted, namely : — (2) In the case of every order passed under this section by a Magistrate, other than the Presidency Magis- trate, an appeal shall lie to- the Sessions Judge and in the case of an order passed by a Presidency Magistrate an appeal shall lie to the High Court." 70. In section 552, after the words {'District Magis- "or Sub-divisional Judicial Magisfrate" the words ',tiate" , •shall be inserted

71. In sub-section (2) of section 554, after clause (d), 4 be following clause shall be inserted, namely : — (e) make rules regulating the control and supervision over different classes of Magistrates and the control, supervision and inspection of different classes of Courts :"

72. In sub-section (2) of section 559, for the words "the :District Magistrate outside such towns", the words There the District Magistrate in the case of Executivé Magis- tzates and the Sessions Judge in the case of Judicial Magis- Gates" shall be substituted.

73. In section 561, for the words "District Magistrate", wherever they occur, the words "Sub-divisional Judicial Magistrate" shall be substituted. **74.** (1) (2) **75.** (1) In the proviso to sub-section (1) of section 562,— for the word "Magistrate", wherever it occurs, the "Judicial Magistrate" shall be words substituted ; the words after the words "State Government" , 'in consultation with the High Court' shall be inserted; and for the words ' 'Sub-divisional Magistrate" , the words "Sub-divisional Judicial Magistrate" shall be substituted. In section 565,— in sub-section (1), for the words. "District Magis- irate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate", the words "Sub-divisional ' Judicial Magistrate or Judicial Magistrate of the first class, such Court or Judicial Magistrate" shall be substituted ; and ill sub-section (3), after the words "Government may" , the words in consultation with the High Court," shall be inserted. 21 The - West Bengal Separation o] Judicial and Executive Functions Act, 1968. [President's ACE 76. After section 565, the following Schedule shall be inserted, namely :— "SCHEDULE 1 (See section GA) IN RELATION TO DIFFERENT CLASSES OF MAGIS— TRATES (SUBJECT TO SPECIFIC PROVISIONS IN THE CODE). Explanation.—Magistrate does not include a Pres idenc•y Magistrate. Sections. 28, 29, 29B, 1. 2

3. Exclusive to the Judicial Magistrates.- Exclusive tG the Executive Magistrates. Concurrent to both the Judieial and Executive Magistrates

77. In Schedule 11, 33, 34, 35, 57, 106, 155, 156F 165, 291, 348 , 380, 387, 389, 408, 409 414 442 173, 175, 186, 187, 190, 191, 428 , 433 , 466 469, 471, 473, 475 157, 158, 159, 193, 200-265, 3392, 346, 347, 30, 32,- 166, 170- 337, 338,, 349, 350A, 352, 411, 436, 467, 476, 565.437 , 468 , 413, 439 478, 479 484, 487, 488, 489, 490, 512 518, 532, 556, 557, -561, 562 45(3), 107-153, 176, 190(1A) 191(2), 196A(2), 196B, 492(2), 549(2). 8, 22A, 22B, 42', 44, 45(1), 54, 60-65, 68-105A, 126A, 164, 167, 169, 192, 197. 344, 350, 354-364, 367, 406. 406A, 425, 435, 438, 485, 497, 498, 502, 503-506, 508A, 509, 514, 514A, 515, 516, 523, 524, 525, 528, 529, 530, 533,. 539, 539A, 539AA, 539B, 540A. 541, 552, 553, 559.". 482, o o (i) to the "Explanatory Note", the following shall- be added, namely : 'The words Magistrate or Presidency Magistrate- wherever they occur in the entries in the eighth column of this Schedule under the heading ' 'By what court triable" shall mean a Magistrate or Presidency Magistrate, as the case may bey appointed in consultation with the Court.' , The West Separd+io.n . ' of J•udiéiai end Dececutil'â; Funatiöns Ac6, 1968. of 1968.] (ii) in column 8, in the entries under the heading "By what court triable" , "194A" in column 1,— (a) against the entry the words (i) for the words "District Magistrate", ' 'Sub-divisional Judicial Magistrate" shall be substituted ; and (ii) after the words ' 'State Government in thie the words "in consultation with the behalf" High Court" shall be inserted; and for the "'376" in column 1, (b) agamst the entry words "District Magistrate" the words "Sub- Magistrate" shall divisional Judicial substituted

78. For Schedule 111, the following Schedule shall substi tuted, namely : —"SCHEDULE III (See section 36) sap.ns!bew 10 S*9Mod K.aeu!P0 be be e Ewplanation.—Magistrate does not include_ a Presidency Magistrate. A.—dudicial Magistrates Z.—Ordinary Powers of a Judicial Magistrate of the Thira Class (I) Power to arrest or direct the arrest of, and commit to custody, a person committing an offence in his presence, section 64. (2) Power to arrest, or direct the arrest in his presence ef,, an offender, section 65. (3) Power to endorse a warrant, or to order the removal- of any accused person arrested under a warrant, sections 8-3, 84 and 86. (4) Power to issue proclamations in cases judicially before him, section 87. (5) Power to attach and sell property and to dispose of claims to attached property in cases judicially before him* section 88. 26 The West Bengal Ececutive (6) Power to restore Separation of. Judicial and Fun;ations Act, 1968. [president's- Act attached property, section 89. (7) to require search to be made for letters and telegrams, section 95. (8) Power to issue search-warrant, section 96. (9) Power to endorse a search-warrant and order delivery •of thing found, section 99. (10) Power to oyder detention (not being detention in the custody of the police) of a person during a pol_ice-investiga- tion, section 167. (11) Power to postpone issue of process and inquire into 'case himself, section 202. (12) Power to detain an offender found in Court, sec. ,tion 351. (13) Power to issue commission for examination of •witness, section 503.

(14) Power to apply to Sub-divisional Judicial Magistrate issue commission for -to ex_amination witness, :section 505 (3). (15) Power to recover forfeited bond for appearance •before Magistrate's court, section 614, and to require fresh security, section 514A. (16) Power to make order as to custody and disposal of oroperty pending inquiry or trial, section 516A. (17) Power to make order as to disposal of property, -sec- 517. (18) Power to sell property of a suspected character, section 525. (19) Power to require affdavit in support of application, section 539A. (20) Power to make local inspection, section 539B. 11.—OTdinary Powers of a Judicial Magistrate of the second Class. (1) The ordinary powers of a Judicial Magistrate of the 'third class. (2) Power to order the police to investigate an offence in -eases in which the Magistrate has jurisdiction to try or commit {or trial, section 155. (3) Power to postpone issue of process and to inquire into a case or direct investigation, section 202. O The West Bengal -Sepatatiön. of Judicial and * Doec.utioé Fun,qtiÖnS Act; : i968. a of 1968.] 27 Ill.—Ordinary Powers of a Judicial Magistrate of the First (1) The ordinary powers of a Judicial Magistrate of the Second Class. (2) Power to direct warrant to landholders, section 78. (3) Power to issue search-warrant otherwise than in course •of an inquiry, section 98. (4) Power to issue search-warrant for discovery of persons • wrongfully confined, section 100. (5) Power to require execution of the bond, section 106. (J) Power to discharge surety, section 126A. (7) Power to record statement or confession, section 164. (8) Power to authorize detention of a person in the custody -of the police during a police-investigation, section 167. (9) Power to commit for trial, section 206. (10) Power to stop proceedings when no complaint, sec- "tion 249. (11) Power to tender pardon to accomplice during inquiry into case by himself, section 337. (12) Power to make orders of maintenance, sections 488 -and 489. (13) Pãwer to recover penalty on forfeited bond, section •514. (14) Power to require fresh security, section 514A. (15) Power to recall case made over by him to another -Magistrate, section 528(4). (16) Power to make order as to first offenders, section 562. (17) Power to order released convicts to notify residence, r-section 565. .1V.&Ordinary Powers of a Sub-divisional Judicial Maoistrate appointed under section 134 (1) The ordinary powers of a Judicial Magistrate of the -first Class. (2) Power to try juvenile offenders, section 29B. (3) Power to order police investigation into coznizable •cases, section 156. (4) Power to receive report of police officer and pass order, •section 173. (5) Power to issue process for person within local juris- diction who has committed an offence outside the local juris- diction, section 186. 28 The West Bengal — Separation of Judicial and Eaecutive Functions Act, 1968. [Presideniis Act (6) Power to entertain complaints, section 190(1) (a). (7) Power to receiv.e police-reports, section (8) Power to entertain cases without complaint, section (9) Power to transfer cases to a Subordinate Magistrate, section 192. (10) Power to try summarily, section 260. (11) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349. (12) Power to make enquiry, section 436. (13) Power to order commitment, section 437. (14) Power to report ease to High Court, section 438. (15) Power to sell property alleged or suspected to have been stolen, etc., section 524 (16) Power to withdraw cases, and to try or refer to them for trial, section 528. (17) Power to compel restoration of abducted females, section 552. B.—Executive Magistrates I .—Ordinary P omers of an Ececutive Magistrate of the Third Class. (1) Power to arrest or direct the arrest of, and to commit to custody, a person committing an offence in his presence, section 64. (2) Power to arrest, or direct the arrest in his presence of, an offender, section 65. (3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 86. (4) Power to issue proclamations in cases judicially before him, section 87. (5) Power to attach and sell property and to dispose of claims to attached property in cases judicially before him, section 88. (6) Power to restore attached property, section 85. (7) Power to require search to be made for letters and telegrams, section 95. (8) Power to issue search-warrant, section 96. (9) Power to endorse a search-warrant and order delivery of thing found, section 99. o The West Benggl, Separation. of Judicial _ and Daecutive Functions Act) 1968. 8 i968.l 29 (10) Power to command unlawful assembly to disperse, section 127. (11) Power to use civil force to disperse unlawful •assembly, section 128. (12) Power to require military force to be used to disperse unlawful assembly, section 130. (13) Power to order detention (not being detention in tho custody of the police) of a person during a police-investiga- tion, section 167. (14) Power to Issue commission, section 503. (15) Power to apply to District Magistrate for examination on commission, section 505(1). (16) Power to recover forfeited bond for appearance before Magistrate's court, section 514 and to require fresh security, section 514.A. (17) Power to make order as to disposal of property, sec- Fon 517. (18) Power to sell property of a suspected character, sec- tion 525. (19) Power to require affidavit in support of appliéation, section 539 A. (20) Power to make local inspection,

section 539B. 11.—Ordinary Powers of an Executive Magistrate of the Second Class The ordinary powers of an Executive Magistrate of the Third Class. 111 Powers of an Executive Magistrate of the First Class (1) The ordinary powers of an Executive Magistrate of the Second Class. (2) Power to issue search-warrant otherwise than in course of an inquiry, section 98. (3) Power to issue search-warrant persons wrongfully confined, section 100. (4) Power to require security to section 101L 107. for discovery of keep the peace, 30 The West Bengal Separation of Judicial and Executive Functions Act, 1968. [President's Act— (5) Power to require security for good behaviour, section 109. (6) Power to discharge sureties, section 126A. (7) Power to make preliminary orders as to local nuisances, section 133. (8) Power to make preliminary orders in possession cases, sections 145, 146 and 147. (9) Power to record statements and confessions during a police-investigation, section 164. (10) Power to authorize detention of a person in the custody of the police during police-investigation, section 167. (11) Power to hold inquest, section 174. (12) Power to recall case made over by him to another Magistrate, section 528 (4). a Sub-divisional Executive Magistrate IV.—Ordinary Powers of Magistrate, appointed under section 13 (I) The ordinary powers of an Executive of the First Class. (2) Power to direct warrants to, landholders, section 78- (3) Power to require security for good behaviour, section 110. (4) Power to make order prohibiting repetitions of nuisances, section 143. (5) Power to make orders under section 144. (6) Power to depute subordinate Magistrate to make local inquiry, section 148. (7) Power to take cognizance of offences otherwise than on police-reports, section 190(1A). (8) Power to transfer cases to a subordinate Magistrate, section 192. (9) Power to sell property alleged or suspected to have been stolen. etc. section 528. 710) Power to withhold evidence, section 528. c- The West Bengal Separation of Judicial and Executive Functions Act, 1968. 8 of 1968. 177.—Ordinary Powers of a District Magistrate (1) The ordinary powers of a Sub-divisional Executive Magistrate. (2) Power to require security for good behaviour in case of sedition, section 108. (3) Power to discharge persons bound to keep the peace section 124. (4) Power to cancel bond for keeping the peace, section 125. (5) Power to order preliminary investigation by police-officer not below the rank of Inspector in certain cases, section 196B. (6) Power to call for records, section 435. (7) Power to report case to High Court, section 438, (8) Power to appoint person to be Public Prosecutor in particular case, section 492(2). (9) Power to compel restoration of an abducted female, section 552." 79. For Schedule I V, the following Schedule shall be substituted, namely : — "SCHEDULE IV (See sections 37 and 38) ADDITIONAL POWERS WITH WHICH MAGISTRATES MAY BE INVESTED Explanation.—Magistrate does not include a Presidency Magistrate

PART I A POWERS WITH WHICH JUDICIAL MAGISTRATES MAY BE INVESTED BY THE STATE GOVERNMENT IN CONSULTATION WITH THE HIGH COURT 1.—Powers with which a Judicial Magistrate of the Class may be invested (1) Power to try juvenile Offenders, section 29B. (2) Power to issue process for person within jurisdiction, who has committed an offence outside the jurisdiction, section 186- First local. 32 The West Bengal Separation of Judicial and Executive Functions Act, 1968: President's Act (3). Power to take cognizance of offences upon complaint, section (4) Power to take cognizance of offences upon police-reports, section 190(1)(b). (5) Power to take cognizance of offences without complaint, section (6) Power to try summarily, section 260. (7) Power to sell properties alleged or suspected to have been stolen, section 524. (8) Power to try cases under section 124A of the Indian Penal Code. 11.—Powers with which a Judicial Magistrate of the Second Class may be invested (1) Power to try juvenile offenders, section 29B. (2) Power to record statements and confessions, section (3) Power to authorize detention of a person in the custody of the police during police-investigation, section 167. (4) Power to take cognizance of offences upon complaint, section 190(1)(a). (5) Power to take cognizance of offences upon police-reports, section 190(1)(b). (6) Power to take cognizance of offences without complaint, section 190(1)(c). (7) Power to commit for trial, section 206. (8) Power to make order as to first offences, section 562. III.—Powers with which a Judicial Magistrate of the Third Class may be invested (1) Power to try juvenile offenders, section 29B. (2) Power to take cognizance of offences upon complaint, section (3) Power to take cognizance of offences under police-reports, section . IV.—Powers with which a Sub-divisional Judicial Magistrate may be invested Power to call for records, section 435. o - The West Bengal Separation of Judicial and Executive Functions Act, 1968. 8 of 1968. 177.—Powers with which Judicial Magistrates may be invested. by the Sessions Judge I.—Powers with which a Judicial Magistrate of the First Class may be invested (1) Power to take cognizance of offences upon complaint; section (2) Power to take cognizance of offences upon police-reports, section

190(1)(b). (3) Power -to transfer cases; section 192. 11 .—Powers with which a Judicial Magistrate of the Second Class may be invested (1) Power to take cognizance of offences upon complaint, section 190(1)(a). (2) Power to take cognizance of offences upon police- reports, section ; / L—Powers with which a Judicial Magistrate of the Third Class. may be invested (1) Power to take cognizance of offences upon complaint, section 190(1)(a). (2) Power to take cognizance of offences upon police- reports, section 190(1)(b). PART IIA Powers with which Executive Magistrates may be invested by the State Government or 1 with which an Executive Magistrate of the First Class may be invested (1) Power to require security for good behaviour in case of seditious, section 108. (2) Power to require security for good behaviour, section 110. (3) Power to make order" prohibiting repetitions of nuisances, section 143, (4) Power to make order" under section 144. The West Bengal Separation of Judicial and Executive Functions Act, 1968. [President's Act (5) Power to take cognizance of offences otherwise than on police-reports, section 190(1A)-. (6) Power to sell property alleged or suspected to have been stolen, etc., section 524. I-I — Powers with which an Executive Magistrate of the Second Class may be invested. (1) Power to make order" prohibiting repetitions of nuisances, section 143. (2) Power to make orders under section 144. (3) Power to record statements and confessions during a section 164. (4) Power to take cognizance of offences otherwise than on police-reports, section 190(1A). 111 —Powers with which an Magistrate of the Third Class may be invested (1) Power to make orders prohibiting repetitions of nuisances, section 143. (2) Power to hold inquest, section 174. IV .—Powers with which a Sub-Divisional Executive Magistrate may be invested Power to call for records, section 435. PART IIB Powers with which Executive Magistrates may be invested by the District Magistrate with which an Executive Magistrate of the First Class may be invested (1) Power to make orders prohibiting repetitions of nuisances, section 143. (2) Power to make orders under section 144. (3) Power to transfer cases, section 192. I .—2Powers with which an Executive Magistrate of the Second Class may be invested (1) Power- to make orders prohibiting repetition. of nuisances, section 143. (2) . Power to make orders under section 144. (3) Power to hold inquest, section 174. 111 .—Powers with which a District Magistrate of the Third Class may be invested (1) Power to make orders. prohibiting repetitions . of nuisances, section 143. (2) Power to hold inquest, section 174.". O The West Bengal Separation of Judicial and Executive Functions Act, 1968. 8 of 1968.1 Reasons for the enactment, With a view to give effect to the directive principle. article 50 of the Constitution to separate -the Judiciary from the Executive in the public services the State of West Bengal, the Governor of West Bengal promulgated the West Bengal Separation of Judicial and Executive Functions Ordinance, 1968 (West Bengal Ordinance of 1968) the 26th January, 1968. The salient provisions. of the Ordinance are as under : — (v) Magistrates are classified into two classes, that is to say, those who are appointed in consultation with the High Court referred to as the Judicial Magistrates and those who are appointed without, such consultation, referred to as the Executive Magistrates. The Judicial Magistrates will primarily - deal with investigation, cognizance, Inquiry into and trial of any offence under the Indian Penal Code or under any other local or special law, while the Executive Magistrate will be mainly" concerned with prevention of Offences and other executive and administrative functions. (ii) The- functions of the two classes of Magistrates are— separated mainly by amending the Code . of Criminal Procedure, 1898 in its application to the State of West Bengal. Subject to the provisions of the Code of Criminal Procedure, the functions of the different classes of Magistrates are categorised as exclusive functions of the Judicial Magistrates or exclusive functions of the Executive Magistrates and the concurrent functions of both the classes of Magistrates without specifically amending the body of the Code of Criminal Procedure either as Judicial or Executive Magistrate except where necessary. (iii) So far as the Presidency Magistrates are concerned the Chief Presidency Magistrate, Additional Chief Presidency Magistrates and other trying . Presidency Magistrates will be appointed in consultation with the High Court and they will discharge all the functions assigned' to them or extended to them under the provisions of the Code of Criminal . Procedure, 1898, but- the State -Government can also appoint Presidency Magistrates without consulting the High Court. and such Presidency Magistrates may perform other functions of Presidency Magistrates under the Code of Criminal Procedure, 1898 excluding .those relating to cognizance, investigations, inquiry into or trial of any offence. 86 -F, Executive and Act, 'President's Act of 1968.1 (it) Though the functions relating to prevention of offences have been allotted to the Executive Magistrates, provision has been made- for a appeal and revision against orders passed by such Magistrates to the Judge or to the High Court provided the order is passed -in a proceeding

under the Code of Criminal Procedure, 1898. (t) The post of Additional District Magistrate (Judicial) has been eliminated and while some powers exercisable by him have been assigned to the Sessions Judge, of his minor powers have been allotted to the Subdivisional Judicial Magistrate. (Q) Suitable provision has been made for proper control and supervision by the Sessions Judge or the Additional Sessions Judge over the Judicial Magistrates in the district or sessions division. (c-i-i) Though the Ordinance primarily seeks to amend the Code of Criminal Procedure, 1898, yet, section 29 of that Code has been so amended that Judicial Magistrates alone can try a case of any offence whether under the Indian Penal Code or under any other special or local law. Here the term "Magistrate" has been used without amending those laws passed or administered by the Union or the State Government. The measure seeks to replace the West proposed Bengal Separation of Judicial and Executive Functions Ordinance, 1968 (West Bengal Ordinance VII of 1968). 3. As it is practicable to refer the present legislation to the Consultative Committee of Parliament on West Bengal legislation, it has been decided, in view of the urgency of the matter, to enact the present legislation without such reference.

