

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act, 1958.

1958 : Bom.XCVII]

GOVERNMENT OF GUJARAT

LEGISLATIVE PARLIAMENTARY AFFAIRS DEPARTMENT

BOMBAY ACT NO. XCVII OF 1958

The Bombay Separation of Judicial And Executive Functions (Extension) and The Code of Criminal Procedure (Provision For Uniformity) Act, 1958

(As modified upto the 31st October, 2006)

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act, 1958.

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**THE BOMBAY SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS (EXTENSION)
AND THE CODE OF CRIMINAL PROCEDURE (PROVISION FOR UNIFORMITY) ACT, 1958.**

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CONTENTS

PREAMBLE	PAGE
	NO.

SECTIONS.

1.	Short title, extent and commencement.	1
2.	Separation of judicial and executive functions and uniformity of Criminal Procedure Code, throughout State and consequential provisions.	1
3.	Amendments not to render invalid notifications, orders, etc., issued before commencement of this Act.	1
4.	Savings.	2
5.	Power to remove difficulties.	2

FIRST SCHEDULE

SECOND SCHEDULE

1958 : Bom.XCVII]

BOMBAY ACT No. XCVII OF 1958.¹

[THE BOMBAY SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS (EXTENSION) AND THE CODE OF CRIMINAL PROCEDURE (PROVISION FOR UNIFORMITY) ACT, 1958].

[5th December, 1958]

An Act to provide for the separation of the performance of judicial and executive functions by officers throughout the State of Bombay, to provide for uniformity in the Code of Criminal Procedure, 1898, in its application to the whole of the State, and for matters connected with the purposes aforesaid.

WHEREAS the separation of the performance of judicial and executive functions by officers has been effected by law only in certain areas of the State of Bombay ;

AND WHEREAS it is now expedient to provide for such separation of functions throughout the State;

AND WHEREAS it is also expedient to provide for uniformity in the provisions of the Code of Criminal Procedure, 1898, in its application to the whole of the State of Bombay, and to provide for matters connected with the purposes aforesaid ; It is hereby enacted in the Ninth Year of the Republic of India as follows :-

1.

(1)

This Act may be called the Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provision for Uniformity) Act, 1958.

(2)

It extends to the whole of the State of Bombay.

(3)

It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.
2.

For the purpose of effecting, by law, the separation of the judicial and executive functions by officers throughout the State of Bombay, and also for proving for uniformity in the provisions of the Code of Criminal Procedure, 1898, in its application throughout the State, on the commencement of this Act, the Code of Criminal Procedure, 1898 (hereinafter referred to as “ the Code ”) as in force immediately before such commencement in the pre-Reorganisation State of Bombay (excluding the transferred territories), shall be so in force throughout the State of Bombay ; and accordingly-

(a)

(i)

all amendments made by any law in the provisions of the Code (whether) by way of modifications thereto, substitutions thereof, deletions therefrom, insertions therein, additions thereto, or otherwise) in the application exclusively of the Code to any of the areas at present forming the Saurashtra area, Kutch area, Hyderabad area or Vidarbha region, of the State of Bombay, and in particular the amendments made in the Code by the Acts specified in the First Schedule to this Act, shall cease to have effect and shall stand repealed ; and

(ii)

all amendments made to the code in its application to the pre-Reorganisation State of Bombay (excluding the transferred territories), and in force at the commencement of this Act, shall be deemed to be extended to, and shall be in force in, the remaining part of the State and the relevant provisions of the

Short title,extent and commencement.

Separation of judicial and executive functions,and uniformity of Criminal Procedure Code,through out State,and consequential provisions.

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act,1958.

1958 : Bom.XCVII]

Code shall be deemed to be amended (whether by way of modification thereto, substitution thereof, deletion therefrom, insertion therein, addition thereto, or otherwise) accordingly ;

- (b) the amendments made to the Central Acts (other than the Code), in their application to the pre-Reorganisation State of Bombay, by the Bombay Separation of Judicial [(Amendment) Act, 1953, and the Bombay Separation of Judicial] and Executive Functions (Supplementary) Act, 1954, shall be deemed to be extended to, and shall be in force in the remaining part of the State of Bombay, to which such Central Acts extend ; and accordingly, those provisions in Central Acts in their application to the various areas of the State shall be deemed to be amended (whether by way of modification thereto, substitution thereof, deletion therefrom, insertion therein, addition thereto, or otherwise) and any amendments already made in those Central Acts and in force immediately before the commencement of this Act in any area of the State, which amendments conflict with or correspond to the amendments now extended, shall be repealed ;
- (c) the laws specified in Parts I, II, III and IV of the Second Schedule shall be amended in the manner and to the extent specified in the fourth column of the said Schedule ;
- (d) in sections 6 and 7 of the Code in its application to the State of Bombay, for the words “ pre-Reorganisation State of Bombay, excluding the transferred territories ” the words “ State of Bombay ” shall be substituted, and in the Schedule to the Central Acts on State and Concurrent Subjects (Bombay Adaptation) Order, 1957, all entries relating to the Code of Criminal Procedure, 1898, shall be deleted.

Bom. XXIII of 1951.
Bom. XXIV of 1953.
Bom. VIII of 1954.

V of 1898.

Amendments not to render invalid notifications, orders,etc. issued before commencement of this Act.

- 3. The provisions of this Act which amend the Code, or any other Central Acts, or the State Acts specified in the second Schedule, so as to alter the manner in which, the authority or the law under which or in accordance with which, any powers are exercisable shall not render invalid any notification, order, commitment, [before the commencement of this Act; and any such notification, order, commitment], attachment, bye-law, rule or regulation or thing may be revoked, varied or undone in the like manner and to the like extent, and in the like circumstances, as if it had been done after the commencement of this Act by the competent authority and in accordance with the provisions then applicable to such a case.
- 4. (1) Save as provided in this section, nothing in this Act shall be deemed to affect-
 - (a) the validity, invalidity, effect or consequence of anything done or suffered to be done in any area before the date on which the provisions of this Act come into force therein ;
 - (b) any right, privilege, obligation or liability already acquired, accrued or incurred before such date ;
 - (c) any penalty, forfeiture or punishment incurred or inflicted in respect of any act before such date ;

Savings.

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act, 1958.

1958 : Bom.XCVII]

- (d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment ;

and any such 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 relevant Acts as amended by this Act.

- (2) All legal proceedings pending before a Magistrate or Court on the date on which this Act comes into force shall, if such Magistrate or Court ceases to have jurisdiction in respect of such proceedings under the provisions of the relevant Acts as amended by this Act, stand transferred to the Magistrate or Court having jurisdiction under the provisions of by such Magistrate or Court, and such Magistrate and Court shall have all the powers and jurisdiction thereof as if they had been originally instituted before such Magistrate or in such Court.

- 5. If any difficulty arises in giving effect to the provisions of this Act, the State Government may by order do anything, not inconsistent with such provisions and for the furtherance of the purposes set out in section 2 which appears to it to be necessary or expedient for the purpose of removing the difficulty.

Power to remove difficulties.

FIRST SCHEDULE.

[See section (2) (a) (i).]

.....	
1	2
.....	
Saurashtra Laws	... 1. The Saurashtra Separation of Judicial and Executive Functions Act, 1952 (Sau. Act IV of 1952).
	2. The Code of Criminal Procedure (Saurashtra Amendment) Act, 1955 (Sau. Act XLV of 1955).
Madhya Pradesh Laws	... 3. The Code of Criminal Procedure (Central Provinces and Berar Amendment) Act, 1936 (C. P. and Berar Act No. XIX of 1936).
	4. The Madhya Pradesh Criminal Procedure Code (Amendment) Act, 1950 (Madhya Pradesh Act No. L of 1950).
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Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act, 1958.

1958 : Bom.XCVII]

SECOND SCHEDULE.

[See section 2 (c).]

PART I.

Acts in force in the Saurashtra area of the State of Bombay.

.....			
Year.	Number.	Short title.	Extent of amendment.
1	2	3	4
.....			
1892	I	The Bombay District Vaccination Act, 1892.	In section 23, in sub-section (1), for the words “ a Magistrate ” the words, “ a Taluka Magistrate ”, shall be substituted.
1951	XXXI	The Saurashtra Habitual Offenders Restriction Act, 1951.	(1) In section 11,— (i) for sub-section (1), the following shall be substituted, namely :— “(1) Where an order of restriction is made against any person, the Court or Magistrate making such order or the Court of Magistrate to whom an appeal would lie against such order under section 13 may at any time on its or his own motion or on an application from such person and for sufficient reasons to be recorded in writing, make an order canceling or modifying the order of restriction.” ; (ii) sub-section (3) shall be deleted.
Year.	Number.	Short title.	Extent of amendment.
1	2	3	4
.....			

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act,1958.

1958 : Bom.XCVII]

(2) In section 13,-

- (i) in clause (i), for the words “ by a magistrate ” the words “ by an Executive Magistrate ” shall be substituted ;
- (ii) in clause (ii), for the words “ Magistrate sub-ordinate to it ” the words “ Judicial Magistrate or a District Magistrate ” shall be substituted.

1952	XXIX	The Saurashtra Identification of Prisoners Act, 1952.	In section 5, in the first proviso, for the words “ except by a Magistrate of the first class ” the words “ except by the District Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the first class ” shall be substituted.
1956	XXIX	The Saurashtra Children Act, 1956.	In section 46, for the words beginning with the word “ elsewhere ” and ending with the words “ is situated ” the following shall be substituted, namely :- “ elsewhere of the Court which passes any order under this Act in respect of the child.”

PART II.

Acts in force in the Kutch area of the State of Bombay.

Year.	Number.	Short title.	Extent of amendment.
1	2	3	4
1867	VIII	The Bombay Village Police Act, 1867.	(1) In section 1, the following paragraph shall be added, namely :- “ The term ‘ Executive Magistrate ’ when used in this Act has the meaning assigned to it in the Code of Criminal Procedure, 1898. ”

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act,1958.

1958 : Bom.XCVII]

- (2) In section 6, for the words “ the Magistrate ” where they occur for the second time, the words “ any other Executive Magistrate ” shall be substituted.
- (3) In section 8, for the words “ the Magistrate ” the words “ the Executive Magistrate ” shall be substituted.
- (4) In section 9, and 9A, for the words “ any Magistrate of the first class ” and “ Any Magistrate of the first class ” the words “ the Magistrate of the District ” and “ The Magistrate of the District ” shall respectively be substituted.
- (5) In sections 19 and 21 for the words “ the Magistrate ” the words “ the Executive Magistrate ” shall be substituted.

1892	I	The Bombay District Vaccination Act, 1892.	In section 23, in sub-section (1), for the words “ a Magistrate ” the words “ a Taluka Magistrate ” shall be substituted.
1923	VI	The Bombay Local Boards Act, 1928.	In section 113– <div>(i) for the words “ Magistrate or Bench of Magistrates ” the words “ Judicial Magistrate or Bench of such Magistrates ” shall be substituted, and</div>

Year.	Number.	Short title.	Extent of amendment.
1	2	3	4

- (ii) for the words “ State Government or of the District Magistrate ” the words “ Sessions Judge ” shall be substituted.

1925	XVIII	The Bombay Municipal Boroughs	(1) For sub-section (1) of section 110, the following shall be substituted, namely :- “(1) Appeals against any claim included in
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Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act,1958.

1958 : Bom.XCVII]

		Act, 1925.	a bill presented under sub-section (1) of section 104 may be made to any Judicial Magistrate or Bench of such Magistrates by whom under the direction of the Sessions Judge such class of cases is to be tried. ”
			(2) In sub-section (3) of section 180, for the words “ a Magistrate exercising not less than second class powers ” the words “ a Taluka Magistrate ” shall be substituted.
			(3) In sub-section (1) of section 183, for the words “ a Magistrate of the first class ” the words “ a Taluka Magistrate ” shall be substituted.
			(4) In section 189, for the words “Magistrate of the first class” the words “ Executive Magistrate ” shall be substituted.
			(5) In section 196, for the words “ Magistrate of the first class ” the words “ Executive Magistrate ” shall be substituted.
1938	XIX	The Bombay Probation of Offenders, Act, 1938.	In section 3,- (i) in sub-section (1), clauses (c) and (d) shall be deleted, and (ii) in sub-section (3), the words “ or Sub Divisional Magistrate ” shall be deleted.

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PART III.

Acts in force in the Hyderabad area of the State of Bombay.

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Year.	Number.	Short title.	Extent of amendment.
1	2	3	4
1355	II	The Forest Act, 1355F	In section 70, for the words “ The District Magistrate or the Magistrate of the first class especially empowered in this behalf by the Government ” the words “ Any Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court ” shall be substituted.

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act,1958.

1958 : Bom.XCVII]

1951	XXXII	The Hyderabad Children Act, 1951.	(1)	In section 3,— (i) for the brackets, letters and words “ (c) a District Magistrate, (d) Chief Magistrate, City Magistrate’s Court” the brackets, letter and words “ (c) a Magistrate of the First Class ” shall be substituted ; (ii) the brackets, letter and words “ (f) any Magistrate specially empowered by the Government to exercise all or any such powers and ” shall be deleted.
			(2)	In section 4,— (i) in sub-section (1), for the words “ District Magistrate to whom he is subordinate ” the words “ Magistrate of the First Class ” shall be substituted; (ii) in sub-section (2), for the words “ The District Magistrate or the Magistrate ” the words “ The Magistrate ” shall be substituted.
			(3)	In section 61, in sub-section (1), for clauses (a) and (b) the following shall be substituted, namely :- “(a) If passed by a Juvenile Court or a Magistrate, to the Court of Session.”

Year.	Number.	Short title.	Extent of amendment.	
1	2	3	4	
1953	XII	The Hyderabad Probation of Offenders Act, 1953.	In section 5, the words “ or Sub-Divisional Magistrate ” shall be deleted.	
			In section 11,—	
			(i)	for sub-section (1), the following shall be substituted, namely :-
1954	XXII	The Hyderabad Habitual offenders	(1)	“(1) Where an order of restriction is made against any person, the Court or

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act,1958.

1958 : Bom.XCVII]

		(Restriction and Settlement)Act,1954.	Magistrate making such order or the Court or Magistrate to whom an appeal would lie against such order under section 13 may, at any time, on its or his own motion or on an application from such person and for sufficient reasons to be recorded in writing, make an order canceling or modifying the order of restriction.” ;
			(ii) sub-section (3) shall be deleted.
		(2) In section 13,-	
			(i) in clause (i), for the words “ by a Magistrate ” the words “ by an Executive Magistrate ” shall be substituted ;
			(ii) in clause (ii), after the words “ made by ” the words “ a Judicial Magistrate or ” shall be inserted.
1954	XXIX	The Hyderabad Prisons Act, 1954.	In section 53,- (i) the words “ District Magistrate, or ” shall be deleted ; (ii) the first proviso shall be deleted; and (iii) in the second proviso the word “ also ” shall be deleted.
1956	XV	The Hyderabad Borstal Schools Act, 1956.	(1) In section 7, for clauses (c), (d) and (e) the following shall be substituted, namely :- “(c) a Magistrate of the first class ”.

Year.	Number.	Short title.	Extent of amendment.
1	2	3	4
			(2) In section 8, for the words “ District Magistrate ” wherever they occur the words “ Magistrate of the first class ” shall be substituted.

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act,1958.

1958 : Bom.XCVII]

PART IV.

Acts in force in the Vidarbha region of the State of Bombay.

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Year.	Number.	Short title.	Extent of amendment.
1	2	3	4
.....			
1880	XIII	The Vaccination Act, 1880.	In section 18, for the words “ the Magistrate of the district, or such Magistrate as the State Government or the Magistrate of the district ” the words “such Magistrate as the State Government ” shall be substituted.
1928	IV	The Central Provinces and Berar Borstal Act, 1928.	(1) In section 5,- (i) in sub-section (2), for the words “District Magistrate or Sub-Divisional Magistrate ” the words “ Magistrate of the first class ” shall be substituted ; (ii) in sub-section (3), for the words “ The District Magistrate or Sub-divisional Magistrate ” the words “ The Magistrate ” shall be substituted. (2) For section 7 the following new section shall be substituted ;- “ Special Power of District Magistrate 7. When any male person not less than sixteen or more than twenty-one years of age has been sentenced for an offence to rigorous imprisonment or transportation, or when such person having been ordered
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.....			
Year.	Number.	Short title.	Extent of amendment.
1	2	3	4
.....			

1958 : Bom.XCVII]

to give security for good behavior and having failed to give such security is imprisoned under sub-section (1) of section 123 of the Code of Criminal Procedure, 1898, and when by reason of such person's criminal habits or tendencies or association with persons of bad character it is expedient in the opinion of the District Magistrate that he should be detained, the District Magistrate may order that the proceedings in his case shall be laid before the Sessions Judge and the provisions of sub-sections (2) and (3) of section 6 shall apply as if the proceedings has been referred under that section".

V of 1898.

- (3) In section 12,-

(i) in sub-section (1), the words " District Magistrate " shall be deleted ;

(ii) in sub-section (2), for the words " District Magistrate " the words " Magistrate of the first class " shall be substituted.
- (4) In section 13, in sub-section (1), the words " District Magistrate " shall be deleted.
- (5) In section 26, the words " District Magistrate " shall be deleted.

1928	X	The Central Provinces and Berar Children Act, 1928.	(1) In section 4, clauses (c) and (d) shall be deleted, and in clause (f) the words beginning with " or Magistrate " and ending with " in this behalf " shall be deleted.
			(2) In section 5, in sub-section (1), for the words " District Magistrate or sub-divisional magistrate " the words " Magistrate so empowered " shall be substituted.

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Year.	Number.	Short title.	Extent of amendment.
1	2	3	4
.....			

- (3) In section 53, in sub-section (1), for clauses (a) and (b) the following shall be substituted :-

Bombay Separation of Judicial and Executive Functions (Extension) and the Code of Criminal Procedure (Provisions for Uniformity) Act, 1958.

1958 : Bom.XCVII]

“(a) if passed by a juvenile court or any Magistrate, to the Sessions Judge.”

1936	I	The Central Provinces and Berar Probation of Offenders Act, 1936.	(1) In section 4, in sub-section (2), the words beginning with “ or a Magistrate ” and ending with “ in this behalf ” shall be deleted. In section 5, in sub-sections (1) and (2), for the words “ District Magistrate or Sub-Divisional Magistrate ” the words “ Magistrate so empowered ” shall be substituted.
1950	II	The city of Nagpur Corporation Act, 1948.	In section 164, in sub-section (1), for the words “ any Magistrate ” the words “ any Judicial Magistrate ” and for the words “ District Magistrate ” the words “ Sessions Judge ” shall be substituted.

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1. For Statement of Objects and Reasons see Bombay Government Gazette, 1958, Part V, pp. 434 and 435.