



The West Bengal Criminal Law Amendment (Special Courts) Act, 1949

Act 21 of 1949

Keyword(s):

Speedy Trial, Effective Punishment, Special Court, Power to try Summarily

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West Bengal Act XXI of 1949

THE WEST BENGAL CRIMINAL LAW AMENDMENT (SPECIAL COURTS) ACT, 1949.¹

AMENDED

West Ben. Act VIII of 1950.
West Ben. Act XII of 1952.
West Ben. Act XV of 1953.
West Ben. Act XXVI of 1956.
West Ben. Act XXIV of 1960.
West Ben. Act XIV of 1964.
West Ben. Act XVI of 1965.
West Ben. Act XXVIII of 1965.
West Ben. Act XXV of 1982.
West Ben. Act XXXVII of 1983.
West Ben. Act XVI of 1990.

[23rd June, 1949.]

An Act to provide for the more speedy trial and more effective punishment of certain offences.

²[WHEREAS it is expedient in the public interest to provide for the speedy trial of the offences specified in the Schedule;]

It is hereby enacted as follows:—

1. This Act may be called the West Bengal Criminal Law Amendment (Special Courts) Act, 1949.

Short title.

³2. (1) The State Government may, by notification in the *Official Gazette*, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

Special Courts.

(2) The State Government shall appoint, as a Judge to preside over a Special Court, any person who—

- (a) is or has been, or is qualified under clause (2) of article 217 of the Constitution of India for appointment, as a Judge of a High Court, or
- (b) has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, of the 12th January, 1949, Part IV, page 48, and for Proceedings of the West Bengal Legislative Assembly, see the Proceedings of the West Bengal Legislative Assembly, 1949, Vol. IV, pages 55-60.

²This preamble was first substituted for the original preamble by s. 2 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

³Section 2 was first substituted for the original section 2 by s. 3, *ibid.* Later, the same was re-substituted by s. 2 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1982 (West Ben. Act XXV of 1982).

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(Sections 3, 4.)

(3) Every Special Court shall have jurisdiction over the particular area for which it has been constituted and shall sit at such place or places as the State Government may, by notification in the *Official Gazette*, specify in this behalf.

3. [(*Special Judge.*)—Omitted by s. 4 of the *West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).*]

Offences to
be tried by
Special
Courts.

4. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law in force, the offences specified in the Schedule shall be triable by Special Courts only:

2 of 1974.

Provided that when trying a case, a Special Court may also try any offence other than the offence specified in the Schedule, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial:

Provided further that every offence specified in the Schedule shall be tried by the Special Court constituted for the particular area within which the offence was committed, and where there are more than one Special Court constituted for any particular area, by such one of them as may be specified by the State Government by notification in the *Official Gazette*.

¹Section 4 was first substituted for the original section by s. 4 of the *West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952)*. Thereafter, there occurred some changes, namely:—

- (i) sub-section (1a) was added by s. 2(a) of the *West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956)*,
- (ii) sub-section (3) was first added with retrospective effect by s. 2 of the *West Bengal Criminal Law Amendment (Special Courts) (Amending) Act, 1964 (West Ben. Act XIV of 1964)*. Thereafter, that sub-section was substituted by s. 2(1) of the *West Bengal Criminal Law Amendment (Special Courts) (Amending and Validating) Act, 1965 (West Ben. Act XXVIII of 1965)*, and
- (iii) sub-section (4) was added by s. 2(2), *ibid.*

Finally, the present section 4 was substituted by s. 3 of the *West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1982 (West Ben. Act XXV of 1982)*.

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(Section 5.)

2 of 1974.

15. (1) A Special Court may take cognizance of offences in the manner laid down in clauses (a) and (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1973, without the accused being committed to his Court for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973, ²[for the trial by Magistrates of warrant cases—

Procedure and powers of Special Courts.

- (a) instituted on a police report;
- (b) instituted otherwise than on a police report:]

Provided that a Special Court shall not be bound to adjourn trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

³(1A) For the avoidance of doubt, it is hereby declared that any appeal, application, complaint, trial, inquiry or investigation in respect of any warrant case referred to in sub-section (1), pending at the date of commencement of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1990, shall be continued, held, made, dealt with or disposed of, as the case may be, in accordance with the provisions of sub-section (1) as amended by the said Act.

¹Section 5 was substituted for the original section by s. 4 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1982 (West Ben. Act XXV of 1982). Prior to this substitution, there occurred some amendments in the original section, namely:—

- (a) in sub-section (1),—
 - (i) the words "Special Court" were substituted for the words "Special Judge" by s. 6(1) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).
 - (ii) the words, figures, letters and brackets ". in the manner laid down in clauses (a) and (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898", were inserted by s. 2 of the West Bengal Criminal Law Amendment (Special Courts) (Amending) Act, 1960 (West Ben. Act XIV of 1964).
 - (iii) the words ". instituted otherwise than on a police report" were inserted by s. 2(b)(i) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).
 - (iv) two provisos were substituted for the original proviso by s. 6(1) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952);
- (b) sub-section (1a) was inserted by s. 2(a) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1953 (West Ben. Act XV of 1953);
- (c) in sub-section (2),—
 - (i) the words, figure and letter "or sub-section (1a)" were inserted by s. 2(b), *ibid.*.
 - (ii) the words "a special Court" were substituted for the words "the Court of the Special Judge" by s. 6(2) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).
 - (iii) the words "or without the aid of Assessor" were omitted by s. 2(b)(ii) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).

²These words, letters and brackets within the square brackets were substituted for the words "for the trial of warrant cases by Magistrates, instituted on a police report:" by s. 2(1) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1990 (West Ben. Act XVI of 1990).

³Sub-section (1A) was inserted by s. 2(2), *ibid.*

(Sections 5A, 5B.)

(2) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof; and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 of that Code.

2 of 1974.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, in so far as they are not inconsistent with this Act, apply to the proceedings of a Special Court, and for the purposes of the said provisions, a Special Court shall be deemed to be a Court of Session trying cases without a Jury, and a person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) A Special Court may pass any sentence authorised by law.

Jurisdiction of Magistrates for certain purposes not to cease.

¹5A. Nothing in section 4 or section 5 shall affect the jurisdiction and powers of Magistrates under the ²[Code of Criminal Procedure, 1973] during the investigation by the police under the said Code of offences specified in the Schedule.

[2 of 1974.]

Power to try summarily.

³5B. (1) Where a Special Court tries any of the offences specified in item 1, in item 7 and in item 8 relating to offences specified in items 1 and 7, of the Schedule alleged to have been committed by a public servant in relation to the contravention of any special order referred to in section 12A of the Essential Commodities Act, 1955, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1898, the Special Court shall try the offence in a summary way, and the provisions of sections 262 to 265, both inclusives of the said Code shall, so far as may be, apply to such trial:

Act 10 of 1955.

Act 5 of 1898.

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment not exceeding one year.

¹Section 5A was inserted by s. 3 of the West Bengal Criminal Law Amendment (Special Courts) (Amending) Act, 1960 (West Ben. Act XXIV of 1960).

²The words and figures within the square brackets were substituted for the words, figures and letter "Code of Criminal Procedure, 1898.—Act V of 1898." by s. 5 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1982 (West Ben. Act XXV of 1982).

³Section 5B was inserted by s. 2 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1965 (West Ben. Act XVI of 1965).

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(Sections 6-9.)

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1898, there shall be no appeal by a convicted person in any case tried summarily under this section in which the Special Court passes a sentence of imprisonment not exceeding one month, or of fine not exceeding two thousand rupees, or both, whether or not any order under section 517 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence of imprisonment or fine in excess of the aforesaid limits is passed by the Special Court.

(3) Where any notification is issued under sub-section (1) of section 12A of the Essential Commodities Act, 1955, in relation to a special order, all cases triable summarily under this section in relation to such special order and pending on the date of the issue of such notification shall, if no witnesses have been examined before the said date, be tried by the Special Court in a summary way under this section.

6. The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapters XXIX, XXX and XXXI of the Code of Criminal Procedure, 1973, on a High Court as if a Special Court were a Court of Session trying cases without a Jury within the local limits of the jurisdiction of the High Court.

Appeal-
revision and
transfer.

7. [(Bar to certain jurisdiction.)—Omitted by the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1982 (West Ben. Act XXV of 1982).]

8. [(Special rules of evidence.)—Omitted by the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).]

9. (1) If for any reason the services of the person appointed as a Judge to preside over a Special Court ceases to be available, the State Government shall as often as may be necessary, appoint another person having the qualifications referred to in clause (a) or clause (b) of sub-section (2) of section 2, as a Judge to preside over such Special Court.

Provision
where
services of
Judge
presiding
over Special
Court ceases
to be
available.

(2) A person appointed under sub-section (1) as a Judge to preside over a Special Court may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself:

Provided that if the person appointed under sub-section (1) as a Judge to preside over a Special Court is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary

¹Section 6 was substituted for the original by s. 6 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1982 (West Ben. Act XXV of 1982). Prior to this substitution the words "a Special Court" were substituted for the words "the Court of the Special Judge", in the original section, by s. 7 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

²This section was substituted for the original section by s. 9. *ibid.*

³This sub-section was substituted by s. 2(c) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).

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(Sections 10-13 and the Schedule.)

in the interests of justice, he may re-summon any such witness and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

Application of Act II of 1947 to trials under this Act.

10. The provisions of the Prevention of Corruption Act, 1947, shall apply to trials under this Act.

II of 1947.

Indemnity.

11. No suit, prosecution or legal proceedings whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

Pending proceedings in other courts not to be affected.

12. Nothing in this Act shall apply to any proceedings pending on the date of the commencement of the West Bengal Criminal Law Amendment (Special Courts) Amending Ordinance, 1952, in any court other than a Special Court.

West Ben.
Ord. VIII of
1952.

Certain sections of Act XLVI of 1952, not to apply to West Bengal.

13. Sections ³* * * * 6, 7, 8, ⁴[8A,] 9 and 10 of the Criminal Law Amendment Act, 1952, shall not apply and shall be deemed never to have applied to West Bengal.

XLVI of
1952.

THE SCHEDULE

³[See section 4.]

Offences triable by Special Judges.

1. An offence punishable under section 161, section 162, section 163 ⁶{, section 164, section 165 or section 165A} of the Indian Penal Code.

Act XLV of
1860.

¹This section 12 was substituted for the original section 12 by s. 11 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

²Section 13 was added by s. 3 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1953 (West Ben. Act XV of 1953).

³The figure "5." was omitted by s. 2(d) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).

⁴The figure and letter within the square brackets were inserted by s. 8 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1982 (West Ben. Act XXV of 1982).

⁵These words and figure were substituted for the words, figures and brackets "See section 4(2)" by s. 9, *ibid*.

⁶This expression was substituted for the expression "or section 164 or section 165" by s. 4 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1953 (West Ben. Act XV of 1953).

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(The Schedule.)

Offences triable by Special Judges.

1* * * * *

12. An offence punishable under section 409 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government ²[or by a person dealing with property belonging to a Government company as defined in section 617 of the Companies Act, 1956 as an agent of such Government company] in respect of property—

Act XLV of 1860.

I of 1956.

with which he is entrusted, or
over which he has dominion

in his capacity of a public servant or in the way of his business as such agent.

13. An offence punishable under section 417 or section 420 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government ³[or by a person dealing with property belonging to a Government company as defined in section 617 of the Companies Act, 1956 as an agent of such Government company], while purporting to act as such public servant or agent.

1* * * * *

7. An offence punishable under section 5 of the Prevention of Corruption Act, 1947.

II of 1947.

8. Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in items ⁴[1, 2, 3 and 7].

¹Items 1A, 2, 3, 4, 5 and 6 were omitted and these items 2 and 3 were substituted therefor by s. 12(b) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

²These words and figures with the marginal reference were inserted by s. 2(a) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1983 (West Ben. Act XXXVII of 1983).

³These words and figures were inserted by s. 2(b), *ibid.*

⁴These figures were substituted for the figures, word and letter "1, 1A, 2, 3, 4, 5, 6 and 7" by s. 12(c) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act.