Pakistan: *Code of Criminal Procedure, 1898 as amended by Act 2 of 1997*

THE CODE OF CRIMINAL PROCEDURE, 1898 (Pakistan)
As amended by Act II of 1997

PART I - PRELIMINARY - CHAPTER I

1. Short title and commencement. (1) This Act may be called the Code of Criminal Procedure, 1898, and It shall come Into force on the first day of July, 1898. (2) It extends to 1 [the whole of Pakistan] but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

2. [Repeal of enactments, notifications, etc, under repealed Acts pending cases] Rep. by the Repealing and Amending Act, 1914 (X of 1914).

3. Reference to Code of Criminal Procedure and other repealed enactments. (1) In every enactment passed before this Code comes into force in which reference is made to, or to any, chapter or section of the Code of Criminal Procedure, Act XXV of 1861 or Act X of 1872, or Act X of 1882 or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section. (2) Expressions in former Acts. In every enactment passed before this Code comes into force the expressions 'Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate' 'Subordinate Magistrate, first class', and 'Subordinate Magistrate second class', shall respectively be deemed to mean 'Magistrate of the first class', 'Magistrate of the second class' and 'Magistrate of the third class', the expression 'Magistrate of a division of a district shall be deemed to mean 'Sub-Divisional Magistrate', the expression 'Magistrate' of the district shall be deemed to mean 'District Magistrate and the expression 'Joint Sessions Judge' shall mean 'Additional Sessions Judge'.

4. Definition. (1) In this Code the following words and expressions have the following meanings unless a different intention appears from the subject or context:

(a) **'Advocate-General'.** 'Advocate-General' includes also a Government Advocate or where there is not Advocate-General or Government Advocate, such officer as the Provincial Government may, from time to time, appoint in this behalf;

(b) **'Bailable offence',** 'Non-bailable offence'. 'Bailable offence' means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and 'non-bailable offence' means any other offence:

(c) **'Charge'.** 'Charge' includes any head of charge when the charge contains more heads than one:

(d) [Rep. by the Repealing and amending Act, 1923 (Act XI of 1923)}

(e) [Omitted by Law Reforms Ordinance, 1972}.

(f) **'Cognizable offence'.** Cognizable case'. 'Cognizable offence' means an offence for, and 'cognizable case' means a case in, which a police officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant;

(g) Omitted by A.O. 1949.

(h) **'Complaint'.** 'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the reports of a police-officer;

(i) Omitted by Act II of 1950.

(j) **'High Court'.** 'High Court' means the highest Court of criminal appeal or revision for a Province:

(k) **'Inquiry'.** 'Inquiry' includes every inquiry other than a trial conducted under this Code by a Magistrate or Court;

(l) **'Investigation'.** 'Investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;

(m) **'Judicial proceeding'.** 'Judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath;

(n) **'Non-cognizable offence':** 'Non-cognizable case'. 'Non-cognizable offence means an offence for, and 'non-cognizable case' means a case in, which a police officer, may not arrest without warrant;

(o) **'Offence',** 'Offence' means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871.

Offence- The word 'offence' as defined in the Code means any act or omissions made punishable by any law for the time being enforced apart those from under PPC. 1991 Cr.L.J. 1476 (Ind). An offence is constituted as soon as the act which constitute that offence have been committed. It remains an offence whether it is triable by a Court or not and the fact that the trial of the offence can only be taken up after certain specified conditions are fulfilled does not make it any the less an offence. AIR 1967 S.C. 528. There is nothing wrong in law to regard a single act of firing at two persons as one offence. AIR 1952 S.C. 45. However, an act or omission is an offence only if it is made punishable by any law for the time being in force 1931 P.C. 94.

(p) **'Officer in charge of a police-station'.** 'Officer in charge of a police-station' includes, when the officer in charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the Provincial Government so directs, any other police-officer so present;

(q) **'Place'.** 'Place' includes also a house, building, tent and vessel:

(r) **'Pleader'.** 'Pleader', used with reference to any proceeding in any Court, means, a pleader or a mukhtar authorized under any law for the time being in force to practice in such Court, and includes (1) an

advocate, a vakil and an attorney of a High Court so authorized, and (2) any other person appointed wit the permission of the Court to act in such proceeding;

Pleader- With reference to any proceedings in the Court a pleader means a pleader or Mukhtar authorised under law for the time being in force and includes:

(1) An advocate;

(2) A vakeel or any attorney of High Court so authorised;

(3) Any other person appointed with the permission of the Court. A co-accused can act as pleader if so permitted. AIR 1962 Pat 244. Private person must get the prior permission. 1991 P.Cr.L.J. 2425. The discretion of the Court in permitting person to appear as 'pleader' must be exercised judicially with due regard to the interest of the party engaging him. AIR 1978 S.C. 1019; 1978 Cr.L.J. 778.

A power of attorney authenticated by fail authorities is a valid document. 1991 P.Cr.L.J. 25. A constituted attorney can appear for the accused. 1991 P.Cr.L.J. 2425.

(s) **'Police-station'.** 'Police-station' means any post or place declared generally or specially, by the Provincial Government to be a Police Station and includes any local area specified by the Provincial Government in this behalf:

Police station-Police station is a place declared generally or specifically by the provincial Government to be a police station and includes any local area so specified except a beat-house. AIR 1960 Cal 519. Does not include vehicle. (1963) 3 SCR 386. Detention in a tee other than notified is illegal. PLD 1965 Lah 324.

(t) **'Public Prosecutor'.** Public Prosecutor' means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of the State in any High Court in the exercise of its original criminal jurisdiction:

Public prosecutor-Public Prosecutor means any person appointed u/s. 492 and includes Assistant Public Prosecutor and any person conducting prosecution under Public Prosecutor. PLD 1960 Dacca 783. He is bound to assist the Court with his fairly considered view and the Court is entitled to have the benefit of the fair exercise of his function. AIR 1957 S.C. 389. Government advocate under instructions of the Advocate General who is appointed u/s 492 to be Public Prosecutor for all cases in the High Court is a Public Prosecutor. 1966 Raj. Law Weekly 300; 1981 S.C. Cr. R. 301. Additional Government Advocate appointed as a public Prosecutor is a Public Prosecutor lawfully empowered to present appeal in the High Court against orders of acquittal. AIR 1971 S.C. 1977. A private pleader instructed by a private party will not be permitted to conduct prosecution. 1991 Mad. L.J. Cr. 624.

(u) **'Sub-division'.** 'Sub-division' means a sub-division of a district.

[Clauses (v) and (w) of Subsection (1) of Section 4 omitted by Law Reform Ordi. 1972.]

Province of Punjab

Omission of clauses (e) (v) & (w) by Law Reforms Ordinance 1972. item No. 1 enforced w.e.f. 26.12.1975 vide No. Judl. 1-3(2)/75 dated 26.12.1975.

(2) **Words referring to acts done.** Words which refer to acts done, extend also to illegal omission; and

Words to have same meaning as in Pakistan Penal Code. All words and expression used herein and defined in the Pakistan Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by the Code.

5. Trial of offences under Penal Code. (1) All offences under the Pakistan Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) **Trial of offences against other laws.** All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

PART II - CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES - CHAPTER II - OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES

A. Classes of Criminal Courts

[6. Classes of Criminal Courts and Magistrates:--

(1) Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of Criminal Courts in Pakistan, namely:

(i) Courts of Session;

(ii) Courts of Magistrates.

(2) There shall be the following classes of Magistrates, namely:

(i) Judicial Magistrates:--

(1) Magistrates of the first class.

(2) Magistrates of the second class.

(3) Magistrates of the third class.

(4) Special Judicial Magistrate.

(ii) Executive Magistrates:-

(1) District Magistrates.

(2) Additional District Magistrates.

(3) Sub-Divisional Magistrates.

(4) Special Executive Magistrates.']

[(5) Magistrates of the first class.

(6) Magistrates of the second class.

(7) Magistrates of the third class.]

B. Territorial Divisions

7. Sessions divisions and districts. (1) Each Province shall consist of session; and every session divisions shall, for the purposes of this Code, be a district or consist of districts.

(2) **Power to alter divisions and districts.** The Provincial Government may alter the limits or the number of such divisions and districts.

(3) **Existing divisions and districts.** The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

8. Power to divide districts into sub-divisions. (1) The Provincial Government may divide any district into sub-divisions, or make any portion of any such district a sub-division, and may alter the limits of any sub-division.

(2) **Existing sub-divisions maintained.** All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C. Courts and Offices

9. Court of Sessions. (1) The Provincial Government shall establish a Court of Session for every session division, and appoint a judge of such Court.

(2) The Provincial Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but until such order is made, the Court of Session shall hold their sittings as heretofore.

(3) The Provincial Government may also appoint Additional Sessions Judges and Assistant Session Judges to exercise jurisdiction in one or more such Courts.

(4) Sessions Judge of one sessions division may be appointed by the Provincial Government to be also an Additional Session Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Provincial Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

[10. District Magistrate:

(1) In every district the Provincial Government shall appoint a District Magistrate

(2) The Provincial Government may also appoint Additional District Magistrate to exercise jurisdiction in one or more Districts and such Additional District Magistrates shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the Provincial Government may direct.]

[(3) For the purposes of section 192, sub-section (1) and section [407, sub-section (2) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate].

District Magistrate- District Magistrate is not one of the Courts established under Cr.P.C. District Magistrate occupies dual position, he is the Chief Executive, Incharge of the administration of the District and as Magistrate of the First Class, he may exercise the powers conferred upon such Magistrate by the Cr.P.C. PLD 1988 Lah 352

Additional District Magistrate-District Magistrate a/one authorised by legislature to do certain acts. Additional District Magistrate is not empowered to exercise District Magistrate's power under S. 10(2), Cr.P.C. PLD 1958 Dacca 425. However, Additional District Magistrate is competent to exercise powers even after his transfer to some equal or higher office in same local area. PLD 1962 Lah 939.

11. Officers temporarily succeeding to vacancies in office of District Magistrate. Whenever in consequence of, the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Provincial Government, exercise all the powers and perform all the duties respectively conferred and imposed by the Code on the District Magistrate.

Additional Deputy Commissioner-Additional Deputy Commissioner as Chief Executive of District and Magistrate 1st Class can pass order under S. 144(1). 1980 P.Cr.L.J.851.

12. [Subordinate] Magistrates. (1) The Provincial Government may appoint as many persons as it thinks fit [***] to be Magistrates of the first, second or third class in any district and may from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) **Local limits of their jurisdiction.** Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

[Province of Balochistan. The Government of Balochistan has fixed the limits of territorial jurisdiction for the Judicial Magistrates appointed in each Sessions Division to be the same as the territorial limits of the Sessions Divisions fixed vide Notification No.US(Judl)5(7)/87/674-716, dated the 28th February, 1994.

2. The Judicial Magistrate(s) appointed in a Session Division shall have the jurisdiction throughout that Division subject to the powers conferred upon them under section 12 of the Code of Criminal Procedure, 1898, as amended by the Law Reforms Ordinance, 1972, and further amended by the Law Reforms (Amendment) Ordinance, 1996, (XL of 1996).

3. Wherever, in any of the Sessions Divisions the number of Judicial Magistrates is more than one, the Sessions Judge of the Division, shall distribute the business amongst the Judicial Magistrates. (Gazette Extra dated 22nd March, 1996, PLD 1997 Bal. St. 5)].

Jurisdiction of Magistrate. Jurisdiction of Magistrate extends throughout District unless restricted by order. [71 DLR 839] It is essential that offence must be shown to be triable by Magistrate in the Schedule. [1972 P.Cr.L.J. 233]

Balochistan Province-See Notification No.US (Judl)4(10)/94/Vol.I, dated 22.3.1996. For text see Cr.P.C. by the same Author. .

13. Power to put [Magistrate] in charge of sub-division. (1) The Provincial Government may place any [Executive Magistrate] in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-Division Magistrates.

(3) **Delegation of powers to District Magistrate.** The Provincial Government may delegate its powers under this section to the District Magistrate.

[14. Special Judicial and Executive Magistrates.

(1) The Provincial Government may on the recommendation of the High Court, confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area.

(2) Such Magistrates shall be called Special Judicial Magistrates, and shall be appointed for such term as the Provincial Government may, in consultation with the High Court by general or special order, direct.

(3) The Provincial Government may also appoint Executive Magistrate for particular areas or for performance of particular functions and confer upon them or any of the powers conferred or conferrable by or under this Code on an Executive Magistrate.

(4) Such Magistrates shall be called Executive Magistrates, and shall be appointed for such term as the Provincial Government may, by general or special order, direct: Provided that no powers shall be conferred under this sub-section on any police officer below the grade of Assistant 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 a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

(5) The Provincial Government may delegate, subject to such limitations as it thinks fit, to any officer under its control the powers conferred by subsection (3).']

15. Benches of Magistrates. (1) The Provincial Government may direct any two or more [Judicial Magistrates] in any place to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes only, and within such local limits, as the Provincial Government thinks fit.

(2) **Powers exercisable by Bench in absence of special direction.** Except as otherwise provided by any order under this section every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as for as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

16. Power to frame rules for guidance of Benches. The Provincial Government may '..... from time to time, make rules consistent with this Code for the guidance of Magistrates, Benches in any district respecting the following subjects:

(a) the classes of cases to be tried:

(b) the times and places of sitting;

(c) the constitution of the Bench for conducting trials;

(d) the mode of settling differences of opinion which may arise between the Magistrates in session.

17. ['Subordination of Judicial Magistrates and Benches to Sessions Judge.

(1) All Judicial Magistrates appointed under sections 12 and 14 and all Benches constituted under section 15 shall be subordinate to the Sessions Judge, and he may from time to time, make rules or give special orders consistent with this Code and any rules framed by the Provincial Government under section 16, as to the distribution of business among such Magistrates and Benches,

(2) Subordination of Executive Magistrates to District Magistrate. All Executive Magistrates appointed under section i3[i2] 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 and any rules framed by the Provincial Government under section 16, as to the distribution of business among such Magistrates.

(2-A) Subordination of Executive Magistrates to Sub-Divisional Magistrate.-Every Executive Magistrate (other than a Sub-Divisional Magistrate) in a sub-Division shall also be subordinate to the Sub-Divisional Magistrate, subject, however, to the general control of the District Magistrate',]

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

(4) The Session Judge may also when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge ..... and such Judge . .. . shall have jurisdiction to deal with any such application.

D. Courts of Presidency Magistrates

18 to 21. Appointment of Presidency Magistrates. Benches Local limits of jurisdiction, Chief Presidency Magistrate. Omitted by A.O., 1949 Sch.

E-Justice of the Peace

[22. A Provincial Government so far as regards the territories subject to its administration may by notification in the official Gazette, appoint such persons resident within Pakistan and not being the subjects of any foreign State as it thinks fit to be justices of the Peace within and for the local area mentioned in such notification.]

Punjab Amendment

[22. Appointment of Justices of the Peace. The Provincial Government may, by notification in the official Gazette, appoint for such period as may be specified in the notification, and subject to such rules as may be made by it any person who is a citizen of Pakistan and as to whose integrity and suitability it is satisfied, to be a Justice of the Peace for a local area to be specified in the notification, and more than one Justice of the Peace may be appointed for the same local area.

22-A. Powers of Justice of the Peace. (1) A Justice of the Peace for any local area shall, for the purpose of making an arrest, have within such area all the powers of a Police Officer referred to in section 54 and an officer in-charge of a police-station referred to in section 55.

(2) A Justice of the Peace making an arrest in exercise of any powers under subsection (1) shall, forthwith, take or cause to be taken the person arrested before the officer in-charge of the nearest police-station and furnish such officer with a report as to the circumstances of the arrest and such officer shall thereupon re-arrest the person.

(3) A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him:

(a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and

(b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquillity.

(4) Where a member of the police force on duty has been called upon to render aid under subsection (3), such call shall be deemed to have been made by a competent authority.

(5) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government:

(a) issue a certificate as to the identity of any person residing within such area, or

(b) verify any document brought before him by any such person, or

(c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate, and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

22-B. Duties of Justices of the Peace. Subject to such rules as may be made by the Provincial Government, every Justice of the peace for any local area shall,

(a) on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in writing the result of his inquiries to the nearest Magistrate and to officer in charge of the nearest police-station.

(b) if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of any thing from, or the interference in any way with, the place of occurrence of the offence;

(c) when so required in writing by a police-officer making an investigation under Chapter XIV in respect of any offence committed within such local area.

(i) render all assistance to the police-officer making such an investigation.

(ii) record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed'.]

23 & 24. Justice of the Peace for the Presidency-towns. Present Justices of the Peace. Rep. by the Criminal Law Amendment Act, 1923 (XII of 1923) S. 4.

25. Ex-officio Justice of the Peace. In virtue of their respective offices, the Judges of the High Courts are Justice of the Peace within and for the whole of Pakistan, Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Provincial Government under which they are serving.

F. Suspension and Removal

26 & 27. Suspension and removal of Judges and Magistrates. Suspension and removal of Justices of the Peace. Rep. by A.O., 1937.

CHAPTER III

POWERS OF COURTS

A. Description of offences cognizable by each Court

28. Offences under Penal Code. Subject to the other provisions of this Code any offence under the Pakistan Penal Code may be tried:

(a) by the High Court; or

(b) by the Courts of Sessions; or

(c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable; [Provided that the offences falling under Chapters VIII, X, XIII and XIV of the Pakistan Penal Code (Act XLV of 1860), except offences specified in section 153A and section 281 of the said Code, shall be tried by the Executive Magistrates and the expression 'Magistrate' used in the said eighth column shall mean Executive Magistrate of the respective class.]

Illustration

A is [tried by] the Session Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

29. Offences under other laws. (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.

(2) **When no Court is so mentioned,** it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offences shown in the eight column of the second schedule to be triable; (Provided that the offences punishable with imprisonment for a term not exceeding three years, with or without any other punishment, shall be tried by the Executive Magistrates.]

29-A. Trial of European British subjects by second and third class Magistrates. Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950).

[29-B. Jurisdiction of the case of juveniles. Any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by a District Magistrate or by any Magistrate specially empowered by the Provincial Government to exercise the powers conferred by section 8, sub-section (1), of the Reformatory Schools Act 1897 or, in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment youthful offenders, by any Magistrate empowered by or under such Saw to exercise all or any of the powers conferred thereby].

30. Offences not punishable with death. In the Punjab, the North-West Frontier, in Sind and in those parts of the Provinces in which there are Deputy Commissioners or Assistant Commissioners the Provincial Government may, notwithstanding anything contained in [sections 28 and 29. invest any Judicial] District Magistrate or any Magistrate of the first class with power to try as a Magistrate ail offences not punishable with death.

B. Sentences which may be passed Courts of various Classes

31. Sentences which High Courts and Session Judges may pass. (1) A High Court may pass any sentence authorized by law.

(2) **A Sessions Judge or Additional Sessions Judge** may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) **An Assistant Sessions Judges** may pass any sentence authorized by law, except a sentence of death or of 24[imprisonment for a term exceeding seven years].

32. Sentence which [Magistrate] may pass. (1) The Courts of [Judicial Magistrates] may pass the following sentences namely:

(a) Courts of Magistrates of the first class; Imprisonment for a term not exceeding [three years], including such solitary confinement as Is authorized by law; Pine not exceeding [fifteen] thousand rupees [arsh, daman} Whipping.

(b) Courts of Magistrates of the second class; Imprisonment for a term not exceeding one year,including such solitary confinement as is authorized by law; Fine not exceeding (five)thousand rupees,

(c) Courts of Magistrates of the third class; Imprisonment for a term not exceeding one month;Fine not exceeding (one thousand) rupees.

(2) The Courts of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to passs.

33. Power of Magistrates to sentence to imprisonment in default of fine. (1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default; Provided that:

Proviso as to certain cases.

(a) The term is not in excess of the Magistrate's powers under this Code:

(b) In any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence the period of imprisonment awarded in default of payment of the fine shall not exceed one fourth

of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

[34. Higher powers of certain District Magistrates. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by Saw, except a sentence of death or..... Imprisonment for a term exceeding seven years.]

34-A. (Sentences which Court and Magistrates may pass upon European British subjects]. Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (11 of 1950),Sch.

35. (1) Sentence in case of conviction of several offences at one trial. When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Pakistan Penal Code sentence him, for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment 34..... to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court; Provided as follows:

Maximum term of punishment.

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) if the case is tried by a Magistrate, as..... the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

C. Ordinary and Additional Powers

36. Ordinary powers of Magistrates. All ^[Judicial and Executive Magistrates] have the powers hereinafter respectively conferred upon them and specified in the third schedule Such powers are called their 'ordinary powers'.

37. 37['Additional powers conferrable on Magistrates. In addition to his ordinary powers, any Magistrate may be invested by the Provincial Government with any powers specified in the Fourth Schedule;

Provided that in the case of a Judicial Magistrate, such powers shall be conferred on the recommendation of the High Court;

Provided further that the Provincial Government may authorize a District Magistrate to invest any Magistrate subordinate to him with any of the powers specified in Part 11 of the Fourth Schedule.']

38. Control of District Magistrates investing power. The powers conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Provincial Government.

D. Conferment, Continuance and Cancellation of Powers

39. Mode of conferring powers. (1) In conferring powers under this Code the Provincial Government may by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official title.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Powers of officers appointed. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same Provincial Government, he shall, unless the Provincial Government otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

41. Powers may be cancelled. (1) The Provincial Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it; ('provided that, in the case of Judicial Magistrate, the withdrawal of such persons shall not be made except on the recommendation of the High Court.']

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III - GENERAL PROVISIONS

CHAPTER IV

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS

42. Public when to assist Magistrate and police. Every person is bound to assist a Magistrate "I, Justice of Peace] or police-officer reasonably demanding his aid:

(a) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property,

43. Aid to person, other than police-officer, executing warrant. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

[44. Public to give information of certain offences. (1) Every person aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Pakistan Penal Code, namely, 121, 121 A, 122, 123,123 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 153A, 161, 162,163, 164.165. 168.170,231, 232, 255, 302, 303, 304, 304A, 364A, 382, 392, 393, 394, 395 396, 397, 398, 399. 402, 435,436 449, 450, 456, 457. 458, 459, 460 and 489A, shall, in the absence of reasonable excuse, the burden of proving shall lie upon the person so aware, forthwith give information to the nearest Magistrate [, Justice of the Peace,] or police-officer of such commission or intention; and]

(2) For the purposes of this section the term, 'offence' includes any act committed at any place out of Pakistan which would constitute an offence if committed in Pakistan.

45. Village-headmen, accountant, landholders and others bound to report certain matters. (1) Every village-headman, accountant, village-accountant, village watchman, village police-officer, owner or occupier of land, and the agent of any such owner or occupier in charge of the management of that land and every officer employed in the collection of revenue or rent of land on the part of the Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate [or Justice of Peace] or the officer in charge of the nearest police-station whichever is the nearer, any information which he may possess respecting:

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender;

(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under sections 143, 144, 145, 147 or 148 of the Pakistan Penal Code;

(d) the occurrence in or near such village or any sudden or unnatural death or of any death under suspicious circumstances; or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;

(e) the commission of, or intention to commit, at any place out of Pakistan near such village any act which, if committed in Pakistan would be an offence punishable under any of the following sections of the Pakistan Penal Code, namely, 231, 232, 233, 234, 235,236,237,238,302, 304,382,392,393, 394, 395, 396, 397. 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489A, 489B, 489C and 489D;

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Provincial Government has directed him to communicate information.

(2) In this section:

(i) 'village' includes village-lands; and

(ii) the expression 'proclaimed offender' includes any person proclaimed as an offender by any Court or authority established or continued by the Central Government in any part of Pakistan, in respect of any act which if committed in Pakistan, would be punishable under any of the following sections of the Pakistan Penal Code, namely 302,304, 382, 392, 393,394.395,396, 397, 398, 399, 402,435,436, 449, 450, 457, 458, 459 and 460.

(3) Appointment of village-headmen by District Magistrate or Sub-Divisional Magistrate in certain cases for purposes of this section. Subject to rules in this behalf to be made by the Provincial Government the District Magistrate or Sub-Divisional Magistrate may from time to time appoint one or more persons with his or their consent to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.

CHAPTER V - OF ARREST, ESCAPE AND RETAKING

A Arrest generally

46. Arrest how made. (1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) Resisting endeavor to arrest. If such person forcibly resists the endeavor to arrest him or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with [imprisonment for life.]

47. Search of place entered by person sought to be arrested. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

48. Procedure where' ingress not obtainable. If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance dully made, he cannot otherwise obtain admittance.

Breaking open zanana. Provided that if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

49. Power to break open doors and windows for purposes of liberation. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

50. No unnecessary restraint. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

51. Search of arrested persons. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

52. Mode of searching woman. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

53. Power to seize offensive weapons. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested,

B. Arrest without warrant

54. When police may arrest without warrant. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest:

Firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

Thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Provincial Government;

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a police-officer while in the execution of his duty or who has escaped, or attempts to escape from lawful custody;

Sixthly, any person reasonably suspected of being a deserter from the armed forces of Pakistan [****];

Seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Pakistan which, if committed in Pakistan, would have been punishable as an offence and, for which he is, under any law relating to extradition or [****] otherwise, liable to be apprehended or detained in custody in Pakistan.

Eightly, any released convict committing a breach of any rule made under section 565, sub-section (3);

Ninethly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

55. Arrest of vagabonds, habitual robbers, etc. (1) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested:

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put person in fear of injury.

56. Procedure when police-officer deputes subordinate to arrest without warrant (1) When any officer incharge of a police station or any police-officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so require shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

57. Refusal to give name and residence. (1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate [having jurisdiction] if so required:

Provided that, if such person is not resident in Pakistan, the bond shall be secured by a surety or sureties resident in Pakistan.

(3) Should the true name and residence of such person be not ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to nearest Magistrate having Jurisdiction.

58. Pursuit of offenders into other jurisdictions. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter, pursue such person into any place in Pakistan.

Explanation. In this section 'police officer includes a police officer acting under this Code as in Azad Jammu & Kashmir.]

59. Arrest by private persons and procedure on such arrest. (1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer or, in the absence of a police-officer, take such person or causes him to be taken in custody to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

60. Person arrested to be taken before Magistrate or officer in charge of police-station. A police-officer making an arrest without warrant shall, without, unnecessary delay and subject to the provisions

herein contained as to bail, take and send the person arrested before a Magistrate having jurisdiction in the case or before the officer in charge of a police-station.

61. Person arrested not be detained more than twenty four hours. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

62. Police to report apprehensions. Officers in charge of police station shall report, to the District Magistrate, or, if he so directs, to the Sub-Divisional Magistrate, the cases of all person arrested without warrant, within the limits of their respective station, whether such persons have been admitted to bail or otherwise.

63. Discharge of person apprehended. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

64. Offence committed in Magistrate's presence. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provision herein contained as to bail commit the offender to custody.

65. Arrest by or in presence of Magistrate. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

66. Power, on escape, to pursue and retake. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in Pakistan.

67. Provisions of escape, to sections 47, 48 and 49 to apply to arrest under section 66. The provisions of sections 47, 48 and 49 shall apply to arrest under section 66, although the person making any such arrest is not acting under a warrant and is not police-officer having authority to arrest.

CHAPTER VII - OF PROCESS TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED

A. Summons to produce

94. Summons to produce document or other thing. (1) Whenever any Court, or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officers a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order:

Provided that no such officer shall issue any such order requiring the production of any document or other thing which is in the custody of a bank or banker as defined in the Bankers' Books Evidence Act, 1891

(XVIII of 1891) and relates, or might disclose any information which relates to the bank account of any person except.

Punjab Amendment: [Provided that no officer shall issue any such order requiring the production of any document or other thing which is in the custody of a bank or banker as defined in the Banker Books Evidence Act, 1891 (XVIII of 1891) and relates or might disclose any information which relates, to bank account of any person except with the prior permission In writing of the High Court or the Sessions Judge within whose jurisdiction such bank or banker, as the case may be, is situated or carries on business.]

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Evidence Act, 1872, section 123 and 124, or to apply to a letter, postcard, telegram, or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

(a) for the purpose of investigating an offence under sections 403, 406, 408 and 409 and section 421 to 424 (both inclusive) and section 465 to 447-A (both inclusive) of the Pakistan Penal Code, with the prior permission in writing of a Sessions Judge; and

(b) in other cases, with the prior permission in writing of the High Court.

95. Procedure as to letters and telegraphs. (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, High Court or Court of Sessions, wanted for the purpose of any investigation, inquiry trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, or Court.

B. Search warrants

96. When search warrant may be issued. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition.

or where such documents or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection.

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

97. Power to restrict warrant. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

98. Search of house suspected to contain stolen property, forged documents, etc. (1) If a District Magistrate, Sub-Divisional Magistrate, or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps, i5[bank notes, currency notes or coins, or instruments or materials for counterfeiting coins stamps, bank notes or currency notes] or for forging.

or that any forged documents, false seals or counterfeit stamps [bank note currency notes or coins or instruments or materials used for counterfeiting coins, stamps, bank notes or currency notes] or for forging, are kept or deposited in any place.

or for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Pakistan Penal Code or that any such obscene objects are kept or deposited in any place;

he may by his warrant authorize any police-officer above the rank of a constable-

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps, 17(bank notes, currency notes] or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials or of any such obscene objects as aforesaid, and

(d) to convey such property, documents, seals, stamps, [bank notes, currency notes], coins, instruments, or materials or such obscene objects before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents seals, or stamps, (bank notes, currency] notes coins, instruments or materials [or such obscene objects] knowing of having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, bank notes, currency notes, coin, instruments or materials, to have been forged, falsified or counterfeited, or the said instruments or materials have been or to be intended to be used for counterfeiting coin, stamps, bank notes, or currency notes or for forging 2o[or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported].

(2) The provisions of this section with respect to:

(a) counterfeit coin,

(b) coin suspected to be counterfeit, and

(c) instruments or materials for counterfeiting coin. shall, so far as they can be made applicable, apply respectively to:

(a) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into Pakistan in contravention of any notification for the time being in force under 21 [section 16 of the Customs Act, 1969].

(b) pieces or metal suspected to have been so made or to have been so brought into Pakistan or to be intended to be issued in contravention of the former, of those Acts, and

(c) instruments or materials for making pieces of metal in contravention of that Act.

99. Disposal of things found in search beyond jurisdiction. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be Immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

99-A. Power to declare certain publications forfeited and to issue search-warrants for the same. (1) where:-

(a) any newspaper, or book as defined in the z2[West Pakistan Press and Publication Ordinance, 1963, or any other law relating to press and publications for the time being in force] or

(b) any document.

Wherever printed, appears to the Provincial Government to contain any treasonable a seditious matter or any matter which is prejudicial to national integration or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of Pakistan or which is deliberately and maliciously intended to outrage the religious feelings of such class by insulting the religion or the religious beliefs of theat class, [or any matter of the nature referred to in clause (ii) of subsection (i) of S. 24 of the W.P. Press and Publication Ordinance. 1963) that is to say, any matte the publication of which is punishable under section 123A or section 124A or section 154A or section 295A [or S. 298A or S. 298B or S. 298C] of the Pakistan Penal Code, the Provincial Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government and thereupon any police-officer may seize the same wherever found in Pakistan and any Magistrate may by warrant authorize any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be reasonably suspected to be.

(2) In sub-section (1) 'document' includes also any painting, drawing or photograph, or other visible representation.

99-B. Application to High Court to set aside order of forfeiture. (1) Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99-A (or any other law for the time being in force] may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any treasonable or seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A.

([2) Nothing is sub-section (1) shall apply to a case where the order of forfeiture has been made

(a) in respect of a newspaper, book or other document printed outside Pakistan; or

(b) in respect of a newspaper, book or other document, on the conviction, in respect of such newspaper, book or other document, of the author or editor thereof for any of the offences referred to in sub-section (1) of section 99A.]

99-C. [Omitted by Law Reforms Ordinance, 1972, item 39.]

99-D, Order of High Court setting aside forfeiture. (1) On receipt of the application, the [High Court] shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained (1) treasonable or seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A, set aside the order of forfeiture.

(2) (Omitted by Law Reforms Ordinance, 1972, item 40.].

99-E. Evidence to prove nature or tendency of newspapers. On the hearing of any such application with reference to any. newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.

99-F, Procedure in High Court. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply so far as may be practicable, to such applications.

99-G. Jurisdiction barred. No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions of sections 99B.

C. Discovery of persons wrongfully confined

100. Search for persons wrongfully confined. If any Magistrate of the first class or Sub-Divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined and such search shall be made In accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D. General provisions relating to searches

101. Direction, etc. of search-warrants. The provisions of sections 43,75,77,79,82, 83 and 84 shall, so far as may be apply to all search, warrants issued under section 96, section 98, section 99A or section 100.

102. Persons incharge of closed place to allow search. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities, for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided, by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions, of section 52 shall be observed.

103. Search to be made in presence of witness. (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) **Occupant of place searched may attend.** The occupant of the place searched, or some person in his behalf, shall, in every instance be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witness, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, subsection (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

(5) Any person who. without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Pakistan Penal Code.

104. Power to impound document etc., produced. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

105. Magistrate may direct search in his presence. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV - PREVENTION OF OFFENCES

CHAPTER VIII - OF SECURITY KEEPING THE PEACE AND FOR GOOD BEHAVIOR

A. Security for keeping the peace on conviction

106. Security for keeping the peace on conviction. (1) Whenever any person accused of any offence punishable under Chapter VIII of the Pakistan Penal Code, other than an offence punishable under section 143. section 149, section 153A or section 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court a Court of Sessions, or the Court of [a District Magistrate, Sub-Divisional Magistrate or] a Magistrate of the First class, and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court [or by a Court] when exercising its powers of revision.

B. Security for keeping the peace in other cases and security for good behavior.

107. Security for keeping the peace in other cases. (1) Whenever (a District Magistrate or Sub-Divisional Magistrate or an Executive Magistrate specially empowered in this behalf by the Provincial Government or the District Magistrate] of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, the Magistrate if in his opinion there is sufficient ground for proceeding may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period not exceeding [three years] as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person Informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate other than a District Magistrate, unless both the persons informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

(3) Procedure of Magistrate not empowered to act under sub-section (1). When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reason, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under sub-section (3) may in his discretion detain such person in custody pending further action by himself under this Chapter.

108. Security for good behavior from persons disseminating seditious matter. Whenever a District Magistrate [or a Sub-divisional Magistrate or an Executive Magistrate] specially empowered by the Provincial Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits either orally or in writing or in any other manner intentionally disseminates or attempts to disseminate, or in anywise abets the dissemination of:

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 123A or section 124A of the Pakistan Penal Code; or

(b) any matter the publication of which is punishable under section 153A of the Pakistan Penal Code; or

(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Pakistan Penal Code. Such Magistrate, if in his opinion there is sufficient ground for proceeding may (in matter hereinafter provided) require such person to show cause why he should not be ordered to execute a bond; with or without sureties, for his good behavior for period, not exceeding one year, as the Magistrate thinks fit to fix. No proceedings shall be taken under this section against the editor, proprietor, or publisher of any publication registered under, [and edited, printed and published] in conformity with the [provisions of the West Pakistan Press and Publications Ordinance, 1963 or any other law relating to press and publications for the time being in force] with reference to any matters contained in such publication except by the order or under the authority of a Provincial Government or some officer empowered by the Provincial Government in this behalf.

109. Security for good behavior from vagrants and suspected persons. Whenever [a District Magistrate or Sub-Divisional Magistrate or an Executive Magistrate specially empowered by the Provincial Government in this behalf] receives information:

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself. Such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behavior for such period, not exceeding 2(three years], as the Magistrate thinks fit to fix.

110. Security for good behavior from habitual offenders. Whenever a District Magistrate, or Sub-divisional Magistrate or a 3[Executive Magistrate] specially empowered in this behalf by the Provincial Government receives information that any person within the local limits of his jurisdiction;

(a) is by habit a robber, house-breaker, thief, or forger or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbors thieves or aids in the concealment or disposal of stolen property, or

(d) habitually commits or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Pakistan Penal Code, or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community. Such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behavior for such period, not exceeding three years, as the Magistrate thinks fit to fix.

111. [Proviso as to European vagrants] Rep. by the Criminal Law Amendment Act, 1923 (XII of 1023) S. 8.

112. Order to be made. When a Magistrate acting under section 107, section 108 section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

113. Procedure in respect of person present in Court. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

114. Summons or warrant in case of person not so present. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court;

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

115. Copy of order under section 112 to accompany summons or warrant. Every summons of warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under the same.

116. Power to dispense with personal attendance. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and permit him to appear by a pleader.

117. Inquiry as to truth of information. (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with. or in execution of a summons or warrant, issued under section 114. the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such Inquiry shall be made, as nearly as may be practicable, in the manner prescribed in Chapter XX for conducting trials and recording evidence, except that no charge need be framed.]

(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behavior until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded. Provided that:

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behavior, and

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112.

(4) For the purpose of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

118. Order to give security. (1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behavior, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or with sureties, the Magistrate shall make an order accordingly; Provided:

Firstly, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

Secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

Thirdly, that when the person in respect of whom the inquiry is made is a minor, the bod shall be executed only by his sureties.

119. Discharge of person informed against. If, on an inquiry under section 117, its is not proved that it is necessary for keeping the peace or maintaining good behavior, as the case may be, thus the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if a such person is in custody only for the purposes of the inquiry shall release him, or, if such person is not in custody, shall discharge him.

C. Proceedings in all cases subsequent to order to furnish Security

120. Commencement of period for which security is required. (1) If any person, in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of imprisonment the period for which such security is required shall commence on the expiration of such sentence.

(2) In other case such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

121. Contents of bond. The bond to be executed by any such person shall bind him to keep the peace or to be of good behavior, as the case may be, and in the later case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

122. Power to reject sureties. (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond: Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety or cause such inquiry to be held , and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing.

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him,

123. Imprisonment in default of security. (1) If any person ordered to give security under section 106 or section 118 doe's not give such security on or before the date on which, the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned be committed to prison, or if he is already in prison be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(2) Proceedings when to be laid before High Court or Court of Sessions. When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge; [****] and the proceedings shall be laid, as soon as conveniently may be, before [such Judge.]

(3) The Sessions Judge, after examining such proceedings and requiring from the Magistrate any further information or evidence which he thinks necessary, may pass such order on the cases as he thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(3-A) If security has been required in the course of the same proceedings from two or more persons in respect of anyone of whom the proceedings are referred to the Sessions Judge under sub-section (2), such reference, shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3-B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(4) If the security is tendered to the officer incharge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(5) Kind of imprisonment. Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behavior shall, where the proceedings have been taken under section 108 be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

124. Power to release person imprisoned for failing to give security. (1) Whenever the District Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter may be

released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts.

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The Provincial Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any such person has been discharged is in the opinion of the District Magistrate by whom the order of discharge was made or of his successor not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate. Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate may remand such person to prison to undergo such unexpired portion. A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made or to its or his successor.

125. Power of District Magistrate to cancel any bond for keeping the peace or good behavior. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behavior executed under this Chapter by order of any Court in his district not superior to his Court.

126. Discharge of sureties. (1) Any surety for the peaceable conduct or good behavior of another person may at any time apply to a District Magistrate [or Sub-Divisional Magistrate] to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought; before him.

126-A. Surety for unexpired period of bound. When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122, or under section 126, sub-section (2), appears or if brought before him, the Magistrate shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121,122,123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX - UNLAWFUL ASSEMBLIES [AND MAINTENANCE OF PUBLIC PEACE AND SECURITY

127. Assembly to disperse on command of magistrate or police officer. (l) Any [Executive Magistrate] or officer incharge of a police-station may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) [Omitted by A.O., 1949]

128. Use of civil force to disperse. if, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any io[Executive Magistrate] or officer incharge of a police-station, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer, soldier, sailor or airman in the armed forces of Pakistan ..... and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

129. Use of military force. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the [Executive Magistrate] of the highest rank who is present may cause it to be dispersed by military force.

130. Duty of officer commanding troops required by magistrate to disperse assembly. (1) When a Magistrate determines to disperse any such assembly by the armed forces, ... he may require any officer thereof in command of any group of persons belonging to the armed forces to disperse such assembly with the help of the armed forces under his command and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

131. Power to commissioned military officers to disperse assembly. When the public security is manifestly endangered by such assembly, and when no [Executive Magistrate] can be communicated with, any commissioned officer of the Pakistan Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section it becomes practicable for him to communicate with [an Executive Magistrate], he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

[131-A. Power to use military force for public security and maintenance of law and order. (1) If the Provincial Government is satisfied that, for the public security, protection of life and property, public peace and the maintenance of law and order, it is necessary to secure the assistance of the armed forces, the Provincial Government may require, with the prior approval of the Federal Government, or the Federal Government, on the request of the Provincial Government, direct, any officer of the armed forces to render such assistance with the help of the armed forces under his command, and such assistance shall include the exercise of powers specified in sections 46 to 49, 53. 54, 55(a) and (c), 58, 63 to 67,100,102,103 and 156: Provided that such powers shall not include the powers of a Magistrate.

(2) Every such officer shall obey such requisition or direction, as the case may be, and in doing so may use such force as the circumstances may require.

(3) In rendering assistance relating to exercise of powers specified in subsection (1), every officer shall, as far as may be, follow the restrictions and conditions laid down in the Code.']

132. Protection against prosecution for acts done under this Chapter. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Provincial Government; and:

(a) no Magistrate or police officer acting under this Chapter in good faith.

(b) no officer acting under section 131 in good faith.

(c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130 [or S.131-A], and

(d) no inferior officer, or soldier, sailor or airman in the armed forces ..... doing any act in obedience to any order which he was bound to obey. shall be deemed to have thereby committed an offence: Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier, sailor or airman in the armed forces except with the sanction of the Central Government. Scope-Section 132, Criminal P.C. is a protection against prosecution and has nothing to do with ingredients of any offence. In order to obtain benefit of S. 132 the accused has to prove that the acts complained of were done under circumstances mentioned in the section, He need not prove that he committed no offence. In other words he must place before the Judge materials and circumstances justifying an inference that there was an unlawful assembly and the acts complained of were purported to have been done while dispersing that assembly. AIR 1956 S.C. 44

132-A. Definitions. In this Chapter:-

(a) the expression 'armed forces' means the military, naval and air forces, operating as land forces and includes the force constituted under the Federal Security Force Act (XL of 1973), and any other armed forces of Pakistan so operating.

(aa) the expression 'civil armed forces' means the Pakistan Rangers, Frontier Corps, Frontier Constabulary, Baluchistan Constabulary, Pakistan Coast Guards or any other force as the Federal Government may notify.'

(b) 'officer', in relation to the armed forces, means a person Commissioned, gazette or in pay as an officer of the armed forces and includes a junior commissioned officer a warrant officer, a petty officer and a non-commissioned officer; and

(c) 'soldier' includes a member of the force constituted under the Act referred to in clause (b).

CHAPTER X - PUBLIC NUISANCES

133. Conditional order for removal of nuisance. (1) Whenever a District Magistrate, a Sub-Divisional Magistrate or 2o[an Executive Magistrate] considers, on receiving a police report or other information and on taking such evidence (if any) as the thinks fit. that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public or from any public place, or that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or that any building, tent or structure, or any tree is in such a condition that it is likely to fail and thereby cause injury to persons living or carrying on business in the neighborhood or passing by, and that in consequence the removal, repair or

support of such building, tent or structure, or the removal or support of such tree, is necessary, or that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or that any dangerous animal should be destroyed, confined or otherwise disposed of, such magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed In the order. or remove such obstruction or nuisance; or to desist from carrying on, or to remove or regulate the keeping thereof in such manner as may be directed; or

to remove such goods, or merchandise, or to regulate the keeping thereof in such manner as may be directed; or to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or to remove or support such tree; or to alter the disposal of such substance; or to fence such tank, well or excavation, as the case may be; or to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other 21 (Executive Magistrate], at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation. A 'public place' Includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

134. Service or notification of order. (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Provincial Government by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

135. Person to whom order is addressed to obey or show cause or claim jury. The person against whom such order is made shall;

(a) perform, within the time and in the manner specified in the order the act directed thereby; or

(b) appear in accordance with such order and either show cause against the same or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

136. Consequence of his failing to do so. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Pakistan Penal Code, and the order shall be made absolute.

137. Procedure where he appears to show cause. (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter 22[in the manner provided in Chapter XX].

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

138. Procedure where he claims jury. (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall:

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant.

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

139. Procedure where jury finds Magistrate's order to be reasonable. (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(2) In other cases no further proceedings shall be taken under this Chapter.

139-A. Procedure where existence of public right is denied. (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter.

(2) If in such inquiry Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1) failed to deny the existence of a public right of the nature therein referred to, or who having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138.

140. Procedure on order being made absolute. (1) When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Pakistan Penal Code.

(2) Consequences of disobedience to order. If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

141. Procedure on failure to appoint jury or omission to return verdict. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may In his discretion allow, the Magistrate may pass such order as he thick fit, and such order shall be executed in the manner provided by section 140.

142. Injunctions pending inquiry. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunctions, the Magistrate may himself use, or cause to be used, such means as he thick fit to obviate such danger to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

143. Magistrate may prohibit repetition or continuance of public nuisance. A District Magistrate or Sub-divisional Magistrate [or any other Executive Magistrate] empowered by the Provincial Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Pakistan Penal Code or any special or local law.

CHAPTER XI - TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER

144. Power to issue order absolute at once in urgent cases of nuisance or apprehended danger. in cases where, in the opinion of a District Magistrate, Sub-Divisional Magistrate, (or of any other Executive Magistrate] specially empowered by the Provincial Government or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction Is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may. in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, exparte.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Provincial Government, by notification in the official Gazette, otherwise directs.

CHAPTER XII - DISPUTES AS TO IMMOVABLE PROPERTY

145. Procedure where dispute concerning land, etc., is likely to cause breach of peace. (1) Whenever a District Magistrate [or Sub-Divisional Magistrate or an Executive Magistrate specially empowered by the Provincial Government in this behalf] is satisfied from a police-report or other information that a dispute likely to cause breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statement of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression 'land or water' includes buildings markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) Inquiry as to possession. The Magistrate shall then, without reference to the merits or the claims of any such parties to a right to possess the subject of dispute, pursue the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any which of the parties was at the date of the order before mentioned in such possession of the said subject: Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date: Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) Party in possession to retain possession until legally evicted. If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

146. Power to attach subject of dispute. (1) If the Magistrate decides that none of the parties was then In such possession, or Is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach It until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof. Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court appoint a receiver thereof, who, subject to the control of the Magistrate, shall have ail the powers of a receiver appointed under the [Code of Civil Procedure, 1908]: Provided that in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

147. Disputes concerning rights of use of immovable property, etc. (1) Whenever any District Magistrate 27[or Sub-Divisional Magistrate or an Executive Magistrate specially empowered by the Provincial Government in this behalf] is satisfied, from a police-officer or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145. sub-section (2) (whether such rights be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court In person or by pleader within a time to be fixed by such Magistrate and to put in written statement of their respective claims and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as for as may be applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right: Provided that no such order shall be made where the right is exercisable at all times of the years, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.

148. Local inquiry. (1) Whenever a local inquiry is necessary for the purpose of this Chapter, any District Magistrate or Sub-Divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

Order as to costs.

(3) When any costs have been incurred by any party to a proceeding under this Chapter the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. Such costs may Include any expenses incurred in respect of witnesses, and of pleaders' fees, which the Court may consider reasonable.

CHAPTER XIII - PREVENTIVE ACTION OF THE POLICE

149. Police to prevent cognizable offences. Every police-officer may interpose for the purpose of preventing and shall, to the best of his ability prevent, the commission of any cognizable offence.

150. information of design to commit such offences. Every police-officer receiving information of a design to commit any cognizable offence, shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. Arrest to prevent such offences. A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

152. Prevention of injury to public property. A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

153. Inspection of weights and measures. (1) Any officer incharge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V - INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

CHAPTER XIV

154. Information in cognizable cases. Every information relating to the commission of a cognizable offence If given orally to an officer incharge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer In such form as the Provincial Government may prescribe in this behalf.

155. Information in non-cognizable cases. (1) When information is given to an officer incharge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the [Magistrate].

(2) Investigation into non-cognizable cases. No police-officer shall investigate a non-cognizable case without the order of a Magistrate of first or second class having power to try such case [or send the same for trial to the Court of Session].

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer incharge of a police station may exercise in a cognizable case.

156. Investigation into cognizable case. (1) Any officer incharge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an Investigation as above mentioned.

[(4) Notwithstanding anything contained in sub-sections (1) (2) or (3), no police-officer shall investigate an offence under section 497 or section 498 of the Pakistan Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had the care of such woman on his behalf at the time when such offence was committed.]

157. Procedure where cognizable offence suspected. (1) If, from information received or otherwise an officer incharge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Provincial Government may, by general or special order, prescribe in this behalf to proceed, to the sport, to investigate the facts and circumstances of the case, and, if necessary to take measures for the discovery and arrest of the offender:

Provided as follows:

(a) Where local Investigation dispensed with. When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer Incharge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) Where police officer incharge sees no sufficient ground for investigation, if it appears to the officer Incharge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1). the officer incharge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b). such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Provincial Government, the fact that he will not investigate the case or cause it to be Investigated.

158. Report* under section 157 how submitted. (1) Every report sent to a Magistrate under section 157 shall, if the Provincial Government so directs, be submitted through such superior officer of police as the Provincial Government, by general or special order appoints in that behalf.

(2) Such superior officer may give such instructions to the officer incharge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Power to hold investigation of preliminary inquiry. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

160. Police-officer's power to require attendance of witnesses. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or

otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

161. Examination of witnesses by police. (1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Provincial Government may. by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police-officer may reduce Into writing any statement made to him in the course of an examination, under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.

162. Statements to police not to be signed: Use of statements in evidence. (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether In a police-diary or otherwise or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by 'section 145 of the Evidence Act. 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in public interests, it shall record such opinion (but not the reasons therefore) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1). of the Evidence Act, 1872 [or to affect the provisions of section 27 of that Act].

163. No inducement to be offered. (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Evidence Act, 1872, section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

164. Power to record statements and confessions. (1) Any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Provincial Government may, if he is not a police-officer, record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

[(1A) Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement.]

(2) Such statement shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and statements of confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, questioning the person making, it, he has reasons to believe that it was made voluntarily: and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect: 'I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and. I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him. (Signed} A.B., Magistrate

Explanation. It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

165. Search by police-officer. (1) Whenever an officer incharge of a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purpose of an investigation into any offence which he is authorized to investigate may be found In any place within the limits of the police-station of which he is Incharge, or to which he is attached and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search or cause search to be made, for such thing in any place within the limits of such station.

[Provided that no such officer shall search, or cause search to be made, for anything which is In the custody of any bank or banker as defined in the Bankers Books Evidence Act, 1891 (XVIII of 1891), and relates or might disclose any information which relates, to the bank account of any person except:-

(a) for the purpose of investigating an offence under sections 403, 406 and 409 and sections 421 to 424 (both inclusive) and sections 465 to 477-A (both inclusive) of the Pakistan Penal Code, with the prior permission in writing of a Sessions Judge; and

(b) in other cases, with the prior permission in writing of the High Court.]

(2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer sub-ordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the place to be searched, and, so far as possible, the thing for which search is to be made: and such subordinate officer may thereupon search for such things in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 102 and section 103 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Punjab Amendment. In section 165, for proviso to sub-section (1), the following proviso, shall be substituted namely: ['Provided that no such officer shall search, or cause a search to be made, for anything which is in the custody of a bank or a banker as defined in the Bankers' Books Evidence Act 1891 (XVIII of 1891) and relates, or might disclose any Information which relates, to the bank account of any person except with the prior permission in writing of the High Court or the Sessions Judge within whose jurisdiction such bank or banker, as the case may be, is situated or carries on business.']

166. When officer incharge of police-station may require another to issue search warrant. (1) An officer incharge of a police-station or a police officer not being below the rank of sub-inspector making an investigation may require an officer incharge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer incharge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer incharge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer incharge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103 and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred in section 165, sub-sections (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

167. Procedure when investigation cannot be completed in twenty-four hours. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-tour hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer incharge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the [nearest Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

[Explanation:- For this purpose of this section, in the cases triable by the Executive magistrates, the expression 'nearest Magistrate' means the Executive Magistrate and in all other cases, the Judicial Magistrate.]

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or [send] it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Provincial Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

[(4) The Magistrate giving such order shall forward a copy of his order, with his reasons for making it, to the Sessions Judge.]

[(5) Notwithstanding anything contained in sections 60 and 61 or hereinbefore to the contrary, where the accused forwarded under subsection (2) is a female, the Magistrate shall not, except in the cases involving Qatl or dacoity supported by reasons to be recorded in writing, authorize the detention of the accused in police custody, and the police officer making in investigation shall interrogate the accused referred to in subsection (1) in the prison in the presence of an officer of jail and a female police officer.

(6) The officer incharge of the prison shall make appropriate arrangements for the admission of the investigating police officer into the prison for the purpose of interrogating the accused.

(7) If for the purpose of investigation, it is necessary that the accused referred to in subsection (1) be taken out of the prison, the officer incharge of the police station or the police officer making investigation not below the rank of Sub-Inspector, shall apply to the Magistrate in that behalf and the Magistrate may, for the reasons to be recorded in writing, permit taking of accused out of the prison in the company of a female police officer appointed by the Magistrate:

Provided that the accused shall not be kept out of the prison while in the custody of the police between sunset and sunrise.']

168. Report of investigation by subordinate police-officer. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer incharge of police-station.

169. Release of accused when evidence deficient. If, upon an investigation under this Chapter, it appears to the officer incharge of the police-station, or to the police-officer making the investigation that there is no sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or 11 [send] him for trial.

170. Case to be sent to Magistrate when evidence is sufficient. (1) If, upon an investigation under this Chapter, it appears to the officer incharge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or [send] him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer incharge of police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

[(3) If the Court of District Magistrate or Sub-divisional Magistrate Is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the cases for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.]

(4) x x x x x x x

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

171. Complainants and witnesses not to be required to accompany police-officer. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer. Complainants and witnesses not to be subject to restraint, or shall be subjected to , unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond: Recusant complainant or witnesses may be forwarded in custody. Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer incharge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

172. Diary of proceedings in investigation. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court, may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the police-officer who made them, to refresh his memory, if the Court uses them for the purpose of contradicting such police-officer the provisions of the Evidence Act, 1872 section 161 section 145 as the case may be, shall apply.

173. Report of police-officer. (1) Every investigation under this Chapter shall be completed, without unnecessary delay, and, as soon as it is completed, the officer incharge of the police-station shall, [through the public prosecutor]. is

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case

and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

Provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under section 154, the officer incharge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the court decides that the trial should not so commence.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may pending the orders of the Magistrate, direct the officer incharge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial:

'(5) Where the officer incharge of a police-station forwards a report under sub-section (1), he shall along with the report produce the witnesses in the case, except the public servants, and the Magistrate shall bind such witnesses for appearance before him or some other court on the date fixed for trial'.

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

174. Police to inquire on suicide, etc. (1) The officer incharge of a police-station or some other police-officer specially empowered by the Provincial Government in that behalf, on receiving information that a person:

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Provincial Government, or by any general or special order of the District or Sub-Divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable Inhabitants of the neighborhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds fractures, bruises and other marks of Injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-Divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the Provincial Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Provincial Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) [Omitted by A.O. 1949].

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, Sub-divisional Magistrate [or any other Executive Magistrate] especially empowered in this behalf by the Provincial Government or the District Magistrate.

175. Power to summon person. (1) A Police-officer proceeding under section 174, may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

176. Inquiry by Magistrate into cause of death. (1) When any person dies when in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Power to disinter corpses. Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

PART VI - PROCEEDINGS IN PROSECUTIONS

CHAPTER XV - OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

A. Place of Inquiry or Trial

177. Ordinary place of inquiry and trial. Every offence shall ordinary be inquired in and tried by a Court within the local limits of whose jurisdiction it was committed.

178. Power to order cases to be tried in different sessions divisions. Notwithstanding anything contained in section 177, the Provincial Government may direct that any cases or class of cases [in any district sent for trial to a Court of sessions] may be tried in any sessions division:

[Provided that such direction is not repugnant to any direction previously issued by the High Court under section 526 of the Code or any other law for the time being in force]

179. Accused triable in district where act is done or where consequence ensues. When a person is accused of the commission of any offence by reason of anything which had been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

Illustrations

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z, The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z unable in the local limits of the jurisdiction of either Court Y, or court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within local limits of jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court. Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(d) A is wounded in the State of Junagadh, and dies of his wounds in Karachi. The offence of causing A's death may be inquired into and tried in Karachi.

180. Place of trial where act is offence by reason of relation to other offence. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be Inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

181. Being a thug or belonging to a gang of dacoits, escape from custody, etc. (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

(2) **Criminal misappropriation and criminal breach of trust.** The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

(3) **Theft.** The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(4) **Kidnapping and abduction.** The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

182. Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts. When it is uncertain in which or several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one, and continues to be committed in more local areas than, one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

183. Offence committed on a journey. An offence committed whilst the offender in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

184. Offences against Railway, Telegraph, Post Office and Arms Acts. [Rep. by the Federal Laws (Revision and Declaration) Act, 1951 (XXVI) of 1951), S. 3 and Second Schedule.)

185. High Court to decide, in case of doubt, district where inquiry or trial shall take place. (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High court, upon the matter having been brought to Its notice, does not so decide any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued.

186. Power to issue summons or warrant for offence committed beyond local jurisdiction. (1) When a [District Magistrate, a Sub-Divisional Magistrate, or, if he is specially empowered in this behalf by the Provincial Government, a Magistrate of the first class], sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without Pakistan) an offence which cannot, under the provisions of section 177 to 184 (both inclusive), or any other law for the time being in force be inquired into or tried within such local limits, but is under some law for the time being in force triable in Pakistan such Magistrate may inquire into the offence as if it had been committed within such local limits and compel such person in manner hereinbefore provided to appear before him, and send such person to Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

(2) When there are more Magistrates than one having such jurisdiction and Magistrate acting under the section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case, shall be reported for the orders of the High Court.

187. Procedure where warrant issued by subordinate Magistrate. (1) If the person has been arrested under a warrant issued under section 186 [the Magistrate issuing the warrant shall send the arrested person to the Sessions Judge] to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued,

(2) If the offence with which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

188. Liability for offences committed outside Pakistan. When a citizen of Pakistan commits an offence at any place without and beyond the limits of Pakistan, or when a servant of the State (whether a citizen of Pakistan or not commits an offence in [a tribal area,] when any person commits an offence on any ship or aircraft registered in Pakistan wherever it may be, he may be dealt with in respect of such offence as if it had been committed at any place within Pakistan at which he may be found:

Political Agents to certify fitness of inquiry into charge. Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be inquired into in Pakistan unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge, ought to be inquired into in Pakistan; and, where there is no Political Agent, the sanction of Federal Government shall be required.

Provided, also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in Pakistan shall be a bar to further proceedings against him under the [Extradition Act, 1972,] in respect of the same offence in any territory beyond the limits of Pakistan.

189. Power to direct copies of depositions and exhibits to be received in evidence. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Provincial Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such office is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Courts might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B. Conditions requisite for initiation of proceedings.

190. Cognizance of offences by Magistrates. (1) Except as hereinafter provided, [any District Magistrate or a Sub-Divisional Magistrate or any other Magistrate specially empowered in this behalf] by the Provincial Government on the recommendation of High Court may take cognizance of any offence:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion that such offence has been committed.

[(2) The Provincial Government may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or send to the Court of Session for trial:

Provided that in case of Judicial Magistrate, the Provincial Government shall exercise this power on the recommendations of the High Court.]

[(3) A Magistrate taking cognizance under sub-section (1) of an offence triable exclusively by a Court of Session shall, without recording any evidence, send the case to Court of Session for trial.]

[191. Transfer on application of accused. When a Magistrate takes cognizance of an offence under subsection (1), clause (c) of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and, if the accused or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be [sent] to the [in the case of Judicial Magistrate to the Session Judge and in the case of Executive Magistrate to the District Magistrate] for transfer to another Magistrate.]

[192. Transfer of cases by Magistrate. (1) Any District Magistrate, or Sub-Divisional Magistrate may transfer any case of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him;

[Provided that if the offence is triable by a Judicial Magistrate the case shall be sent to the Court of Session for transfer to such Magistrate.]

['(2) Any District Magistrate may empower any Executive Magistrate subordinate to him, who has taken cognizance of any case, to transfer such case for inquiry or trial to any other Executive Magistrate in his district who is competent under this Code to try the accused; and such Magistrate may dispose of the case accordingly'; and

'(3) A Sessions Judge may empower any Judicial Magistrate who has taken cognizance of any case, to transfer such case for trial to any other Judicial Magistrate in his district and such Magistrate may dispose of the case accordingly.']

193. Cognizance of offences by Courts of Sessions. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction [unless the case has been sent to it under section 190 sub-section (3).

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Provincial Government by general or special order may direct them to try, or as the Sessions Judge of the division, by general or special order, may make over to them for trial.

194. Cognizance of offences by High Court. (1) The High Court may take cognizance of any offence [.....] in manner hereinafter provided. Nothing herein contained shall be deemed to affect the provisions of any Letters Patent or Order by which a High Court is constituted or continued, or any other provision of this Code. [*****]

195. Prosecution for contempt of lawful authority of public servants; Prosecution for certain offences against public justice: Prosecution for certain offences relating to documents given in evidence. (1) No Court shall take cognizance:

(a) of any offence punishable under sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate.

(b) of any offence punishable under any of the following sections of the same Code namely sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate, or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding i.e. any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clause (b) and (c) of the sub-section (1), the term 'Court' includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the [Registration Act, 1908].

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decree no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate: Provided that:

(a) where appeals lie to more than one Court, the appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceedings in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offence, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause(a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and if it does so. it shall forward a copy or such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

196. Prosecution for offences against the State. No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Pakistan Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Central Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments.

196-A. Prosecution for certain classes of criminal conspiracy. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Pakistan Penal Code.

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the Central Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence, or a cognizable offence not punishable with death or [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, unless the Provincial Government, or a District

Magistrate empowered in this behalf by the Provincial Governments, has by order in writing, consented to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary.

196-B. Preliminary inquiry in certain cases. In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).

197. Prosecution of Judges and public servants. (1) When any person who is a Judge within the meaning of section 19 of the Pakistan Penal Code or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Central Government or a Provincial Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:

(a) in the case of a person employed in connection with the affairs of the Centre, of the President; and

(b) in the case of a person employed in connection with the affairs of a Province, of Governor of that Province.

(2) Power of President or Governor as to prosecution. The President or Governor, as the case may be, may determine the person by whom, the manner in which, the offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

198. Prosecution for breach of contract, defamation and offences against marriage. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Pakistan Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf;

Provided further that where the husband aggrieved by an offence under section 494 of the said Code is serving in any of the Armed Forces of Pakistan under conditions which are certified by the Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorized by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

N.W.F.P. Amendment. In Section 198 of the Code, omit the words 'or under sections 493 to 496 (both inclusive) of the same Code'; and the second proviso to this section.

[198-A. Prosecution for defamation against public servants in respect of their conduct in the discharge of public functions. (1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Pakistan Penal Code (Act XLV of 1860) is alleged to have been

committed against the President, the Prime Minister a Federal Minister, Minister of State, Governor, Chief Minister or Provincial Minister or any public servant employed in connection with the affairs of the Federation or of a Province, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

(2) Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(3) No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction.

(a) in the case of the President or the Prime Minister or a Governor, or any Secretary to the Government authorized by him in this behalf.

(b) in the case of a Federal Minister or Minister of State, Chief Minister or Provincial Minister, of any Secretary to the Government authorized in this behalf by the Government concerned.

(c) in the case of any public servant employed in connection with the affairs of the Federation or of a province, of the Government concerned.

(4) No Court of Sessions shall take cognizance of an offence under sub-section (1) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(5) When the Court of Session takes cognizance of an offence under sub-section (1), then, notwithstanding anything contained in the Code, the Court of Sessions shall try the case without the aid of a jury or assessors and in trying the case shall follow the procedure prescribed for the trial by Magistrate of warrant cases instituted otherwise than on a police report.

(6) The provisions of this section shall be in addition to, and not in derogation of those of section 198].

199. Prosecution for adultery or enticing a married woman. [No Court shall take cognizance of an offence under section 497 or section 498 of the Pakistan Pena! Code, except:

(a) upon a report in writing made by a police-officer on the complaint of the husband of the woman, or in this absence, by some person who had care of such woman on his behalf at the time when such offence was committed; or

(b) upon a complaint made by the husband of the woman or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed:]

Provided that where such husband is under the age of eighteen years or is an idiot or is from sickness or infirmity unable to make complaint, some other person may with the leave of the Court make a complaint on his behalf:

Provided further that where such husband is serving in any of the Armed Forces of Pakistan under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorized by the husband in

accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court make a complaint on his behalf.

(N.W.F.P. Amendment-Delete Section 199].

199-A. Objection by lawful guardian to complaint by person other than person aggrieved. When in any case falling under section 198 or. section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.

199-B. Form of authorization under second proviso to section 198 or 199. (1) The authorization of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegation upon which the complaint is to be founded, shall be countersigned by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by the Officer, to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorization and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.

N.W.F.P. Amendment-[In section 199-A of the Code; omit the words 'or section 199' and delete section 199-B].

CHAPTER XVI - OF COMPLAINTS TO MAGISTRATE

200. Examination of complainant. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows:

(a) when the complaint is made in writing nothing herein contained shall be deemed to require a Magistrate to examine the complaint before transferring the case under section 192 [or sending it to the Court of Sessions].

(aa) when the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complainant has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties:

(b) * * * * *

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

201. Procedure by Magistrate not competent to take cognizance of the case. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not beep made in writing such Magistrate shall direct the complainant to the proper Court.

[202. Postponement of issue of process. (1) Any Court, on receipt of a complaint of an offence of which it is authorized to take cognizance, or which has been sent to it under Section 190, sub-section (3), or transferred to it under Section 191 or Section 192, may, if it thinks fit, for reasons to be recorded postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case itself or direct an inquiry or investigation to be made by [any Justice of the Peace or by] a police-officer or by such other person as it thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of Section 200.

(2) A Court of Session may, instead of directing an investigation under the provisions of sub-section (1), direct the investigation to be made by any Magistrate subordinate to it for the purpose of ascertaining the truth or falsehood of the complaint.

(3) If any inquiry or investigation under this section is made by a person not being a Magistrate [or Justice of the Peace] or a police-officer, such person shall exercise all the powers conferred by this Code on an officer-in-charge of a police-station, except that he shall not have power to arrest without warrant.

(4) Any Court inquiring into a case under this section may, if it thinks fit, take evidence of witnesses on oath.]

203. Dismissal of complaint. [The Court] before whom a complaint is made or to whom it has been transferred or [sent] may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry if any under section 202 there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

CHAPTER XVII - OF THE COMMENCEMENT OF PROCEEDING BEFORE [COURTS]

204. Issue of process. (1) If in the opinion of a [Court] taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which, according to the fourth column of the second schedule a summons should issue in the first instance, [it] shall issue its summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, [it] may issue a warrant, or, if, [it] thinks fit, a summons for causing the accused to be brought or to appear at a certain time before such Court or (if [it] has not jurisdiction [itself]) some other Court having jurisdiction.

(2) Nothing in this section-shall be deemed to affect the provision of section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the [Court] may dismiss the complaint.

205. Magistrate may dispense with personal attendance of accused. (1) Whenever a magistrate issue a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring or trying the case may, in his discretion, at any stage of the proceedings direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII - OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT

206-220. [Chapter XVIII consisting of sections 206-220 omitted by Law Reforms Ordinance, 1972. item 82. Enforced in the Province of Punjab w.e.f. 26.12.1975.]

CHAPTER XIX - OF THE CHARGE FORM OF CHARGES

221. Charge to state offence. (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) Specific name of offence; sufficient description. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) How stated where offence has no specific name. If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he Is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) What implied In charge. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particulars case.

(6) Language of charge. The charge shall be written either in English or in the language of the Court.

(7) Previous conviction when to be set out. If the accused having been previously convicted of any offence, is liable by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in section 299 and 300 of the Pakistan Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to sections 300 or that, if it did fall within Exception 1, one or other of the three provisos to that exception apply to it.

(b) A is charged, under section 326 of the Pakistan Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Pakistan Penal Code, and that the general exceptions did not apply to it

(c) A is accused of murder cheating, theft, extortion, adultery or criminal intimidation or using a false property-mark. The charge may state that A committed murder, cheating, or theft, or extortion, or adultery or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Pakistan Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Pakistan Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

222. Particulars as to time, place and person. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom; or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234;

Provided that the time included between the first and last of such dates shall not exceed one year.

223. When manner of committing offence must be stated. When the nature of the case is such that the particulars mentioned in section 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner In which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

224. Words in charge taken in sense of law under which offence is punishable. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

225. Effect of errors. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged under section 242 of the Pakistan Penal Code, with 'having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit', the word 'fraudulently' being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, call witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case a material error.

(d) A is charged with the murder of Khoda Bakhsh on the 21st January 1882. In fact the murdered person's name was Haider Bakhsh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the [trial], which referred exclusively to the case of Haider Bakhsh. The Court may infer from these facts that A was not misled and that the error in the charge was immaterial.

(e) A was charged with murdering Haider Bakhsh on the 21st January 1882. When charged for the murder of Haider Bakhsh, he was tried for the murder of Khoda Bakhsh. The witnesses present in his defence were witnesses in the case of Haider Bakhsh. The Court may infer from this that A was misled, and that the error was material.

226. [Omitted by Law Reforms Ordinance 1972, item 84].

227. Court may alter charge. (1) Any Court may later or add to any charge at any time before judgement is pronounced [.....].

(2) Every such alteration or addition shall be read and explained to the accused.

228. When trial may proceed immediately after alteration. If the charge framed or alteration or addition made under [....} section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case. the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

229. When new trial may be directed, or trial suspended. If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or

the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

230. Stay of proceedings if prosecution of offence in altered charge requires previous sanction. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

231. Recall of witnesses when charge altered. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

232. Effect of material error. (1) If any Appellate Court, or the [Court of Session] in the exercise of revision or of its powers under Chapter XVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge by any error in the charge, It shall direct a new trial to be held upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration

A is convicted of an offence, under section 196 of the Pakistan Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

233. Separate charges for distinct offences. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234.235, 236 and 239.

Illustration

A is accused of a theft on one occasion, and causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

234. Three offences of same kind within one year may be charged together. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, and number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Pakistan Penal Code or of any special or local low:

Provided that, for the purpose of this section, an offence punishable under section 379 of the Pakistan Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Pakistan Penal Code or of any special or local law shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

235. Trial for more than one offence. (1) If, in one series of facts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) Offence falling within two definitions. If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(3) Acts constituting one offence, but constituting when combined a different offence. If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by anyone, or more, of such acts.

(4) Nothing contained in this section shall affect the Pakistan Penal Code, Section 71.

Illustrations

To sub-section (1):

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was, A may be charged with, and convicted of, offences under section 225 and 333 of the Pakistan Penal Code.

(b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under section 454 and 497 of the Pakistan Penal Code.

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Pakistan Penal Code.

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Pakistan Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Pakistan Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding: and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under sections 211 of the Pakistan Penal Code.

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of. offences under sections 211 and 194 of the Pakistan Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under section 147, 325 and 152 of the Pakistan Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of three offences under section 506 of the Pakistan Penal Code. The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time: To sub-section (2):

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under section 352 and 323 of the Pakistan Penal Code.

(j) Several stolen sacks of corn are made over to A and B who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of offences under sections 411 and 414 of the Pakistan Penal Code.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Pakistan Penal Code.

(I) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Pakistan Penal Code. A may be separately charged with, and convicted of, offences under sections 471 read with 466 and 196 of the same Code. To sub-section (3):

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Pakistan Penal Code.

236. When it is doubtful what offence has been committed. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

237. When a person is charged with one offence, he can be convicted of another. (1) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

Illustration

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. When offence proved included in offence charged. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(2-A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.]

(3) Nothing in this section shall be deemed to authorizes conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations

(a) A is charged, under section 407 of the Pakistan Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) A is charged, under section 325 of the Pakistan Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

239. What persons may be charged jointly. The following persons may be charged and tried together, namely:

(a) persons accused of the same offence committed in the courses of the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence.

(c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction

(e) persons accused of an offence which includes theft, extortion or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last named offence;

(f) persons accused of offences under sections 411 and 414 of the Pakistan Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

(g) persons accused of any offence under Chapter XII of the Pakistan Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of

abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

240. Withdrawal of remaining charges on conviction on one of several charges. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry, into, or trial of such charge or charges. Such withdraw shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XX - OF THE TRIAL OF CASES BY MAGISTRATE

241. Procedure in trial of cases. The following procedure shall be observed by Magistrate in the trial of cases.

241-A. Supply of statements and documents to the accused. (1) In all cases instituted upon police report, except those tried summarily or punishable with fine or imprisonment not exceeding six months, copies of statements of ail witnesses recorded under sections 161 and 164 and of the inspection note recorded by an investigation officer on his first visit to the place of occurrence, shall be supplied free of cost to the accused not less than seven days before the commencement of the trial;

Provided that if any part of a statement recorded under section 161 is such that its disclosure to the accused would be inexpedient in the public interest such part of the statement shall be excluded from copy of the statement furnished to the accused.

(2) in ail eases instituted upon a complaint in writing, the complainant shall;

(a) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of the evidence which he is likely to adduce at the trial; and

(b) within three days of the order of the Court under section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the compliant and any other document which it has filed with his complaint as the number of the accused;

Provided that the provisions of this sub-section shall not apply in any case in which the complaint has been made by a Court or by a public servant acting or purporting lo act in the discharge of his official duties.]

[242. Charge to be framed. When the accused appears or is brought before the Magistrate, a formal charge shall be framed relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged.]

243. Conviction on admission of truth of accusation. If the accused admits that he has committed the offence [with which he is charged] his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

244. Procedure when no such admission is made. (1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed

to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

Provided that the Magistrate shall not be bound to hear any person as a complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.]

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court:

[Provided that it shall not be necessary for the accused to deposit any such expenses in Court in case where he is charged with an offence punishable with imprisonment exceeding six months.]

[244-A. Statement made under section 164. The statement of a witness duly recorded under section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of Evidence Act, 1872.]

245. Acquittal. (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks tit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

[245-A. Procedure in case of previous convictions. In a case where a previous conviction is charged under the provisions of section 221, subsection (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the accused under section 243, or under section 245, subsection (2), take evidence in respect of the alleged previous conviction, and, if he does so, shall record a finding thereon.]

246. [Omitted by Law Reforms Ordinance, XII of 1972, item 95].

247. Non-appearance of complainant. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case:

[Provided further that nothing in this section shall apply where the offence of which the accused is charged is either cognizable or non-compoundable.]

248. Withdrawal of complaint. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

249. Power to stop proceedings when no complainant. In any case instituted otherwise than upon complaint a Magistrate of the first class, or with the previous sanction of the [Sessions Judge, in the case of

Judicial Magistrate and District Magistrate in the case of Executive Magistrate,] may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

[249-A. Power of Magistrate to acquit accused at any stage. Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.]

FRIVOLOUS ACCUSATIONS IN [CASES TRIED BY MAGISTRATES].

250. False frivolous or vexatious accusations. (1) If in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate, by whom the case is heard [....] acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may by his order of [....] acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or if such person is not present direct the issue of a summons to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious, may, for reasons to be recorded, direct that compensation to such amount not exceeding [twenty five thousand rupees] or if the Magistrate is a Magistrate of the third class not exceeding [two thousand and five hundred] rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2A) The compensation payable under sub-section (2) shall be recoverable as an arrear of land revenue.]

(2B) When any person is imprisoned under sub-section (2A), the provisions of section 68 and 69 of the Pakistan Penal Code shall, so far as may be. apply.]

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account, in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under subsection (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal form the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made, in case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

[250-A. Special summons in case of petty offences.~(l) Any Magistrate of the first class specially empowered in this behalf by the Provincial Government taking cognizance of any offence punishable only with fine shall, except for reasons to be recorded in writing, issue summons to the accused requiring him either to appear before him on a specified date in person or by an advocate or, if he desires to plead guilty to the charge, without appearing before the Magistrate; to transmit to the before the specified date, by registered post or through a messenger, the said plea in writing and the amount of fine specified in the summons or, if he desires to appear by an advocate and to plead guilty to the charge, to authorize, in writing, such advocate to plead guilty to the charge, on his behalf and to pay the fine:

Provided that the amount of the fine specified in such summons shall not be less than twenty-five per cent nor more than fifty per cent of the maximum fine provided for such offence.

(2) Sub-section (1) shall not apply to an offence punishable under the Motor Vehicles Ordinance, 1965 (W.P. Ordinance XIX of 1965), or under any other law which provides (or the accused person being convicted in his absence on a plea of guilty.]

CHAPTER XXI - OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES

251-259. [Omitted by Law Reforms Ordinance, 1972, item 99].

CHAPTER XXII - OF SUMMARY TRIALS

260. Power to try summarily. (1) Notwithstanding anything contained in this Code:

(a) x x x x x x

(b) any Magistrate of the first class specially empowered in this behalf by the Provincial Government, and

(c) any Bench of Magistrate invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the Provincial Government. may, if he or they think fit, try in a summary way all or any of the following offence:

(a) offences not punishable with death, transportation or imprisonment for term exceeding six months;

(b) offences relating to weights and measures under sections 264, 265 and 266 of the Pakistan Penal Code;

(c) hurt, under section 323 of the same Code;

(d) theft under sections 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed [two thousand five hundred rupees]

(e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed [two thousand five hundred rupees]

(f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed [two thousand five hundred rupees]

(g) assisting in the concealment or disposal of stolen property under S. 414 of the same code, where the value of such property does not exceed [two thousand and five hundred rupees]

(h) mischief, under section 427, of the same Code;

(i) house-trespass, under section 448, and offences under sections 451, 453, 454, 456 and 457 of the same Code.

(j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code:

(jj) offence of personating at an election under section 171 F of the same Code;

(k) abetment of any of the forgoing offences;

(l) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(m) offences under section 20 of the Cattle-trespass Act 1871:

[x x x x x]

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that ft should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to-near the case in manner provided by this Code.

261. Power to invest Bench of Magistrates invested with less power. The Provincial Government may [on the recommendation of the High Court] confer on any Bench of Magistrate invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:

(a) offences against the Pakistan Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 330, 336,341, 352, 426. 447, and 504;

(6) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine:

(c) abetment of any of the foregoing offences:

(d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

262. Procedure [prescribed in Chapter XX] applicable. [(1) In trials under this Chapter, the procedure prescribed in Chapter XX shall be followed except as hereinafter mentioned.]

(2) Limit of imprisonment. No sentence of Imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

263. Record in cases where there is no appeal. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Provincial Government may direct the following particulars:

(a) the serial number,

(b) the date of the commission of the offence;

(c) the date of the report or complaint;

(d) the name of the complainant (if any);

(e) the name. parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e) clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed.

(g) the plea of the accused an his examination (if any),

(h) the finding, and, in the case of a conviction, a brief statement of the reason therefore,

(i) the sentence or other final order, and

(j) the date on which the proceedings terminated.

[264. Record in appealable cases. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall, before passing any sentence, record a judgment in the case.]

265. Language of record and judgment. (1) Record made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

(2) Bench may be authorized to employ clerk. The Provincial Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

CHAPTER XXII-A - TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION

[265-A. Trial before Court of Session to be conducted by Public Prosecutor. In every trial before a Court of Session, initiated upon a police report, the prosecution shall be conducted by Public Prosecutor.

265-B. Procedure in cases triable by High Courts and Courts of Session. The following procedure shall be observed by the High Courts and the Courts of Session in the trial of cases triable by the said Courts.

265-C. Supply of statements and documents to accused. (1) In all cases instituted upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely:

(a) the first information report;

(b) the police report;

(c) the statements of all witnesses recorded under sections 161 and 164, and

(d) the inspection note recorded by an investigating officer on his first visit to the place of occurrence and the note recorded by him on recoveries made, if any:

Provided that, if any part of a statement recorded under section 161 or section 164 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing:

(a) the complainant shall;

(i) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of evidence which he is likely to adduce at the trial, and

(ii) within three days of the orders of the Court under Section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the complaint and any other document which he has filed with his complaint as the number of the accused; and

(b) copies of the complaint and any other documents which the complainant has filed therewith and the statements under section 200 or section 202 shall be supplied free of cost to the accused not later than seven days before the commencement of the trial.

265-D. When charge is to be framed. If, after perusing the police report or, as the case may be, the complaint, and all other documents and statements filed by the prosecution, the Court is of opinion that there is ground for proceeding with the trial of the accused it shall frame in writing a charge against the accused.

265-E. Plea. (1) The charge shall be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty the Court shall record the plea, and may in its discretion convict him thereon.

265-F. Evidence for prosecution.(l) If the accused does not plead guilty or the Court in its discretion does not convict him on his plea, the Court shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution:

Provided that the Court shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Court shall ascertain from the public prosecutor or, as the case may be, form the complainant, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon such persons to give evidence before it.

(3) The Court may refuse to summon any such witness, if it is of opinion that such witness is being called for the purpose of vexation or delay or defeating the ends of justice. Such ground shall be recorded by the Court in writing.

(4) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(5) If the accused puts in any written statement, the Court shall file it with the record.

(6) If the accused, or any one of several accused, says that he means to adduce evidence, the Court shall call on the accused to enter on his defence and produce his evidence.

(7) If the accused or any one or several accused, after entering on his defence, applies to the Court to issue any process for compelling the attendance of any witness for examination or the production of any document or other thing, the Court shall issue such process unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of justice such ground shall be recorded by the Court in writing.

265-G. Summing up by prosecutor and defence. (1) In case where the accused, or any one of several accused, does not adduce evidence in his defence, the Court shall on the close of the prosecution case and examination (if any) of the accused call upon the prosecutor to sum up his case whereafter the accused shall make a reply.

(2) In cases where the accused, or any one of the several accused examines evidence in his defence, the Court shall, on the close of the defence case, call upon the accused to sum up the case whereafter the prosecutor shall make a reply.

265-H. Acquittal or conviction. (1) If in any case under this Chapter in which a charge has been framed the Courts finds the accused not guilty, it shall record an order of acquittal.

(2) If in any case under this Chapter the Court finds the accused guilty the Court shall, subject to the provisions of Section 265-I. pass a sentence upon him according to law.

265-I. Procedure in case of previous conviction. (1) In a case where, by reason of a previous conviction the accused has been charged under Section 221, sub-section (7) the Court, after finding the accused guilty of the offence charged and recording a conviction shall record the plea of the accused in relation to such part of the charge.

(2) If the accused admits that he has been previously convicted as alleged in the charge, the Court may pass a sentence upon him according to law, and if the accused does not admit that he has been previously convicted as alleged in the charge the court may take evidence in respect of the alleged previous conviction, and shall record a finding thereon and then pass sentence upon him according to law.

265-J. Statement under section 164 admissible. The statement of a witness duly recorded under Section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act, 1872 (II of 1872).

265-K. Power of Court to acquit accused at any stage. Nothing in this Chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the case; if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence.

265-L Power of Advocate-General to stay prosecution. At any stage of any trial before a High Court under this Code, before the sentences is passed, the Advocate-General may, if the thinks fit, inform the Court on behalf of Government that he will not prosecute the accused upon the charge, and thereupon all proceedings against the accused shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding judge otherwise directs.

265-M. Time of holding sittings. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

265-N. Place of holding sittings. (1) The High Court shall hold its sittings at the place at which it held them immediately before the commencement of the Law Reforms Ordinance, 1972, or at such other place (if any) as the Provincial Government may direct.

(2) But the High Court may, from time to time, with the consent of the Provincial Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give prior notice in the Official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court].

CHAPTER XXIII - OF TRAILS BEFORE HIGH COURTS AND COURTS OF SESSIONS

266-336. ***** [Omitted by Law Reforms Ordinance, 1972. item 105].

CHAPTER XXIV - GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

337. Tender of pardon to accomplice. (1) In the case of any offence triable exclusively by the High Court or Court of Sessions, or any offence punishable with the imprisonment which may extend to ten years, or any offence punishable under section 211 of the Pakistan Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Pakistan Penal Code, namely, sections 216A, 369, 401, 435 and 477A, (the District Magistrate or a Sub-divisional Magistrate] may, at any stage of the investigation or inquiry into, or the trail of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether, as principal or abettor, in the commission thereof:

[x xx x xx]

[Provided that no person shall be tendered pardon who is involved in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim.]

(1A) Every Magistrate who tenders a pardon under subsection (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record:

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

[(2) Every person accepting a tender under this section shall be examined as a witness in the subsequent trial, if any.]

(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Sessions or High Court, as the case may be.

(3) Such person, unless he is already on bail, shall be detained in custody until the termination of the trial.

[338. Power to grant or tender of pardon. At any time before the judgment is passed, the High Court or the Court of Sessions trying the case may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the District Magistrate to tender, a pardon on the same condition to such person.]

[Provided that no person shall be tendered pardon who Is involved in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim.]

339. Trial of person to whom pardon has been tendered. (1) Where a pardon has been tendered under section 337 or section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by willfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter:

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court,

[339-A. Procedure in trial of person under section. 339. (1) The Court trying under section 339 a person who has accepted a tender of pardon shall, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.]

340. Right of person against whom proceedings are instituted to be defended and his competency to be a witness. (1) Any person accused of an offence before a Criminal Court or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

[(2) Any person accused of an offence before a Criminal Court or against whom proceedings are instituted under this Code in any such Court shall if he does not plead guilty, give evidence on oath in disproof of the charges or allegations made against him or any person charged or tried together with him at the same trial:

Provided that he shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is being tried, or is of bad character, unless

(i) the proof that he has committed or been convicted of such offence is admissible in evidence to show that he is guilty of the offence with which he is charged or for which he is being tried ; or

(ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establishing his own good character or has given evidence of his good character; or

(iii) he has given evidence against any other person charged with or tried for the same offence.']

341. Procedure where accused does not understand proceedings. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the [....} trial; and, in the case of a Court other than a High Court, [....] if such trial results In a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

342. Power to examine the accused. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Court [....] may draw such inference from such refusal or answer as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

[(4) Except as provided by subsection (2) of S. 340 no oath shall be administered to the accused.]

343. No influence to be used to induce disclosures. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or with-hold any matter within his knowledge.

344. Power to postpone or adjourn proceedings. (1) If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefore from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :

Remand. Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the Presiding Judge or Magistrate.

Explanation. Reasonable cause for remand. If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

345. Compounding offences. (1) The offences punishable under the sections of the Pakistan Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:

(3) Where any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is [under the age of eighteen years or is] as idiot a lunatic, any person competent to contract on his behalf may [with the permission of the Court] compound such offence.

[(5) When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard.]

[(5A)A High Court acting in the exercise of its powers of revision under section 439 [and a Court of Session so acting under section 439-A], may allow any person to compound any offence which he is competent to compound under this section.]

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused [with whom the offence has been compounded].

(7) No offence shall be compounded except as provided by this section.

[346. Procedure of Magistrate in cases which he cannot dispose of. (1) If, in the course of an inquiry or trial before a Magistrate in any district, the evidence appears to him to warrant a presumption that the case is one which should be tried, or sent for trial to the Court of Session or the High Court, by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to the Sessions Judge or to such other Magistrate, having jurisdiction, as the Sessions Judge directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself or send the case for trial to the Court of Sessions or the High Court.]

[347. Procedure when, after commencement of trial, Magistrate finds case should be tried by Court of Session or High Court. If in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tired by the Court of Session or High Court, he shall send the case to the Court of Session or High Court, for trial.}

348. Trial of persons previously convicted of offences against coinage, stamp law or property. (1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Pakistan Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapter with imprisonment for a term of three years or upwards, shall, if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds [for the trial of the accused by the Court of Session or High Court, as the case may be send the accused for trial to such Court] unless the Magistrate is competent to try the case and is of opinion, that he can himself pass an adequate sentence if the accused is convicted:

Proviso [x x x x]

[(2) When any person is sent for trial to the Court of Session or High Court under sub-section 1), any other person accused jointly with him in the trial shall be similarly sent for trial.]

349. Procedure when Magistrate cannot pass sentence sufficiently severe. (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to [a Magistrate of the first class specially empowered in this behalf by the Provincial Government].

(1-A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the [Magistrate empowered under sub-section (1)].

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit and as is according to law:

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under section 32 and 33.

[350. Conviction a..... on evidence partly recorded by one presiding officer and partly by another. (1) Whenever any Sessions Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Sessions Judge or Magistrate, so succeeding, may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself or he may re-examine the witnesses and recommence the inquiry or trial:

Provided that-

(a) where the conviction was held before a Sessions Judge, the High Court, and

(b) where the conviction was held before a Magistrate, the High Court or the Court of Session.

may, whether there be an appeal or not, set aside any conviction passed on evidence, not wholly recorded by the Sessions Judge or Magistrate before whom the conviction was held, if such Court is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial'] .

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346 or in which proceedings have been submitted to a [Magistrate specially empowered] under section 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub section (1).

350-A. Changes in constitution of Benches. No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is dully constituted under sections 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings.

351. Detention of offenders attending Court. (1) Any person attending a Criminal Court although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which Court can take cognizance and which, from the evidence may appear to have been arrested or summoned.

(2) When the detention takes place [....] after a trial has been begun the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

352. Courts to be open. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person shall not have access to, or be or remain in the room or building used by the Court.++++++++++++++++++

CHAPTER XXV - OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

353. Evidence to be taken in presence of accused. Except as otherwise expressly provided, all evidence taken under [Chapters XX, XXI, XXII and XXIIA] shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

354. Manner of recording evidence. In inquires and trials (other than summary trials) under this Code by or before a Magistrate or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

355. [Record in trial of certain cases by first an second class Magistrates.] [(1) In cases tried under Chapter XX or Chapter XXII] Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his Inability to do so and shall cause memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

356. Record in other cases. [(1) In trials before Courts of Session and in inquiries under Chapter XII] the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

(2) Evidence given in English. When the evidence of such witness is given in English the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form pan of the record.

(2-A) When the evidence of such witness Is given In any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own

hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence In the language of the Court or in English shall form part of the record.

(3) Memorandum when evidence not taken down by the Magistrate or Judge himself. In cases in which the evidence Is not taken down in writing by the Magistrate or Sessions Judge he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

(4) If the Magistrate or Sessions Judge is prevented from making memorandum as above required he shall record the reason of his inability to make it.

357. Language of record of evidence. (1) The Provincial Government may direct that in any district or part of a district, or in proceedings before any Court of Session or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his Inability to do so and shall cause the evidence to be taken down in writing form his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate and form part of the record:

Provided that the Provincial Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language or in the language of the Court, although such language is not his mother-tongue.

358. Option to Magistrate in cases under section 335. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Provincial Government has made the order referred to in section 357, in the manner provided in the same section.

359. Mode of recording evidence under section 356 or section 357. (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion take down, or cause to be taken down, any particular question and answer.

360. Procedure in regard to such evidence when completed. (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be Interpreted to him in the language in which it was given, or in a language which he understands.

361. Interpretation of evidence to accused or his pleader. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. [Record of evidence in Presidency Magistrate's Court.} Omitted by A. 0., 1949,

Sch.

363. Remarks respecting demeanour of witness. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

364. Examination of accused how recorded. (1) Whenever the accused is examined by any Magistrate or by any Court other than a High Court the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shall be shown or read to him or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In a case in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound as the examination proceeds, to make memorandum thereof in the language of the Court or in English, if he is sufficiently acquainted with latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand and shall be annexed to the record. If the Magistrate or Judge Is unable to-make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

365. Record of evidence in High Court. Every High Court shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court and the evidence shall be taken down in accordance with such rule.

CHAPTER XXVI - OF THE JUDGMENT

366. Mode of delivering judgment. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced or the substance of such judgment

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of the fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

367. Language of judgment: Contents of judgment. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, or in English; and shall contain the points for determination, the decision thereon and the reasons for the decision; shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Pakistan Penal Code or other law under which the accused is convicted, and the punishment to which he Is sentenced.

(3) Judgment in alternative. When the conviction is-under the Pakistan Penal Code and it is doubtful under which of two sections, or under which or two parts of the same section of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

Proviso [x x x x x x x x] Omitted by Law Reforms Ordi. 1972, item 122. Enforced in the Province of Punjab w.e.f. 26.12.1975.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, and Court shall in its judgment state the reason why sentence of death was not passed.

(6) For the purposes of this section, an order under section 118 or section 123, sub-section (3), shall be deemed to be a judgment.

368. Sentence of death. (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(2) [Omitted by Act XXV of 1974, item 123. Enforced in the Province of Punjab w.e.f. 26.12.1975].

369. Court not to alter judgment. Save as otherwise provided by this Code or by any other law for the time being in force or, in case of a High Court by the Letters Patent of such High Court no Court when it has signed its judgment, shall alter or review the same, except to correct a clerical error.

370. [Presidency Magistrate judgment] Omitted by A.0.1949.

371. Copy of judgment, etc. to be given to accused ..... [(l) In every case where the accused is convicted of an offence, a copy of the judgment shall be given to him at the time of pronouncing the judgment, or when the accused so desires, a translation of the judgment in his own language. If practicable, or in the language of the Court, shall be given to him without delay. Such copy or translation shall be given free of cost.

Provided that this sub-section shall not apply to cases tried summarily or where the accused is convicted of an offence under any law other than the Pakistan Penal Code]

(2) [Omitted by Law Reforms Ordinance, 1972, item No. 124 (ii)].

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

372. Judgment when to be translated. The original judgment shall be filled with the record of proceedings, and, where the original is recorded In a different language from that of the Court and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

373. Court of Session to send copy of finding and sentence to District Magistrate. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII - OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION

374. Sentence of death to be submitted by Court of Session. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.

375. Power to direct further inquiry to be made or additional evidence to be taken. (1) If when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry to take such evidence itself, or direct it to be made or taken by the Court of Session.

[(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence Is taken.]

(3) When the Inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

376. Power of High Court to confirm sentences or annul conviction. In any case submitted under section 374, [....] the High Court:

(a) may confirm the sentence, or pass any other sentence warranted by law; or

(b) may annul the conviction and convict the accused of any offence of which the Sessions Court might have convicted him or order a new trial on the same or an amended charge; or

(c) may acquit the accused person ;

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

377. Confirmation of new sentence to be signed by two Judges. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall when such Court consists of two or more judges, be made, passed and signed by at least two of them.

378. Procedure in case of difference of opinion. When any such case is heard before a Bench of Judges and such Judges are equally divided, in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion and the judgment or order shall follow such opinion.

379. Procedure in cases submitted to High Court for confirmation. In cases submitted by the Court of Session to the High Court for the confirmation of sentence of death, the proper officer of the High Court shall without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the Court of Session.

380. [Rep. by Probation of Offenders Ordinance. LXV of 1960].

CHAPTER XXVIII - OF EXECUTION

381. Execution of order passed under section 376. When a sentence of death passed by a Court of Sessions is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

['Provided that the sentence of death shall not be executed if the heirs of the deceased pardon the convict or enter into a compromise with him even at the last moment before execution of the sentence. ']

382. Postponement of capital sentence on pregnant woman. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to [imprisonment] for life.

[382-A. Postponement of execution of sentence of imprisonment under section 476 or for a period of less than one year. Notwithstanding anything contained in section 383 or 391, where the accused:

(a) is awarded any sentence of imprisonment under section 476, or

(b) is sentenced in cases other then those provided for in Section 381, to imprisonment whether with or without fine or whipping for a period of less than one year.

the sentence shall not, if the accused furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, be executed., until the expiry of the period prescribed for making an appeal against such sentence, or, if an appeal is made within that time, until the sentence of

imprisonment is confirmed by the appellate Court, but the sentence shall be executed as soon as practicable after the expiry of the period prescribed for making an appeal, or, in case of an appeal as soon as practicable after the receipt of order of the appellate Court confirming the sentence.

[382-B. Reduction of period of sentence of imprisonment. The length of any sentence of imprisonment imposed upon an accused person in respect of any offence shall be treated as reduced by any period during which he was detained in custody for such offence]

N.W.F.P Amendment. In S. 382-B for the word 'may' the word 'shall' substituted by Cr.P.C. (Amndt.) Regn., 1997, w.e.f. on the 23rd September, 1997. PLD 1999 N.W.F.P. St. p.36.

[382-C. Scandalous or false and frivolous pleas to be considered in passing sentence. In passing a sentence on an accused for any offence, a Court may take Into consideration any scandalous or false and frivolous plea taken in defence by him or on his behalf.]

383. Execution of sentence of [imprisonment] in other cases. Where the accused is sentenced to (imprisonment] for life or imprisonment in cases other than those provided for by section 381 [and section 382-A] the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to he confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

384. Direction of warrant for execution. Every warrant for the execution of sentence of imprisonment shall be directed to the officer incharge of the jail or other place in which the prisoner is or is to be, confined.

385. Warrant with whom to be lodged. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

386. Warrant for levy of fine. (1) Wherever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may:

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorizing him to realize the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter;

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole, of such imprisonment in default, no Court shall issue such warrant [.....].

(2) The Provincial Government may make rules regulating the manner in which warrants under sub-section (1), clause (a) are to be executed, and for the summary determination of any claim made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under sub-section (1) clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be. deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly;

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

387. Effect of such warrant. A warrant issued under section 386, sub-section (1), clause (a), by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the attachment and sale of any such property without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

388. Suspension of execution of sentence of imprisonment. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may:

(a) order that the fine shall be payable either in full on or before a date not more (than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days form the date of the order and the other or others at an interval, or at intervals, as the case may be, of not more than thirty days, and

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be mada; and if the amount of the fine or of any instalment, as the case may be, is not realized on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, the person against whom the order has been made, on being required to enter into a bond such as. is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

389. Who may issue warrant. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-office.

390. Execution of sentence of whipping only. When the accused is sentenced to whipping only, the sentence shall subject to the provisions of section 391 be executed at such place and time as the Court may direct.

391. Execution of sentence of whipping, in addition to imprisonment. (1) When the accused:

(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(b) is sentenced to whipping in addition to imprisonment. The whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days or in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.

392. Mode of inflicting punishment. (1) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode and on such part of the person, as the Provincial Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as the Provincial Government directs.

(2) **Limit of number of stripes.** In no case shall such punishment exceed thirty stripes and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.

393. Not to be executed by instalments. Exemptions. No sentence of whipping shall be executed by instalments and none of the following persons shall be punishable with whipping, namely:

(a) females;

(b) males sentenced to death or to [imprisonment for life] or to imprisonment for more than five years;

(c) males whom the Court considers to be more than forty-five years of age.

394. Whipping not to be inflicted if offender not in fit state of health. (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies or if there is not a medical officer present, unless it appears to the Magistrate or officer present that the offender is in a fit state of health to undergo such punishment.

(2) Stay of execution, if during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the sentence, the whipping shall be finally stopped.

395. Procedure if punishment cannot be inflicted under section 394. (1) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it, and the said Court may, at its discretion either remit such sentence or sentence the offender in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, or to a fine not exceeding five hundred rupees, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term or a fine or an amount exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. Execution of sentence on escaped convicts. (1) When sentence is passed under this Code on an escaped convict, such sentence, if of death fine or whipping shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, or [imprisonment for life] shall take effect according to the following rules, that is to say:

(2) if the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation. For the purposes of this section:

(a) x x x x x

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

[397. Sentence on offender already sentenced for another offence. When a person already undergoing a sentence of imprisonment or imprisonment for life is sentenced to imprisonment, or imprisonment for life, such imprisonment, or imprisonment for life shall commence at the expiration of the imprisonment, or imprisonment for life to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.]

398. Saving as to section 396 and 397. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment or to a sentence of [imprisonment for life], and the person undergoing the sentences is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, or [imprisonment for life] effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

399. Confinement of youthful offenders in reformatories. (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Provincial Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Provincial Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed,

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897, is for the time being in force.

400. Return of warrant on execution of sentences. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX - OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES

401. Power to suspend or remit sentences. (1) When any person has been sentenced to punishment for an offence, the Provincial Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an applications is made to the Provincial Government for the suspension or remission of a sentence Ihe Provincial Government may require the Presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reason for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Provincial Government, not fulfilled the Provincial Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4-A) The provisions, of the above sub-section shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of the President or of the Central Government when such right is delegated to it to grant pardons, reprieves, respites or remissions of punishment.

(5-A) Where a conditional pardon is granted by the President or, in virtue of any powers delegated to it, by the Central Government, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Provincial Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petition should be presented and dealt with.

402. Power to commute punishment. (1) The Provincial Government may, without the consent of the persons sentenced, commute any one of the following sentences for any other mentioned after it: Death, [imprisonment for life], rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Pakistan Penal Code.

402-A. Sentence of death. The powers conferred by section 401 or 402 upon the Provincial Government may, in the case of sentences of death, also be exercised by the President.

[402-B. Certain restrictions on the exercise of powers by Provincial Government. Notwithstanding anything contained in section 401 or section 402, the Provincial Government shall not, except with the previous approval of the President, exercise the powers conferred thereby in a case where the President has

passed any orders in exercise of his powers under the Constitution to grant pardons, reprieves and respites or to remit, suspend or commute any sentence or of his powers under section. 402-A.]

("402-C. Remission or commutation of certain sentences not to be without consent. Notwithstanding anything contained in section 401, section 402, section 402A or section 402B, the Provincial Government, the Federal Government or the President shall not, without the consent of the victim or, as the case may be, of his heirs, suspend remit or commute any sentence passed under any of the section in Chapter XVI of the Pakistan Penal Code.')

CHAPTER XXX - OF PREVIOUS ACQUITTALS OR CONVICTIONS

403. Persons once convicted or acquitted not to be tried for the same offence. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 36, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted for any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under sections 235, subsection (1).

(3) A person convicted of any offence constituted by any act causing consequences which together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequence had not happened, or were not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provision of section 26 of the General Clauses Act, 1897, or section 188 of this Code.

Explanation. The dismissal of a complaint, the stopping of proceedings under section 249 [or the discharge of the accused] is not acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as servant, or, upon the same facts, with theft simply or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A Is charged by a Magistrate of the first class with, and convicted by hint of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(0 A is charged by a Magistrate of the second class with, and convicted by him, of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class, with, and convicted by him of robbing D. A, B and C may afterwards be charged with, and tried for dacoity on the same facts.

PART VII - OF APPEAL, REFERENCE AND REVISION - CHAPTER XXXI - OF APPEALS

404. Unless otherwise provided, no appeal to lie. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this or by any other law for the time bring in force.

405. Appeal from order rejecting application for restoration of attached property. An person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

406. Appeal from order requiring security for keeping the peace or for good behavior. Any person who has been ordered by a Magistrate under section 118 to give security for keeping the peace or for good behavior may appeal against such order: to the Court of Session:

[Provided that the Provincial Government may, by notification in the official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate shall lie to the District Magistrate and not the Court of Session:

Provided, further, that nothing in this section shall apply to person the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of subsection (2) or sub-section (3A) of section 123.]

[406-A. Appeal from order refusing to accept or rejecting a surety. Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order to the Court of Session].

[407. Appeal from sentence of Magistrate of the second or third class. (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 .... may appeal to the District Magistrate.

(2) Transfer of appeals to first class Magistrate. The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Provincial Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate or If already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.]

408. Appeal from sentence of Assistant Sessions Judge or [Judicial Magistrate]. Any person convicted on a trial held by an Assistant Sessions Judge, [or any Judicial Magistrate] or any person sentenced under section 349 [....] may appeal to the Court of Session:

Provided as follows:

[(a) Clause (a) Rep. by Act 12 of 1923. S. 23.]

(b) when in any case an Assistant Sessions Judge [....] passes any sentence of imprisonment for a term exceeding four years, [....] the appeal of all or any of the accused convicted at such trial shall lie to the High Court:

(c) when any person is convicted by a Magistrate of an offence under section 124-A of the Pakistan Penal Code, the appeal shall lie to the High Court.

[409. Appeal to Court of Session how heard. Subject to the provisions of this section, an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge or an Assistant Sessions Judge;

Provided that an Additional Sessions Judge shall heard only such appeals as the Provincial Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

Provided further that no such appeal shall hear by an Assistant Sessions Judge unless the appeal is of a person convicted on a trial held by a Magistrate of the second class or third class.]

410. Appeal from sentence of Court of Session. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

411. [Appeal from sentence of Presidency Magistrate}. Omitted by A.O., 1949, Sch.

411-A. Appeal from sentence of High Court. (1) Except in cases in which an appeal lies to the Supreme Court under Article 185 of the Constitution any person convicted on a trial held by a High Court .in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the Letters Patent of any High Court, appeal to the High Court:

(a) against the conviction on any ground of appeal which involves a matter of law only:

(b) with the leave of the Appellate Court, or upon the certificate of the Judge who tried the case that it is a fit case for appeal, against the conviction on any ground o\ appeal which involves a matter of fact only, or a matter of mixed law and fact, or any other ground which appears to the appellate Court to be a sufficient ground o) appeal; and

(c) with the leave of Appellate Court, against the sentence passed unless the sentence is one fixed by law.

(2) Notwithstanding anything contained in section 417, the Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the exercise of its original criminal Jurisdiction, and such appeal may, notwithstanding anything contained in section 418, or section 423, sub-section (2) or in the Letters Patent of any High Court, but subject to the restrictions imposed by clause (b) and clause (c) of sub-section (1) of this section on an appeal against a conviction, lie on a matter of fact as well as a matter of law.

(3) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Division Court of the High Court composed of not less than two judges, being judges other than the judge or judge by whom the original trial was held and if the constitution of such a Division Court is impracticable, the High Court shall take action with a view to the transfer of the appeal under section 527 to another High Court.

(4) Subject to such rules as may from time to time be made by the Supreme Court in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to the Supreme Court from any order made on appeal under sub-section (1) by a Divisional Court of the High Court in respect of which order the High Court declares that the matter is a fit one for such appeal.

412. No appeal in certain cases when accused pleads guilty. Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by a High Court, a Court of Session or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

413. No appeal in petty cases. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which a Court of Session or [a] Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only.

Explanation. There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence or imprisonment has also been passed.

414. No appeal from certain summary convictions. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred rupees only.

415. Proviso to sections 413 and 414. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any punishment therein mentioned is combined with any other punishment, but not sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Explanation. A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishment are combined within the meaning of this section.

415-A. Special right of appeal in certain cases. Notwithstanding anything contained in this Chapter, when more person than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any such person, all or any of the persons convicted at such trial shall have a right of appeal.

416. [Saving of sentence on European British subjects}. Rep. by the Criminal Law Amendment Act, 1923 (XII of 1923) S. 25.

[417. Appeal in case of acquittal. (1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.'

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).

418. Appeal on what matters admissible. (1) An appeal may lie on a matter of fact as well as matter of law [....].

(2) [....]

Explanation. The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

419. Petition of appeal. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against [....].

420. Procedure when appellant in jail. If the appellant is in jail, he may present his petition of appeal and the copies companying the same to the officer incharge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

421. Summary dismissal of appeal. (1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall pursue the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may cal for the record of the case but shall not be bound to do so.

422. Notice of appeal. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Provincial Government may appoint in this behalf, of the time and place on which such appeal will be heard, and shall on the application of such officer, furnish him with a copy of the grounds of appeal. and, in cases of appeals under section 411 A, sub-section (2) or section 417 the Appellate Court shall cause a like notice to be given to the accused.

423. Powers of Appellate Court in disposing of appeal. (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 411 A, sub-section (2) or section 417, the accused, if he appears, the Court may if it considers that there is no sufficient ground for interfering, dismiss the appeal or may:

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or [sent for trial to the Court of Session or the High Court], as the case may be or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or sent for trial, or (2), alter the finding, maintaining the sentence, or, with or without altering the finding reduce the sentence, or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence but, subject to the provisions of the section 106, sub-section (3) not so as to enhance the same;

(c) in appeal from any other, order alter or reverse such order;

(d) make any amendment or any consequential or incidental order that may be just or proper.

(2) [Omitted by Law Reforms Ordinance, 1972 Item 147 Cr. P.O.]

424. Judgment of subordinate Appellate Courts. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply so far as may be practicable, to the judgment of any Appellate Court other than a High Court;

Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

425. Order by High Court on appeal to be certified to lower Court. (1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than District Magistrate, the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

426. Suspension of sentence pending appeal: Release of appellant on bail: (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement that he be released on bail or on his own bond.

(1-A) An Appellate Court shall, unless for reasons to be recorded in writing if otherwise directs, order a convicted person to be released on bail who has been sentenced.

(a) to imprisonment for a period not exceeding three years and whose appeal has not been decided within a period of six months of his conviction;

(b) to imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has not been decided with a period of one year of his conviction;

(c) to imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided within a period of two years of his conviction].

(2) The power conferred by this section on an appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(2-A) [Subject to the provisions of section 382-A] when any person other than a person accused of a non-bailable offence is sentenced to imprisonment by a Court, and an appeal lies from that sentence, the Court may if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(2-B) Where a High Court is satisfied that a convicted person has been granted special leave to appeal by the Supreme Court against any sentence which it has imposed or maintained, it may if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and also, if said person is in confinement, that he be released on bail.

(3) When the appellant is ultimately sentenced to imprisonment, or [imprisonment for life], time during which he is so released shall be excluded in computing the term for which he is so sentenced.

427. Arrest of accused in appeal from acquittal. When an appeal is presented under section 411A, sub-section (2), or section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

428. Appellate Court may take further evidence or direct to be taken. (1) In dealing with any appeal under this Chapter, the appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or an Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court and such Court shall thereupon proceed to dispose of the appeal;

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence Is taken .....

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV as if it were an inquiry.

429. Procedure where Judge of Court of Appeal are equally divided. When the Judge composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

430. Finality of orders on appeal. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

431. Abatement of Appeals. Every appeal under section 411 A sub-section (2), or section 417 shall! finally abate on the death of the accused, any every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII - OF REFERENCE AND REVISION

432 and 433. [Reference by Presidency Magistrate to High Court. Disposal of case according to decision of High Court and direction as to costs]. Omitted by A.O., 1949, Schedule.

434. [Power to reserve questions arising in original jurisdiction of High Court and procedure when question reserved]. Omitted by the Criminal Procedure (Amendment) Act, 1943 XXVI of 1943). S. 6.

435. Power to call for records of inferior Courts. (1) The High Court or any Sessions Judge [….], may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending examination of the record.

[Explanation. All Magistrates, shall be deemed to be inferior to the Session Judge for the purposes of this sub-section.]

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) [* * * * *]

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

[436. Power to order further inquiry. On examining any record under section 435 or otherwise-

(a) the High Court may direct the Sessions Judge to require a District Magistrate subordinate to him to make, and the Sessions Judge himself may direct any Judicial Magistrate subordinate to him to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204 [.-}.

(b) The High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Executive Magistrates subordinate to him to make further inquiry into any proceeding in which order of discharge or release has been made under section 119.]

Proviso.- [Proviso omitted by Act XXI of 1976]

437. [Omitted by Act XXI of 1976.]

[438. Report to High Court. (1) The [….] District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Session

Judge.]

439. High Court's powers of revision. (1) In the case of any proceeding the record of which has been called for by itself, [....] or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by Magistrate [....], the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by Magistrate of the first class.

(4) Nothing in this section shall be deemed to authorize a High Court:

(a) to convert a finding of acquittal into one of conviction; or

(b) to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439-A.]

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced, shall, in showing cause, be entitled also to show cause against his conviction.

439-A. Sessions Judge's powers of revision. (1) In the case of any proceeding before a Magistrate the record of which has been called for by the Sessions Judge or which otherwise comes to his knowledge, the Sessions Judge may exercise any of the powers conferred on the High Court by section 439.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him under any general or special order of the Session Judge].

440. Optional with Court to hear parties. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision.

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

441. [Statement by Presidency Magistrate of grounds of his decision to be considered by High Court}. Omitted by A.O., 1949 Schedule.

442. High Court's-order to be certified to lower Court or Magistrate. When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

PART VIII - SPECIAL PROCEEDINGS - CHAPTER XXXIII

443-463. [Omitted by Act II of 1950]

CHAPTER XXXIV - LUNATICS

464. Procedure in case of accused being lunatic. (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Provincial Government directs and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

(1A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466.

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence he shall record a finding to that effect and shall postpone further proceedings in the case.

[465. Procedure in case of person [sent for trial] before Court of Session or High Court being lunatic. (1) If any person before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently Incapable of making his defence, the Court shall, In the first instance, try the fact of such unsoundness and Incapacity, and if the Court is satisfied of the fact, it shall record a finding to that effect and shall postpone further proceedings in the case.]

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.]

466. Release of lunatic pending investigation or trial. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) Custody of lunatic. If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit and shall report the action taken to the Provincial Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Provincial Government may have made under the Lunacy Act, 1912.

467. Resumption of inquiry or trial. (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

468. Procedure on accused appearing before Magistrate or Court. When the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466.

[469. When accused appears to have been insane. When the accused appears to be of sound mind at the time of Inquiry or trial and the Magistrate or Court Is satisfied from the evidence given before him or it that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind incapable of knowing the nature of the fact or that it was wrong or contrary to law, the Magistrate or Court shall proceed with the case.]

470. Judgment of acquittal on ground of lunacy. Whenever any persons Is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

471. Person acquitted on such ground to be detained in safe, custody. (1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to the Provincial Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Provincial Government may have made under the Lunacy Act, 1912.

(2) **Powers of Provincial Government to relieve Inspector-General of certain functions.** The Provincial Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector-General of Prisons under section 473 or section 474.

472. [Lunatic prisoners to be visited by Inspector General]. Rep. by the Lunacy Act, 1912, Ss. 101 and Schedule II.

473. Procedure where lunatic prisoner is reported capable of making his defence. If such person is detained under the provisions of section 466 and in the case of a person detained in a jail, the Inspector General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

474. Procedure where lunatic detained under section 466 or 471 is declared fit to be released. (1) If such person is detained under the provisions sections 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be released or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and in case it orders him to be transferred to an asylum, may appoint .a Commission, consisting of a Judicial and two medical officers.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Provincial Government which may order his release or detention as it thinks fit.

475. Delivery of lunatic to care of relative or friend. (1) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the Provincial Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such Provincial Government that the person delivered shall:

(a) be property taken care of and prevented from doing injury to himself or to any other person, and

(b) be produced for the inspection of such officer, and at such times and places, as the Provincial Government may direct, and

(c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence and the Inspecting officer referred to in sub-section (1), clause (b), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.

CHAPTER XXXV - PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

[476. Procedure in cases mentioned in section 195. (1) When any offences referred to in section 195, sub-section (1) clause (b) or clause (c), has been committed in, or in relation to a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII.

(2) When in any case tried under sub-section (1) the Court finds the offender guilty, it may, notwithstanding anything contained in sub-section (2) of section 262:

(a) pass any sentence on the offender authorized by law for such offence, except a sentence of death, or, imprisonment for life, or imprisonment exceeding five years, if such Court be a High Court, a Court of Session, a District Court or any Court exercising the power of a Court of Session or a District Court;

(b) sentence the offender to simple imprisonment for a term which may extend to three months, or to pay a fine not exceeding [one thousand rupees) or both, if such Court be a Court of Magistrate of the first class, a Civil Court other than a High Court, a District Court, or a Court exercising the powers of a District Court or Revenue Court not inferior to the Court of Collector;

(c) sentence the offender to simple imprisonment for a term not exceeding one month, or to pay a fine not exceeding fifty rupees or both, If such Court be a Criminal Court or Revenue Court other than a Court referred to in clause (a) or clause (b).

(3) The powers conferred on Civil, Revenue and Criminal Courts under this section may be exercised in respect of any offence referred to in sub-section (1) and alleged to have been committed in relation to any

proceeding in such Court to which such former Court is subordinate within the meaning of sub-section (3) of S. 195.

(4) Any person sentenced by any Court, under this section may, notwithstanding anything hereinbefore contained, appeal;

(a) in the case of a sentence by the High Court, to the Supreme Court;

(b) in case of a sentence by a Court of Session or District Court, or a Court exercising the powers of a Court of Session or a District Court, to the High Court, and

(c) in any other case, to the Session Judge.

(5) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeal under this section and the Appellate Court may alter the finding or reduce or enhance the sentence appealed against].

[476-A. Forwarding of cases for trial by Courts having jurisdiction. (1) If the Court in any case considers that the person accused of any of the offence referred to in section 476, sub-section (1), and committed in, or in relation to, any proceedings before it, should not be tried under that section, such Court may, after recording the facts constituting the offence and the statement of the accused person, as hereinbefore provided, forward the case to a Court having jurisdiction to try the case, and may require security to be given for the appearance of such accused person before such Court, or, if sufficient security is not given, shall forward such person in custody to such Court.

(2) The Court to which a case is forwarded under this section shall proceed to hear the complaint against the accused person in the manner hereinbefore provided.]

476-B. Omitted by Law Reforms Ordinance. 1972 Item 158.

477. Repealed by Amendment Act XVIII of 1923. S. 129.

478. Omitted by Law Reforms Ordinance, 1972, item 158.

479. Omitted by Law Reforms Ordinance, 1972, item 158.

480. Procedure in certain cases of contempt. (1) When any such offences as is described in section 175, section 178, section 179, section 180 or section 228 of the Pakistan Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine, not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

481. Record in such cases. (1) In every such case the Court shall record the facts constituting the offence, with statement (if any) made by the offender, as well as finding and sentence.

(2) If the offence is under section 228 of the Pakistan Pena! Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

482. Procedure where Court considers that case should not be dealt with under section 480. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same and may require security to be given for the appearance of such accused person before such Magistrate or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided

483. When Registrar or Sub-Registrar to be deemed a Civil Court with section 480 and 482. When the Provincial Government so directs, any Registrar or any Sub-Registrar appointed under the [Registration Act, 1908] shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

484. Discharge of offender on submission of apology. When any Court has under section 480 or section 482 adjudged an offender to punishment or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

485. Imprisonment or committal of person refusing to answer or produce document. If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a High Court, shall be deemed guilty of a contempt.

486. Appeal from convictions in contempt cases. (1) Any person sentenced by any Court under section 480 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Sessions for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge.

487. Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves. (1) Except as provided in section 8(476], 480 and 485, no Judge of a Criminal Court or

Magistrate, other than a Judge of a High Court shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) [Omitted by Law Reforms Ordinance, 1972, item 160(ii).]

CHAPTER XXXVI - OF THE MAINTENANCE OF WIVES AND CHILDREN

488. Order for maintenance of wives and children. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable maintain itself, [....} a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding four hundred rupees in the whole, as such Magistrate thinks fit and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) **Enforcement or order.** If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of such month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Provided further that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if without any sufficient reason, she refuses to live with her husband or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reasons she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and -shall be recorded in the manner prescribed in the case of summons-cases;

Provided that if the Magistrate is satisfied that he is wilfully avoiding service or wilfully neglects to attend the Court the Magistrate may proceed to hear and determine the case ex-parte. Any orders so made may be set aside for good cause shown on application made within three months form the date thereof.

(7) The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

(8) Proceedings under this section may be taken against any person in any district where he resides or is, where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

489. Alteration in allowance. (1) On proof of a change in the circumstance of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit provided that if he increases the allowance the monthly rate of four hundred rupees in the whole be not exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

490. Enforcement of order of maintenance. A copy of order of maintenance shall be given without payment to the person in whose favour it is made or to his guardian, if any, or to whom the allowance is to be paid; and such order may be enforced by any Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due].

CHAPTER XXXVII - DIRECTIONS OF THE NATURE OF A HABEAS CORPUS

491. Power to issue directions of the nature of a Habeas Corpus. Any High Court may, whenever it thinks fit, direct:

(a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law:

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a prisoner detained in any jail situate within such limits be brought before Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively.

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(f) that the body of defendant within such limits be brought in on the Sheriff's return of cepi corpus to a writ of attachment.

(2) The High Court may, from time to time, frame rules to regulate the procedure in the cases under this section.

(3) Nothing in this section applies to persons detained under [any other law providing for preventive detention.]

491 A. [Powers of High Court outside the limits of appellate jurisdiction} Omitted by the Criminal Law (Extinction of Discriminatory Privileges Act, 1940 (II of 1950), Schedule.

PART IX - SUPPLEMENTARY PROVISIONS - CHAPTER XXXVIII - OF THE PUBLIC PROSECUTOR

492. Power to appoint Public Prosecutors. (1) The Provincial Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) The District Magistrate, or subject to the control of the District Magistrate, the Sub-Divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the Provincial Government may prescribe in his behalf to be Public Prosecutor for the purposes of any case.

493. Public Prosecutor may plead in all Courts in cases under his charge; Pleaders privately instructed to be under his direction. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution and the pleader so instructed shall act therein, under his directions.

494. Effect of withdrawal from prosecution. Any Public Prosecutor may, with the [....] consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and upon such withdrawal:

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences;

495. Permission to conduct prosecution. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the tank to be prescribed by the Provincial Government in this behalf but no person other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Provincial Government in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494 and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

CHAPTER XXXIX - OF BAIL

496. In what cases bail to be taken. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer incharge of a police-station or appears or is brought before a Court, and is prepared at any lime while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer of Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).

497. When bail may be taken in cases of non-bailable offence. (1) When any person accused of non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or [imprisonment for life or imprisonment for ten years].

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail:

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show cause why he should not be so released.

[Provided further that the Court shall, except where it is of opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, direct that any person shall be released on bail--

(a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year and whose trial for such offence has not concluded; or

(b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and whose trial for such offence has not concluded.

Provided further that the provisions of the third proviso to this subsection shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or involved in terrorism.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) Ah officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court Is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

498. Power to direct admission to bail or reduction of bail. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

[498-A. No bail to be granted to a person not in custody, in Court or against whom no case is registered etc. Nothing in section 497 or section 498 shall be deemed to require or authorise a Court to release on bail, or to direct to be admitted to bail any person who is not in custody or is not present in Court or against whom no case stands registered for the time being and an order for the release of a person on bail, or direction that a person be admitted to bail shall be effective only in respect of the case that so stands registered against him and is specified in the order or direction.]

499. Bond of accused and sureties. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

500. Discharge from custody. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released ; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. Power to order sufficient bail when that first taken is insufficient. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

502. Discharge of sureties. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the persons so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so, may commit him to custody.

CHAPTER XL - OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES

503. When attendance of witness may be dispensed with. (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code it appears to a District Magistrate, a Court of Sessions or the High Court that the examination of a witness is necessary for the ends of justice and the attendance of such a witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

[(2) * * * * *]

[(2-A) When the witness resides in an area in or in relation to which the President has Extra-Provincial jurisdiction within the meaning of the Extra-Provincial Jurisdiction Order, 1949, (G.G.O. No. 5 of 1949) the commission may be issued to such Court or Officer, in the area as may be recognized by the President, by notification in the official Gazette as a Court or officer to which or to whom commission may be issued under this sub-section and within the local limits of whose jurisdiction the witness resides.]

(2-B) When the witness resides in the United Kingdom or any other country of the Commonwealth [....}, or in the Union of Burma, or any other country in which reciprocal arrangement in this behalf exists, the commission may be issued to such Court or Judge having authority in this behalf in that country as may be specified by the Central Government by notification in the Official Gazette.

(3) The Magistrate or officer to whom the commission is issued, [x x x] shall proceed to the place where the witness is or shall summon the witness before him, and take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of [....] cases under this Code.

[(4) Where the commission is issued to an officer as is mentioned in sub-section (2A) he may in lieu of proceeding in the manner provided In sub-section (3), delegate his powers and duties under the

commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in Pakistan.]

504. [Commission in case of witness being within Presidency town.] Omitted by A.O., 1949, Schedule.

505. Parties may examine witnesses. (1) The parties to any proceeding under this Code in which a commission is issued, may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue and when the commission is directed to a Magistrate or officer mentioned in section 503, such Magistrate or the Officer to whom the duty of executing such commission has been delegated shall examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate or officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

506. Power of [....] Magistrate to apply for issue of commission. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, [such Magistrate if he is a judicial Magistrate, shall apply to the Sessions Judge and if he is an Executive Magistrate] shall apply to the District Magistrate, stating the reasons for the application; [and the Sessions Judge or the District Magistrate as the case may be], may either issue a commission in the manner herein before provided or reject the application.

507. Return of commission. (1) After any commission issued under section 503 or section 506 has been duly executed it shall be returned, together with the exposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Evidence Act, 1872 may also be received in evidence at any subsequent stage of the case before another Court.

508. Adjournment of inquiry or trial. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

508-A. Application of this Chapter to commission issued in Burma. The provisions of sub-section (3) of section 503, and so much of sections 505 and 507 as relates to the execution of a commission and its return by the Magistrate or officer to whom the commission is directed shall apply in respect of commissions issued by any Court or Judge having authority in this behalf in the United Kingdom or in any other country of the Commonwealth ..... or in the Union of Burma or any other country in which reciprocal arrangement in this behalf exists under the law in force in that country relating to commissions for the examination of witnesses as they apply commissions issued under section 503 or section 506.

CHAPTER XLI - SPECIAL RULES OF EVIDENCE

509. Deposition of medical witness. (1) The deposition of a Civil Surgeon or other medical witness taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) **Power to summon medical! witness.** The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

510. Report of Chemical Examiner, Serologist etc. Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any Serologist, finger print expert or fire-arm expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code:

Provided that the Court may [if it considers necessary in the interest of justice] summon and examine the person by whom such report has been made.]

511. Previous conviction or acquittal how proved. In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force.

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(b) in case of conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered: together with, in each of such cases evidence as to the identity of the accused person with the person so convicted or acquitted.

512. Record of evidence in absence of accused. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him the Court competent to try or [send for trial to the Court of Session or High Court] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, of trial for the offence with which he is charged, if the dependant is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) Record of evidence when offender unknown. If it appears that an offence punishable with death or 21 [imprisonment for life] has been committed by some person unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry and examine any witness who can give evidence concerning the offence. Any deposition so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of Pakistan.

CHAPTER XLII - PROVISIONS AS TO BONDS

513. Deposit instead of recognizance. When any person is required by any Court or officer to execute a bond, with or without sureties such Court or officer may, except in. the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

514. Procedure on forfeiture of bond. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Magistrate of the first class, or when the bond is for appearance before a Court, to the satisfaction of such Court,that such bond has been forfeited, the

Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the attachment and sale of any movable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which Issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 107 or section 118 ..... is convicted of an offence the commission of which constitutes a breach of the conditions of this bond, or of a bond executed in lieu of his bond under section 514B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety, or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

514-A. Procedure in case of insolvency or death of surety or when a bond is forfeited. When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court by whose order such bond was taken or a Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court of Magistrate may proceed as if there had been a default in complying with such original order.

514-B. Bond required from a minor. When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

[515. Appeal from, and revision of, orders under section 514. All order passed under section 514 by a District Magistrate or a Judicial Magistrate, shall be appealable to Sessions Judge and all such orders passed by an Executive Magistrate other than a District Magistrate, shall be appealable to the District Magistrate, or, if no appeal is made against any such order, may be revised, in the case of an order passed by a District Magistrate or a Judicial Magistrate, by the Sessions Judge, and in the case of an order passed by an Executive Magistrate other than a District Magistrate, by the District Magistrate.]

516. Power to direct levy of amount due on certain recognizances. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII - OF THE DISPOSAL OF PROPERTY

516-A. Order tor custody and disposal of property pending trial in certain cases. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence is produced before any Criminal Court during any inquiry or trial, the Court may make such order as It thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

'[Provided that, if the property consists of explosive substances, the Court shall not order it to be sold or handed over to any person other than a Government Department or office dealing with, or to an authorized dealer in, such substances]'

(Provided further that if the property is a dangerous drug, intoxicant, intoxicating liquor or any other narcotic substance seized or taken into custody under the Dangerous Drugs Act, 1930 (II of 1930), the Customs Act, 1969 (IV of 1969), the Prohibition (Enforcement of Hadd) Order, 1979 (P.O. 4 of 1979), or any other law for the time being in force, the Court may, either on an application or of its own motion and under its supervision and control obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other Court and cause destruction of the remaining portion of the property under a certificate issued by it in that behalf:

Provided also that such samples shall be deemed to be whole of the property in an inquiry or proceeding in relation to such offence before any authority or Court.]

517. Order for disposal of property regarding which offence committed. (1) When an Inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried effect by the District Magistrate.

(3) When an order is made under this section such order shall not, except, where the property is livestock or subject to speedy and natural decay, and save as provided by subsection (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

Explanation. In this section the term 'property' includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

518. Order may take form of reference to District or Sub-Divisional Magistrate. In lieu of itself passing an order under section 517 the Court may direct the property to be delivered to the district Magistrate or to a Sub Divisional Magistrate who shall in such case deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

519. Payment to innocent purchaser of money found on accused. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and, it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

520. Stay of order under sections 517, 518, or 519. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519 passed by a Court, subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just

521. Destruction of libelous and other matter. (1) On a conviction under the Pakistan Penal Code, section 292 section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner on a conviction under the Pakistan Penal Code, section 272, section 273, section 274, section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

522. Power to restore possession of immovable property. (1) Whenever a person is convicted of an offence [of cheating forgery or of an offence] attended by criminal force or show of force or by criminal intimidation and it appears to Court that by such [cheating forgery force] or show of force or criminal intimidation any person has been dispossessed of any immovable property, the Court may if it thinks fit, when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be restored to the possession of the same [whether such property is in the possession or under the control of the person convicted or of any other person to whom it may have been transferred for any consideration or otherwise'.]

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.

[522-A. Power to restore possession of movable property.-(l) Whenever a person is convicted of an offence of criminal mis-appropriation of property or criminal breach of trust or cheating or forgery and it appears to the Court that, by such mis-appropriation, breach of trust, cheating or forgery, any person has been dispossessed or otherwise deprived of any movable property, the Court may, if it thinks fit, when convicting such person or at any time within one month from the date of the conviction, order the person dispossessed or deprived of the property, where such property can be identified, to be restored to the possession of such property, whether such property is in the possession or under the control of the person convicted or of any other person to whom it may have been transferred for any consideration or otherwise.

(2) Where the property referred to in sub-section (1) cannot be identified or has been disposed of by the accused so that it may not be identified, the Court may order such compensation to be paid to the person dispossessed or deprived of such property as it may determine in the circumstances of the case.

(3) No order referred to in sub-section (1) or sub-section (2) shall prejudice any right or interest in any movable property which any person may be able to establish in a civil suit'.]

523. Procedure by police upon seizure of property taken under section 51 or stolen. (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) Procedure where owner of property seized unknown. If the person so entitled is known, the Magistrate may order the property to be delivered to him on such condition (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

524. Procedure where no claimant appears within six months. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Provincial Government and may be sold under the orders of the District Magistrate or Sub-divisional Magistrate or of [any other Executive Magistrate] empowered by the Provincial Government in this behalf.

(2) In the case of every order passed under this section an appeal shall lie to the Court to which appeal against sentences of the Court passing such order would lie.

525. Power to sell perishable property. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten rupees the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

CHAPTER XLIV - OF THE TRANSFER OF CRIMINAL CASES

526. High Court may transfer case or itself try it. (1) Whenever it is made to appear to the High Court:-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses, or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code; it may order:

(i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence.

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case or appeal be transferred to and tried before itself; or

(iv) that an accused person be sent for trial to itself or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court [....] it shall observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the High Court may under this section award by way of compensation to the person opposing the application.

(6) Notice to Public Prosecutor of application under this section. Every accused person making any such application shall give to the Public Prosecutor notice in writing of application, together with a copy of the grounds on which it is made; and no order shall be mode on the merits of the application unless at least twenty four hours have elapsed between the giving of such notice and the hearing of the application.

(6A) When any application for the exercise of the power conferred by this section is dismissed, the High Court may if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding [five hundred rupees] as it may consider proper in the circumstances of the case.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

[(8) In an inquiry under Chapter VIII or any trial, the fact that any party intimates to the Court at any stage that he intends to make an application under this section shall not require the Court to adjourn the case; but the Court shall not pronounce its final judgment or order until the application has been finally disposed of by the High Court and if the application is accepted by the High Court, the proceedings taken by the Court subsequent to the intimation made to it shall, at the option of the accused, be held afresh]

(9) x x x x x

(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding (five hundred rupees] that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.

526-A. High Court to transfer for trial to itself in certain cases. [Omitted by Ordinance XX of 1969]. S. 2.

527. Power of Provincial Government to transfer cases and appeal. (1) The Provincial Government may, by notification in the official Gazette direct the transfer of any particular case or appeal from one High Court to another High Court or from any Criminal Court subordinate to one to another High Court, or from any Criminal Court subordinate to one High Court, to any other Criminal Court, of equal or superior jurisdiction subordinate to another High Court, whenever it appears to it that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

Provided that no case or appeal shall be transferred to a High Court or other Court in another Province without the consent of the Provincial Government of that Province.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

528. Sessions Judge may withdraw cases from Assistant Sessions Judge. (1) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Assistant Sessions Judge subordinate to him.

(1A) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, any Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(1B) Where a Sessions Judge withdraws or recalls a case under sub-section (1) or recalls a case or appeal under sub section (1A), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.

(1C) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Explanation. Omitted by Law Reforms Act 1997 (Act No. XXIII of 1997.

(2)&(3) [Omitted by Act XXI of 1976.]

(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.

(5) A Magistrate making an order under [preceding sub-section] shall record in writing his reasons for making the same.

[528-A. Powers of District Magistrate for transfer of cases, etc. (1) A District Magistrate may withdraw or recall any case which he has made over to a Magistrate subordinate to him.

(2) Where a District Magistrate withdraws or recalls a case under sub-section (1), he may either try the case himself or make it over in accordance with the provisions of this Code for trial to any other Magistrate subordinate to him.']

CHAPTER XLV - OF IRREGULAR PROCEEDINGS

529. Irregularities which do not vitiate proceedings. If any Magistrate not empowered by law to do any of the following things, namely:-

(a) to issue a search-warrant under section 98;

(b) to order, under section 155, the police to investigate an offence:

(c) to hold an inquest under section 176:

(d) to issue process under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b);

(f) to transfer a case under section 192;

(g) to tender a pardon under section 337 or section 338;

(h) to sell property under section 524 or section 525; or

(i) to withdraw a case and try it himself under section 528; erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

530. Irregularities which vitiate proceedings. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-

(a) attaches and sells property under section 88;

(b) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department.

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour:

(f) cancels a bond to keep the peace;

(g) makes an order under section 133, as to a local nuisance;

(h) prohibits under section 143, the repetition or continuance of a public nuisance;

(i) issue an order under section 144;

(j) makes an order under Chapter XXII;

(k) takes cognizance under section 190, sub-section (1) clause (c), of an offence;

(I) passes a sentence, under section 349, on proceeding recorded by another Magistrate:

(m) calls under section 435, for proceedings.

(n) [x x x x x]

(o) revises, under section 515, an order passed under section 514:

(p) tries an offender;

(q) tries an offender summarily; or

(r) decides an appeal; his proceedings shall be void:

531. Proceedings in wrong place. No finding sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions divisions, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

532. [Omitted be Law Reforms Ordinance, 1972, item 174 w.e.f 26.12.1975].

533. Non-compliance with provisions of section 164 or 364. (1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and notwithstanding anything contained in the Evidence Act, 1872, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision.

534. [Omission to give information under section 447] Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950), Schedule.

535. Effect of omission to prepare charge. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

536. [Omitted by Law Reforms Ordinance, 1972, item 174 w.e.f 26.12.1975].

[537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings. Subject to the provisions hereinbefore contained, no finding, sentence order passed by a court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account'

(a) of any error, omission or irregularity in the complaint, report by police-officer under section 173, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) of any error, omission or irregularity in the mode of trial, including any misjoinder of charges unless such error omission or irregularity has in fact occasioned a failure of justice.

Explanation. In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.]

538. Attachment not illegal, person making same not trespasser for defect or want of form in proceedings. No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

CHAPTER XLVI - MISCELLANEOUS

539. Courts and persons before whom affidavits may be sworn. Affidavits and affirmations to be used before any High court or any officer of such Court may be sworn and affirmed before such Court [....] or any Commissioner or other person appointed by such court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in Pakistan.

539-A. Affidavits in proof of conduct of public servant. (1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the applications by affidavit, and Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High court under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such as he has reasonable grounds to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in a affidavit to be struck out or amended.

539-B. Local inspection. (1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of property appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor complainant or accused so desires , a copy of the memorandum shall be furnished to him free of cost.

540. Power to summon material witness or examine persons present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

540-A. Provision for inquiries an trial being held in the absence of accused in certain cases. (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the court, if the Judge or Magistrate is satisfied for reason to be recorded, that any one or more of such accused is or incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

541. Power to appoint place of imprisonment. (1) Unless when other-wise provided by any law for the time being in force, the Provincial Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

(2) Removal to criminal pi! of accused or convicted person who are in confinement in civil jail, and their return to the civil jail. If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jai! under sub-section (2) he shall, on being released therefrom, be sent back to the civil jail, unless either:

(a) three years have elapsed since he was removed to the criminal jail in which case he shall be deemed to have been discharged from the civil jail under (section 58 of the Code of Civil Procedure 1908]; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under [section 58 of the Code of Civil Procedure 1908].

542. [Power of Presidency Magistrate to order prisoner in jail to be brought up for examination]: Rep, by (he Federal Laws (Revision and Declaration Act. 1951), S. 3 and II Schedule.

543. Interpreter to be bound to Interpret truthfully. When the services of an Interpreter are required by any Criminal Court for She interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

544. Expenses of complainants and witness. Subject to any rules made by the Provincial Government any criminal! Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial, or other proceeding before such Court under this Code.

[544-A. Compensation to the heirs of the person killed, etc. [(1) Whenever a person is convicted of an offence in the commission whereof the death of or hurt, injury, or mental anguish or psychological damage to, any person is caused or damage to or loss or destruction of any property is caused, the court shall when convicting such person, unless for reasons to be recorded in writing it otherwise directs, order the person convicted to pay to the heirs of the person whose death has been caused, or to the person hurt or injured, or to the person to whom mental anguish or psychological damage has been caused, or to the owner of the property damaged, lost or destroyed, as the case may be, such compensation as the court may determine having regard to the circumstances of the case';] and

(2) The compensation payable under sub-section (1) shall be recoverable as [an arrear of land revenue] and the court may further order that, in default of payment or of recovery as aforesaid the person ordered to pay such compensation shall suffer imprisonment for a period not exceeding six months, or if it be a Court of the Magistrate of the third class, for a period not exceeding thirty days.

(3) The compensation payable under sub-section (1) shall be in addition to any sentence which she court may impose for the offence of which the person directed to pay compensation has been convicted.

(4) The provisions of sub-sections (28), (2C), (3), and (4) of section 250, shall, as far as may be, apply to payment of compensation under this section.

(5) An order under this section may also be made by an appellate Court or by a Court when exercising its powers of revision.

545. Power of Court to pay expenses, compensation out of fine. (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied:

(a) in-defraying expenses properly incurred in the prosecution;

(b) in the payment of any person of compensation for any loss, [injury or mental anguish or psychological damage] caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence which includes theft, criminal misappropriation, breach of trust, or cheating or of having dishonestly received or retained or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal be presented, before the decision of the appeal.

546. Payments to be taken into account in subsequent suit. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section [544-A or section] 545.

546-A. Order of payment of certain fees paid by complainant in non-cognizable cases.

(1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant:

(a) the fee (if any) paid on the petition of complaint or the examination of the complainant, and

(b) any fees paid by the complainant for serving processes on his witnesses or on the accused, and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or by the High Court, when exercising its powers of revision.

547. Money ordered to be paid recoverable as fines. Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for shall be recoverable as if it were a fine.

548. Copies of proceeding. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of ..... any order or deposition or other part of the record he shall, on applying for such copy, be furnished therewith:

Provided that he pays for the same unless the Court, for some special reason, thinks fit to furnish it free of cost.

549. Delivery to military authorities of persons liable to be tried by Court martial. (1)The Central Government may make rules consistent with this Code and the [Pakistan Army Act, 1952 (XXXIX of 1952), the Pakistan Air Force Act, 1953 (VI of 1953, and the Pakistan Navy Ordinance, 1961 (XXXV of 1961] and any similar law for the time being in force as to the cases in which person subject to military naval or air force law shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules and shall in proper cases deliver him together with a statement of the offence of which he is accused to the commanding officer of the regiment, corps, ship or detachment to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by Court-martial.

(2) Apprehension of such persons. Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavour to apprehend and secure any person accused of such offence.

(3) Notwithstanding anything contained in this Code, if the person arrested by the Police is a person subject to the Pakistan Army Act, 1952 (XXXIX of 1952) and the offence for which he is accused is triable by a Court-martial, the custody of such person and the investigation of the offence of which he is accused may be taken over by the Commending Officer of such person under the said Act.]

550. Powers to Police to seize property suspected to be stolen. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

551. Powers of superior officers of police. Police officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

552. Power to compel restoration of abducted females. Upon complaint made to a District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of sixteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

553. [Compensation to persons groundlessly given in charge in presidency-town]. Rep. by the Federal Laws (Revision and Declaration Act, 1954 (XXVI of 1951) S. and II Schedule.

554. Power of (x x) High courts to make rules for Inspection of records of subordinate courts. (1) With the previous sanction of the Provincial Government, any High Court may from time to time, make rules for the inspection of the records of subordinate Courts.

(2) Power of other High Courts to make rules for other purposes. Every High Court may, from time to time, and with the previous sanction of Provincial Government:

(a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts:

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided:

(c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the official Gazette.

555. Forms. Subject to the power conferred by section 554 and by [Articles 202 and 203] of the Constitution, the forms set forth in the Fifth Schedule, with such variation as the circumstances of each require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

556. Case in which Judge or Magistrate is personally interested. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try ..... any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from an judgment or order passed or made by himself.

Explanation. A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

Illustration

A., as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws A is disqualified for trying this case as a Magistrate.

557. Practicing pleader not to sit as Magistrate in certain Courts. No pleader who practises in the Court of any Magistrate in a district, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court,

558. Power to decide language of Courts. The Provincial Government may determine what for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts.

559. Provision for powers of Judges and Magistrate being exercised by their successors in office. (1) Subject to the other provisions o(the Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, [the Sessions Judge in the case of Judicial Magistrate, and the District Magistrate in the case of Executive Magistrate] shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this

Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.

560. Officers concerned in sales not to purchase or bid for property. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

561. [xxxxxxx]

561-A. Saving of inherent power of High Court. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code; or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

First Offenders

562. Powers of Court to release certain convicted offenders on probation of god conduct instead of sentencing to punishment. When any person not under twenty one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty one years of age or any woman is convicted of an offence not punishable with death or [imprisonment] for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be good behaviour:

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Provincial Government in this behalf and the Magistrate is of opinion that the powers conferred by this section should be exercised he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class [x x x] forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

(1A) Conviction and release with admonition. In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Pakistan Penal Code punishable with not more than two years imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(2) An order under this section may be made by any Appellate Court or by the High Court where exercising its power of revision.

(3) When an order has been made under this section in respect of any offender, the Court may, on appeal when there is a right of appeal to such Court, or when exercising its power of revision, set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court which the offender was convicted.

(4) The provisions of sections 122, 126-A and 406A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

563. Provision in case of offender failing to observe conditions of his recognizance. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance it, may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court Issuing the warrant, and such Court may either remand him in custody until the case is heard or admit to bail with a sufficient surety conditions on his appearing for sentences. Such Court may, after hearing the case, pass sentence.

564. Conditions as to abode of offender. (1) The Court before directing the release of an offender under section 562, sub section (1), shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Nothing in this section or in sections 562 and 563 shall effect the provisions of section 31 of the Reformatory School Act, 1897. Previously convicted offender

565. Order for notifying address of previously convicted offender. (1) When any person having been convicted:

(a) by a Court in Pakistan of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Pakistan Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of the Code, with imprisonment of either description for a term of three years or upward; or

(b) X X X X is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court, Court of Sessions, [District Magistrate, Sub-Divisional Magistrate] or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of [....] imprisonment on such person, also order that his residence and any change of or change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Provincial Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

SCHEDULE 1

[Enactments repealed]. Rep. by the Repealing and Amending Act, 1914 (X of 1914), S. 3 and Sch. II.