

AMENDMENTS IN THE CODE OF CRIMINAL PROCEDURE, 1898

The Pakistan Law Commission received certain complaints to the effect that various provisions of the Code of Criminal Procedure, 1898 have become outdated and are causing numerous problems to the litigant public. It was also reported that due to lacunae in certain other provisions of the Code the Police officials abuse their powers and authority which results in tremendous inconvenience to the people, besides inflicting avoidable sufferings on the accused and his family. The Commission further took notice of the defect in law whereunder the offence of perjury cannot be effectively curbed. Furthermore, it considered the issue of termination of appeal proceedings in the event of the death of the convict appellant. The specific complaints relate to the following issues:

- (1) Police, on making arrest under Section 54 and 55 of the Code do not give information to the family members of the person arrested, therefore, they remain unaware about the whereabouts of the detenu;
- (2) First Information Report is not recorded in some cases by the police as required under Section 154 of the Code;
- (3) Copy of authorisation of detention of the accused in custody of the Police is seldom forwarded to the Sessions Judge in compliance of Section 167(4);
- (4) Punishment for perjury may not be postponed under Section 282-A(a) of the Code;
- (5) Appeal of the deceased convict may not abate if any one of his legal heirs requests the Court for decision on merit;

- (6) Right of appeal may not extinguish where a convict dies before filing appeal and his heirs may have a right to file the appeal;
- (7) The court, before which false evidence is given, may itself take cognisance of the offence, instead of sending the case to another court, under Section 476(A) of the Code.

The Commission deliberated upon these issues and resolved to propose appropriate amendments to the Code. The proposed amendments are as follows:

1. Person Arrested to Have his Family Informed by the Police

The Commission took notice of public complaints to the effect that quite often the Police fails to intimate the fact of detention of a person to his family members. This practice, the Commission observed, tantamounts to depriving the detenu of his right to secure bail and arrange for his defence. This practice is patently illegal and is often used for depriving a person of his fundamental rights guaranteed under Article 10 of the Constitution. The Commission observed that due to phenomenal improvement in means of information and communication, such information can and should be given without any inconvenience. It, therefore, recommends that the incharge of a police station, should soon after the arrest of a person, inform his relation or friend of the fact of his arrest. In making this recommendation, however, the Commission is conscious of the fact that such information might be abused/misused, such as leading to interference with evidence, letting other suspects in the case to escape or hinder the recovery of property involved in the alleged offence. Therefore, in order to forestall any such abuse/misuse of the law, the Commission suggests that a responsible Police Officer, not below the rank of Superintendent of Police, be authorised to withhold such information for a while. To do so, however, such Police officer must have cogent reasons for his action.

2. Authorising Magistrate to Record FIR

There is a common complaint against the police that in order to keep the graph of crime low, they use various tactics including refusing to register First Information Report about the commission of crime. As a result the people have either to keep quiet or seek directions from the High Court for the purpose of registering the said report. Though the Code provides for presenting a complaint before the Magistrate but it requires the complainant to conduct the proceedings in private capacity and on his own expenses. Since the complainant cannot effect recoveries etc. from the accused, therefore, these complaints fail in most of the cases. The Commission takes the view that there must be an alternate mode of getting the First Information Report recorded. Therefore, the Commission recommends that a sub-section (2) be added to Section 154 of the Code allowing a person to get his First Information Report recorded with the concerned Magistrate. Such Magistrate should send a copy of the First Information Report to the concerned police station for investigation. A consequential amendment may also be made in Section 156 of the Code.

3. Magistrate Ordering Detention to Inform Sessions Judge Immediately

The rationale behind Section 167(4) of the Code was to place a check upon discretionary powers of a Magistrate, authorising detention of a person in the custody of police. Therefore, it was provided by the Code that a Magistrate while giving such order should forward a copy of it to the Sessions Judge with reasons for making such order. Although an express provision of law is available in the Code yet it is seldom followed, especially when the order is made without considering the merits of the case. The Commission recommends that Section 167(4) be amended so as to make the provision mandatory.

4. Right of Appeal Not to Abate on Death of Convict

Under Section 431 of the Code, an appeal abates on the death of the convict appellant, Any conviction, more so a conviction on the grounds of moral turpitude, puts a blot not just on the character of the convict but his entire family. This stigma may be

washed of on the successful outcome of the appeal. But the death of the convict leaves his family entirely without any remedy as the appeal abates. The same result ensues when the convict dies before filing an appeal. The Commission, having examined this situation reached the conclusion that the law on the subject is unsatisfactory, in as much as it does not provide any opportunity to the family of a convict to remove the blot of ignominy from its face. Accordingly, the Commission recommends amendment to Section 431 of the Code to the effect that appeal may not abate if any heir of the deceased convict requests the court to decide the appeal on merit. It further recommends a new Section 431-A to be added to the Code. The additional clause provides that the right of appeal shall not extinguish if the convict dies before filing the appeal. In such an eventuality, any heir of the deceased may file an appeal against the conviction in the same manner as if the deceased convict was alive.

5. Punishing the Perjurer

In the absence of confession, evidence is the sole criteria for deciding a case. No system of justice can succeed without ensuring that authentic and credible evidence is presented in the case. In an Islamic society deposition is a religious obligation and giving false evidence is regarded as a sin of the highest degree. Giving false evidence with impunity is the root cause of many injustices perpetuated in the society. There exists penal provisions for giving punishment to a perjurer but such provisions are seldom invoked as the court has to refer the case to another court and the complainant judge has to stand in the witness box for giving evidence. He also has to face cross examination by the perjurer, as provided by Section 476-A of the Code of Criminal Procedure. Therefore, the courts always avoid to proceed under the provisions of Section 476-A. If a court takes suo moto action under Section 476 in the case of perjury during the pendency of a case and accords punishment to the perjurer, its implementation postponed till the decision of appeal, when the convict furnishes bail for his appearance before the court. Thus Sections 476 and 476-A in the present form have made the courts helpless to tackle the problem of perjury effectively. The Commission, therefore, suggests appropriate alternative provisions for the same. The Commission takes the view that the present restriction on the powers of the courts be removed so that they may punish for perjury. The Commission further recommends that

any fabrication of false evidence during investigation by a police officer or an expert may also be punished. Consequently, the Commission recommends repeal of clause (a) of Section 382-A and Section 476-A of the Code and to make the law more effective it recommends the substitution of, Section 476. Recommendations of the Commission are annexed in the shape of an amending bill.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 1993

An Act further to amend the Code of Criminal Procedure, 1898.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898 (Act V of 1898), for the purpose hereinafter appearing;

It is hereby enacted as follows:

- 1. Short title and commencement.- (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 1993.
(2) It shall come into force at once.**

- 2. Insertion of a new Section 59A, Act V of 1898.- In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code, after section 59, the following new section 59A shall be inserted, namely:**

"59A. Right to have some one informed when arrested.-

- (1) Where a person is held, in custody in a Police Station or other premises, he shall be entitled to have a friend or relative or other persons who is known to him or who is likely to take an interest, in his welfare, told by the Officer Incharge of Police Station about his arrest.**

- (2) A Police Officer not below the rank of Superintendent of Police may only authorise delay where he has reasonable grounds of believing that telling to the named person of the arrest shall-**
 - (a) lead to interference with or harm to the evidence connected with a cognisable offence or interference with or physical injury to other persons; or**

- (b) lead to alerting of other person suspected of having committed such an offence but not yet arrested for it; or
- (c) hinder the recovery of any property obtained as a result of such an offence".

3. **Amendment of Section 154, Act V of 1898.- In the said Code, the existing section 154 shall be numbered as sub-section (1) and the following new sub-section (2) shall be added, namely:**

(2) Any information relating to the commission of cognisable offence not entered in the book, by an Officer Incharge of a Police Station, may be given to the Magistrate having ordinary jurisdiction in cases coming up from such Police Station which shall be received in the manner given under sub-section(1).

4. **Amendment of Section 156, Act V of 1898.- In the said Code, in section 156, in sub-section (1), after the word and comma "may," the words "with or" shall be inserted.**

5. **Amendment of Section 167, Act V of 1898.- In the said Code, in section 167, in sub-section (4), after the word "shall" the word "forthwith" shall be inserted.**

6. **Amendment of Section 382A, Act V of 1898.- In the said Code, in section 382A, the clause (a) shall be omitted.**

7. **Amendment in Section 431, Act V of 1898.- In the said Code, in section 431, for the 'full stop' a semi colon shall be substituted and thereafter the following proviso shall be added, namely:**

"Provided an appeal against conviction shall not abate if anyone of legal heirs of the deceased appellant within thirty days of death of the appellant request the court for its judgment in such appeal".

8. **Insertion of a new Section 431A, Act V of 1898.- In the said Code, after section 431 the following new section 431A shall be inserted, namely,**

"431A. Right of appeal not to extinguish.- Where a convict dies before filing an appeal against his conviction, anyone of his legal heirs may prefer appeal against such conviction in the same manner as prescribed in the Code for appeal by such deceased convict".

9. **Substitution of Section 476, Act V of 1898.- In the said Code, for section 476 the following new section 476 shall be substituted, namely,**

"476. Cognisance of false evidence., Procedure of trial.---

(1) Notwithstanding anything contained in this Code where any offence has been committed during hearing or trial of a case in any Civil, Revenue or Criminal Court, or in the course of investigation, or a proceeding in relation to such a case, by a Police Officer, a witness including an expert who has tendered false opinion in a case relating to a matter covered by his specialty, whether he deposed in the court or not, or any other person, under Sections 176 to 182 of Chapter X, Section 191 to 204, 211 to 223 and 223A of Chapter XI of the Pakistan Penal Code (Act No XLV of 1860) or under any other law relating to false evidence and offenses against public justice, the court shall, at any time during such hearing or trial or on pronouncement of judgment, have jurisdiction to take cognisance of the offence and to try the same in accordance with the procedure prescribed for summary trials in Chapter XXII.

(2) The proceedings under sub-section (1) may be initiated by the court on its own accord or on an application made by any one of the parties to such hearing or trial.

10. **Omission of Section 476, Act V of 1898.- In the said Code, Section 476A shall be omitted.**

Statement of Objects and Reasons

These recommendations of Pakistan Law Commission seek to amend the Criminal Procedure Code, 1898 to provide a right to have someone informed when arrested, an alternate procedure of recording FIR if not recorded by the Police, to confer a right upon legal heirs of a deceased convict to file or pursue the appeal against his conviction, and to empower the courts to take cognisance of an offence of false evidence committed before them during a trial or hearing.