

Amendment in the Code of Criminal Procedure 1898 for Substitution /  
Deletion of Obsolete Provisions

Report No. 102

( - )

## **AMENDMENT IN THE CODE OF CRIMINAL PROCEDURE 1898 FOR SUBSTITUTION / DELETION OF OBSOLETE PROVISIONS.**

The Code of Criminal Procedure, 1898, has remained constantly under revision and amendments have been made in the said Code from time to time for making it compatible with the changing needs of the Society for the proper dispensation of criminal justice. However, sections 94, 99A, 108, 172, 244A, 265J, 471, 507 and 533 of the said Code still contain obsolete provisions which also need to be properly amended.

In sections 94, 172, 244A, 265J, 507 and 533 reference has been made to the Evidence Act, 1872, or certain provisions thereof. The said Act has been repealed vide section 166 of the Qanun-e-Shahadat Order, 1984 and replaced with the said Order. Most of the provisions of the Evidence Act, 1872, which were not repugnant to the injunctions of Islam, were retained in the Qanun-e-Shahadat Order, 1984, in a different arrangement / order, so the provisions of the Evidence Act, 1872, referred to in some of the above mentioned sections of the Code of Criminal Procedure, 1898, now find place in a different order in the Qanun-e-Shahadat Order, 1984.

In section 94 of the Code of Criminal Procedure, 1898, reference has been made to sections 123 and 124 of the Evidence Act, 1872, which now find place in sections 6 and 7 of the Qanun-e-Shahadat Order, 1984. Similarly in section 172 of the Code of Criminal Procedure, 1898, reference has been made to sections 161 and 145 of the Evidence Act, 1872, which now find place in sections 157 and 140 of the Qanun-e-Shahadat Order, 1984, respectively. Likewise, in section 507 of the Code of Criminal Procedure, 1898, reference has been made to section 33 of the Evidence Act, 1872, which now find place in section 47 of the Qanun-e-Shahadat Order, 1984. Similarly section 91 of the Evidence Act, 1872, has been referred to in section 533 of the Code of Criminal Procedure, 1898, which now find place in section 102 of the said Order. All the above mentioned sections of the Evidence Act, 1872, need to be replaced with the relevant sections of the Qanun-e-Shahadat Order, 1984, referred to above. The words "Evidence Act, 1872" referred to in sections 244A and 265J of the Code of Criminal Procedure, 1898, also need to be replaced with the words "Qanun-e-Shahadat Order, 1984".

In sections 99A and 108 of the Code of Criminal Procedure, 1898, reference has been made to the Press and Publications Ordinance, 1963, or some provisions thereof. In clause (b) of sub-section (1) of section 99A of the Code of Criminal Procedure, 1898, reference has been made to clause (jj) of sub-section (1) of section 24 of the said Ordinance. The said Ordinance has been repealed vide section 45 of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002. However, no alternate provision is available in the new Ordinance to replace clause (jj) of sub-section (1) of section 24 of the Press and Publications Ordinance, 1963. So the words "the Press and Publications Ordinance 1963" in clause (a) of sub-section (1) of section 99A and section 108 of the Code of Criminal Procedure, 1898, need to be replaced with the

words “the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002” and the words in clause (b) of sub-section (1) of section 99A of the Code of Criminal Procedure, 1898, “**or any matter of the nature referred to in clause (jj) of sub-section (1) of section 24 of the West Pakistan Press and Publications Ordinance, 1963**” need to be omitted.

Similarly, in section 471 of the Code of Criminal Procedure, 1898, reference has been made to the Lunacy Act, 1913. The said Act has been repealed vide section 61 of the Mental Health Ordinance, 2001. So the words “the Lunacy Act, 1913” also need to be replaced with the words “the Mental Health Ordinance, 2001”.

It is one of the functions of the Law and Justice Commission of Pakistan under clause (v) of the Law and Justice Commission Ordinance, 1979, to repeal obsolete or unnecessary provisions in the laws. It is therefore, proposed that;

- 1) Section 123 and 124 of the Evidence Act, 1872, referred to in section 94 of the Code of Criminal Procedure, 1898, section 161 and 145 of the Evidence Act, 1872, referred to in section 172 of the Code of Criminal Procedure, 1898, section 33 of the Evidence Act, 1872, referred to in section 507 of the Code of Criminal Procedure, 1898, and section 91 of the Evidence Act, 1872, referred to in section 533 of the Code of Criminal Procedure, 1898, may be replaced, respectively, with sections 6, 7, 155, 140, 147 and 102 of the Qanun-e-Shahadat Order, 1984, in its proper places.
- 2) In sections 244A and 265J of the Code of Criminal Procedure, 1898, the words “**the Evidence Act, 1872**” may be replaced with the words “**the Qanun-e-Shahadat Order, 1984**”.
- 3) The words “**the Press and Publications Ordinance, 1963**” referred to in clause (a) of sub-section (1) of section 99A and 108 of the Code of Criminal Procedure, 1898, may be replaced with the words “**the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002**”, and the words in clause (b) of sub-section (1) of section 99A of the Code of Criminal Procedure, 1898 “**or any matter of the nature referred to in clause (jj) of sub-section (1) of section 24 of the West Pakistan Press and Publications Ordinance, 1963**” may be omitted.
- 4) The words “**the Lunacy Act, 1913**” referred to in section 471 of the Code of Criminal Procedure, 1898, may be replaced with the words “**the Mental Health Ordinance, 2001**”.

Comparative table is enclosed.

## COMPARATIVE TABLE

EXISTING PROVISIONS	PROPOSED PROVISIONS
<p><b>Section 94.</b> – <i>Summons to produce document or other thing.</i> (1)..... (2).....            (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.</p>	<p><b>Section 94.</b> – <i>Summons to produce document or other thing.</i> (1)..... (2).....            (3) Nothing in this section shall be deemed to affect <b>the Qanun-e-Shahadat Order 1984, Article 6 and 7</b>, 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.</p>
<p><b>Section 99A.</b> – <i>Power to declare certain publications forfeited and to issue search warrants for the same.</i></p> <p>(a) any newspaper, or book as defined in the West Pakistan Press and Publications Ordinance, 1963, or any other law relating to press and publication for the time being in force, or</p> <p>(b) any document, wherever printed, appears to the Provincial Government to contain any treasonable or 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 any such class by insulting the religion or the religious beliefs of that class, <b>or any matter of the nature referred in clause (jj) of sub-section (1) of section 24 of the West Pakistan Press and Publications Ordinance, 1963</b>, that is to say, any matter the publication of which is punishable under section 123A or section 124A or section 153A or section 295A or section 298A or section 298B or section 298C of the Pakistan Penal Code, the Provincial Government may, by notification in the official</p>	<p><b>Section 99A.</b> – <i>Power to declare certain publications forfeited and to issue search warrants for the same.</i></p> <p>(a) any newspaper, or book as defined in <b>the Press, Newspapers, News Agencies and Books Registration Ordinance 2002</b> or any other law relating to press and publication for the time being in force, or</p> <p>(b) any document, wherever printed, appears to the Provincial Government to contain any treasonable or 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 any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under section 123A or section 124A or section 153A or section 295A or section 298A or section 298B or section 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</p>

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 an 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 or may be or may be reasonably suspected to be.

**Section 108.** – *Security for good behaviour from persons disseminating seditious matter.*

(a)..... (b)..... (c).....

No proceedings shall be taken under this section against the editor, proprietor, printer 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 the Provincial Government or some officer empowered by the Provincial Government in this behalf.

**Section 172.** – *Diary of proceedings in investigation.* (1).....

(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

to be forfeited to Government, and thereupon any police-officer may seize the same wherever found in Pakistan an 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 or may be or may be reasonably suspected to be.

**Section 108.** – *Security for good behaviour from persons disseminating seditious matter.*

(a)..... (b)..... (c).....

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with the provisions of **the Press, Newspapers, News Agencies and Books Registration Ordinance 2002** 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 the Provincial Government or some officer empowered by the Provincial Government in this behalf.

**Section 172.** – *Diary of proceedings in investigation.* (1).....

(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 see them

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, or if the Court, uses them for the purpose of contradicting such police-officer, the provisions of the Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

**Section 244A.** – *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 direction if the Court, if such witness is produced and examined, be treated as evidence in the case for all purpose subject to the provisions of the Evidence Act, 1872.

**Section 265J.** – *Statement under section 164 admissible.* The statement of a witness duly recorded under section 164, of 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 direction if the Court, if such witness is produced and examined, be treated as evidence in the case for all purpose subject to the provisions of the Evidence Act, 1872.

**Section 471.** – *Person acquitted on such ground to be detained in safe custody.* (1) Wherever 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

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, or if the Court, uses them for the purpose of contradicting such police-officer, the provisions of **the Qanun-e- Shahadat Order 1984, Article 155 or Article 140**, as the case may be, shall apply.

**Section 244A.** – *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 direction if the Court, if such witness is produced and examined, be treated as evidence in the case for all purpose subject to the provisions of **the Qanun -e-Shahadat Order 1984.**

**Section 265J.** – *Statement under section 164 admissible.* The statement of a witness duly recorded under section 164, of 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 direction if the Court, if such witness is produced and examined, be treated as evidence in the case for all purpose subject to the provisions of **the Qanun-e-Shahadat Order 1984.**

**Section 471.** – *Person acquitted on such ground to be detained in safe custody.* (1) Wherever 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.

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) .....

**Section 507. – Return of commission.**

(1).....

(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.

**Section 533. – Non compliance with provisions of section 164 or 364.**

(1) If any Court, before which a confessions 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) .....

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 Mental Health Ordinance 2001.**

(2) .....

**Section 507. – Return of commission.**

(1).....

(2) Any deposition so taken, if it satisfies the conditions prescribed by **Article 47 of the Qanun-e-Shahadat Order 1984**, may also be received in evidence at any subsequent stage of the case before another Court.

**Section 533. – Non compliance with provisions of section 164 or 364.**

(1) If any Court, before which a confessions 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 Qanun-e-Shahadat Order 1984, section 102**, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) .....

### **Commission's deliberations**

The working paper was considered by the Commission in its meeting held on 27.7.2007 and the following are the deliberations:-

The Commission considered reference of the "Evidence Act 1872 occurring in sections 94, 172, 244A, 265J, 507 and 533 of the Criminal Procedure Code which have been repealed by the Qanoon-e-Shahadat Order 1984 and recommended that the Qanoon-e-Shahadat Order with its relevant Articles may be substituted for the corresponding sections of the Evidence Act. The Commission also recommended omission of reference of the repealed West Pakistan Press and Publication Ordinance 1963 and its clause (JJ) in Section 99-A Cr.P.C wherever occurring and substituted by the Newspaper, News Agency and Books Registration Ordinance 2002. The Commission approved the omission of proviso to Section 471 Cr. PC providing for detention of lunatic in the asylum established under the Lunacy Act 1912 on repeal of the Act by the Mental Health Ordinance 2001 not providing for any such asylum.