

**Amendment to section 46 of the Code of
Criminal Procedure, 1898.**

Report No. 134

Amendment to Section 46 of the Code of Criminal Procedure, 1898.

It is argued in almost all segments of the society that section 46 of the Cr.C.P requires reform as its sub-section (2) and (3), when read together, may provide the police with a license to kill the persons accused of death or imprisonment of life under the garb of resisting arrest including unchecked power available to Police in the shape of using force while effecting arrest is the probable causes of “fake police encounters” which are witnessed in Pakistan frequently. The superior courts of Pakistan have in many judgments including PLD 1998 Supreme Court of Pakistan (Page 388) held that an agency killing someone in encounter has to show that it was attacked first by the deceased and the court has to give finding whether the killing was justified.

In view of the above, certain amendments were proposed in the section 46 of Criminal Procedure Code, 1898 and placed before the Sub-Committee. The Sub-Committee examined the proposal and recommended certain changes. A comparative table with respect to the existing provision, proposed amendments by the Secretariat of the Commission and recommendations made by the Sub-Committee is as follows:

Comparative Table

Existing Provision	Proposed Amendment(s) by the Secretariat of Law and Justice Commission	Recommendation(s) of the Sub-Committee
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.	(1) No change	(1) No change
(2) Resisting endeavour to arrest. If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such police officer or other person may use all means	(2) Resisting endeavour to arrest. (a) A police officer or other person, after giving notice of his identity as an officer or as a person making arrest, may	(2) No change

<p>necessary to effect the arrest</p>	<p>use or threaten to use force that is reasonably necessary to accomplish the arrest of an individual suspected of a criminal act who resists or escapes from the arrest.</p> <p>(b) Notwithstanding subsection (a), the police officer or other person making arrest may use deadly force to effect an arrest only if all other reasonable means of apprehension have been exhausted or are unavailable, and where feasible, the police officer or other person has given notice of his identity as a police officer or as a person making arrest and given a warning that deadly force may be used unless resistance or flight ceases, and :</p> <p>(1) The police officer or other person making arrest has probable cause to believe the individual to be arrested has committed an offence involving death or the infliction or threatened infliction of serious bodily injury; or</p> <p>(2) The police officer or other person making arrest has probable cause to believe that the individual to be arrested poses a threat of causing death or serious bodily injury, either to the police officer or the other person making arrest or to others unless immediately apprehended.</p> <p>(c) All police, law enforcement officers and other persons eligible to arrest under the law shall be</p>	
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<p>(3) Nothing in this section gives a right to cause the death of person who is not accused of an offence punishable with death or with imprisonment for life.</p>	<p>bound by the provisions in this section.</p> <p>(3) Deleted</p>	<p>“Provided that the Police Officer or any person making arrest shall not use any means which may cause death of, or grievous bodily injury to, the person being arrested unless there is probable cause to believe that the person to be arrested poses an imminent threat of causing death or grievously bodily injury either to the Police Officer or any other the person making arrest.”</p> <p>(3) No change</p>
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Commission’s deliberations

The Law and Justice Commission of Pakistan in its meeting dated 14 June 2014 considered the proposal and resolved that instead of adding new proviso, an independent sub-section (4) be added to section 46 of Cr.P.C with suitable wording. The Commission also approved the proposal of Hon’ble Chief Justice, High Court of Balochistan for substituting article “the” appearing for the last time in the proviso with the words “any other”.

Draft Bill for amendment in section 46 of the Code of Criminal Procedure, 1898 is hereby annexed.

**THE CODE OF CRIMINAL PROCEDURE
(AMENDMENT) ACT 2014**

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

Whereas it is expedient further to amend the Code of Criminal Procedure (Act V of 1898), for the purposes 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, 2014.

(2) It shall come into force at once.

2. **Amendment of Section 46, Act V of 1898.** In the Code of Criminal Procedure, 1898 (Act V of 1898), in section 46, after sub-section (3) the following new sub-section (4) shall be added, namely;

“(4) Notwithstanding anything contained in sub-section (2) and (3), the Police Officer or other person making arrest shall not use any means which may cause death of, or grievous bodily injury to, the person being arrested unless there is probable cause to believe that the person to be arrested poses resistance with imminent threat of causing death or grievously bodily injury either to the Police Officer, or any other person making arrest”