

Amendment in Section 345 and the Schedule of the Code of Criminal Procedure 1898 to make the Offence of Rioting Compoundable

Report No. 46

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Mr. Abdul Qadir Halepota, Member, Pakistan Law Commission in previous meeting of the Commission suggested that the offence of rioting under Section 148 of the Pakistan Penal Code 1860, when committed alongwith other compoundable offences (murder, hurt, etc), be made compoundable by the person against whom such offence is committed. Accordingly, he forwarded the following draft amendment to the Code of Criminal Procedure 1898, for the consideration of the Commission:

Amendment of Section 345, Act V of 1898. In the Code of Criminal Procedure 1898 (Act V of 1898), hereinafter referred to as the said Code, in Section 345, in Sub-section (1), in the Table, in the second column, for the figures "298" and the entries relating thereto in the second and third columns, the following shall be substituted namely:-

Table

Offence	Sections of Pakistan Penal Code applicable	Persons by whom offence may be compounded
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Rioting armed with
deadly weapon

148

The persons against
whom the offence
was committed.

It is pertinent to mention that the offence and punishment of rioting is prescribed in Sections 147 and 148 of the Pakistan Penal Code as follows:

Section 147. **Punishment for rioting.**- Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 148. **Rioting armed with deadly weapon.**- Whoever is guilty of rioting, being armed with deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Another relevant Section 149 which establishes the principle of joint responsibility of all members for an unlawful act done in furtherance of common intention. It says:-

Section 149. **Every member of unlawful assembly guilty of offence committed In prosecution of common object.**- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Rioting has been defined in Section 146 as under:-

Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

The offence of rioting is generally committed by persons in an unlawful assembly, which has been defined as under: -

Section 141. **Unlawful assembly:** An assembly of five or more persons is designated

an "unlawful assembly" if the common object of the persons composing that assembly is:

First. - To overawe by criminal force, or show of criminal force, the Federal or any Provincial Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or

Second.- To resist the execution of any law, or of any legal process; or

Third.- To commit any mischief or criminal trespass, or other offence, or

Fourth.- By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property or to deprive any person of the enjoyment of a right of way, or the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do

Explanation.- An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

The offence under Section 148 of the Pakistan Penal Code 1860 is preventive in nature to prevent the consequences of an unlawful assembly armed with deadly weapons likely to cause death, whereas Section 149 comes into action when there is an actual Commission of a wrongful act. It is pertinent to mention that, in case death is caused, or severe injury is inflicted, as a result of rioting or unlawful assembly, the main offences, death or hurt etc are compoundable, whereas the offences under sections 147 and 148 are not compoundable. In such like cases the object of compounding of the main offence (death or injury) is virtually defeated as the punishment under sections 147 and 148 of the Pakistan Penal Code 1860 still remain in the way of release.

Therefore, there is a need for making the offence under sections 147 and 148 compoundable when these are linked with compoundable offences. Indeed, under Section 345 of the Cr.P.C, several offences are made compoundable e.g. uttering words, etc, with deliberate intent to wound the religious feelings of any person (S. 298), wrongfully restraining or confining any person (S. 341, 342), assault or use of criminal force (352, 355, 358), criminal trespass (S. 447) etc. Similarly, under Chapter XVI of the Pakistan Penal Code 1860, all offences affecting human body or life involving Qisas and Diyat are compoundable under Section 345 of the Code of Criminal Procedure 1898.

It is, therefore, suggested that the offences under sections 147 and 148 of the Pakistan Penal Code 1860, be made compoundable, with the permission of the court, by the person against whom the offence is committed or the heirs of the victim, if consequential offence is compoundable. Accordingly, Section 345 and the Schedule of the Code of Criminal Procedure (Act V of 1898) may be amended as follows:-

Table

Offence	Section of the Pakistan Penal Code applicable	Persons by whom offence may be compounded
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Rioting	147	The person against whom offence was committed or his heirs, if consequential offence is compoundable.
Rioting armed with deadly weapon	148	Ditto

Commission's deliberations

The Commission in its meeting held on 21 December 2002, considered the above proposal in detail and observed that if the consequential major offences like murder/hurt are compoundable, a linked/joint offence therewith, namely, rioting where the punishment prescribed is imprisonment for upto 2-3 years, may also be made compoundable, otherwise any compromise between the parties cannot be effected and the trial has to be concluded. The Commission therefore, resolved that the offence of rioting should be made compoundable, only if jointly committed with other compoundable offences, and approved the draft Bill at Appendix.

Appendix

A BILL

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 2002.

(2) It shall come into force at once.

2. Amendment of Section 345, Act V of 1898.- In the Code of Criminal Procedure, 1898 (V of 1898), hereinafter referred to the said Code, in section 345, in sub-section (2), in the table, before the entries relating to offence of "Qatl-I-amd", the following entries shall be inserted, namely;-

Rioting.	147	The person against whom offence was committed or his heirs, if consequential offence is compoundable.
Rioting armed with deadly weapon.	148	Ditto

3. **Amendment of Schedule II, Act V of 1898.**- In the said Code, in Schedule II, for the entries relating to sections 147 and 148, the following entries shall be substituted, namely:-

1	2	3	4	5	6	7	8
147	Rioting.	Ditto	Ditto	Ditto	According as the consequential offence is compoundable or not	Ditto	Ditto
148	Rioting, armed with deadly weapon.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Magistrate of the first class.