

**Amendment in the Pakistan Penal Code 1860 to Provide  
Punishment for  
Absconding from Trial**

**Report No.53**

## **Amendment in the Pakistan Penal Code 1860 to Provide Punishment for Absconding from Trial.**

The term “abscond” with its derivatives is not defined in the Code of Criminal Procedure, 1898 (hereinafter referred to as the Code) although it occurs in several Sections viz Sections 87, 90 (a) and 512 of the Code and Section 172 of the Pakistan Penal Code 1860. Section 87 (1) of the Code provides that if any Court has reason to believe after taking evidence that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation, requiring him to appear at a specified place and time before it not less than thirty days from the date of publication of such proclamation. Under Section 88 of the Code, the property of person absconding is attached. The Court issuing a proclamation under Section 87 may at any time order the attachment of any property, movable or immovable or both, belonging to the proclaimed person. Similarly, under Section 90 (a) of the Code, a Court may in lieu of the summons for the appearance of any person, issue a warrant for his arrest, if it sees reasons to believe that he has absconded or will not obey the summons. Section 512(1) of the Code also lays down that 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. Section 172 of the Pakistan Penal Code, 1860, provides that whoever absconds in order to avoid being served with summons, notice or order or other proceedings from any public servant competent in this behalf shall be punished with simple imprisonment for a term which may extend to one month or with fine up to Rs.500 or with both. It appears that in this context the term “abscond” with its derivatives has been used in its ordinary sense in the criminal law in force in Pakistan and not in any technical sense. It means a person who is intentionally evading or avoiding the service of notices, summons or warrants issued to him and intentionally makes himself inaccessible to the process of the law. Although, abscondence is of very limited<sup>1</sup> evidentiary value unless it is for a long period because some time, the accused person is innocent, deliberately absconds rather than face the ordeal of a criminal trial. The second reason for abscondence is the lack of public confidence in the investigation agency. But in some cases, after committing gruesome and heinous crime, the accused persons managed to hide themselves for long time to defy the operation of law. In one case, the accused against whom a case of murder was registered remained absconded for a period of 12 years and when he was arrested no penal action for abscondance was taken against him except attachment of property under Section 88 of the Code, which was made during the period of abscondence<sup>2</sup>.

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<sup>1</sup> PLJ 1978 S.C-41.

<sup>2</sup> 1999 Pcr.LJ-359.

Such persons deserve more punishment on account of defiance of the operation of law, besides the punishment prescribed for the offence committed.

For the first time, punishment for abscondence was provided in Section 21-L of the Anti-Terrorism Act, 1997 (XXVII of 1997), which states:-

‘Whoever being accused of an offence under this Act, absconds and avoids arrest or evades appearance before any inquiry, investigation or court proceedings or conceals himself, and obstructs the course of justice, shall be liable to imprisonment for a term not less than six months and not more than five years or with fine or with both.’

Similarly, Section 31-A of the National Accountability Bureau Ordinance, 1999 (XVIII of 1999) provides:-

“Whoever absconds in order to avoid being served with any process issued by any Court or any other authority or officer under this Ordinance or in any manner prevents, avoids or evades the service on himself of such process or conceals himself to screen himself from the proceedings or punishment under this Ordinance shall be guilty of an offence punishable with imprisonment which may extend to three years notwithstanding the provisions of Section 87 and 88 of Code of Criminal Procedure, 1898, or any other law for the time being in force.”

It has been observed that the accused persons, after committing offences punishable under the Pakistan Penal Code or under any other law, abscond or conceal themselves to avoid their arrest for a long period and defeat the operational of law hence they should be liable for punishment for such acts. A proposal was therefore submitted by the Secretariat to the Commission to recommend for insertion of the following new Section in the Pakistan Penal Code 1860, making act of abscondance as an offence.

**“172-A. Punishment for an absconder.-** Whoever being accused of an offence under this Code or under any other law for the time being in force, absconds or avoids arrest or evades appearance before any inquiry or trial or court proceeding or conceals himself, and obstructs the course of justice, and against whom a warrant of arrest has been issued by the court or proclamation has been published, shall be liable to imprisonment for a term not exceeding three years or with fine or with both.

The Commission in its meeting held on 18 May 2002 examined the proposal and noted that there is a growing tendency in the society to evade/avoid trial by the accused persons, thereby hampering investigations and delaying trial. This tantamount to obstructing the course of justice. The members observed that at times the accused person deliberately absconds to get the benefit of acquittal or lenient sentence, awarded to the co-accuse (s). The members further expressed the view that the present provisions in the Code providing for proclamation,

issuing warrant of arrest and attachment of the property of absconder, have proved to be ineffective, and therefore, the law needs to be clarified and its enforcement improved. In this respect, the Commission noted the provisions in the Anti Terrorism Act 1997 and the National Accountability Bureau Ordinance 1999, which prescribe punishment for an accused person who avoids arrest or evades appearance in court proceedings. The Commission therefore resolved that appropriate punishment needs to be prescribed for cases of wilful and deliberate abscondance, and requested its Member, Mr. Abdul Qadir Halepota, to prepare an appropriate draft for the consideration of the Commission.

The learned member of the Commission has suggested insertion of a new Section 172-A in the Pakistan Penal Code, 1860 and insertion of new Section 540-B in the Code of Criminal Procedure, 1898 as follows:

Insertion of Section 172-A, in the Pakistan Penal Code:

“172-A. Whoever absconds in order to avoid being served with any process issued by any Court or in any manner prevents, avoids or evades the service on himself of such process or conceals himself to screen himself from the punishment shall be guilty of an offence punishable with imprisonment which may extend to three years.”

Insertion of Section 540-B, in the Code of Criminal Procedure, 1898:

“540-B (1). No accused person shall be convicted under Section 172-A of the Pakistan Penal Code unless a proclamation under Section 87 of this Code has been published in respect of him, in at least three National Daily Newspapers out of which one shall be in the urdu language requiring him to appear at a specified place and specified time within seven days failing which action may also be taken against him under Section 88 of this Code.

(2). If within sixty days from the date of his conviction, the accused appears voluntarily or is apprehended and brought before the concerned Court and proves to its satisfaction that he did not abscond or conceal himself for the purpose of avoiding the proceedings against him, the Court shall set aside his conviction and proceed to try him for the offence for which he is charged.”

The proposal i.e. addition of Section 172-A to the Pakistan Penal Code was examined by the Secretariat and of the view that it has a fairly wide scope and will have far reaching repercussions.

The expression “Whoever absconds in order to avoid being served with any process issued by any court or in any manner prevents, avoids or evades the

service on himself of such process” seem to cover all the processes issued under the Code of Criminal Procedure, 1898, Code of Civil Procedure, 1908 or any other law, and includes a summons, notice, order, precept and a warrant to be served or executed upon any person whether he is accused of an offence or a plaintiff, defendant, appellant, respondent, witness, medical or technical experts in criminal or civil case etc. and who avoids service of such court process will be liable for punishment. Where under the proposed Section 504-B it is provided that no one will be punished under Section 172-A unless a proclamation has been issued against him by the Court under Section 87 of the Code. But Section 87 of the Code. provides that a proclamation is issued by the Court having jurisdiction under Cr.P.C. on taking evidence that any person against whom a warrant is issued has absconded or is concealing himself to avoid execution of such warrant. As no proclamation can be issued on avoiding from service of process in the form of summons, notice etc therefore, the use of the word process instead of warrant would create difficulties of interpretation. Also when the purpose of amendment is to cover only the accused persons who after committing offences, intentionally abscond in order to avoid trial. Again, the proposed Section 540-B contemplates the publication of proclamation under Section 87 of the Code in at least three national newspapers. In criminal cases, the Federal or Provincial Government is the prosecutor, therefore, the expenses on publication will have to be borne by these Governments, and some mechanism shall have to be devised for the purpose.

The proposed amendment also does not reveal whether it provides an additional measure or is substituting the existing mode of publication of proclamation provided in the Code. As an alternative to the proposed new Section 540-B, it is suggested that a new clause to this effect may be added to Sub-section (2) of Section 87, providing for publication of the proclamation in three daily newspapers, if the court, in the interest of justice, so decides.

The Commission therefore considered the following proposed amendment drafts.

Draft suggested by Mr Abdul Qadir Halepota, Member.

Insertion of Section 172-A, Pakistan Penal Code:

“172-A. Whoever absconds in order to avoid being served with any process issued by any Court or in any manner prevents, avoids or evades the service on himself of such process or conceals himself to screen himself from the punishment shall be guilty of an offence punishable with imprisonment which may extend to three years.”

Insertion of Section 540-B, Code of Criminal Procedure, 1898:

“540-B (1). No accused person shall be convicted under Section 172-A of the Pakistan Penal Code unless a proclamation under Section 87 of this Code has been published in respect of him, in at least three National Daily Newspapers out of which one shall be in the urdu language requiring him

to appear at a specified place and specified time within seven days failing which action may also be taken against him under Section 88 of this Code.

(2). If within sixty days from the date of his conviction, the accused appears voluntarily or is apprehended and brought before the concerned Court and proves to its satisfaction that he did not abscond or conceal himself for the purpose of avoiding the proceedings against him, the Court shall set aside his conviction and proceed to try him for the offence for which he is charged.”

Draft suggested by the Law & Justice Commission’s Secretariat:

**Addition of new Section 172-A, XLV of 1860:-** In the Pakistan Penal Code, 1860 (XLV of 1860), after Section 172, the following new Section shall be added, namely;-

“**172-A. Punishment for an absconder.-** Whoever being accused of an offence under this Code or under any other law for the time being in force, absconds or avoids arrest or evades appearance before any inquiry or trial or court proceeding or conceals himself, and obstructs the course of justice, and against whom a warrant of arrest has been issued by the court or proclamation has been published, shall be liable to imprisonment for a term not exceeding three years or with fine or with both.

**Amendment of Section 87, Act V of 1898.-** In the Code of Criminal Procedure, 1898 (V of 1898), in Section 87, in Sub-section (2),

(i) in clause (b), the word “and” shall be omitted and in clause (c), for the full stop a semicolon shall be substituted and the word “and” shall be added at the end;

(ii) after clause (c) as amended, the following new clause (d), shall be added, namely:-

“(d) if the court considers appropriate, in the interest of justice, in at least three national daily newspapers including one in Urdu language.”.

The Commission in its meeting held on 21-12-2002 again deliberated upon the proposal and opined that before proceeding further in the matter, it is necessary that the observations of High Courts on this issue are considered and distinction is made between a fugitive and absconder. It was further pointed out that the High Courts have already ruled that trial/conviction in absentia is illegal. It was emphasized that the definition of absconding from trial given in the draft be improved and the formalities prescribed under Sections 87 and 88 of the Code should be fully complied with, including the added requirement of publication of proclamation under Section 87 in 3 national dailies, one to be in Urdu language

and one in the regional language. The Secretariat was directed to re-examine the matter afresh in the light of above observations and submit a revised report.

The Lahore High Court in its judgment dated 30-9-1989<sup>3</sup> while considering the question of holding of a trial in the absence of the accused under the provisions of the Special Court for Speedy Trial Act (XV) of 1987 observed that the provisions of the said Act in so far as they permit the trial of the accused person in absentia are violative of Article 10 of the Constitution. From the above view of the High Court, it is clear that the conviction of the accused in absentia is illegal. It was brought to the notice of the Commission that in the present proposal, no such suggestion is made for the trial of an accused in absentia. The present proposal is rather to provide punishment for the deliberate act of absconding from trial, which necessarily impedes the course of justice. The offender remains in hiding and meanwhile intimidates and pressurises the opponent to withdraw the complaint or compromise. While remaining as out law, the witnesses are also under threat. The offender usually appears before the court after becoming sure that he would get remedy when the other co-accused who counted arrest and went through trial are acquitted or given lenient sentences in the case. Some time the principal accused remains absconded from trial for many years. In order to curb this tendency a penal provisions is suggested to award punishment for the deliberate act of absconding from trial. Due safeguard have also been suggested, so that there is no possibility of injustice. Draft amendment is as under:

**Addition of new Section 172-A, XLV of 1860:-** In the Pakistan Penal Code, 1860 (XLV of 1860), after Section 172, the following new Section shall be added, namely;-

**“172-A. Punishment for an absconder.-** Whoever being accused of an offence under this Code or under any other law for the time being in force, absconds or avoids arrest or evades appearance before any inquiry or trial or court proceeding or conceals himself, and obstructs the course of justice, and against whom a warrant of arrest has been issued by the court or proclamation has been published, shall be liable to imprisonment for a term not exceeding three years or with fine or with both.

**Amendment of Section 87, Act V of 1898.-** In the Code of Criminal Procedure, 1898 (V of 1898), in Section 87, in Sub-section (2), —

(a) in clause (b), the word “and” shall be omitted and in clause (c), for the full stop a semicolon shall be substituted and the word “and” shall be added at the end;

(b) after clause (c) as amended, the following new clause (d), shall be added, namely:-

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<sup>3</sup> PLD 1989 Lahore-554(Ziaullah Khan and others Vs Government of Punjab).

“(d) if the court considers appropriate, in the interest of justice, in at least three national daily newspapers including one in Urdu language and one in the regional language.”.

The issue again came before the Commission in its meeting on 11 October, 2003, which approved the proposed amendment to add a new Section 172-A to the Pakistan Penal Code to penalise the act of absconding and also approved an amendment in Section 87 of the Code of Criminal Procedure 1898 so as to provide for a proclamation to be published in at least three national newspapers, including one in urdu language and one in the regional language, requiring the person absconding to appear before the court and face trial. The draft Bill is as at Annex:

**A  
BILL**

*further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898.*

**WHEREAS** it is expedient further to amend the Pakistan Penal Code, 1860 (XLV 1860) and the Code of Criminal Procedure, 1898 for the purpose hereinafter appearing;

**1 Short title and commencement.** –(I) This Act may be called the Criminal Law (Amendment) Act, 2003.

(2) It shall come into force at once.

**2. Insertion of new Section 172-A, XLV of 1860:-** In the Pakistan Penal Code, 1860 (XLV of 1860), after Section 172, the following new Section shall be inserted, namely;-

**“172-A. Punishment for an absconder.-** Whoever being accused of an offence under any law for the time being in force, and against whom a warrant of arrest cannot be executed and the court has published a proclamation for his appearance before such Courts, absconds or avoids arrest or evades appearance before any inquiry or trial or in a court proceeding or conceals himself and obstructs the course of justice, shall be liable to imprisonment for a term not exceeding three years or with fine or with both.

**3. Amendment of Section 87, Act V of 1898:-** In the Code of Criminal Procedure, 1898 (V of 1898), in Section 87, in Sub-section (2).

- (a) in clause (b), the word “and: shall be omitted and in clause (c), for the full stop a semicolon shall be substituted and the word “and” shall be added at the end;
- (b) after clause (c) as amended, the following new clause (d), shall be added namely;-
- “(d) if the court considers appropriate, in the interest of justice, in at least three national daily newspapers including one in Urdu language and one in the regional language.”