

**Omission Of Repealed Sections Of Pakistan Penal Code,
1860 From The Code Of Criminal
Procedure, 1898.**

Report No.63

Omission Of Repealed Sections Of Pakistan Penal Code, 1860 From The Code Of Criminal Procedure,1898.

By virtue of Sub-section (3) of Section 19 of the offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), the following Sections of the Pakistan Penal Code, 1860 were repealed, namely, Section 366 regarding Kidnapping, abducting or inducing women to compel her for marriage etc, Section 372 regarding selling minors for purposes of prostitution etc, Section 373 regarding buying minors for purposes of prostitution etc, Section 375 regarding offence of rape, Section 376 relates to punishment for rape, of Chapter XVI and Section 493 regarding cohabitation caused by man deceitfully inducing a belief of lawful marriage, Section 497 relating to the offence of adultery, Section 498 regarding enticing, taking away or detaining with the Criminal intent married women, of Chapter XX. Schedule II to the Code of Criminal Procedure, 1898 (hereinafter referred to as the Criminal Code) still contains the above mentioned repealed Sections of the Penal Code, as consequential amendments were not made when the above mentioned Sections were repealed. The offences mentioned in these Sections are triable by a Court of Sessions and an appeal from an order of the Court of Sessions lies to the Federal Shariat Court. Thus, the retention of these repealed Sections in Schedule II of the Criminal Code is undesirable, as these create confusion.

Section 199 of the Criminal Code provides—

“No court shall take cognizance of an offence under Section 497 or Section 498 of the Pakistan penal Code, except-

- a) upon a report in writing made by a police-officer on the complaint of the husband of the woman, or in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed ; or
- b) upon a complaint made by the husband of the woman or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed.

Provided that where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf.

Provided further that where such husband is serving in any of (the armed forces of Pakistan) under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorized

by the husband in accordance with the provisions of Sub-section (1) of Section 199B may, with the leave of the Court, make a complaint on his behalf.

As mentioned above, Sections 497 and 498 of the Penal Code were repealed, but still find mention in Section 199 of the Criminal Code. These Sections, in practice, have become redundant. Since Section 199 of the Criminal Code which is contingent upon these repealed Sections, thus, become ineffective. The Province of NWFP has already omitted Section 199 vide NWFP Act XXVI of 1950. It is proposed to omit Section 199 of the Criminal Code. Section 199 is also mentioned in the following Sections.

199A. When in any case falling under Section 198 or **Section 199**, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian, so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.

199B. (1) The authorization of a husband given to another person to make a complaint on his behalf under the second proviso to Section 198 or the **second proviso to Section 199** shall be in writing, shall be signed or otherwise attested by the husband shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorization and complying with the provisions of Sub-section (1), and any document purporting to be a certificate required by that Sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.

Since Section 199 of the Criminal Code becomes ineffective which is being omitted, therefore, the aforesaid Section mentioned in the Sections 199A and 199B as reproduced above, may also be omitted from these Sections.

Similarly, in Section 198, it is mentioned that no court shall take cognizance of an offence falling under chapter XIX or Chapter XXI of the Pakistan Penal Code or under Section 493 to 496 *ibid* (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offences. Since Section 493 of the Pakistan Penal Code was repealed by an Ordinance No. VII of 1979, but it is still mentioned in Section 198 of the Criminal Code, hence, Section 493 is to be deleted from Section 198.

The offences punishable under various Sections of the Penal Code specified in Section 345 of the Criminal Code are compoundable. The Penal Code Sections 490 and 492 regarding the criminal breach of contract of service were repealed by the workman's Breach of Contract (Repealing) Act, 1925, and Section 497 regarding adultery and Section 498 regarding enticing or taking away or detaining with the Criminal intent married women were repealed by Ordinance VII of 1979 but all these Sections are still mentioned in the aforesaid Section as compoundable offences. These Sections may also therefore, be deleted from the list of compoundable offences in Section 345 of the Criminal Code.

It is therefore proposed that all the repealed Sections of the Penal Code which are stated/mentioned in the Section 345 and Schedule II to the Criminal Code may be omitted to make the law up-to-date. Section 199 of the Code of Criminal Procedure be omitted and consequential amendment in Section 199A and 199B by deleting Section 199 from these Sections is suggested

Commission 's Deliberations

The Commission considered the working paper in its meeting held on 14-2-2004. The Secretary Law & Justice Commission of Pakistan explained that following the promulgation of the Hudood Ordinance and certain other amendments to law, consequential amendments were not made to the Cr. P.C., thus the present draft working paper seeks to omit such provisions from the Code to remove therefrom obsolete/redundant provisions. After deliberations, the Commission approved the proposed amendments in the Code of Criminal Procedure, 1898.

The draft Bill as at Annex is recommended by the Commission for enactment.

**A
Bill**

further to amend the Code of Criminal Procedure, 1898

Whereas it is expedient further to amend the Code of Criminal Procedure, 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, 2004.

(2) It shall come into force at once.
2. **Amendment of Section 198, Act V of 1898.-** In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, in Section 198, for the figure “493” the figure “494” shall be substituted.
3. **Omission of Section 199, Act V of 1998.-** In the said Code, Section 199, shall be omitted.
4. **Amendment of Section 199-A, Act V of 1989.-** In the said Code, in Section 199A, the words and figure “or Section 199” shall be omitted.
5. **Amendment of Section 199-B, Act V of 1989.-** In the said Code, in Section 199B, the words and figure “or the second proviso to Section 199” shall be omitted.
6. **Amendment of Section 345, Act V of 1898. -** In the said Code, in Section 345, in Sub-section (1), in the table. -
 - (a) in the second column, the figures and comma 490, 492 shall be omitted
 - (b) in the second column, the figures 497 and 498 and the entries relating thereto in the first and third columns shall be omitted.
7. **Amendment of Schedule II, Act V of 1898. –** in the said Code, in Schedule II, the figures 372, 373, 376, 493, 497 and 498 occurring in column (1) and the entries relating thereto in columns 2 to 8 shall be omitted.