

LAW REFORM BILL 2005

Report No. 69

(63—64)

LAW REFORM BILL 2005

Secretary Law, Justice and Human Rights, Islamabad vide his letter No. 1(46)/2004-D&L dated the 14th January 2005, made a reference to the Chief Justice of Pakistan forwarding therewith a Bill, namely, the Law Reform Bill 2005, seeking comments and suggestions thereon. The Chief Justice of Pakistan convened a meeting of the Law and Justice Commission of Pakistan on 12-2-2005 to consider the following proposed Bill.

A

BILL

further to amend certain laws

WHEREAS it is expedient, for the purpose of making reforms, further to amend certain laws;

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act may be called the Law Reforms Act, 2005.

It shall come into force at once.

PART-I CRIMINAL LAW

2. **Amendment of Act XLV of 1860.**— The following further amendments shall be made in the Pakistan Penal Code (Act, XLV of 1860), namely:—

(1) after section 167, the following new section shall be inserted namely:—

“167A. Punishment for dishonest investigation.— Whoever being a police officer conducts the investigation dishonestly

in breach of his duties, shall be punished with imprisonment which may extend to three years, or with fine, or with both”,

(2) in section 182, for the words “six months” the words “five years” and for the words “three thousand” the words “fifty thousand” shall be substituted.”

(3) after section 344, the following new Section shall be inserted, namely:—

“344A. Punishment for wrongful confinement by a police officer or official.—Whoever being a police officer or official wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend for seven years and shall also be liable to fine.”;

(4) in section 379, for the words “three years” the words “five years” shall be substituted;

(5) after section 381A, the following new Section shall be inserted, namely:—

“381B. Theft of cattle.—Whoever commits theft of a cattle shall be punished with imprisonment of either description for a term which may extend to seven years and with fine which shall not be less than twice the value of the stolen cattle payable to the owner or his heirs, as the case may be, as compensation.”

(6) in section 420, for the word “seven” the word “ten” shall be substituted;

(7) in section 441, after the word “annoy occurring twice, the words “or dispossess” shall be inserted;

(8) in Section 447, after the word “punished” the commas and words “except in case of dispossession,” shall be inserted and after the word “both”, occurring at the end, the words “and in case of dispossession the offender shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.”;

(9) in Section 468, for the word "seven" the word "ten" shall be substituted and after the word "years" the word "and if such offence has been committed in relation to immovable property the imprisonment shall not be less than seven years" shall be inserted.

3. **Amendment of Act V of 1898.**—The following further amendments shall be made in the Code of Criminal Procedure, 1898 (Act, V of 1898), namely:—

(1) In section 54, in sub-Section (1),—

(a) in clause first, for the semi-colon, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:—

“Provided that where a person is arrested on the basis of suspicion, such arrest shall be reported to the incharge of the police station concerned immediately for verification and if officer incharge of the police-station is satisfied of the grounds of arrest he shall record the same in writing.”

(b) clause secondly shall be omitted; and

(c) in clause fourthly, after the word "thing" at the end, the comma and words "in respect of which credible information has been received" shall be added;

(2) section 154 shall be re-numbered as sub-Section (1) of that Section and after sub- Section (1) re-numbered as aforesaid the following new sub-Section shall be added, namely:—

“(2) Where an officer incharge of police station refuses to record information relating to the commission of a cognizable offence he shall be liable to prosecution under Article 155 of the Police Order, 2002.”;

(3) in section 155, after sub-Section (2), the following new sub-Section shall be added, namely:—

“(2a) Where any person furnish information to a Magistrate of the first or second class of the commission of a non-cognizable offence having power to try such offence such Magistrate may direct the investigation to be conducted by police whether information under sub-section (1) has been given or not.”;

(4) in section 173, in sub-Section (1), in the proviso, after the word “commence” occurring at the end, the words “and if report is not submitted within the aforesaid period, the Court within next seven days shall pass an order directing that an entry of negligence and carelessness be made in the service record of the officer concerned”;

(5) in Section 195:—

(i) in clause (a), for the figures and word “172 to 188” the words, commas and figures “172, 173, 176 to 181, 183 to 188” shall be substituted; and

(ii) in clause (b), after the word “Sections” the figures, letter, comma and word “167A, 174 and 175” shall be inserted;

(6) in Section 374, after the word “Court” at the end, the words “and the convict shall not be treated as condemned prisoner till confirmation of sentence and till such confirmation is made he shall not be confined in death cell but may be kept in high security Section earmarked for this purpose in jail”;

(7) in Section 476, in sub-Section (1), for the word “may” the word “shall” shall be substituted;

(8) in Section 497, in sub-Section (1), in the first proviso, the words “or any woman” shall be omitted and after the first proviso amended as aforesaid the following new proviso shall be inserted, namely:

“Provided further that a woman accused of such an offence shall be released on bail:

Provided further that a woman shall not be so released if there appear reasonable grounds for believing that she has been guilty of an offence relating to narcotics, terrorism, murder, dacoity, robbery or

harrabah and such offence is punishable with death or imprisonment for life or imprisonment for ten years, unless, having regard to the facts and circumstances of the case, the Court directs otherwise.”;

(9) in Section 514, sub-Section (5) shall be omitted; and

(10) In Schedule II,—

(i) after Section 167 in column 1 and entries relating thereto in columns 2-8, the following new Section and entries relating thereto shall be inserted, namely:—

1	2	3	4	5	6	7	8
167 A	Punishment imprisonment for dishonest investigation	ditto	ditto	ditto	ditto	Imprisonment for three years, or fine, or both	Magistrate of first class.

(ii) in the entry relating to Section 182 in column 1, in column 7, for the figure and word “6 months” the words “five years” shall be substituted;

(iii) after Section 344 in column 1 and entries relating thereto in columns 2 to 8, the following new Section and the entries relating thereto shall be inserted namely:—

1	2	3	4	5	6	7	8
344 A	Punishment for wrongful confinement by police	ditto	With out warrant	Not bailable	ditto	Imprisonment for seven years and fine	Court of Session or Magistrate of the first class.”.

(iv) in the entry relating to Section 345 in column 1, in column 4, for the word “Ditto” the word “Summons” shall be substituted, in column 5 for the word “Ditto” the word “Bailable” shall be substituted and in column 8 for the word “Ditto” the words “Magistrate of the first or second class” shall be substituted;

(v) in the entry relating to Section 379 in column 1, in column 7, for the figure “3” the figure “5” shall be substituted;

- (vi) after the entries relating to Section 381A in columns 1 to 8, the following new Section and the entries relating thereto shall inserted, namely:—

1	2	3	4	5	6	7	8
381 B	Theft of cattle	ditto	ditto	ditto	ditto	Imprisonment of either description for seven years and fine	Ditto".

- (vii) in the entry relating to Section 420 in column 1, in column 5, for the word "bailable" the word "Not bailable" shall be substituted and in column 7 for the figure "7" the figure "10" shall be substituted;
- (viii) in the entry relating to Section 447 in column 1,—
- (a) in column 4, after the words "Summons" the words "and Warrant if the offence has been committed to dispossess any person" shall be added, in column 5 after the word "bailable" the words "and Not bailable if the offence has been committed to dispossess any person" shall be added;
 - (b) in column 7, after the word "both" the words "and ten years and fine if the offence has been committed to dispossess any person" shall be added;
 - (c) in column 8 "for the words "any Magistrate" the words "Court of Session or the Magistrate of the first or second class" shall be substituted; and
- (ix) in the entry relating to Section 468 in column 1, in column 7, for the figure "7" the figure "10" shall be substituted.

4. **Amendment of Section 20, Ordinance VII of 1979.**—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), in Section 20, after sub-Section (3), the following new sub-Section shall be inserted, namely:—

“(3A) The offence under sub-Section (2) of Section 10 and Sections 13 and 14 shall be non-cognizable.

PART-II CIVIL LAWS

5. **Amendment of Act I of 1877.**—In the Specific Relief Act, 1877 (I of 1877), Section 9 shall be re-numbered as sub-Section (I) of that Section ; and—

- (i) before the first paragraph, the following new paragraph shall be inserted, namely:—

“If it appears to the Court that nay party has within two months next before the date of filing of suit is shown to be wrongfully dispossessed, the Court may through an interlocutory order restore the possession to such party during the pendency of the case.”, and

- (ii) after sub-Section (1) re-numbered as aforesaid, the following new sub-Section shall be added, namely:—

“(2) The Court shall decide the suit within six months and where it decrees the suit it shall grant such compensation as it deems fit having regard to the loss suffered by the plaintiff.”; and

6. **Amendment of Act VII of 1882.**—In the Powers of Attorney Act., 1882 (VII of 1882), after Section 3 of the following new sections shall be inserted, namely:—

“3A. Name of donee to be specified.—In the instrument creating the power of attorney authorizing the grantee to make gift of immovable property, there shall be specified the name of the donee in the instrument of power of attorney.

3B. Period to be specified.—The instrument of creating power of attorney shall be valid for three years from the date of its execution and shall be renewable after every three years.”.

7. **Amendment of Act V of 1908.**—The following further amendments shall be made in the Code of Civil Procedure, 1908 (Act, V of 1908), namely:—

(1) in Section 1, after sub-Section (3), the following new sub-section shall be added, namely:—

“(4) The Code shall be so construed as to secure substantial, inexpensive and expeditious justice.

(5) The Court may, in the interest of expeditious disposal of a case and to prevent abuse of the process of law, adopt any fair procedure not inconsistent with the provisions of this Code.”;

(2) in Section 12, after sub-Section (2), the following new sub-Section shall be added, namely:—

“(3) For the decision of an application under sub-Section (2), the Court may in the interest of expeditious disposal apply such fair procedure as the circumstances of the case warrant, and shall, unless for reasons to be recorded in writing it directs otherwise, order any fact to be proved or disproved by affidavit, and such affidavit shall be read as evidence.”;

(3) in Section 30, in clause (c), after the word “proved” the words “or disapproved” shall be inserted.

(4) in Section 35,—

(a) in sub-Section (1), for the words “to all suits shall be in discretion of the Court” the words “to all suits and other proceedings in the suit including an execution proceedings, shall follow the event, unless for reasons to be stated in writing the Court directs that any costs shall not follow the event” shall be inserted; and

(b) for sub-Section (2), the following shall be substituted, namely:—

“(2) Each party shall, within seven days of the completion of evidence, file in the Court a statement of the actual costs

incurred by it, and to which it claims to be entitled. The statement shall include the fees paid to the counsel. If a party fails to file such a statement which the specified time or within the extended time granted by the court, it shall not whatever the result of the suit, be entitled the costs:

Provided that notwithstanding the failure of the party to comply with this provision, the court may allow such costs as are ascertainable from the record.”; and

- (d) after sub-section (3), the following new sub-section shall be added, namely:—

“(4) Nothing in this section and in the principle that costs shall follow the event shall be construed to prevent the court at any stage of the suit or a proceeding in the suit from assessing the costs, and ordering their payment forthwith and from specifying the manner in which such costs shall be recoverable.”;

- (5) in section 35A,—

- (a) for sub-section (1), the following shall be substituted, namely:—

“(1) If in any suit or a proceeding in a suit, including an execution proceeding, it appears to the court that the claim or defence, or any part of it, is false or vexatious or there was no probable or reasonable ground for making it, and such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the court may, after hearing the parties and for reasons to be recorded, make any order for the payment of such proportionate costs byway of compensation as warranted by the facts of the case. The court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purpose, including a direction that the costs shall be payable forthwith and

recoverable in such manner as the court may specify.”
and

- (b) in sub-section (2), for the words “twenty-five thousand”;
- (6) in section 83, in sub-section (1), for the words “the Provinces” the word “Pakistan” shall be substituted;
- (7) in section 84, in sub-section (1), for the words “the Provinces” the word “Pakistan” shall be substituted;
- (8) for section 89A, the following shall be substituted, namely:—

“89A. Alternate dispute resolution.—(1) In suits for partition or rendition of accounts or in a dispute in any other suit in which it appears to the Court that there is reasonable possibility of an amicable settlement between the parties, the Court shall, with a view to encouraging such a settlement, require the parties to have resort to one of the alternative dispute resolution methods, such as mediation, conciliation or arbitration.

(2) For the purposes of sub-section (1), the Court may refer the matter to retired Judges of Superior Courts or of subordinate Courts, technocrats having experience in the relevant field, or an eminent lawyer or any other person acceptable to both the parties, an Insaf Committee or a Musalihat Committee constituted under a Local Government Ordinance 2001, or the Ombudsman appointed under the said Ordinance.

(3) A matter referred to a mediator, conciliator or an arbitrator, as the case may be, shall be disposed off by him within a period of ninety days, extendable for sufficient cause for another period of sixty days.

(4) The Court shall pronounce judgment in terms of decision made as a result of mediation, conciliation or arbitration and upon the judgment so pronounced a decree

shall follow, and no appeal shall lie from such decree except on the ground of misconduct.-

(5) On receipt of decision of a mediator, conciliator or arbitrator, as the case may be, the Court may on its own or on the application of either party examine the propriety or legality of the decision and may pass such order as it deems fit without recording any fresh evidence.

(6) The Arbitration Act., 1940 (X of 1940) shall not apply to arbitration under this section.

(7) Section 28 of the Contract Act, 1872 (IX of 1872), shall not apply to an agreement for the resolution of disputes by one of the alternative dispute resolution methods under this section.”;

(9) for section 95, the following shall be substituted, namely:—

“95 Compensation, for obtaining arrest, attachment or injunction on insufficient grounds.— (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last proceeding section , it appears to the court that such arrest, attachment or injunction was applied for insufficient grounds or that there was no reasonable or probable ground for making the application, the court may, on its own motion or on the application of the aggrieved party, award against the party at fault such punitive compensation as it deems reasonable to the aggrieved party for the expense and injury caused to him.

(2) In addition to the compensation awardable under subsection (1), the Court may also make an order directing the party at fault to pay such amount as penalty payable into Court for wasting public time and for abusing the process of the law, as the Court deems just.

(3) An order under this section shall bar any suit for compensation in respect of such arrest, attachment or injunction.”;

(10) in section 115, after sub-section (4), the following new sub-section shall be added, namely:—

“(5) No proceedings in revision shall be entertained by the High Court against an order passed by the District Court under section 104.”;

(11) in section 151, after the word “Court” occurring for the first time, the commas and words”, to be exercised after recording reasons,” shall be inserted;

(12) after section 151, the following new section shall be inserted, namely:—

“151A. Powers of District Judge to issue directions.—

(1) Without prejudice to any other law for the time being in force, the District Judge if satisfied that no other adequate remedy is provided by law, on an application by an aggrieved person or on his own motion, may direct any holder of public office within the District to refrain from doing anything which is not permitted by law or to do anything or perform his duty in accordance with law to provide relief and remedies to the citizens at local level.

Explanation.—For the purpose of this section, the expression ‘holder of public office means’,—

- (i) all functionaries and officials of the District Government, a city District Government, a Zila Council, Tehsil Municipal Administration, Tehsil Council, Town Municipal Administration and Town Council; and
- (ii) officials of the Federal Government, Provincial Government and statutory bodies owned or controlled by any such Government, who by virtue of their duties are performing functions within the district.”;

(2) The revision would lie to the High Court against an order passed by the District Judge under sub-section (1) and no appeal shall lie against such order.”;

(13) in the First Schedule,—

(a) in Order V,—

- (i) in rule 2, after the word “statement” the words “along with the copies of all documents which have been produced by the plaintiff” shall be inserted;
- (ii) in rule 10-A, for sub-rule (1), the following shall be substituted, namely:—

“(1) **Service by post, etc.**—Simultaneously with the issue of summons under rule 9, there shall be sent, unless otherwise ordered by the Court, another copy of summons signed and sealed in the manner provided in rule 10 to the defendant by,—

- (a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain;
- (b) any electronic device of communication which may include telegram, phonogram telex, fax, radio and television;
- (c) urgent mail service or public courier services;
- (d) registered post, acknowledgment due;
- (e) beat of drum in the locality where the defendant resides;
- (f) publication in newspaper having wide circulation in area where service is to be effected; and
- (g) any other manner or mode as it may deem fit.”;

- (iii) after sub-rule (2), the following new sub-rule shall be inserted, namely:—

“(3) Service of summons in the manner provided in sub-rule (1) shall be as effectual as if it had been made on the defendant personally.”; and

- (iv) rule 20 shall be omitted.

- (b) in Order VII, in rule 10, after sub-rule (2), the following new sub-rule shall be added, namely:—

“(3) If the plaint is returned, after the appearance of the defendant, the Court shall make an order, as to the appropriate costs to be paid by the plaintiff, for presenting the plaint in wrong forum, to such defendant on filing of the fresh suit.”;

- (c) in Order VIII, in rule I, in the proviso the word “ordinarily” shall be omitted;

- (d) in Order XIII, in sub-rule 3, for the word “may” occurring for the first time, the word “shall”, shall be substituted.

- (e) in Order XIV, in rule 1, after sub-rule (4), the following new sub-rule shall be added, namely:—

“(4a) After the filing of written statement both the parties shall, within seven days, file proposed issues which are based on material proposition of fact and law.”;

- (f) in Order XVI, for sub-rule (1), the following shall be substituted, namely:—

“(1) Not later than seven days after the settlement of issues the parties shall present in Court a list of witnesses along with affidavit of witnesses, containing their evidence, so far as it is applicable”;

- (g) in Order XVII,—

- (i) for rule I, the following shall be substituted, namely:—

“1. Court may grant time and adjourn hearings.— (1) The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or any of them:

Provided that the Court shall not grant more than two adjournments to the parties or any of them and except on payment of costs occasioned by such adjournment.

(2) Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1) the Court shall proceed with the suit forthwith.”;

- (ii) after rule 1, substituted as aforesaid, the following new rule, shall be inserted, namely:—

“Day-to-day hearing of evidence.—1A.

The hearing of evidence shall be continued from day to day until the completion of evidence in the suit, unless the Court finds the adjournment beyond the following day to be necessary adjourn such hearing for reasons to be recorded.”; and

- (iii) for rule 3, the following shall be substituted, namely:—

“3. Where any party to a suit fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other Act, necessary to the further progress of the suit, the Court may, notwithstanding such failure, proceed to decide the suit forthwith.”;

- (h) in Order XVIII, for rule 4, the following shall be substituted, namely:—

“4. Witnesses to be examined.—The affidavits of the witnesses having been filed by the parties shall be taken to be the examination-in-chief and the witnesses in

attendance shall be cross-examined in open Court in the presence and under the personal direction and superintendence of the Judge.”;

(i) In Order XIX, in rule 1,—

(a) after the word “proved” the words “or disproved” shall be inserted; and

(b) in the proviso, for the words “and order shall not be made authorizing the evidence of such witness to be given by affidavit”, the words “the Court may order the attendance for cross examination of the deponent” shall be substituted.

(j) in Order XX, in rule 1, in sub-rule(1), for the words “fix a date” the words “provide a single opportunity” shall be substituted;

(k) in Order XXVI, in rule 1,—

(i) for the marginal heading, the following shall be substituted, namely:-

“Examination of witnesses through commission”; and

(ii) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that in a suit for partition and rendition of accounts the Court shall issue the commission for examination of witnesses.”; and

(l) in Order XXXIX, in rule 3,—

(i) after the word “party” the words “and any injunction granted without notice shall be of no legal effect” shall be inserted; and

- (ii) in the first proviso, after word “demolition” the words “dispossession or alienation shall be inserted and for the word “premises” the word “property” shall be substituted.

8. Amendment of Act XVI of 1908.—In the Registration Act, 1908 (XVI of 1908), in section 17, in sub-section (1), after clause (e) the following new clauses shall be inserted, namely:—

- “(f) agreement to sell relating to immovable property and the stamp duty paid at the time of registration of agreement to sell shall be deductible at the time of registration of sale deed;
- (g) power of attorney when authorizing the attorney to sell any immovable property.”.

EXPLANATORY NOTE

Secretary Law, Justice and Human Rights Division highlighted the aims and objects of the proposed amendments in various laws in the Explanatory Note as under:

PROPOSED LAW REFORMS

The system of administration of justice is confronted with case load at all levels of judicial hierarchy and, unless the requisite legal/judicial measures are timely adopted, the situation will be further deteriorated. Government intends to address the court delays both on long term and short term basis.

2. As a first step we have brought amendments for karo-kari, Hudood Law and Blasphemy Law and are further proposing amendments in the Civil Procedure Code, 1908, Code of Criminal Procedure, 1898, Specific Relief Act, 1877, Powers of Attorney Act, 1882, Registration Act, 1908, and Pakistan Penal Code. These amendments are aimed at *inter alia* curtailing the undue discretionary powers and to remove procedural impediments to facilitate speedy justice to the citizens.

CRIMINAL LAW

1. A provision is being proposed providing punishment for dishonest investigation by the Police which would help curb the evil of dishonest investigation resulting in redressing the grievances of the aggrieved persons. (Section 167A PPC).

2. Illegal confinement by police officer especially by the Police Officials is being made an offence punishable with imprisonment upto seven years and the offender shall also be liable to fine. (Section 344A PPC).

3. Section 379 (theft) Punishment of Imprisonment is being enhanced from three years to five years.

4. The punishment of theft, fraud and forgery is being enhanced to curtail the cases of frequent theft, fraud and forgery in particular involving immovable property. (420, 468 PPC).

5. A new offence for cattle theft is being provided punishable upto seven years with fine payable to the owner as compensation. This offence is quite common in some part of our country and as a result of proposed amendment the cases of cattle theft would come down. (Section 381B PPC).

6. The punishment of trespass by dispossessing any person from immovable property would be punishable upto ten years which would have a deterrent effect on Qabza Groups. (Section 441 and 447 PPC).

7. Wide powers of police to arrest are being curtailed in order to save the general public from abuse of the power by the police. (Section 54 Cr.P.C).

8. A police officer failing to record FIR in cognizable offence shall be liable to prosecution under Article 155 of Police Order, 2002.

9. The Courts are being empowered to direct investigation by the police in non-cognizable cases on receipt of an information which would put the police in motion immediately resulting in redress of grievances of the common man. (Section 155 Cr.P.C).

10. In case the challan is not submitted within the prescribed period, the Court shall pass an order directing that entry of negligence may be undue in service record of the police officer concerned. (Section 173 Cr.P.C)

11. In order to reduce the Court delays due to non-attendance of the witnesses and non-production of documents in Criminal cases an amendment is being proposed empowering the trial court to take action against the delinquent. (Section 195 Cr.P.C and consequential amendment in section 476 empowering the Court for mandatory prosecution).

12. The condemned prisoners shall not be shifted to death cells without confirmation of sentence by the High Court. (Section 374 Cr.P.C).

13. To safeguard the rights of women the law relating to bail is being amended so that the women could be released on bail except in offences relating to narcotics, terrorism, robbery, decoity or murder. This would lessen the misery of the women who presently languish in jails without trial. (Section 497 Cr.P.C).

14. Another reason of delay of the cases is that of absconding of the accused after having been granted bail and the sureties get themselves absolved by paying some percentage of the amount of the surety. The law in this respect is being amended curtailing the power of the court to give remission in the amount of the surety. (Section 514 Cr.P.C).

15. The offence under sub-section (2) of section 10 (Zina liable to tazir) and sections 13 and 14 of the Offence of Zina (Enforcement of Hudood Ordinance, 1979, are being made non-cognizable to protect, in particular the women, from abuse of power and harassment at the hands of the Police.

CIVIL CASES

Unfortunately, the situation with regard to civil cases is more miserable. It takes years to conclude a case and sometimes, the remedy gets diluted. In this regard certain amendments in the civil laws are being made. It is expected that these reforms will to great extent curtail the delays. These steps are:—

1. Where a person has been wrongfully dispossessed, the Court may through interlocutory order restore the possession to such party during pendency of the suit. (Section 9 of Specific Relief Act, 1877).
2. The powers of attorney are also often misused. To meet such a situation the power of attorney shall be renewable after every three years. (Section 3A of Powers of Attorney Act, 1882).
3. The Code of Civil Procedure shall be so constructed as to secure substantial, inexpensive and expeditious justice. (Section 1(4)).
4. For expeditious disposal of cases and prevent abuse of the process the Courts are being empowered to adopt any fair procedure not inconsistent with the provisions of the Civil Procedure Code. (Section 1(5)).
5. In order to curb the false and vexatious claims an amendment is being proposed to award compensatory costs as a mandatory requirement and the maximum limit of the cost is also being enhanced from twenty-five thousand to one hundred thousand. (Section 35 and 35A CPC).
6. With a view to encourage settlement of cases outside the court in suits for partition and rendition of accounts, disputes and in any other case in which the court finds that there is a possibility of settlement the court shall require the party to have resort to alternative dispute resolution methods and for that matter the court may use the good offices of retired Judges, advocates, technocrats, Insaf committee or Musalihat Committee or Ombudsman under a Local Government Ordinance, 2001. (Section 89A CPC).
7. It has been proposed that where any party to the suit obtains an order of temporary injunction or attachment before judgment on insufficient grounds the court may grant punitive compensatory costs. (Section 95 CPC).

8. No revision shall lie against any order passed by the District Judge under section 104. (Section 15(4)).
9. The District Judges are being empowered to give to give relief to the people at the door steps by issuing directions to the concerned functionaries of the local Government or other officials of the District Government, the Provincial or the Federal Government to the refrain from doing unlawful acts and to perform the duties as required by law. (Insertion of new section 151A CPC).
10. The procedure for summons in all type of civil courts and appeals is being simplified and made effective b y adopting all the possible modes available for the service of the parties through modern devices. (Order V, rule 10A CPC).
11. Sometimes the cases a e filed in courts which do not have the territorial jurisdiction and the plaints are returned. It has been proposed that in such situation appropriate courts shall be imposed on refilling the suits. (Order VII (10)).
12. Further to curtail delays it has been proposed that the defendant in all cases shall file written statement within thirty days in all cases. (Order VIII, rule 1).
13. Following the pleading it has been proposed that party shall file list of proposed issues within seven days which would reduce delay. (Order XIV, rule 1).
14. At present a lot of time is spent in recording the evidence. In order to curtail the delay it has been proposed that after framing the issues within seven days the parties shall produce affidavit of their witnesses containing their evidence which shall be treated Examination-in-Chief. (Order XVI, rule 1 and Order XVIII, rule 4).
15. In order to discourage adjournments to check the delays it has been proposed that the court shall not adjourn the case for more then twice and any adjournment so granted shall be subject to payment of costs occasioned by such adjournment. (Order XVII, rules 1 and 3).

16. Arguments in cases are generally heard on the conclusion of the evidence and a number of opportunities are given. It has been proposed that the court shall provide only a single opportunity for the purpose. (Order XX, rule 1).
17. In order to further curtail delay, in cases of partition and rendition of accounts, the examination of witnesses shall be recorded through commission. (Order XXVI, rule 1).
18. An amendment is being proposed to discourage Temporary Injunctions (stay orders). A Stay Order without notice to other party (except in cases of demolition, dispossession and alienation) would be of no legal effect. (Order XXXIX, rule 3 CPC).
19. There are ever increasing complaints as to the execution of agreements to sell and misuse thereof, particularly involving ladies, old and infirm persons. The relevant law on the subject is being amended and now agreement to sell shall have to be got registered. (Section 17 of Registration Act, 1908).

Commission's deliberation

The Draft Law Reform Bill, 2005 was considered and deliberated by the Law and Justice Commission of Pakistan in its meeting on 12-2-2005. The Chairman asked the Secretary, Ministry of Law to explain the draft Law Reform Bill. The Secretary explained the rationale and justification for the draft proposals. He stated that the Bill is primarily aimed at removing anomalies, minimizing delays and expediting trial proceedings. He added that there are suitable amendments proposed in the draft to check the police highhandedness and abuse of powers, particularly in the rural areas, and further to restrict their discretion of arrest and detention on suspicion. He stated that in practice, investigators are often changed and the real culprits get away. Further, there are unusual delays in trial, he added. He clarified that the draft also envisages new procedure for pretrial stage to complete the case record and fix the case for trial. The trial judge should then proceed to take evidence and conclude the trial on day-to-day hearing. He also emphasized upon the need for bifurcation of civil and criminal functions of courts, as under the present system, the civil cases linger on, on account of urgency accorded to criminal matters. He added

that the draft further incorporates new modes and devices for service of summons on defendant to expedite the judicial process.

The Chairman observed that most of these issues have already been taken care of under the relevant laws and what is lacking is their effective implementation.

After deliberations, it was agreed that the Secretariat will examine the draft bill, taking into account the written comments received from High Courts, and prepare a comprehensive draft for consideration of the Commission in its next meeting.

Pursuant to the direction of the Commission, Secretary Law and Justice Commission of Pakistan, has requested the Chief Justice, Federal Shariat Court and Chief Justices of 4 High Courts to offer their comments on the bill. The Federal Shariat Court, and 3 High Courts have offered their comments on Bill as indicated in column (2) below:—

Bill's Section	Amendments Proposed by Ministry of Law & Justice (1)	Comments of Federal Shariat Court, Balochistan High Court, Lahore High Court and Peshawar High Court. (2)
02	<p>Amendment of Act, XLV of 1860:- The following further amendments shall be made in the Pakistan Penal Code (Act, XLV of 1860), namely:-</p> <p>(1) after section 167, the following new section shall be inserted namely:—</p> <p>“167A. Punishment for dishonest investigation:- Whoever being a police officer conducts the investigation dishonestly in breach of his duties, shall be punished with imprisonment which may extend to three years, or with fine, or with both”,</p>	<p>Federal Shariat Court Agreed. Word dishonestly has already been defined by section 24 of the Pakistan Penal Code.</p> <p>Balochistan High Court. Agreed</p> <p>Lahore High Court. Proposed insertion of section 167-A, will have check upon the performance of discharge of duties by the police. The proposal is supported. However, section 217/218, and 193 PPC also require to be read with this proposal.</p> <p>Peshawar High Court a. This amendment would keep the I.O under tremendous pressure which can adversely affect the investigation.</p>

		b. In case the amendment is adopted it would be proper to define the word "Dishonestly" so as to avoid the misuse of the term to the detriment of IO.
(2) in section 182, for the words "six months" the words "five years" and for the words "three thousand" the words "fifty thousand" shall be substituted."	Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. The enhancement of punishment will have deterrent effect upon the person giving a false information, hence supported. Peshawar High Court No comments.	
(3) after section 344, the following new Section shall be inserted, namely:— "344A. Punishment for wrongful confinement by a police officer or official:- Whoever being a police officer or official wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend for seven years and shall also be liable to fine."	Federal Shariat Court Agreed Balochistan High Court. Agreed. However, it should correspond to the nature of offence i.e., involving punishment for 10 years or more, be punished with imprisonment of either description for a term which may extend to seven years; and for lesser punishment than that, be punished for a term which may extend to three years. Lahore High Court. The proposed insertion/amendment will restrain a police officer/official from misusing his authority, hence sported. Peshawar High Court In proposed Section 344A the use of the word "official:" is tautologous. The word "officer" include all the members of the Police force as used in Cr.P.C, PPC and Police Order 2002.	
(4) in section 379, for the words "three years" the words "five years" shall be substituted;	Federal Shariat Court Agreed. Balochistan High Court. Agreed Lahore High Court.	

		<p>The crime of theft is on the increase. The proposal for enhancement of punishment is supported.</p> <p>Peshawar High Court No comments.</p>
	<p>(5) after section 381A, the following new Section shall be inserted, namely:—</p> <p>“381B. Theft of cattle:- Whoever commits theft of a cattle shall be punished with imprisonment of either description for a term which may extend to seven years and with fine which shall not be less than twice the value of the stolen cattle payable to the owner or his heirs, as the case may be, as compensation.”</p>	<p>Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court.</p> <p>The proposed amendment provides for punishment upto 7 years with fine not less than twice the value of the stolen cattle, payable to the owner as compensation. This will create a sense of security amongst the people living in the rural areas, hence supported.</p> <p>Peshawar High Court In view of Section 379 of PPC, there is no need of creating a special offence for the theft of cattle. In case it is to be retained then the payment of fine as compensation would place Section 544-A CrPC as redundant for the following reasons.</p> <p>a. Section 544-A already provides for grant of compensation in all such cases and has general application.</p> <p>b. This special provision of payment of compensation would render all other cases covered by Section 544-A CrPC as ineffective or subordinate. The result can be the misleading interpretation in the way that in all those cases where compensation is intended to be paid, the legislature ought to specifically mention the same as is the case in the proposed amendment.</p>
	<p>(6) in section 420, for the word “seven” the word “ten” shall be substituted;</p>	<p>Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court.</p>

		<p>The cases of fraud are rampant in the society these days and the innocent people are being deprived of their valuable rights and property. The enhancement of punishment from 7 to 10 years and making the offence non-bailable will discourage the offenders.</p> <p>Peshawar High Court No comments.</p>
	<p>(7) in section 441, after the word "annoy occurring twice, the words "or dispossess" shall be inserted;</p>	<p>Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. The definition of criminal trespass has been widened to include punishment of trespass by dispossessing any person from immovable property. The proposed property punishment provided for such an offence is 10 years with fine which makes the offence non-bailable. This will have deterrent effect upon the persons forming Qabza Groups. Hence supported.</p> <p>Peshawar High Court The word "dispossess" should be preceded by the word "illegally".</p>
	<p>(8) in Section 447, after the word "punished" the commas and words "except in case of dispossession," shall be inserted and after the word "both", occurring at the end, the words "and in case of dispossession the offender shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.",</p>	<p>Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. As above Peshawar High Court The word "dispossession" should be preceded by the word "illegal".</p>
	<p>(9) in Section 468, for the word "seven" the word "ten" shall be substituted and after the word</p>	<p>Federal Shariat Court Agreed Balochistan High Court.</p>

	<p>“years” the word “and if such offence has been committed in relation to immovable property the imprisonment shall not be less than seven years” shall be inserted.</p>	<p>Agreed Lahore High Court. The crime of forgery is on the increase. It deprives the innocent people of their valuable rights and property. The punishment has been enhanced from 7 to 10 years which makes the offence non-bailable. This will discourage the person involved in the crime of forgery. Hence supported. Peshawar High Court No comments.</p>
03	<p>Amendment of Act V of 1898:- The following further amendments shall be made in the Code of Criminal Procedure, 1898 (Act, V of 1898), namely:- (1) In section 54, in sub-Section (1),-</p> <p>(a) in clause first, for the semi-colon, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:- “Provided that where a person is arrested on the basis of suspicion, such arrest shall be reported to the incharge of the police station concerned immediately for verification and if officer incharge of the police-station is satisfied of the grounds of arrest he shall record the same in writing.”</p> <p>(b) clause secondly shall be omitted; and</p> <p>(c) in clause fourthly, after the word “thing” at the end, the comma and words “in respect of which credible information has been received” shall be added;</p>	<p>Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. The misuse of power by a police officer in arresting a person on the basis of mere suspicion has been checked by the report of verification by the officer incharge of a police station concerned. Hence supported. Obtaining prior permission from Ilaqa Magistrate would be more efficacious. Peshawar High Court The proviso is silent about the situation when the Incharge of the police station is dissatisfied of the grounds. Suitable provision for setting the arrested person at liberty should be added in such eventuality.</p>
	<p>(2) section 154 shall be re-numbered as sub-Section (1) of that Section and after sub-Section</p>	<p>Federal Shariat Court Agreed. Since as provided by section 154</p>

	<p>(1) re-numbered as aforesaid the following new sub-Section shall be added, namely:-</p> <p>(2) Where an officer incharge of police station refuses to record information relating to the commission of a cognizable offence he shall be liable to prosecution under Article 155 of the Police Order, 2002.”.</p>	<p>Cr.P.C an Officer Incharge of the police station is under obligation to reduce to writing every information relating to the cognizable offence, received by him and as per section 32 of the Pakistan Penal Code words referring to Acts include illegal omissions as well therefore, amendment is a must.</p> <p>Balochistan High Court. Agreed</p> <p>Lahore High Court. It is matter of daily occurrence that the police refuses to record information relating to the commission of a cognizable offence. The informant has to run from pillar to post and even to knock at the door of the courts just for the purpose of seeking a direction for recording of an FIR. The provision making the concerned delinquent police officer liable to prosecution under Article 155 of the Police Order 2002 will to a great extent ameliorate the sufferings of the public at large. Hence supported.</p> <p>Peshawar High Court This proposed amendment would encourage the recording of baseless reports as well. It is proposed that after the word “information” the words “without just cause” be added. Secondly for making the proposed action as an offence the relevant section of Police Order 2002 would require amendment.</p>
	<p>(3) in section 155, after sub-Section (2), the following new sub-Section shall be added,</p> <p>“(2a) Where any person furnish information to a Magistrate of the first or second class of the commission of a non-cognizable offence having power</p>	<p>Federal Shariat Court It is proposed that instead of Magistrate of the 1st or 2nd Class the word Court competent to try the offence may be substituted.</p> <p>Balochistan High Court. Agreed</p> <p>Lahore High Court.</p>

	<p>to try such offence such Magistrate may direct the investigation to be conducted by police whether information under sub-section (1) has been given or not.”.</p>	<p>Will reduce the ambit of the police of withholding the information as to commission of a non-cognizable offence, hence supported.</p> <p>Peshawar High Court After the word “offence” the words “or send the same for trial to the Court of Sessions” should be added.</p>
	<p>(4) in section 173, in sub-Section (1), in the proviso, after the word “commence” occurring at the end, the words “and if report is not submitted within the aforesaid period, the Court within next seven days shall pass an order directing that an entry of negligence and carelessness be made in the service record of the officer concerned;</p>	<p>Federal Shariat Court No comments.</p> <p>Balochistan High Court. Agreed.</p> <p>Lahore High Court. The court has been vested with the power to pass an order for making an entry qua negligence and carelessness in the service record of the officer concerned. This will improve the efficiency on the part of the police and curb delayed submission of challan. Hence supported.</p> <p>Peshawar High Court No comments.</p>
	<p>(5) in Section 195:- (i) in clause (a), for the figures and word “172 to 188” the words, commas and figures “172, 173, 176 to 181, 183 to 188” shall be substituted; and (ii) in clause (b), after the word “Sections” the figures, letter, comma and word “167A, 174 and 175” shall be inserted;</p>	<p>Federal Shariat Court Agreed</p> <p>Balochistan High Court. Agreed</p> <p>Lahore High Court. The provision of section 182 PPC has been taken out of the purview of section 195 whereas sections 174 and 175 and the newly proposed section 167 -A have been added to clause (b) of section 195. This has been done to minimize the frequent exercise of misuse of powers by the police in this behalf. Hence supported.</p> <p>Peshawar High Court There is no need of transferring Section 174 & 175 from clause a to clause b of Section 195 Cr.P.C. The purpose of this transfer appears to make these two offences cognizable</p>

		on the report of the Court. If these two offences are left in their old position, then not only would they be cognizable on the reports of courts but also on the reports of other public servants legally competent to issue the processes.
	(6) in Section 374, after the word "Court" at the end, the words "and the convict shall not be treated as condemned prisoner till confirmation of sentence and till such confirmation is made he shall not be confined in death cell but may be kept in high security Section earmarked for this purpose in jail;	<p>Federal Shariat Court Agreed</p> <p>Balochistan High Court. Agreed</p> <p>Lahore High Court. Sentence of death cannot be executed unless it is confirmed by the High Court. Till the pendency of the reference, the accused should not be put to rigours of death cell as condemned prisoner. The amendment will protect the human rights of such a prisoner, hence supported. Safety of condemned prisoners requires further examination of the proposal.</p> <p>Peshawar High Court This proposed amendment is introduced not in proper place and law. The convicted prisoners are sent to death cell under S 30(2) of Prisons Act, & Prison Rules.</p>
	(7) in Section 476, in sub-Section (1), for the word "may" the word "shall" shall be substituted;	<p>Federal Shariat Court Agreed</p> <p>Balochistan High Court. Agreed</p> <p>Lahore High Court. Previously the initiation of cases of contempt and perjury committed in relation to any proceedings in the court was left at the discretion of the court either to try itself or to make a complaint. Now it has been made mandatory for the court concerned to hold summary trial in such cases. The chances of commission of such offences shall be reduced to prevent the accused of changing his stance at various stages of a case.</p>

		Hence supported. Peshawar High Court No comments.
(8) in Section 497, in sub-Section (1), in the first proviso, the words "or any woman" shall be omitted and after the first proviso amended as aforesaid the following new proviso shall be inserted, namely:- "Provided further that a woman accused of such an offence shall be released on bail: Provided further that a woman shall not be so released if there appear reasonable grounds for believing that she has been guilty of an offence relating to narcotics, terrorism, murder, dacoity, robbery or harrabah and such offence is punishable with death or imprisonment for life or imprisonment for ten years, unless, having regard to the facts and circumstances of the case, the Court directs otherwise."	Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. Except in the cases of offence relating to narcotics, terrorism, murder, dacoity robbery or haraba, the punishment of which is death or imprisonment for life or imprisonment for 10 years having regard to the facts and circumstances of the case, a women accused has been conferred the right to be released on bail. Hence supported. Peshawar High Court No comments.	
(9) in Section 514, sub-Section (5) shall be omitted; and (10) In Schedule II,- (i) after Section 167 in column 1 and entries relating thereto in columns 2-8, the following new Section and entries relating thereto shall be inserted, namely:-	Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. The discretion of the court in ordering reduction in the payment of amount of surety has been taken away to ensure the appearance of the accused before the court for expeditious disposal of the case. However, due regard be made to the fixation of surety bond while granting the bail keeping in view the nature of the offence. Peshawar High Court No comments.	

1	2	3	4	5	6	7	8
167A	Punishment imprisonment for dis-honest investigation	ditto	ditto	ditto	ditto	Imprisonment for three years, or fine, or both.	Magistrate of first class Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. In view of the above proposed amendments, corresponding amendments have been proposed in this schedule. Hence no comments. Peshawar High Court No comments
	(ii) in the entry relating to Section 182 in column 1, in column 7, fore the figure and word "6 months" the words "five years" shall be substituted; (iii) after Section 344 in column 1 and entries relating thereto in columns 2 to 8, the following new Section and the entries relating thereto shall be inserted namely:-						Federal Shariat Court Agreed Balochistan High Court. No comments Lahore High Court. No comments Peshawar High Court No comments
1	2	3	4	5	6	7	8
344 A	Punishment for wrongful confinement by police	ditto	without warrant	Not bail-able	ditto	Imprisonment for seven years and fine	Court of Session or Magistrate of the first class."
	(iv) in the entry relating to Section 345 in column 1, in column 4, for the word "Ditto" the word "Summons" shall be substituted, in column 5 for the word "Ditto" the word "Bailable" shall be substituted and in column						Federal Shariat Court No comments Balochistan High Court. Agreed Lahore High Court. No comments Peshawar High Court

	8 for the word "Ditto" the words "Magistrate of the first or second class" shall be substituted; (v) in the entry relating to Section 379 in column 1, in column 7, for the figure "3" the figure "5" shall be substituted; (vi) after the entries relating to Section 381A in columns 1 to 8, the following new Section and the entries relating thereto shall inserted, namely:-	No comments
1	2 3 4 5 6 7	8
381 B	Theft of cattle ditto ditto ditto ditto Imprisonment of either description for seven years and fine.	Ditto Federal Shariat Court Agreed Balochistan High Court. No comments Lahore High Court. No comments Peshawar High Court No comments
	(vii) in the entry relating to Section 420 in column 1, in column 5, for the word "bailable" the word "Not bailable" shall be substituted and in column 7 for the figure "7" the figure "10" shall be substituted; (viii) in the entry relating to Section 447 in column 1,- (a) in column 4, after the words "Summons" the words "and Warrant if the offence has been committed to dispossess any person" shall be added, in column 5 after the word "bailable" the words "and Not bailable if the offence has been committed to dispossess any person" shall be added; (b) in column 7, after the	Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. No comments Peshawar High Court No comments

	<p>word "both" the words "and ten years and fine if the offence has been committed to dispossess any person" shall be added;</p> <p>(c) in column 8 "for the words "any Magistrate" the words "Court of Session or the Magistrate of the first or second class" shall be substituted; and</p> <p>(ix) in the entry relating to Section 468 in column 1, in column 7, for the figure "7" the figure "10" shall be substituted.</p>	
04	<p>Amendment of Section 20, Ordinance VII of 1979:- In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), in Section 20, after sub-Section (3), the following new sub-Section shall be inserted, namely:-</p> <p>"(3A) The offence under sub-Section (2) of Section 10 and Sections 13 and 14 shall be non-cognizable.</p>	<p>Federal Shariat Court</p> <p>So far as offence under section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is concerned it is agreed that no woman shall be arrested without a warrant issued by the Court competent to try the offence. However, since sections 13 and 14 of the "the Ordinance" include, inter-alia, the offences regarding selling of persons (women), which is a heinous offence and has been enacted primarily, for the protection of woman and it carries life imprisonment alongwith other sentences, therefore, it is to that extent, not agreed.</p> <p>Balochistan High Court.</p> <p>The proposed insertion of sub-Section (3A) in Section 20 of the Ordinance VII of 1979, is opposed keeping in view the punishment provided for the offence under sub-Section (2) of Section 10, which may extend to 10 years and under Section 13 and 14 to be imprisonment for life; in order to keep parity with other such punishments, as such the</p>

		<p>offence to remain as Cognizable. The offence being against the society at large, and may not be viewed leniently.</p> <p>Lahore High Court. The offences under sub-section (2) of section 10 and sections 13 and 14 have been made non-cognizable by inserting a new subsection 3-A in section 20 of the Ordinance to protect the women from the exercise of misuse of power by the police to involve innocent persons in Hudood cases.</p> <p>Peshawar High Court The purpose of protection of women from the abuse of power and harassment at the hands of Police cannot be served by this proposed amendment by making Sections 13 and 14 as non cognizable as these provisions are for the protection of women as victims. By this amendment the women fold would become more vulnerable.</p>
05	<p>Amendment of Act, I of 1877.- In the Specific Relief Act., 1877 (I of 1877), Section 9 shall be re-numbered as sub-Section (I) of that Section ; and-</p> <p>(i) before the first paragraph, the following new paragraph shall be inserted, namely:- “If it appears to the Court that nay party has within two months next before the date of filing of suit is shown to be wrongfully dispossessed, the Court may through an interlocutory order restore the possession to such party during the pendency of the case.”, and</p> <p>(ii) after sub-Section (1) re-numbered as aforesaid, the</p>	<p>Federal Shariat Court Agreed</p> <p>Balochistan High Court. Agreed</p> <p>Lahore High Court. The court has been given the powers to pass an interlocutory order, during the pendency of the case, to restore the possession to a party who was shown to have been wrongfully dispossessed within two months next before the date of filing of the suit. Period of six months has been fixed for disposal of the suit. The court has also been given the power to grant compensation to the plaintiff for the loss suffered. The amendment will have deterrent effect upon the activities of the Qabza Groups.</p>

	<p>following new sub-Section shall be added, namely:-</p> <p>“(2) The Court shall decide the suit within six months and where it decrees the suit it shall grant such compensation as it deems fit having regard to the loss suffered by the plaintiff.”; and</p>	<p>Peshawar High Court No comments.</p>
06	<p>Amendment of Act, VII of 1882.- In the Powers of Attorney Act., 1882 (VII of 1882), after Section 3 of the following new sections shall be inserted, namely:-</p> <p>“3A. Name of donee to be specified.- In the instrument creating the power of attorney authorizing the grantee to make gift of immovable property, there shall be specified the name of the donee in the instrument of power of attorney.</p> <p>3B. Period to be specified.- The instrument of creating power of attorney shall be valid for three years from the date of its execution and shall be renewable after every three years.”.</p>	<p>Federal Shariat Court Agreed Balochistan High Court. Agreed Lahore High Court. Section 3A and 3B. The proposed amendment aims at specifying the name of donee and fixing the period of three years for the validity of an instrument creating power of attorney authorizing the grantee to make gift of immovable property. The power of the grantee has been restricted and the creation of power of attorney has been made conditional by indicating the name of the donee. This will minimize the chances of misuse of authority by the grantee and protect the rights of specified donee. Peshawar High Court Instead of word “grantee” the word “donee”, instead of word “gift” the word “alienation” and instead of word “donee” the word “transferee” should be substituted. No comments.</p>
07	<p>Amendment of Act, V of 1908.- The following further amendments shall be made in the Code of Civil Procedure, 1908 (Act V of 1908), namely:- (1) in Section 1, after sub-Section (3), the following new sub-section shall be added, namely:- “(4) The Code shall be so</p>	<p>Federal Shariat Court No comments. Balochistan High Court. Agreed Lahore High Court. The underlying purpose and object of law is to provide inexpensive and expeditious justice. Keeping that in</p>

	<p>construed as to secure substantial, inexpensive and expeditious justice.</p> <p>(5) The Court may, in the interest of expeditious disposal of a case and to prevent abuse of the process of law, adopt any fair procedure not inconsistent with the provisions of this Code.”;</p> <p>(2) in Section 12, after sub-Section (2) the following new sub-Section shall be added, namely:-</p> <p>“(3) For the decision of an application under sub-Section (2), the Court may in the interest of expeditious disposal apply such fair procedure as the circumstances of the case warrant, and shall, unless for reasons to be recorded in writing it directs otherwise, order any fact to be proved or disproved by affidavit, and such affidavit shall be read as evidence.”;</p>	<p>view by making the present provision, the court has been freed from the technicalities of law and permitted to adopt fair procedure to prevent abuse of the process of law not deviating from the clear provisions of the Code. Hence the proposal is supported.</p> <p>Experience has shown that application under section 12(2) stands converted into proceedings like a regular suit. To simply the procedure the court has been given the power to prove or disprove any fact by affidavit and to read the said affidavit as evidence. This will reduce the delay in disposal of the application. Hence the proposal is supported.</p> <p>Peshawar High Court This proposed insertion cannot be made in the Short Title, Commencement and Extend Clause.</p>
	<p>(3) in Section 30, in clause (c), after the word “proved” the words “or disapproved” shall be inserted.</p>	<p>Federal Shariat Court Agreed Balochistan High Court Agreed Lahore High Court. Simultaneously with the power of the court to order any fact to be proved by affidavit, by the proposed amendment the court has been empowered to order any such fact to be disproved by affidavit. This will help resolve the controversy expeditiously. Hence supported. Peshawar High Court. No comments.</p>
	<p>(4) in Section 35,- (a) in sub-Section (1), for the words “to all suits shall be in</p>	<p>Federal Shariat Court No comments. Balochistan High Court</p>

<p>discretion of the Court" the words "to all suits and other proceedings in the suit including an execution proceedings, shall follow the event, unless for reasons to be stated in writing the Court directs that any costs shall not follow the event" shall be inserted; and</p> <p>(b) for sub-Section (2), the following shall be substituted, namely:-</p> <p>"(2) Each party shall, within seven days of the completion of evidence, file in the Court a statement of the actual costs incurred by it, and to which it claims to be entitled. The statement shall include the fees paid to the counsel. If a party fails to file such a statement within the specified time or within the extended time granted by the court, it shall not whatever the result of the suit, be entitled the costs:</p> <p>Provided that notwithstanding the failure of the party to comply with this provision, the court may allow such costs as are ascertainable from the record."; and (d) after sub-section (3), the following new sub-section shall be added, namely:-</p> <p>"(4) Nothing in this section and in the principle that costs shall follow the event shall be construed to prevent the court at any stage of the suit or a proceeding in the suit from assessing the costs, and ordering their payment forthwith and from specifying the manner in which such costs shall be recoverable.";</p>	<p>Agreed</p> <p>Lahore High Court</p> <p>The amendment in subsection (1) has widened the powers of the court for grant of costs following the event and shall state the reasons for not granting costs following the event. The proposed substitution of subsection (2) provides for submission of statement of actual costs including fee paid to the counsel by the parties within 7 days of the completion of the evidence and in case of failure to do so disentitling the said party to costs. However the court has been empowered to assess the costs itself and order payment and also specify the manner in which costs shall be recoverable. Hence supported.</p> <p>Peshawar High Court</p> <p>No comments.</p>
<p>(5) in section 35A,-</p>	<p>Federal Shariat Court</p>

<p>(a) for sub-section (1), the following shall be substituted, namely:- “(1) If in any suit or a proceeding in a suit, including an execution proceeding, it appears to the court that the claim or defence, or any part of it, is false or vexatious or there was no probable or reasonable ground for making it, and such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the court may, after hearing the parties and for reasons to be recorded, make any order for the payment of such proportionate costs by way of compensation as warranted by the facts of the case. The court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purpose, including a direction that the costs shall be payable forthwith and recoverable in such manner as the court may specify.” and</p> <p>(b) in sub-section (2), for the words “twenty-five thousand”</p>	<p>Agreed Balochistan High Court Agreed Lahore High Court By substituting subsection (1) the procedure for awarding special costs in case of false or fictitious claims/ defence has been simplified and the court has been given full power to determine the extent of the costs and to give necessary directions with regard to the payment and the mode of recovery. The quantum of costs has been enhanced from <i>Rs.25,000/-</i> to <i>Rs.1,00,000/-</i>. Hence supported. Peshawar High Court No comments.</p>
<p>(6) in section 83, in sub-section (1), for the words “the Provinces” the word “Pakistan” shall be substituted;</p>	<p>Federal Shariat Court Agreed Balochistan High Court Agreed Lahore High Court The provisions relate to institution of suits by alien enemies residing in Pakistan and by foreign states. Through the proposed amendment a right has been given to an alien enemy or foreign state to institute a suit anywhere in Pakistan. Hence</p>

		supported. Peshawar High Court No comments.
	(7) in section 84, in sub-section (1), for the words "the Provinces" the word "Pakistan" shall be substituted;	Federal Shariat Court Agreed Balochistan High Court Agreed Lahore High Court As above Peshawar High Court No comments.
	(8) for section 89A, the following shall be substituted, namely:- "89A. Alternate dispute resolution.- (1) In suits for partition or rendition of accounts or in a dispute in any other suit in which it appears to the Court that there is reasonable possibility of an amicable settlement between the parties, the Court shall, with a view to encouraging such a settlement, require the parties to have resort to one of the alternative dispute resolution methods, such as mediation, conciliation or arbitration. (2) For the purposes of sub-section (1), the Court may refer the matter to retired Judges of Superior Courts or of subordinate Courts, technocrats having experience in the relevant field, or an eminent lawyer or any other person acceptable to both the parties, an Insaf Committee or a Musalihah Committee constituted under a Local Government Ordinance 2001, or the Ombudsman appointed under the said Ordinance. (3) A matter referred to a mediator, conciliator or an	Federal Shariat Court Agreed Balochistan High Court Agreed Lahore High Court The proposed amendment is designed to give power to the court to award against the party at fault punitive compensation for obtaining arrest, attachment or injunction on insufficient grounds, as it deems reasonable to the aggrieved party for the expense and injury caused to him. It also provides the power to the court directing the party at fault to pay such amount as penalty payable into court for wasting public time and for abusing the process of law as the court deals just. The proposed amendment shall bar any suit for compensation in respect of such arrest, attachment or injunction. The proposed amendment shall reduce the agony of the aggrieved party who was deprived of his valuable right and property and liberty by means of arrest, attachment or injunction

<p>arbitrator, as the case may be, shall be disposed off by him within a period of ninety days, extendable for sufficient cause for another period of sixty days.</p> <p>(4) The Court shall pronounce judgment in terms of decision made as a result of mediation, conciliation or arbitration and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground of misconduct.-</p> <p>(5) On receipt of decision of a mediator, conciliator or arbitrator, as the case may be, the Court may on its own or on the application of either party examine the propriety or legality of the decision and may pass such order as it deems fit without recording any fresh evidence.</p> <p>(6) The Arbitration Act., 1940 (X of 1940) shall not apply to arbitration under this section.</p> <p>(7) Section 28 of the Contract Act, 1872 (IX of 1872), shall not apply to an agreement for the resolution of disputes by one of the alternative dispute resolution methods under this section.”;</p>	<p>without sufficient grounds. Hence supported.</p> <p>Peshawar High Court</p> <p>No comments.</p>
<p>(10) in section 115, after sub-section (4), the following new sub-section shall be added, namely:-</p> <p>“(5) No proceedings in revision shall be entertained by the High Court against an order passed by the District Court under section 104.”;</p>	<p>Federal Shariat Court</p> <p>No comments.</p> <p>Balochistan High Court</p> <p>The proposed addition of sub-Section (5) in Section 115 C.P.C. is opposed on the ground that, if the power of Revision before the High Court is retrenched than the aggrieved party will challenge the order passed by the District Court, before the High Court in writ jurisdiction and the position will remain the same.</p>

		<p>Lahore High Court The proposed amendment regarding barring proceedings in revision by the High Court against an order passed by District Court under section 104 is designed to shorten litigation between the parties. Hence supported.</p> <p>Peshawar High Court No comments.</p>
	<p>(11) in section 151, after the word "Court" occurring for the first time, the commas and words", to be exercised after recording reasons," shall be inserted;</p>	<p>Federal Shariat Court Agreed</p> <p>Balochistan High Court Agreed</p> <p>Lahore High Court The exercise of inherent power by the court has been made conditional upon recording reasons. This will put the court on guard before exercising said power. Hence supported.</p> <p>Peshawar High Court No comments.</p>
	<p>(12) after section 151, the following new section shall be inserted, namely:- "151A. Powers of District Judge to issue directions.- (1) Without prejudice to any other law for the time being in force, the District Judge if satisfied that no other adequate remedy is provided by law, on an application by an aggrieved person or on his own motion, may direct any holder of public office within the District to refrain from doing anything which is not permitted by law or to do anything or perform his duty in accordance with law to provide relief and remedies to the citizens at local level. Explanation.- For the purpose of this section, the expression 'holder of public office means',-</p>	<p>Federal Shariat Court Since the proposed amendment is more or less identical to the powers of the High Court under section 199 Cr.P.C and is likely to lead to an anomalous situation, therefore, it is opposed.</p> <p>Balochistan High Court The addition of Section 151A C.P.C. is opposed as it will create anomalous situation, enhance/augment the litigation in petty matters and overburden the work of District Judge, which would require him to make/pass orders on each and every application. Note: The said powers already exist with the High Courts under Article 199, sub-clause 1(a) (i) of the Constitution of the Islamic Republic of Pakistan.</p> <p>Lahore High Court</p>

	<p>(i) all functionaries and officials of the District Government, a city District Government, a Zila Council, Tehsil Municipal Administration, Tehsil Council, Town Municipal Administration and Town Council; and</p> <p>(ii) officials of the Federal Government, Provincial Government and statutory bodies owned or controlled by any such Government, who by virtue of their duties are performing functions within the district.”;</p> <p>(2) The revision would lie to the High Court against an order passed by the District Judge under sub-section (1) and no appeal shall lie against such order.”;</p>	<p>The power given to the District Judge through the proposed amendment is designed to provide speedy and expeditious justice to the litigant at the door steps directing the holders of public office to remain within the domain of their jurisdiction and to act in accordance with law. A check has been placed by providing a remedy of revision to the High Court against an order passed by the District Judge. However the provision is beyond the scope of C.P.C. and is likely to cause confusion. Requires further examination.</p> <p>Peshawar High Court No comments.</p>
	<p>(13) in the First Schedule,- (a) in Order V,-</p> <p>(i) in rule 2, after the word “statement” the words “along with the copies of all documents which have been produced by the plaintiff” shall be inserted;</p> <p>(ii) in rule 10-A, for sub-rule (1), the following shall be substituted, namely:-</p> <p>“(1) Service by post, etc.- Simultaneously with the issue of summons under rule 9, there shall be sent, unless otherwise ordered by the Court, another copy of summons signed and sealed in the manner provided in rule 10 to the defendant by,-</p>	<p>Federal Shariat Court Agreed</p> <p>Balochistan High Court Agreed</p> <p>Lahore High Court Through the proposed amendment the plaintiff has been required to annex copies of all documents produced by him which shall accompany the summons. Simultaneously with the above mode of service, substitution of rule 10-A, other modes of service of summons have been provided by use of all the</p>

<p>(a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain;</p> <p>(b) any electronic device of communication which may include telegram, phonogram, telex, fax, radio and television;</p> <p>(c) urgent mail service or public courier services;</p> <p>(d) registered post, acknowledgment due;</p> <p>(e) beat of drum in the locality where the defendant resides;</p> <p>(f) publication in newspaper having wide circulation in area where service is to be effected; and</p> <p>(g) any other manner or mode as it may deem fit.”;</p> <p>(iii) after sub-rule (2), the following new sub-rule shall be inserted, namely:-</p> <p>“(3) Service of summons in the manner provided in sub-rule (1) shall be as effectual as if it had been made on the defendant personally.”; and</p> <p>(iv) rule 20 shall be omitted.</p> <p>(b) in Order VII, in rule 10, after sub-rule (2), the following new sub-rule shall be added, namely:-</p> <p>“(3) If the plaint is returned, after the appearance of the defendant, the Court shall make an order, as to the appropriate costs to be paid by the plaintiff, for presenting the plaint in wrong forum, to such defendant on filing of the fresh suit.”;</p>	<p>modern devices unless otherwise ordered by the court to ensure service and to reduce the delay. In this manner, rule 20 which provides for substituted service has been omitted.</p> <p>The court has been empowered to award appropriate costs to be paid by the plaintiff to the defendant after appearance for presenting the plaint in wrong forum on filing of fresh suit. The words "on filing of the fresh suit" require substitution with the words "on presentation of the plaint before the court of competent jurisdiction". The reason being that filing of fresh suit indicates as if the</p>
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<p>(c) in Order VIII, in rule I, in the proviso the word "ordinarily" shall be omitted;</p> <p>(d) in Order XIII, in sub-rule 3, for the word "may" occurring for the first time, the word "shall", shall be substituted.</p> <p>(e) in Order XIV, in rule 1, after sub-rule (4), the following new sub-rule shall be added, namely:- "(4a) After the filing of written statement both the parties shall, within seven days, file proposed issues which are based on material proposition of fact and law.";</p> <p>(f) in Order XVI, for sub-rule (1), the following shall be substituted, namely:- "(1) Not later than seven days after the settlement of issues the parties shall present in Court a list of witnesses along with affidavit of witnesses, containing their evidence, so far as it is applicable";</p>	<p>earlier suit was allowed to be withdrawn with permission to file a fresh one. The provision is designed to prevent the litigant from approaching the wrong forum and saving of precious time of the court.</p> <p>The word "ordinarily" has been omitted from the proviso to rule 1, thus giving a specific time schedule of 30 days to file the written statement.</p> <p>The provision has been made mandatory for the court, on production of documents, to call upon the parties to admit or deny the same and to record their admission or denial which shall reduce the volume of issues and the volume of evidence.</p> <p>Through the proposed amendment a new provision sub rule 4(a) has been added asking the parties to file within seven days after the filing of written statement, proposed issues based on material proposition of fact and law. This would avoid grant of unnecessary adjournments for the framing of issues by the court and addition of any other issue at a subsequent stage of the trial.</p> <p>Sub rule 1 has been substituted by the proposed amendment requiring the parties to present in court, not later than 7 days after the settlement of issues, a list of witnesses alongwith affidavits of witness containing their evidence. On fulfillment of this condition, recording of examination in chief of the witnesses has been dispensed with a right to the opposite party to cross examine the witness. Hence supported.</p>
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<p>(g) in Order XVII,- (i) for rule I, the following shall be substituted, namely:- “1. Court may grant time and adjourn hearings.- (1) The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or any of them: Provided that the Court shall not grant more than two adjournments to the parties or any of them and except on payment of costs occasioned by such adjournment. (2) Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1) the Court shall proceed with the suit forthwith.”;</p> <p>(ii) after rule 1, substituted as aforesaid, the following new rule, shall be inserted, namely:- “Day-to-day hearing of evidence.- 1A. The hearing of evidence shall be continued from day to day until the completion of evidence in the suit, unless the Court finds the adjournment beyond the following day to be necessary adjourn such hearing for reasons to be recorded.”; and</p> <p>(iii) for rule 3, the following shall be substituted, namely:- “3. Where any party to a suit fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other Act, necessary to the further progress of the suit, the Court may, notwithstanding such failure, proceed to decide the suit forthwith.”;</p>	<p>The amendment sought to be introduced is designed to achieve the expeditious disposal of a suit by restricting the parties to number of adjournments and making it obligatory for the court to record day to day evidence and on failure of the parties to produce evidence or to cause attendance of witnesses to decide the suit forthwith. Hence supported.</p>
<p>(h) in Order XVIII, for rule 4, the following shall be substituted,</p>	<p>The existing rule has been substituted by the proposed rule which provides</p>

<p>namely:-</p> <p>"4. Witnesses to be examined.- The affidavits of the witnesses having been filed by the parties shall be taken to be the examination-in-chief and the witnesses in attendance shall be cross-examined in open Court in the presence and under the personal direction and superintendence of the Judge.";</p> <p>(i) In Order XIX, in rule 1,- (a) after the word "proved" the words "or disproved" shall be inserted; and (b) in the proviso, for the words "and order shall not be made authorizing the evidence of such witness to be given by affidavit", the words "the Court may order the attendance for cross examination of the deponent" shall be substituted.</p> <p>(j) in Order XX, in rule 1, in sub-rule(1), for the words "fix a date" the words "provide a single opportunity" shall be substituted;</p> <p>(k) in Order XXVI, in rule 1,- (i) for the marginal heading, the following shall be substituted, namely:- "Examination of witnesses through commission"; and (ii) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:- "Provided that in a suit for partition and rendition of accounts the Court shall issue the</p>	<p>that the affidavits of the witnesses having been filed by the parties in terms of the proposed Order XVI, rule 1, shall be taken to be the examination in chief and the witnesses in attendance shall be cross examined in open court in the presence and under the personal direction and superintendence of the Judge. This will also reduce delay in the disposal of the suit.</p> <p>By the proposed amendment now the power lies with the court to order any particular fact or facts to be proved or disproved by affidavit and for that purpose the court has been given the power to order the attendance for cross examination of the deponent. This again will minimize the delay in disposal of the suit.</p> <p>For the words "fix a date" the words "provide a single opportunity" are sought to be substituted for hearing of arguments of parties. This again will reduce the delay in disposal of the suit.</p> <p>Through the proposed amendment a proviso has been added making it obligatory for the court in a suit for partition and rendition of accounts to issue commission for examination of witnesses. It will save the precious time of the court and ensure the speedy disposal of suit.</p>
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<p>commission for examination of witnesses.”; and</p> <p>(l) in Order XXXIX, in rule 3,- (i) after the word “party” the words “and any injunction granted without notice shall be of no legal effect” shall be inserted; and (ii) in the first proviso, after word “demolition” the words “dispossession or alienation shall be inserted and for the word “premises” the word “property” shall be substituted.</p>	<p>The proposed amendment manifest to stop grant of injunction by the court except in the cases of demolition, dispossession or alienation of any property without notice.</p> <p>Peshawar High Court No comments.</p>
<p>8. Amendment of Act, XVI of 1908.- In the Registration Act, 1908 (XVI of 1908), in section 17, in sub-section (1), after clause (e) the following new clauses shall be inserted, namely:- “(f) agreement to sell relating to immovable property and the stamp duty paid at the time of registration of agreement to sell shall be deductible at the time of registration of sale deed; (g) power of attorney when authorizing the attorney to sell any immovable property.”.</p>	<p>Federal Shariat Court Agreed Balochistan High Court Agreed Lahore High Court The agreement to sell relating to immovable property and the stamp duty paid at the time to registration of said agreement has been deductible at the time of registration of scale deed. The proposal was initiated by the Lahore High Court. Likewise power of attorney to sell any immovable property has been made compulsorily register-able. Both the proposals are supported. Peshawar High Court No comments.</p>

Commission’s deliberations

The Commission again in its meeting held on 19 March 2005, considered the proposals of the Reforms Bill 2005 and the comments offered by the Federal Shariat Court and 3 High Courts and after deliberation formulated the recommendations as contained in column (2) below.

LAW REFORMS BILL 2005

S. #	Column 1 Amendments Proposed by Ministry of Law & Justice	Column 2 Commission's Recommendations
02	<p>Amendment of Act, XLV of 1860:- The following further amendments shall be made in the Pakistan Penal Code (Act, XLV of 1860), namely:- (1) after section 167, the following new section shall be inserted namely:- "167A. Punishment for dishonest investigation:- Whoever being a police officer conducts the investigation dishonestly in breach of his duties, shall be punished with imprisonment which may extend to three years, or with fine, or with both",</p>	<p>The proposed amendment seeks to make "dishonest investigation" by a police officer an offence, punishable with imprisonment for upto three years or with fine or with both. The members pointed out that the proposal may be juxtaposed with Section 217 and 218 of the PPC where similar punishment is prescribed for a public servant, which also includes the police officer. A similar penal clause also exists in Section 155 of the newly enacted Police Order 2002. The courts always have the power to take notice of any such eventuality and pass strictures against a dishonest or corrupt or inefficient police officer. It was also pointed out that whereas it is desirable to punish any dishonest act of the police officer; the vested interest and crooks may also abuse such provision to delay or derail or throttle investigation. The Commission, therefore, declined the proposal.</p>
	<p>(2) in section 182, for the words "six months" the words "five years" and for the words "three thousand" the words "fifty thousand" shall be substituted."</p>	<p>The proposal seeks the enhancement of punishment for giving false information to a public servant with intent to cause such public servant to use his lawful power to the injury of another person. The punishment is thus enhanced from 6 months to 5 years imprisonment and fine from Rs.3000/- to Rs.50,000/-. The Commission agreed to the proposal, subject to qualification that the sentence be enhanced from 6 months to three years only.</p>

<p>(2) after section 344, the following new Section shall be inserted, namely:-</p> <p>“344A. Punishment for wrongful confinement by a police officer or official:- Whoever being a police officer or official wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend for seven years and shall also be liable to fine.”</p>	<p>The proposal states that illegal confinement by a police officer should be made an offence, punishable with imprisonment and fine. It was pointed out that sections 340 to 348 of the PPC provide various punishments for the same offence, committed by any person including a police officer; and as such any special provision for police is uncalled-for. The Commission, therefore declined the proposal.</p>
<p>(4) in section 379, for the words “three years” the words “five years” shall be substituted;</p>	<p>The proposal seeks to enhance the punishment of theft from three years to five years. The Commission approved the proposal.</p>
<p>(5) after section 381A, the following new Section shall be inserted, namely:-</p> <p>“381B. Theft of cattle:- Whoever commits theft of a cattle shall be punished with imprisonment of either description for a term which may extend to seven years and with fine which shall not be less than twice the value of the stolen cattle payable to the owner or his heirs, as the case may be, as compensation.”</p>	<p>The proposal seeks to add a new offence of “cattle theft” to PPC, punishable imprisonment for upto seven years as well as fine, payable to the owner as compensation. The proposal was defended on the plea that the problem of cattle theft is acute, especially in the Province of the Punjab, hence the proposal is justified. It was, however, pointed out that Section 379 of the PPC adequately caters to such a need. Further, the proposed amendment will be in conflict with Section 544-A of the Cr.PC, which provides compensation in such cases to a victim. The Commission, therefore, declined the proposal.</p>
<p>(6) in section 420, for the word “seven” the word “ten” shall be substituted;</p>	<p>The proposal seeks to enhance the punishment of cheating and dishonestly inducing delivery of property through fraud or forgery from 7 years to 10 years imprisonment. It was agreed that the purpose of increase of sentence is to make the offence non-bailable. Sections 465 to 469 also relate to the issue and prescribe punishments. It was pointed out that increase in sentence from 7 years to 10 years may be abused by the police. The Commission therefore, declined the proposal.</p>

<p>(7) in section 441, after the word "annoy occurring twice, the words "or dispossess" shall be inserted;</p> <p>(8) in Section 447, after the word "punished" the commas and words "except in case of dispossession," shall be inserted and after the word "both", occurring at the end, the words "and in case of dispossession the offender shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.",</p>	<p>The proposal seeks to criminalize the act of dispossession from immovable property, the punishment prescribed is 10 years imprisonment plus fine. It was suggested that the word "dispossession" in the draft should be preceded by the word "illegally" and with this modification, the amendment was approved.</p>
<p>(9) in Section 468, for the word "seven" the word "ten" shall be substituted and after the word "years" the word "and if such offence has been committed in relation to immovable property the imprisonment shall not be less than seven years" shall be inserted.</p>	<p>The proposal seeks to enhance the punishment for forgery from 7 years to 10 years imprisonment with a minimum sentence of seven years for offence committed in relation to immovable property. It was observed that forgery is frequently resorted to and is a major instrument for the offence of cheating. The proposal was therefore approved.</p>
<p>03 Amendment of Act, V of 1898:- The following further amendments shall be made in the Code of Criminal Procedure, 1898 (Act, V of 1898), namely:-</p> <p>(1) In section 54, in sub-Section (1),-</p> <p>(a) in clause first, for the semicolon, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-</p> <p>"Provided that where a person is arrested on the basis of suspicion, such arrest shall be reported to the incharge of the police station concerned immediately for verification and if officer incharge of the police-station is satisfied of the grounds of arrest he shall record the same in writing."</p>	<p>The proposal seeks to curtail the powers of police to arrest, in order to save innocent persons from excesses of police. The proposal was approved subject to the observation that the proviso that arrest on suspension shall be reported to the Incharge of Police Station concerned, is no real or adequate safeguard to an innocent person, therefore the provision may be rephrased in a manner that such information shall be conveyed immediately to the area Magistrate, so that in case the person is innocent, he may be released forthwith.</p>

<p>(b) clause secondly shall be omitted; and</p> <p>(c) in clause fourthly, after the word "thing" at the end, the comma and words "in respect of which credible information has been received" shall be added;</p>	
<p>(2) section 154 shall be re-numbered as sub-Section (1) of that Section and after sub-Section (1) re-numbered as aforesaid the following new sub-Section shall be added, namely:-</p> <p>(2) Where an officer incharge of police station refuses to record information relating to the commission of a cognizable offence he shall be liable to prosecution under Article 155 of the Police Order, 2002."</p>	<p>The proposal seeks to punish the police officer who refuses to record FIR in cognizable cases, by making such police officer liable under Article 155 of Police Order, 2002. It was pointed out that no substantial offence can be created in procedural law and further that any such act, is already made punishable under the Police Order, 2002. The proposal was therefore not approved.</p>
	<p>Having said that, members were of the view that there are frequent complaints of denial of registration of FIRs by Police, even in serious cases. Further, the filing of FIR and the time factor is an important consideration for the Trial Court in decision. Delay in the filing of FIR operates against the victim and gives the benefit of doubt to the accused, therefore some check should be placed on the police or an alternate mechanism suggested ensuring that FIRs do not get delayed. The Commission therefore recommended that the proposal should be rephrased in a manner that in the event of the refusal by the police to file FIR, the complainant/informer may place such information before the area Magistrate, so that no undue delay is caused in the registration of FIRs.</p>

<p>(3) in section 155, after sub-Section (2), the following new sub-Section shall be added,</p> <p>“(2a) Where any person furnish information to a Magistrate of the first or second class of the commission of a non-cognizable offence having power to try such offence such Magistrate may direct the investigation to be conducted by police whether information under sub-section (1) has been given or not.”.</p>	<p>The proposal seeks to empower the Magistrate to direct investigation by the police in non-cognizable cases on receipt of information to move the police to take action and redress the grievance of the victim. After considering the pros and cons of the proposal, the Commission came to the conclusion that the proposal may not realize its stipulated objective; it therefore, deferred further consideration of the matter.</p>
<p>(4) in section 173, in sub-Section (1), in the proviso, after the word “commence” occurring at the end, the words “and if report is not submitted within the aforesaid period, the Court within next seven days shall pass an order directing that an entry of negligence and carelessness be made in the service record of the officer concerned;</p>	<p>The proposal states that in case the submission of Challan is delayed beyond the prescribed period, the Trial Court shall pass an order directing that entry of negligence to this effect be made in the service record of the concerned police officer. In the discussion, it was pointed out that perhaps the proposal is uncalled-for as the new Police Order, in Section 155 thereof, prescribes punishment of imprisonment for upto 3 years to a police officer, guilty of any willful breach or negligent of any provision of law or any rule, regulation or order or is guilty of any violation of duty. It was observed that as used to be the case in the past, the police officer should be obligated to conduct investigation timely, honestly and efficiently to secure conviction, failing which such officer should be taken to task on account of faulty/defective investigation. It was stated that the court can exercise an effective check on investigation under sections 173 and 344 of the Cr PC. The Commission therefore, declined the proposal.</p>

<p>(5) in Section 195:- (i) in clause (a), for the figures and word "172 to 188" the words, commas and figures "172, 173, 176 to 181, 183 to 188" shall be substituted; and (ii) in clause (b), after the word "Sections" the figures, letter, comma and word "167A, 174 and 175" shall be inserted;</p>	<p>The proposal empowers the court to take action against a witness for non-attendance or non-production of documents. The purpose is to reduce delays in trial. The Commission approved the proposal subject to the condition that section 167-A (disapproved by the Commission) may be deleted from clause (b) of Section 195 the draft.</p>
<p>(6) in Section 374, after the word "Court" at the end, the words "and the convict shall not be treated as condemned prisoner till confirmation of sentence and till such confirmation is made he shall not be confined in death cell but may be kept in high security Section earmarked for this purpose in jail;</p>	<p>The proposal states that condemned prisoners in so long as their sentence is not confirmed by the High Court should not be shifted to death cells. During deliberations, it was pointed out that the proposed amendment is misplaced in as much as the proper place to move such an amendment is the prison law/rules and not Cr PC. Furthermore, the security of prison inmates and more so condemned prisoners is a major issue for the Government and until such time that appropriate alternative arrangements are made for their custody, the present proposal may create problems. It was also mentioned that the issue of prisoners is a provincial subject, and it better be left to the Provincial Governments to settle. The Secretary, LJCP informed that the idea seems to have been borrowed from an earlier discussion paper, considered by the LJCP, when it decided that the opinion of the Provincial Governments on the issue be obtained. He stated that the response of the Provincial Governments is still awaited. The Commission therefore deferred further consideration of the matter until receipt of reply from the Provincial Governments.</p>

<p>(7) in Section 476, in sub-Section (1), for the word "may" the word "shall" shall be substituted;</p>	<p>The proposal stipulates that contempt proceedings u/s 195 of the Cr PC shall be mandatory conducted by the Court, rather than being referred to the concerned authority, so as to reduce /minimize the recurrence of such offence. The members observed that the proposed amendment will convert superior courts (Supreme Court, High Courts) into trial courts, which is undesirable. It was further contended that the proposed change of the word "may" to "shall" may not achieve the desired objective. The Commission therefore declined the proposal.</p>
<p>(8) in Section 497, in sub-Section (1), in the first proviso, the words "or any woman" shall be omitted and after the first proviso amended as aforesaid the following new proviso shall be inserted, namely:-</p> <p>“Provided further that a woman accused of such an offence shall be released on bail:</p> <p>Provided further that a woman shall not be so released if there appear reasonable grounds for believing that she has been guilty of an offence relating to narcotics, terrorism, murder, dacoity, robbery or harrabah and such offence is punishable with death or imprisonment for life or imprisonment for ten years, unless, having regard to the facts and circumstances of the case, the Court directs otherwise.”</p>	<p>The proposal seeks to provide additional safeguards to women in conflict with the law, by stipulating that offences other than an offence relating to narcotics, terrorism, murder, dacoity, robbery or Harrabah, punishable with death or imprisonments for life or imprisonment for 10 years shall be madeailable for women. Thorough scrutiny of the proposal however revealed that in actual fact it deprives women of such right, available under the proviso to Section 497 of the Cr.PC, and further that the courts do consider the issue sympathetically. The proposal was therefore disapproved.</p>

<p>(9) in Section 514, sub-Section (5) shall be omitted; and</p> <p>(10) In Schedule II,- (i) after Section 167 in column 1 and entries relating thereto in columns 2-8, the following new Section and entries relating thereto shall be inserted, namely:-</p>	<p>The proposal seeks to abolish the court's discretion to remit a portion of the penalty on forfeiture of bond. The members approved the amendment as it will force the sureties to ensure that the accused person regularly appears before the Court.</p> <p>These consequential amendments in Schedule II of Cr.PC were approved, except where substantive proposals to the effect are declined by the Commission.</p>
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1	2	3	4	5	6	7	8
167 A	Punish- ment impriso- nment for dis honest investigation	ditto	ditto	ditto	ditto	Imprisonme nt for three years, or fine, or both	Magistrate of first class.

<p>(ii) in the entry relating to Section 182 in column 1, in column 7, fore the figure and word "6 months" the words "five years" shall be substituted;</p> <p>(iii) after Section 344 in column 1 and entries relating thereto in columns 2 to 8, the following new Section and the entries relating thereto shall be inserted namely:-</p>	
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1	2	3	4	5	6	7	8
344 A	Punishment for wrong ful confinement by police	ditto	ditto	With out warant	Not bail-able	Imprisonment for seven years and fine	

<p>(iv) in the entry relating to Section 345 in column 1, in column 4, for the word "Ditto" the word "Summons" shall be substituted, in column 5 for the word "Ditto" the word "Bailable" shall be substituted and in column 8 for the word "Ditto" the words "Magistrate of the first or second class" shall be substituted;</p> <p>(v) in the entry relating to Section 379 in column 1, in column 7, for the figure "3" the figure "5" shall be substituted;</p> <p>(vi) after the entries relating to Section 381A in columns 1 to 8, the following new Section and the entries relating thereto shall inserted, namely:-</p>	
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1	2	3	4	5	6	7	8
381 B	Theft of cattle	ditto	ditto	ditto	ditto	Imprisonment of either description for seven years and fine	

<p>(vii) in the entry relating to Section 420 in column 1, in column 5, for the word "bailable" the word "Not bailable" shall be substituted and in column 7 for the figure "7" the figure "10" shall be substituted;</p> <p>(viii) in the entry relating to Section 447 in column 1,-</p> <p>(d) in column 4, after the words "Summons" the words "and Warrant if the offence has been committed to dispossess any person" shall be added, in column 5 after the word "bailable" the words "and Not bailable if the offence has been committed to dispossess any person" shall be added;</p> <p>(e) in column 7, after the word "both" the words "and ten years</p>	
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	<p>and fine if the offence has been committed to dispossess any person" shall be added;</p> <p>(f) in column 8 "for the words "any Magistrate" the words "Court of Session or the Magistrate of the first or second class" shall be substituted; and</p> <p>(ix) in the entry relating to Section 468 in column 1, in column 7, for the figure "7" the figure "10" shall be substituted.</p>	
04.	<p>Amendment of Section 20, Ordinance VII of 1979:- In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), in Section 20, after sub-Section (3), the following new sub-Section shall be inserted, namely:-</p> <p>"(3A) The offence under sub-Section (2) of Section 10 and Sections 13 and 14 shall be non-cognizable.</p>	<p>The proposal seeks to make the offence of Zina-bil-jabr liable to Tazir as well as the offence selling/buying a person for the purpose of prostitution, as non-cognizable. Perusal of the proposal reveals that the proposed measure will operate against the interest of women and are also out of context with the general law, whereunder an offence carrying major penalty such as imprisonment for life is cognizable. The members were of the view that far from protecting the women, the proposal will make them more vulnerable, the amendment was therefore disapproved.</p>
05.	<p>Amendment of Act, I of 1877.- In the Specific Relief Act,, 1877 (I of 1877), Section 9 shall be re-numbered as sub-Section (I) of that Section ; and-</p> <p>(i) before the first paragraph, the following new paragraph shall be inserted, namely:-</p> <p>"If it appears to the Court that nay party has within two months next before the date of filing of suit is shown to be wrongfully dispossessed, the Court may through an interlocutory order restore the possession to such party during the pendency of the case.", and</p>	<p>The proposal gives powers to the court to pass an interlocutory order, during the pendency of the case to restore possession to the party who has been unlawfully dispossessed within 2 months next before filing of suit. The court is required to decide the case in 6 months and is empowered to grant compensation to the plaintiff for any loss suffered due to any such unlawful dispossession. It was stated that in Sections 8 and 9 of the Specific Relief Act remedy is</p>

	<p>(ii) after sub-Section (1) re-numbered as aforesaid, the following new sub-Section shall be added, namely:-</p> <p>“(2) The Court shall decide the suit within six months and where it decrees the suit it shall grant such compensation as it deems fit having regard to the loss suffered by the plaintiff.”; and</p>	<p>available; hence the proposal was disapproved.</p>
06.	<p>Amendment of Act, VII of 1882.- In the Powers of Attorney Act., 1882 (VII of 1882), after Section 3 of the following new sections shall be inserted, namely:-</p> <p>“3A. Name of donee to be specified.- In the instrument creating the power of attorney authorizing the grantee to make gift of immovable property, there shall be specified the name of the donee in the instrument of power of attorney.</p> <p>3B. Period to be specified.- The instrument of creating power of attorney shall be valid for three years from the date of its execution and shall be renewable after every three years.”.</p>	<p>The proposal aims at amending the Powers of Attorney Act 1882 to prevent the abuse/misuse of powers of attorney. The Commission approved the addition to Section 3-A to the Act providing for the name of donee to be specified in the instrument of power of attorney. It however, declined to approve the addition of Section 3-B, which provides that the power of attorney shall be valid for 3 years only. The Commission pointed out that this will create a lot many problems and opens a Pandora box. As to the argument that the power of attorney is not meant for the sale/purchase of property, it was responded that such transaction are actually made through the power of attorney and the proposed amendment will create mischief and increase litigation. The addition of Section 3-B to the Act was therefore disapproved.</p>

07.	<p>Amendment of Act, V of 1908.- The following further amendments shall be made in the Code of Civil Procedure, 1908 (Act, V of 1908), namely:-</p> <p>(1) in Section 1, after sub-Section (3), the following new sub-section shall be added, namely:-</p> <p>“(4) The Code shall be so construed as to secure substantial, inexpensive and expeditious justice.</p> <p>(5) The Court may, in the interest of expeditious disposal of a case and to prevent abuse of the process of law, adopt any fair procedure not inconsistent with the provisions of this Code.”;</p> <p>(2) in Section 12, after sub-Section (2) the following new sub-Section shall be added, namely:-</p> <p>“(3) For the decision of an application under sub-Section (2), the Court may in the interest of expeditious disposal apply such fair procedure as the circumstances of the case warrant, and shall, unless for reasons to be recorded in writing it directs otherwise, order any fact to be proved or disproved by affidavit, and such affidavit shall be read as evidence.”;</p>	<p>The proposal aims at providing a permeable for the power of court to resort to alternative methods of dispute resolution, added through insertion of Section 89-A to the CPC. The Commission took the view that the preamble is too broad. It took exception to the clauses providing for “substantial” justice and “adopt any fair procedure not inconsistent with the provisions of the Code” and opined that such broad discretion to courts has the potential of being abused. It therefore approved the amendment subject to it being rephrased in a manner that the words “Substantial” and “adopt any fair procedure not inconsistent with provisions of the Code” are deleted.</p> <p>The proposal empowers the court to use any fair procedure in cases involving fraud or misrepresentation or want of jurisdiction and further to accept an affidavit to prove or disprove any fact on affidavit. It was pointed out that as per courts’ judgments, such petition is required to be treated as suit, and it leads to delay in disposal. It was stated out that section 12 (2) cannot hamper the quick disposal of petition, provided that the judge knows the law and is vigilant. If the petition is baseless or frivolous, it can be summarily dismissed. After deliberations, it was resolved that the proposed amendment will not achieve the desired goal, hence was disapproved. Instead, the Hon Chief Justices of High Courts may issue instructions to courts to this effect, emphasizing upon the need for quick disposal of such petitions in the light of judgment of the Supreme Court on the issue.</p>
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<p>(3) in Section 30, in clause (c), after the word "proved" the words "or disapproved" shall be inserted.</p> <p>(4) in Section 35,-</p> <p>(a) in sub-Section (1), for the words "to all suits shall be in discretion of the Court" the words "to all suits and other proceedings in the suit including an execution proceedings, shall follow the event, unless for reasons to be stated in writing the Court directs that any costs shall not follow the event" shall be inserted; and</p> <p>(b) for sub-Section (2), the following shall be substituted, namely:-</p> <p>"(2) Each party shall, within seven days of the completion of evidence, file in the Court a statement of the actual costs incurred by it, and to which it claims to be entitled. The statement shall include the fees paid to the counsel. If a party fails to file such a statement which the specified time or within the extended time granted by the court, it shall not whatever the result of the suit, be entitled the costs: Provided that notwithstanding the failure of the party to comply with this provision, the court may allow such costs as are ascertainable from the record."; and (d) after sub-section (3), the following new sub-section shall be added, namely:-</p> <p>"(4) Nothing in this section and in the principle that costs shall follow the event shall be construed to prevent the court at any stage of the suit or a proceeding in the suit from assessing the costs, and ordering their payment forthwith and from specifying the manner in which such costs shall be recoverable.";</p>	<p>(3) The provision empowers the court to order any fact to be proved or disproved by an affidavit. The amendment was approved.</p> <p>(4) The proposal seeks to curb false and vexatious claims by awarding compensatory costs as mandatory requirement and the maximum limit of such cost is enhanced from Rs. 25000/- to 100,000/-. After deliberations, the amendments to sections 35 to 35A were approved.</p>
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<p>(5) in section 35A,- (a) for sub-section (1), the following shall be substituted, namely:- “(1) If in any suit or a proceeding in a suit, including an execution proceeding, it appears to the court that the claim or defence, or any part of it, is false or vexatious or there was no probable or reasonable ground for making it, and such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the court may, after hearing the parties and for reasons to be recorded, make any order for the payment of such proportionate costs by way of compensation as warranted by the facts of the case. The court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purpose, including a direction that the costs shall be payable forthwith and recoverable in such manner as the court may specify.” and (b) in sub-section (2), for the words “twenty-five thousand”</p>	
<p>(6) in section 83, in sub-section (1), for the words “the Provinces” the word “Pakistan” shall be substituted; (7) in section 84, in sub-section (1), for the words “the Provinces” the word “Pakistan” shall be substituted; (8) for section 89A, the following shall be substituted, namely:- “89A. Alternate dispute resolution.- (1) In suits for partition or rendition of accounts or in a dispute in any other suit in which it appears to the Court that there is reasonable possibility of an amicable settlement between the parties, the Court shall, with a view to encouraging such a settlement, require the parties to have resort to one of the alternative dispute resolution methods, such as mediation, conciliation or arbitration.</p>	<p>The proposed amendment seeks to substitute the word “province” by the word “Pakistan”. The amendment is aimed at removing an anomaly in law and as such was approved. The provision provides for the use of alternative methods of dispute resolution in suits for partition or rendition of accounts or in any other dispute in a suit, it empowers the court to refer such suit or dispute for settlement through ADR using method such as mediation, conciliation or arbitration. The Commission thought that this is a beneficial provision and will facilitate in reaching an out-of-court settlement of disputes. It would reduce</p>

<p>(2) For the purposes of sub-section (1), the Court may refer the matter to retired Judges of Superior Courts or of subordinate Courts, technocrats having experience in the relevant field, or an eminent lawyer or any other person acceptable to both the parties, an Insaf Committee or a Musalihat Committee constituted under a Local Government Ordinance 2001, or the Ombudsman appointed under the said Ordinance.</p> <p>(3) A matter referred to a mediator, conciliator or an arbitrator, as the case may be, shall be disposed off by him within a period of ninety days, extendable for sufficient cause for another period of sixty days.</p> <p>(4) The Court shall pronounce judgment in terms of decision made as a result of mediation, conciliation or arbitration and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground of misconduct.-</p> <p>(5) On receipt of decision of a mediator, conciliator or arbitrator, as the case may be, the Court may on its own or on the application of either party examine the propriety or legality of the decision and may pass such order as it deems fit without recording any fresh evidence.</p> <p>(6) The Arbitration Act., 1940 (X of 1940) shall not apply to arbitration under this section.</p> <p>(7) Section 28 of the Contract Act, 1872 (IX of 1872), shall not apply to an agreement for the resolution of disputes by one of the alternative dispute resolution methods under this section.”;</p>	<p>pressure on courts, the Commission therefore approved the amendment subject to it being rephrased in a manner that the expression, “in which it appears to the court that there is reasonable possibility of amicable settlement between the parties” should be deleted from clause (1) of proposed Section 89-A.</p>
<p>(9) for section 95, the following shall be substituted, namely:- “95 Compensation, for obtaining arrest, attachment or injunction on insufficient grounds. (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last proceeding section, it appears to the court that such arrest, attachment or injunction was applied for insufficient</p>	<p>The proposed amendment provides that where any party to the suit obtains an order of temporary injunction or attachment before judgment on insufficient grounds, the court may grant punitive compensatory costs. The Commission approved the amendment.</p>

<p>grounds or that there was no reasonable or probable ground for making the application, the court may, on its own motion or on the application of the aggrieved party, award against the party at fault such punitive compensation as it deems reasonable to the aggrieved party for the expense and injury caused to him.</p> <p>(2) In addition to the compensation awardable under sub-section (1), the Court may also make an order directing the party at fault to pay such amount as penalty payable into Court for wasting public time and for abusing the process of the law, as the Court deems just.</p> <p>(3) An order under this section shall bar any suit for compensation in respect of such arrest, attachment or injunction.”;</p>	
<p>(10) in section 115, after sub-section (4), the following new sub-section shall be added, namely:-</p> <p>“(5) No proceedings in revision shall be entertained by the High Court against an order passed by the District Court under section 104.”;</p>	<p>The proposal provides that no revision shall lie against any order passed by the District Judge under Section 104. The members thought that the provision will merely increase the workload of the High Courts as such cases will be filed before the superior courts under the writ jurisdiction. The proposal was therefore disapproved.</p>
<p>(11) in section 151, after the word “Court” occurring for the first time, the commas and words”, to be exercised after recording reasons,” shall be inserted;</p>	<p>The amendment provides that the court while exercising its inherent power and making any order shall give reasons for the same. The amendment was approved.</p>

<p>(12) after section 151, the following new section shall be inserted, namely:-</p> <p>“151A. Powers of District Judge to issue directions.-</p> <p>(1) Without prejudice to any other law for the time being in force, the District Judge if satisfied that no other adequate remedy is provided by law, on an application by an aggrieved person or on his own motion, may direct any holder of public office within the District to refrain from doing anything which is not permitted by law or to do anything or perform his duty in accordance with law to provide relief and remedies to the citizens at local level.</p> <p>Explanation.- For the purpose of this section, the expression ‘holder of public office means’,-</p> <p>(v) all functionaries and officials of the District Government, a city District Government, a Zila Council, Tehsil Municipal Administration, Tehsil Council, Town Municipal Administration and Town Council; and</p>	<p>The proposal aims at the addition of new Section 151-A empowering the District Judge to issue directions of the nature of writ of mandamus and prohibition against public functionaries. It was thought that the proposal is uncalled-for in view of the similar power available to High Courts under Article 199. The members thought that this could lead to the abuse of process of law and what would unnecessarily add to the burden of the District Judge, as such the proposal was disapproved.</p>
<p>(vi) officials of the Federal Government, Provincial Government and statutory bodies owned or controlled by any such Government, who by virtue of their duties are performing functions within the district.”;</p> <p>(2) The revision would lie to the High Court against an order passed by the District Judge under sub-section (1) and no appeal shall lie against such order.”</p>	
<p>(13) in the First Schedule,- (a) in Order V,-</p> <p>(i) in rule 2, after the word “statement” the words “along with the copies of all documents which have been produced by the plaintiff” shall be inserted;</p>	<p>The proposal provides for simplifying the procedure for summons by adopting all possible means available for effective service on parties and was approved.</p>

<p>(ii) in rule 10-A, for sub-rule (1), the following shall be substituted, namely:- “(1) Service by post, etc.- Simultaneously with the issue of summons under rule 9, there shall be sent, unless otherwise ordered by the Court, another copy of summons signed and sealed in the manner provided in rule 10 to the defendant by,- (a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain; (b) any electronic device of communication which may include telegram, phonogram telex, fax, radio and television; (c) urgent mail service or public courier services; (d) registered post, acknowledgment due; (e) beat of drum in the locality where the defendant resides; (f) publication in newspaper having wide circulation in area where service is to be effected; and (g) any other manner or mode as it may deem fit.”;</p>	<p>(1) After section 131, the following section shall be inserted, namely:- “131A. Powers of District Judge. (1) Without prejudice to any power which he may have as a District Judge, he may, if satisfied that no other mode is provided by law for the service of a summons, order the service of a summons by any of the modes specified in sub-rule (1) of rule 10-A of the Code of Civil Procedure, 1908, or by any other mode as it may deem fit.”</p>
<p>(iii) after sub-rule (2), the following new sub-rule shall be inserted, namely:- “(3) Service of summons in the manner provided in sub-rule (1) shall be as effectual as if it had been made on the defendant personally.”; and (iv) rule 20 shall be omitted.</p> <p>(b) in Order VII, in rule 10, after sub-rule (2), the following new sub-rule shall be added, namely:- “(3) If the plaint is returned, after the appearance of the defendant, the Court shall make an order, as to the appropriate costs to be paid by the plaintiff, for presenting the plaint in wrong forum, to such defendant on filing of the fresh suit.”;</p>	<p>(2) After section 131, the following section shall be inserted, namely:- “131B. Powers of District Judge. (1) Without prejudice to any power which he may have as a District Judge, he may, if satisfied that no other mode is provided by law for the service of a summons, order the service of a summons by any of the modes specified in sub-rule (1) of rule 10-A of the Code of Civil Procedure, 1908, or by any other mode as it may deem fit.”</p>

<p>(c) in Order VIII, in rule I, in the proviso the word "ordinarily" shall be omitted;</p>	<p>The proposal makes it mandatory for the defendant to file written statement within stipulated period of 30 days. After consideration of the pros and cons of the matter, the Commission approved the proposal subject to a change that the period of 30 days may be increased to 45 days.</p>
<p>(d) in Order XIII, in sub-rule 3, for the word "may" occurring for the first time, the word "shall", shall be substituted.</p>	<p>The amendment makes it obligatory on the court to reject any document which it considers irrelevant or inadvisable. The proposal was approved.</p>
<p>(e) in Order XIV, in rule 1, after sub-rule (4), the following new sub-rule shall be added, namely:- "(4a) After the filing of written statement both the parties shall, within seven days, file proposed issues which are based on material proposition of fact and law.";</p>	<p>It has been proposed that the parties shall file list of proposed issues within 7 days with a view to reduce delay. The Commission thought the proposal to be impractical, hence disapproved.</p>
<p>(f) in Order XVI, for sub-rule (1), the following shall be substituted, namely:- "(1) Not later than seven days after the settlement of issues the parties shall present in Court a list of witnesses along with affidavit of witnesses, containing their evidence, so far as it is applicable";</p>	<p>The proposal is an attempt to reduce delay in recording evidence. It is proposed that after framing the issues, within 7 days, the parties should produce affidavit of their witnesses containing their evidence which shall be treated as examination in chief. The proposal further states that only two adjournments can be given in a case subject to payment of costs. Having examined the proposal, the Commission thought it to be impractical and unhelpful, therefore disapproved.</p>
<p>(g) in Order XVII,- (i) for rule I, the following shall be substituted, namely:-</p>	

"1. Court may grant time and adjourn hearings.-

(1) The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or any of them:

Provided that the Court shall not grant more than two adjournments to the parties or any of them and except on payment of costs occasioned by such adjournment.

(2) Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1) the Court shall proceed with the suit forthwith.";

(ii) after rule 1, substituted as aforesaid, the following new rule, shall be inserted, namely:-

"Day-to-day hearing of evidence.- 1A.

The hearing of evidence shall be continued from day to day until the completion of evidence in the suit, unless the Court finds the adjournment beyond the following day to be necessary adjourn such hearing for reasons to be recorded."; and

(iii) for rule 3, the following shall be substituted, namely:-

"3. Where any party to a suit fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other Act, necessary to the further progress of the suit, the Court may, notwithstanding such failure, proceed to decide the suit forthwith.";

(h) in Order XVIII, for rule 4, the following shall be substituted, namely:-

"4. Witnesses to be examined.- The affidavits of the witnesses having been filed by the parties shall be taken to be the examination-in-chief and the witnesses in attendance shall be cross-examined in open Court in the presence and under the personal direction and superintendence of the Judge.";

<p>(i) In Order XIX, in rule 1,- (a) after the word "proved" the words "or disproved" shall be inserted; and (b) in the proviso, for the words "and order shall not be made authorizing the evidence of such witness to be given by affidavit", the words "the Court may order the attendance for cross examination of the deponent" shall be substituted.</p> <p>(j) in Order XX, in rule 1, in sub-rule(1), for the words "fix a date" the words "provide a single opportunity" shall be substituted;</p> <p>(k) in Order XXVI, in rule 1,- (i) for the marginal heading, the following shall be substituted, namely:- "Examination of witnesses through commission"; and</p> <p>(ii) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:- "Provided that in a suit for partition and rendition of accounts the Court shall issue the commission for examination of witnesses."; and</p> <p>(l) in Order XXXIX, in rule 3,- (i) after the word "party" the words "and any injunction granted without notice shall be of no legal effect" shall be inserted; and (ii) in the first proviso, after word "demolition" the words "dispossession or alienation shall be inserted and for the</p>	<p>The amendment provides that only a single opportunity be given to parties to advance arguments. The Commission thought that for unavoidable reasons, adjournment may be granted on payment of cost. The proposed amendment will be unhelpful, hence disapproved.</p> <p>It is proposed that in order to curtail delay in trial, in the suits for partition and rendition of accounts, the examination of witnesses shall be recorded through commission. The proposal was approved.</p> <p>The amendment is proposed to discourage temporary injunctions. It states that a stay order without notice to other party except in cases of demolition, dispossession and alienation, would be of no legal effect.</p>
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	word "premises" the word "property" shall be substituted.	The Commission thought the proposal to be impractical leading to problems, therefore was disapproved.
	<p>8. Amendment of Act, XVI of 1908.- In the Registration Act, 1908 (XVI of 1908), in section 17, in sub-section (1), after clause (e) the following new clauses shall be inserted, namely:-</p> <p>"(f) agreement to sell relating to immovable property and the stamp duty paid at the time of registration of agreement to sell shall be deductible at the time of registration of sale deed;</p> <p>(g) power of attorney when authorizing the attorney to sell any immovable property."</p>	The proposal seeks to amend the Registration Act to make "agreement to sell relating to immovable property" and "the power of attorney when authorizing the attorney to sell an immovable property" as compulsorily registerable under Section 17 of the Act. The amendment was approved.