

PAKISTAN LAW COMMISSION

EIGHTH REPORT

1. **ELIMINATION OF FALSE EVIDENCE
FROM THE JUDICIAL SYSTEM**
2. **AMENDMENT IN CRIMINAL PROCEDURE
CODE, 1898**
3. **OATH ACT 1873**
4. **LAW REPORTS ACT 1875**

ELIMINATION OF FALSE EVIDENCE **FROM THE JUDICIAL SYSTEM**

A meeting of the Pakistan Law Commission was held on 8th December, 1983, to consider the proposal of Mr Justice Muhammad Munir Khan, as incorporated in the Eighth Report of the Pakistan Law Commission on Elimination of False Evidence from Judicial System.

2. The proposal of Mr. Justice Muhammad Munir Khan, a Judge of the Punjab High Court, pointing out certain flaws in section 476 and section 382-A of the Criminal Procedure Code, 1898, was forwarded to the Commission's Secretariat by the Hon'ble Mr Justice Dr Javid Iqbal, Chief Justice of Punjab, suggesting that a meeting of the Commission be convened to consider the said proposal. The said provisions of the law are reproduced below:-

"382-A. Notwithstanding anything contained in section 383 or 391, where the accused ----

- (a) is awarded any sentence of imprisonment under Section 476, or
- (b) is sentenced in cases other than those provided for in section 381, to imprisonment, whether with or without fine or whipping, for a period of less than one year,

the sentence shall not, if the accused furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, be executed, until the expiry of the period prescribed for making an appeal against such sentence, or, if an appeal is made within

that time, until the sentence of imprisonment is confirmed by the Appellate Court; but the sentence shall be executed as soon as practicable after the expiry of the period prescribed for making an appeal, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence."

"476-(1) When any offence referred to in section 195, sub-section (1), clause (b) or clause (c), has been committed in, or in relation to, a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII.

(2) When in any case tried under sub-section (1), the Court finds the offender guilty, it may, notwithstanding anything contained in sub-section (2) of section 262;-

(a) pass any sentence on the offender authorised by law for such offence, except a sentence of death, or, imprisonment for life, or imprisonment exceeding five years, if such Court be a High Court, a Court of Session, a District Court or any Court exercising the power of a Court of Session or a District Court;

(b) sentence the offender to simple imprisonment for a term which may extend to three months, or to pay a fine not exceeding one thousand rupees, or both, if such Court be a Court of a Magistrate of the first Class, a Civil Court other than a High Court, a District Court, or a Court exercising the powers of a District Court, or a Revenue Court not inferior to the Court of Collector;

- (c) sentence the offender to simple imprisonment for a term not exceeding one month, or to pay a fine not exceeding fifty rupees, or both, if such Court be a Criminal Court or a Revenue Court other than a Court referred to in clause (a) or clause (b)."

3. Mr. Justice Muhammad Munir Khan has observed that the provisions of the law as contained in section 476 indicate that a perjurer when tried summarily by a Magistrate of the first class, a Civil Court other than a High Court, a District Court or a Court exercising the powers of a District Court can be punished only to simple imprisonment and that, too, for not more than three months, although the offences relating to perjury i.e. sections 193 and 194 of the Pakistan Penal Code, 1860, are punishable with seven years and ten years R.I., respectively. The provisions of the law contained in section 382A (a) of Cr.P.C., says Mr. Justice Muhammad Munir Khan, further circumscribe the powers of a Court including High Court and Court of Sessions while awarding any sentence of imprisonment under section 476 Criminal Procedure Code, as it can not remand the convict to custody and shall have to release him on bail, if he furnishes bail to the satisfaction of the Court, until the expiry of the period prescribed for making an appeal against such sentence or if an appeal is made within that time until the sentence of imprisonment is confirmed by the Appellate Court. Thus if a delinquent is convicted and simultaneously released on bail, the very object of the summary trial and punishment i.e. prevention of perjury stands frustrated, particularly when the disposal of appeal against that order may take years, Mr. Justice Muhammad Munir Khan has, therefore, proposed that :-

- i) Clause (a) of section 382A of Criminal Procedure Code be deleted; and
- ii) suitable amendment be made in section 476 of Criminal Procedure Code so as to empower a Magistrate of the first class, a Civil Court other than a High Court or

a District Court to award adequate and deterrent sentence keeping in mind that the offences under sections 193 and 194 of the Pakistan Penal Code are punishable with seven years and ten years R.I., respectively.

4. The said proposal of Mr. Justice Muhammad Munir Khan as incorporated in the Eighth Report was circulated amongst the Members of the Commission for comments. The Hon'ble Mr. Justice C.A. Rahman, Law Secretary, while sending his comments on the said Report also enclosed a Note of the Law Division on the subject of perjury, suggesting that the same may be placed along with the Report before the Law Commission for consideration. Thus this note was also included in the Agenda of the meeting at a later stage.

5. With regard to the proposed amendment of Mr. Justice Muhammad Munir Khan, suggesting deletion of clause (a) of section 382A of Criminal Procedure Code, the Commission observed that existing section 476 of the said Code was substituted for the old section 476 by the Law Reforms Ordinance, 1972 and while conferring powers on the Courts to try offences referred to in clauses (b) and (c) of sub-section (1) of section 195 of Criminal Procedure Code, if committed in or in relation to a proceeding in any Civil, Revenue or Criminal Court by following the procedure prescribed for summary trial in Chapter XXII, it was found necessary that the sentence to be awarded by these courts should not be executed until it was confirmed by the Appellate Court, because the above powers given to the Courts were of extraordinary nature and a radical departure had been made from the procedure followed in the trial of offences in which cognizance is taken by a Court upon its own knowledge (section 191 Cr.P.C. refers). That being so, the provision regarding postponement of execution of sentence till after its confirmation by the Appellate Court is very salutary and is manifestly dictated by rule of abundant caution. It is intended to guard against a possible miscarriage of justice which may

arise from trial of the case by a biased court and is calculated to promote confidence in the administration of justice. What is more, that most of the offences that fall within the purview of section 476 of Criminal Procedure Code are bailable and there is no good reason to make the same non-bailable or as proposed, to create a clog on the powers of the Court to grant bail, particularly when the Appellate Courts are free to grant bail. For the aforesaid reasons the Commission reached the conclusion that the amendment proposed in clause (a) of section 382 A of Criminal Procedure Code is not called for.

6. With regard to the amendment proposed in section 476 of Criminal Procedure Code, the Commission was of the view that instead of increasing the term of imprisonment, the punishment of Whipping and Proclamation (Tash'eer) be added in the relevant provisions of Criminal Procedure Code and the Pakistan Penal Code, which the Commission observed, will have a more deterrent effect in curbing the offence of perjury. At this stage the Law Division's note on the subject of perjury, the relevant portion of which is reproduced below was also referred to:-

- (i) "If perjury is committed for damaging another person then he can be punished with whipping, imprisonment or with both according to the gravity of intended damage.
- (ii) If the witness himself makes a rajoo from his evidence on account of repentance (Touba) then there will be no such punishment.

- (iii) However, in any of the two cases, a proclamation shall be made at the place where the witness who told a lie lives that such and such person had committed perjury.
- (iv) According to Imam Abu Hanifa only such proclamation is a sufficient punishment. However, Imam Abu Yousaf, Imam Mohammad, Imam Malik, Imam Shafi and Imam Hanbal lay stress on such proclamation as also on the said Tazir punishment.
- (v) However, based on the Quranic Command and Ahadis of the Holy Prophet (Sallallah-o-Alaih-e-Wassalam) the act of perjury is a great sin. Keeping this in view Hazrat Umar(Almighty Allah may be pleased with him) was pleased to order that a person committing perjury may be whipped and also proclaimed as such".

7. The Commission after lengthy discussion on the subject has resolved to recommend the following amendment in the relevant provisions of the Pakistan Penal Code and the Criminal Procedure Code:-

"The punishment of whipping not exceeding thirty nine stripes and proclamation (Tash'eer) as prescribed by the Provincial Government under the Rules, shall be added in,-

- (a) section 193,194,195,196,199,200,205,209 and 211 of the Pakistan Penal Code,1860;

- (b) section 471,475 and 476 of the Pakistan Penal Code,1860,in respect of any offence described in the aforesaid sections of the said Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding; and
- (c) clauses (b) and (c) of sub-section (2) of section 476 of the Criminal Procedure Code 1898".

8. In addition to the aforesaid amendment, the Hon'ble Chief Justices of the Provincial High Courts have also agreed to issue following instructions, namely:

"In case of conviction of a person for an offence of perjury by following the procedure laid down under section 476 of the Criminal Procedure Code, the appeal against such conviction as well as the appeal in the main case, if any, shall be heard and disposed of within the specified time".

9. Besides the aforesaid recommendations on the subject of perjury,the following matters although not included in the Agenda of the meeting were taken up with the permission of the Hon'ble Chairman and the recommendations made in respect thereof.

BAIL UNDER THIRD PROVISIO TO SUB-SECTION (I) OF SECTION 497 CR.P.C. 1898.

10. The Hon'ble Mr Justice S.Usman Ali Shah, Chief Justice, Peshawar High Court, drew attention of the Commission to practical difficulties being faced by the Courts in certain cases in the matter of grant of bail under the third proviso to sub-section (1) of section 497 of Criminal Procedure Code, under which an accused under detention becomes entitled to bail as a matter of right after expiry of the specified period. The Hon. Chief Justice also read over a note in this regard, the relevant parts of which may be reproduced with advantage:-

"Perusal of the aforesaid provision indicates that the accused person shall be released on bail as a matter of right subject to the fulfillment of the requirements of law as laid down in this newly inserted third proviso. These requirements are-

- (i) his continuous detention for a period exceeding one year if involved in an offence not punishable with death or for a period exceeding two years if involved in an offence punishable with death and whose trial in both the events has not been concluded;

- (ii) the delay in trial has not been occasioned by an act or omission on part of the accused or any other person acting on his behalf, which in other words mean that in the event of delay on his part or any person acting on his behalf, he would not be entitled to bail.

Many situations can possibly crop up wherein it would be seen whether the accused shall be released on bail or otherwise. Each case needs to be decided on its own merits. In the event of slackness of prosecution agency in timely completion of trial of the accused the latter must be given the benefit of the newly added provision of law and if the former is prompt in the performance of its duty then it shall neither be blamed and in that event neither the accused be given the benefit of bail. There might arise a situation in which neither party is found at fault but in spite of that the trial is not concluded within the period mentioned in law and these situations can be imagined as under:-

- (1) non-availability of Presiding Officer of the Court for a considerable period due to many reasons such as illness, engagement in connection with other duties, detailment on a course of Training, termination, removal, dismissal from service etc.;
- (2) non-availability of record to the trial Court for trial of any absconding accused who may have been arrested during the pendency of a Murder Reference or appeal/leave to appeal filed by his co-accused pending in a superior Court in which record may have been summoned by the superior Court; and
- (3) any other reason, either singly or connected with other factors, which may hamper the investigation or trial of an offender.

In the event of above and for similar other reasons the Presiding Officer of the Court has to decide whether the accused shall be released on bail or not. The addition of the third proviso to sub-section (1) of section 497, by employing the word "shall" therein appears to have taken

away such discretion from the Court once it is established that the statutory delay has occurred in the conclusion of the trial without the fault of the accused or any other person acting on his behalf. There may, however, be a case of an absconder, particularly in this Province and the Province of Baluchistan where tribal area is situated next door, who after arrest may have remained in detention for more than the period prescribed in the third proviso without his trial having been concluded because of one or the other reason mentioned above, and in the circumstances of the case it may not be desirable to release him on bail, for instance in a case where his co-accused may have been awarded death sentence by the trial Court which may have been confirmed by the High Court and the application for leave to appeal/appeal may be pending before the Supreme Court, but in presence of the third proviso such absconder can also forcefully claim bail from the Court. Where in such a case bail is granted the accused who earlier remained in abscondence shall certainly become fugitive from law and would thereby make himself unavailable for any other action which may be required to be taken against him."

11. The Commission taking into view the above note and other relevant factors and situations observed that many accused persons who ought not to be granted bail for one reason or the other automatically become entitled to grant of bail under the third proviso to sub-section (1) of section 497 of Criminal Procedure Code, which it is felt, may create difficult situation for the law enforcing agencies and hamper the smooth running of administration of justice. The Commission is, therefore, of the view that the period of detention after which an accused person becomes entitled to bail may be raised from one year to two years where he is involved in a case not punishable with death and from two years to three years where he is involved in a case punishable with death. The Commission has accordingly resolved to recommend the following amendment in section 497 of the Criminal Procedure Code, 1898, namely:-

"In section 497 Cr.P.C, in sub-section (1), in the third proviso,-

- (i) in clause (a), for the words "one year" the words "two years" shall be substituted;
and
- (ii) in clause (b), for the words "two years" the words "three years" shall be substituted".

FORM OF OATH UNDER SECTION 7 OF THE OATHS ACT, 1873.

12. The Hon'ble Mr Justice S.Usman Ali Shah, Chief Justice Peshawar High Court, drew attention of the Commission to the amendment made in the Oaths Act, 1873, by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), whereby section 6 of the said Act was substituted by new section to read as under:-

- "6.- Oath by a Muslim or by a non-Muslim who has no objection.- (1) Where the witness or interpreter is a Muslim he shall make an Oath.
- (2) Where the witness or interpreter is not a Muslim, he shall make an Oath or, if he has an objection to making an Oath,an affirmation".

13. Mr Justice S.Usman Ali Shah pointed out that as a result of the said amendment a new form of Oath is to be prescribed by a High Court under section 7, which has not been prescribed so far. All the four Chief Justices of the Provincial High Courts present in the meeting have, therefore, decided to prescribe the following form of Oath, namely:-

"I swear by Allah Almighty that I will give true evidence and if I give false evidence, I would thereby invoke curse and wrath of Allah on me".

TRANSLATION

**PUBLICATION OF LAW REPORTS UNDER
THE LAW REPORTS ACT, 1875:**

14. The Hon'ble Member Sh Ghias Muhammad invited attention of the Commission to the fact that in certain cases it has been noticed that the Law Reports of the Courts have either been altered or forged or promiscuously published due to lack of proper control and supervision on the publication of these reports. He, therefore, proposed that the Law Commission may take over the supervision of the publication of the Law Reports in order to ensure their authenticity. The Commission agreeing with his proposal, has resolved to also recommend the following amendment in the Law Reports Act, 1875, namely:-

After section 3, the following new section shall be added, namely:-

"3A.-No publication containing reports of a judgment or an order of any Court shall be authorised by any Government without prior approval of the Law Commission which may scrutinize and ban any such publication, including the existing publication".