

Amendment of Sections 400, 401 & 402 of the Pakistan Penal Code 1860
(Act XLV of 1860)

Report No. 95

(-)

AMENDMENT OF SECTIONS 400, 401 AND 402 OF THE PAKISTAN PENAL CODE, 1860 (ACT XLV OF 1860)

The Pakistan Penal Code, 1860 (Act XLV of 1860), was made on the 6th October, 1860, which was adopted after separation to provide a general penal code for Pakistan.

2. Sections 400, 401 and 402 of the Pakistan Penal Code, 1860 (XLV of 1860), hereinafter referred to as the said Code, provide for punishment for belonging to gang of dacoits, gang of thieves and assembling for purpose of committing dacoity, respectively, as under:-

Section 400: Punishment for belonging to gang of dacoits.- Whosoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 401: Punishment for belonging to gang of thieves.- Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Section 402: Assembling for purpose of committing dacoity.- Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

3. From plain reading of the provisions of sections 400, 401 and 402 *ibid* it transpires that the phrase “at any time after the passing of this Act” reflects that the offences defined in said sections were newly introduced at the time of making of the said Code. Therefore, in the said sections, the phrase “at any time after the passing of this Act” may have been relevant at the time when the said Code was made. However, at present, after the passage of almost 146 years, the retention of the aforesaid phrase in sections 400, 401 and 402 *ibid* does not appear necessary.

4. Moreover, in case the phrase “at any time after the passing of this Act” is omitted in sections 400, 401 and 402 *ibid*, there shall not occur any change in the meaning of the text of the said sections. However, it is certain that the text of the said sections shall be simplified and shall become more clear.

5. In addition, from legislative drafting point of view, in the above referred sections, the phrase “at any time after the passing of this Act” is unnecessary and the same no longer serve any useful purpose.

Conclusion:

In view of the foregoing, in sections 400, 401 and 402 of the Pakistan Penal Code, 1860, the phrase “at any time after passing of this Act” is unnecessary.

Legislative proposal:

In the light of the foregoing discussion, it is suggested that in the Pakistan Penal Code, 1860 in section 400, 401 and 402 PPC the commas and words“, at any time after the passing of this Act, “may be omitted;

Comparative table of existing provisions and proposed amendment follows:

Comparative Table

| Existing provisions. | Amended provisions. |
|---|---|
| 400. Punishment for belonging to gang of dacoits.- Whosoever, <u>at any time after the passing of this Act</u> , shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. | 400. Punishment for belonging to gang of dacoits.- Whosoever shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. |
| 401. Punishment for belonging to gang of thieves.- Whoever, <u>at any time after the passing of this Act</u> , shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. | 401. Punishment for belonging to gang of thieves.- Whoever shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. |
| 402. Assembling for purpose of committing dacoity.- Whoever, <u>at any time after the passing of this Act</u> , shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. | 402. Assembling for purpose of committing dacoity.- Whoever shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. |

Commission's deliberations

The working paper was considered by the Commission in its meeting held on 27.7.2007 and the following are the deliberations:-

The Commission considered the proposal of the Secretariat that the words "at any time after passing of this Act" used in sections 400, 401 and 402 of the Pakistan Penal Code 1860 have become obsolete/redundant after passing of period of about one and half century and now the commission of the offence under the said sections have no relevance with the exception provided to the offences of the period before passing of the Act. The Commission therefore, approved the omission of the words "at any time after passing of this Act" from all the three sections of the Pakistan Penal Code.