

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the Provincial Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Provincial Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) [Omitted by A.O. 1949].

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, Sub-divisional Magistrate [or any other Executive Magistrate] especially empowered in this behalf by the Provincial Government or the District Magistrate.

175. Power to summon person. (1) A Police-officer proceeding under section 174, may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

176. Inquiry by Magistrate into cause of death. (1) When any person dies when in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Power to disinter corpses. Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

PART VI - PROCEEDINGS IN PROSECUTIONS

CHAPTER XV - OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

A. Place of Inquiry or Trial

177. Ordinary place of inquiry and trial. Every offence shall ordinarily be inquired in and tried by a Court within the local limits of whose jurisdiction it was committed.

178. Power to order cases to be tried in different sessions divisions. Notwithstanding anything contained in section 177, the Provincial Government may direct that any cases or class of cases [in any district sent for trial to a Court of sessions] may be tried in any sessions division:

[Provided that such direction is not repugnant to any direction previously issued by the High Court under section 526 of the Code or any other law for the time being in force]

179. Accused triable in district where act is done or where consequence ensues. When a person is accused of the commission of any offence by reason of anything which had been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

Illustrations

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z, The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z unable in the local limits of the jurisdiction of either Court Y, or court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within local limits of jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court. Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(d) A is wounded in the State of Junagadh, and dies of his wounds in Karachi. The offence of causing A's death may be inquired into and tried in Karachi.

180. Place of trial where act is offence by reason of relation to other offence. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be Inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

181. Being a thug or belonging to a gang of dacoits, escape from custody, etc. (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

(2) **Criminal misappropriation and criminal breach of trust.** The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

(3) **Theft.** The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(4) **Kidnapping and abduction.** The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

182. Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts. When it is uncertain in which or several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one, and continues to be committed in more local areas than, one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

183. Offence committed on a journey. An offence committed whilst the offender in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

184. Offences against Railway, Telegraph, Post Office and Arms Acts. [Rep. by the Federal Laws (Revision and Declaration) Act, 1951 (XXVI) of 1951), S. 3 and Second Schedule.]

185. High Court to decide, in case of doubt, district where inquiry or trial shall take place. (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High court, upon the matter having been brought to Its notice, does not so decide any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued.

186. Power to issue summons or warrant for offence committed beyond local jurisdiction. (1) When a [District Magistrate, a Sub-Divisional Magistrate, or, if he is specially empowered in this behalf by the Provincial Government, a Magistrate of the first class], sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without Pakistan) an offence which cannot, under the provisions of section 177 to 184 (both inclusive), or any other law for the time being in force be inquired into or tried within such local limits, but is under some law for the time being in force triable in Pakistan such Magistrate may inquire into the offence as if it had been committed within such local limits and compel such person in manner hereinbefore provided to appear before him, and send such person to Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

(2) When there are more Magistrates than one having such jurisdiction and Magistrate acting under the section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case, shall be reported for the orders of the High Court.

187. Procedure where warrant issued by subordinate Magistrate. (1) If the person has been arrested under a warrant issued under section 186 [the Magistrate issuing the warrant shall send the arrested person to the Sessions Judge] to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued,

(2) If the offence with which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

188. Liability for offences committed outside Pakistan. When a citizen of Pakistan commits an offence at any place without and beyond the limits of Pakistan, or when a servant of the State (whether a citizen of Pakistan or not) commits an offence in [a tribal area,] when any person commits an offence on any ship or aircraft registered in Pakistan wherever it may be, he may be dealt with in respect of such offence as if it had been committed at any place within Pakistan at which he may be found:

Political Agents to certify fitness of inquiry into charge. Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be inquired into in Pakistan unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge, ought to be inquired into in Pakistan; and, where there is no Political Agent, the sanction of Federal Government shall be required.

Provided, also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in Pakistan shall be a bar to further proceedings against him under the [Extradition Act, 1972,] in respect of the same offence in any territory beyond the limits of Pakistan.

189. Power to direct copies of depositions and exhibits to be received in evidence. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Provincial Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Courts might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B. Conditions requisite for initiation of proceedings.

190. Cognizance of offences by Magistrates. (1) Except as hereinafter provided, [any District Magistrate or a Sub-Divisional Magistrate or any other Magistrate specially empowered in this behalf] by the Provincial Government on the recommendation of High Court may take cognizance of any offence:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion that such offence has been committed.

[(2) The Provincial Government may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or send to the Court of Session for trial:

Provided that in case of Judicial Magistrate, the Provincial Government shall exercise this power on the recommendations of the High Court.]

[(3) A Magistrate taking cognizance under sub-section (1) of an offence triable exclusively by a Court of Session shall, without recording any evidence, send the case to Court of Session for trial.]

[191. Transfer on application of accused. When a Magistrate takes cognizance of an offence under subsection (1), clause (c) of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and, if the accused or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be [sent] to the [in the case of Judicial Magistrate to the Session Judge and in the case of Executive Magistrate to the District Magistrate] for transfer to another Magistrate.]

[192. Transfer of cases by Magistrate. (1) Any District Magistrate, or Sub-Divisional Magistrate may transfer any case of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him;

[Provided that if the offence is triable by a Judicial Magistrate the case shall be sent to the Court of Session for transfer to such Magistrate.]

['(2) Any District Magistrate may empower any Executive Magistrate subordinate to him, who has taken cognizance of any case, to transfer such case for inquiry or trial to any other Executive Magistrate in his district who is competent under this Code to try the accused; and such Magistrate may dispose of the case accordingly'; and

'(3) A Sessions Judge may empower any Judicial Magistrate who has taken cognizance of any case, to transfer such case for trial to any other Judicial Magistrate in his district and such Magistrate may dispose of the case accordingly.')

193. Cognizance of offences by Courts of Sessions. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction [unless the case has been sent to it under section 190 sub-section (3).

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Provincial Government by general or special order may direct them to try, or as the Sessions Judge of the division, by general or special order, may make over to them for trial.

194. Cognizance of offences by High Court. (1) The High Court may take cognizance of any offence [.....] in manner hereinafter provided. Nothing herein contained shall be deemed to affect the provisions of any Letters Patent or Order by which a High Court is constituted or continued, or any other provision of this Code. [*****]

195. Prosecution for contempt of lawful authority of public servants; Prosecution for certain offences against public justice: Prosecution for certain offences relating to documents given in evidence. (1) No Court shall take cognizance:

(a) of any offence punishable under sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate.

(b) of any offence punishable under any of the following sections of the same Code namely sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate, or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding i.e. any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clause (b) and (c) of the sub-section (1), the term 'Court' includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the [Registration Act, 1908].

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decree no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate: Provided that:

(a) where appeals lie to more than one Court, the appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceedings in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offence, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause(a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and if it does so. it shall forward a copy or such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

196. Prosecution for offences against the State. No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Pakistan Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Central Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments.

196-A. Prosecution for certain classes of criminal conspiracy. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Pakistan Penal Code.

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the Central Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence, or a cognizable offence not punishable with death or [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, unless the Provincial Government, or a District

Magistrate empowered in this behalf by the Provincial Governments, has by order in writing, consented to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary.

196-B. Preliminary inquiry in certain cases. In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).

197. Prosecution of Judges and public servants. (1) When any person who is a Judge within the meaning of section 19 of the Pakistan Penal Code or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Central Government or a Provincial Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:

(a) in the case of a person employed in connection with the affairs of the Centre, of the President; and

(b) in the case of a person employed in connection with the affairs of a Province, of Governor of that Province.

(2) Power of President or Governor as to prosecution. The President or Governor, as the case may be, may determine the person by whom, the manner in which, the offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

198. Prosecution for breach of contract, defamation and offences against marriage. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Pakistan Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf;

Provided further that where the husband aggrieved by an offence under section 494 of the said Code is serving in any of the Armed Forces of Pakistan under conditions which are certified by the Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorized by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

N.W.F.P. Amendment. In Section 198 of the Code, omit the words 'or under sections 493 to 496 (both inclusive) of the same Code'; and the second proviso to this section.

[198-A. Prosecution for defamation against public servants in respect of their conduct in the discharge of public functions. (1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Pakistan Penal Code (Act XLV of 1860) is alleged to have been

committed against the President, the Prime Minister a Federal Minister, Minister of State, Governor, Chief Minister or Provincial Minister or any public servant employed in connection with the affairs of the Federation or of a Province, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

(2) Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(3) No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction.

(a) in the case of the President or the Prime Minister or a Governor, or any Secretary to the Government authorized by him in this behalf.

(b) in the case of a Federal Minister or Minister of State, Chief Minister or Provincial Minister, of any Secretary to the Government authorized in this behalf by the Government concerned.

(c) in the case of any public servant employed in connection with the affairs of the Federation or of a province, of the Government concerned.

(4) No Court of Sessions shall take cognizance of an offence under sub-section (1) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(5) When the Court of Session takes cognizance of an offence under sub-section (1), then, notwithstanding anything contained in the Code, the Court of Sessions shall try the case without the aid of a jury or assessors and in trying the case shall follow the procedure prescribed for the trial by Magistrate of warrant cases instituted otherwise than on a police report.

(6) The provisions of this section shall be in addition to, and not in derogation of those of section 198].

199. Prosecution for adultery or enticing a married woman. [No Court shall take cognizance of an offence under section 497 or section 498 of the Pakistan Penal Code, except:

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

(b) upon a complaint made by the husband of the woman or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed:]

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

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

accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court make a complaint on his behalf.

(N.W.F.P. Amendment-Delete Section 199).

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

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

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

N.W.F.P. Amendment-[In section 199-A of the Code; omit the words 'or section 199' and delete section 199-B].

CHAPTER XVI - OF COMPLAINTS TO MAGISTRATE

200. Examination of complainant. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows:

(a) when the complaint is made in writing nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 [or sending it to the Court of Sessions].

(aa) when the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties:

(b) * * * * *

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.