

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation. For the purposes of this section:

(a) x x x x x

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

[397. Sentence on offender already sentenced for another offence. When a person already undergoing a sentence of imprisonment or imprisonment for life is sentenced to imprisonment, or imprisonment for life, such imprisonment, or imprisonment for life shall commence at the expiration of the imprisonment, or imprisonment for life to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.]

398. Saving as to section 396 and 397. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment or to a sentence of [imprisonment for life], and the person undergoing the sentences is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, or [imprisonment for life] effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

399. Confinement of youthful offenders in reformatories. (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Provincial Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Provincial Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed,

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897, is for the time being in force.

400. Return of warrant on execution of sentences. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX - OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES

401. Power to suspend or remit sentences. (1) When any person has been sentenced to punishment for an offence, the Provincial Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Provincial Government for the suspension or remission of a sentence the Provincial Government may require the Presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reason for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Provincial Government, not fulfilled the Provincial Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4-A) The provisions, of the above sub-section shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of the President or of the Central Government when such right is delegated to it to grant pardons, reprieves, respites or remissions of punishment.

(5-A) Where a conditional pardon is granted by the President or, in virtue of any powers delegated to it, by the Central Government, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Provincial Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petition should be presented and dealt with.

402. Power to commute punishment. (1) The Provincial Government may, without the consent of the persons sentenced, commute any one of the following sentences for any other mentioned after it: Death, [imprisonment for life], rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Pakistan Penal Code.

402-A. Sentence of death. The powers conferred by section 401 or 402 upon the Provincial Government may, in the case of sentences of death, also be exercised by the President.

[402-B. Certain restrictions on the exercise of powers by Provincial Government. Notwithstanding anything contained in section 401 or section 402, the Provincial Government shall not, except with the previous approval of the President, exercise the powers conferred thereby in a case where the President has

passed any orders in exercise of his powers under the Constitution to grant pardons, reprieves and respites or to remit, suspend or commute any sentence or of his powers under section. 402-A.]

('402-C. **Remission or commutation of certain sentences not to be without consent.** Notwithstanding anything contained in section 401, section 402, section 402A or section 402B, the Provincial Government, the Federal Government or the President shall not, without the consent of the victim or, as the case may be, of his heirs, suspend remit or commute any sentence passed under any of the section in Chapter XVI of the Pakistan Penal Code.')

CHAPTER XXX - OF PREVIOUS ACQUITTALS OR CONVICTIONS

403. Persons once convicted or acquitted not to be tried for the same offence. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 36, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted for any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under sections 235, subsection (1).

(3) A person convicted of any offence constituted by any act causing consequences which together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequence had not happened, or were not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provision of section 26 of the General Clauses Act, 1897, or section 188 of this Code.

Explanation. The dismissal of a complaint, the stopping of proceedings under section 249 [or the discharge of the accused] is not acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as servant, or, upon the same facts, with theft simply or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.