

senses and calmness. PLD 1994
the deceased had committed "Zyedar" PLD 1994
PLD 1988 S.C. 260; 1992 SCMR 2047; PLD 1994
occurrence on account of losing self control must be supported through positive circumstances
and not on the basis of presumptive assumption. [1999 P.Cr.L.J. 11] The accused using an
ordinary Danda and he gave single blow which was not repeated. The incident erupted
suddenly as the deceased had reprimanded him for his alleged involvement in the narcotics
sale. In such situation, the accused, it seems could not keep him cool and flared up. Though
the accused has not intention to kill the accused, yet he can sufficiently be saddled with the
knowledge that his act was likely to cause death. Conviction converted from S. 302-B to S.
302-C. [1996 MLD 607]

["53. **Punishment.**—The punishments to which offenders are liable under the provisions of this Code are:

Firstly, Qisas;
Secondly, Diyat;
Thirdly, Arsh;
Fourthly, Daman;
Fifthly, Ta'zir;
Sixthly, Death;
Seventhly, Imprisonment for life;

Eighthly, Imprisonment which is of two descriptions namely:- (i) Rigorous *i.e.*, with hard labour; (ii) Simple
Ninthly, Forfeiture of property,
Tenthly, Fine."]¹

¹ Sub. by Cr. Law (Second Amendment) Ordi. 1990 w.e.f. 12th day of Rabi-ul-Awwal, 1411 H. (i.e. 3rd October, 1990). The amendment remained in the field by the enforcement of various Ordinances and finally the Act II of 1997.

- | | |
|---|-------------------------------------|
| 1. Section 53 as substituted—Effect. | 6. Imprisonment. |
| 2. Punishment—Sentence. | 7. Detention in Reformatory School. |
| 3. Object. | 8. Release on probation. |
| 4. Mode of payment of recovery of diyat, arsh or daman. | 9. Waiver or compounding of qisas. |
| 5. Mitigating circumstances. | 10. Quashment. |

1. **Section 53 as substituted—Effect.** The Islamic Penal Law introduced by substituting sections 53, 299 to 338 in the Pakistan Penal Code for the previous sections by the Criminal Law (Amendment) Ordinance, 1990 is not a mere change in the form or nomenclature but change in substance, content, meaning and the consequences flowing therefrom. Thus any apparent similarity in the two provisions e.g. culpable homicide amounting to murder and *qatl-i-amd* is not to mislead us as this similarity is due to the reason that Islamic Penal Laws were in force when the British acquired suzerainty over the Sub-Continent and the new laws enforced to serve the imperial interests, retained some of the features of the old laws. [PLD 1991 Lah. 347]

1.1 **"Qisas".** The word "Qisas" has been defined as punishment by causing similar hurt at the same part of body of the convict as he has caused to the victim or causing his death if he has committed *qatl-i-amd* in exercise of the right of the victim or *wali*. [1997 SCMR 1307] Offence of *qatl-i-Amd* according to the provisions of ss. 53 and 302, P.P.C., is punishable with death which can be either by way of *qisas* or by way of *ta'zir* and the two sentences of death are independent of each other. [2003 P.Cr.L.J. 35] Liability of *Qisas* is to be established by two competent (*A'dil*) witnesses and sentence of death as *Qisas* cannot be imposed unless Court is satisfied having regard to requirement of *Tazkiyah-al-Shahood*. Sentence of *Qisas* can be altered to imprisonment for life. [PLD 1998 Pesh 101] Under the Islamic Law the sentence of 'Qisas' is not to be executed where even one of the heirs pardons or accepts 'Diyat' at the last moment. The object of *Qisas* and *Diyat* laws is to satisfy the victim or his heirs so as to bring about peace in the society by quenching their thirst of vengeance and, in the absence of *Qisas*, the victim or his heirs are to be compensated in financial terms through payment of *Diyat*. If the convict is source-less and his relative also have no means to pay the liability on his behalf then *Diyat* can be exacted from the *Aqila* (the convict's clan or tribe) so that the blood of the victim does not go waste and vengeance of the heirs of the victim is satisfied through financial compensation. With the growing irrelevance of clans and tribes the State is the modern manifestation of *Aqila*. [PLD 2002 Lah 482]

1.2 **"Ta'zir".** *Tazir* is a punishment which is not fixed by the legislature but is left to the discretion of the Court. The word "Ta'zir" is derived from the word "Azar" which means to prevent, to respect, to reform. It is discretionary punishment to be inflicted for transgression against Allah or against an individual, for which there is neither a fixed punishment nor a penance or expiration. (*Kaffara*). It includes chastisement, admonition, reprimand, flogging, imprisonment, fines etc.

1.3 **"Hadd".** Sharia recognize an offence liable to *hadd* only if it is accompanied by an express intention. Sharia waives the penalty of *hadd* if any doubt occur therein as doubts dispel sentence of *hadd*. [PLD 1991 FSC 10]

1.4 **"Diyat".** *Diyat* means compensation as specified in section 323 Cr.P.C., payable to the heirs of the victim by the offender. The value of the 'Diyat' has not been fixed and is left to be determined by the Court keeping in view the injunction of Islam as laid down in the *Holy Qur'an* and *Sunnah* and keeping in view the financial position of the

[S. 54]

9.4 **Offence of constructive liability.** Offence u/s. 149, P.P.C is by way of constructive liability and when the main offence is allowed to be compounded and the persons who have taken specific part in the commission of offence are allowed to compound, then the persons who are convicted on account of being merely members of the unlawful assembly are also entitled to the concession of compromise/compounding/waiver, otherwise it would not be in consonance with the principle of justice, in accordance with the injunctions of Islam as laid down in Holy Qur'an and Sunnah. [PLD 2003 Kar 127]

10. **Quashment.** Courts cannot allow the continuation of the crimes under the garb of technicalities and cannot exercise extraordinary relief in favour of such criminals who fail to satisfy the Courts about their innocence. [2006 P.Cr.L.J. 34]

54. **Commutation of sentence of death.**—In every case in which sentence of death shall have been passed, the Central Government or the Provincial Government of the Province within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

["Provided that, in a case in which sentence of death shall have been passed against an offender convicted for an offence of *qatl*, such sentence shall not be commuted without the consent of the heirs of the victims.".]²

SYNOPSIS

- | | |
|--|--|
| 1. Remission of sentence. | 4. Remission of sentence—Effect. |
| 2. Federal Shariat Court. | 5. Recall of order. |
| 3. Section 401 read with Pakistan Prisons Rules 140 & 217--Substantive sentence. | 6. Commutation of sentence of death. |
| | 7. Repugnancy to Injunctions of Islam. |

1. **Remission of sentence.** Section 401, Cr.P.C. gives discretionary powers on the appropriate Government which may be moved or act on its own accord to suspend or remit the sentences. Sentences include both for punishment as well as in default of payment of fine. [PLD 1991 FSC 236 (FB)] Provincial Government can suspend execution of sentence at any time upon conditions or without conditions or remit the whole or any part of sentence. Such power of the Provincial Government would not interfere with the right of President or of Federal Government to grant pardons reprieves, despites or remissions of punishment. [PLD 1989 Kar 7]

In case of mercy petition addressed to Provincial Government in term of s. 402, Cr.P.C., Provincial Government is to act within tight jacket of cl. (2) of s. 401, Cr.P.C. strictly following procedure prescribed. Power enjoyed by President on the other hand under Art. 45 of the Constitution of Pakistan is totally independent and discretionary without any procedural trapping exercisable without any fetters and in nature of prerogative of sovereign which is incorporated in all constitutional instruments where monarchies have yielded place to symbolic sovereign as head of States. [1984 P.Cr.L.J. 1741; PLD 1982 S.C. 139; PLD 1982 Lah 40 rel.] No power to reverse the judgment is given to the Government which remain rested in a competent Court of law. [AIR 1958 Punjab 233] No order of this section should be passed adversely affecting the complainant and that too without opportunity of hearing. [1998 P.Cr.L.J. 921] Each amnesty order has to be interpreted and given effect to on its on words and not by

² Added by Act II of 1997.

reference to earlier and different amnesty order. [PLD 1993 Pesh 241 + PLD 1993 S.C.]
 Rolls of all life convicts, completing an aggregate period of 14 years, including remissions of
 kinds, worked out on basis of 14 years referred to Provincial Government for appropriate
 action under s. 401, Cr.P.C. [1982 P.Cr.L.J. 192] Provisions of s. 402(c), Cr.P.C. does not
 power to Provincial Government, Federal Government or even to the President of Pakistan
 remit the sentence u/ss. 401, 402 and 402-B, Cr.P.C. without the consent of the victim or
 heirs. Where the Chief Minister had remitted the sentence of accused without obtaining
 permission and without adopting proper procedure, order remitting sentence passed
 lawful authority and liable to be set aside. [2001 YLR 2858]

Remission, if any, should not be granted in violation of rules as provided in the
 Manual Law. Such illegalities have been taken notice of by the Hon'ble Supreme Court as well
 as High Courts and Federal Shariat Court and were declared to be illegal and improper and the
 accused remanded to jail to serve out remaining sentence. [PLD 2004 Kar 99; PLD 1992 S.C.
 595; PLD 1991 FSC 236] It has been observed by the Federal Shariat Court that question of
 remission of sentence arises only when the trial is over and judgment is delivered and Court
 becomes functus officio. Provisions of s. 401, 402, 402-A and 402-B, Cr.P.C. with respect to
 suspension, commutation or remission of sentence thus do not relate to the law of procedure
 as it is a power or, in other words, the right of the Provincial Government, in certain situations
 and of the Federal Government, to suspend, remit or commute the sentence passed by a
 Court of law, but where the appeal is pending before the High Court and he had not paid the
 compensation awarded by the Trial Court to the legal representatives of the deceased, act of
 the jail authorities remitting the remaining sentence of about 18 years and releasing the
 accused declared to be illegal and accused person remanded to jail to serve out the remaining
 sentence. [2001 P.Cr.L.J. 1453] In a case reported in 1998 P.Cr.L.J. 921; A Division Bench of
 Baluchistan High Court declared the remission being not sustainable and unwarranted by law.
 Admittedly, the powers as conferred upon Provincial Government under s. 401, Cr.P.C. are
 discretionary, but "discretion" wherever is provided in a statute cannot be equated to that of
 "unfettered or unbridled power" but such discretion is to be exercised judicially, with care and
 caution and after diligent application of mind to all the relevant circumstances including nature
 of offences committed and ultimate decision of the case. Where jail authorities totally ignored
 that not only the appeal of the accused is pending for its result before High Court but revision
 against the accused for enhancement of sentence also pending, grant of remission without
 payment of daman unwarranted by law. [PLD 2004 Kar 99]

1.1 Compromise. Compromise between parties, a circumstances which can be taken
 into account by government if an application filed for mercy. [1981 SCMR 1072]

1.2 Power of Minister. Minister being responsible for policy matters concerning his
 department and also being incharge of his department competent to award remission
 by virtue of Business Rules and presumption arises of such having been done on
 behalf of Government. [PLD 1978 Lah 15] Executive authority of Provincial
 Government can be exercised through Chief Minister, other Ministers or officers
 having powers delegated. Acting Chief Minister can pass order u/s. 401, Cr.P.C.
 without seeking approval of Governor. [PLD 1978 Kar 807]

2. Federal Shariat Court. Federal Shariat Court neither has power to review its judgment
 passed in criminal appeal, nor does it enjoy powers of s. 401 or 402, Cr.P.C. to suspend, remit
 or commute sentence of a convict. [1993 P.Cr.L.J. 1544] Federal or Provincial Governments
 cannot press into service jurisdiction conferred by s. 401 & 402-B, Cr.P.C. to commute or remit
 sentence of convict in cases where right of man is treated to be predominant. State, however,
 possesses such right in cases of preponderance of right, of Allah and composition not
 permissible. [PLD 1980 FSC 1]

couple of days and the necessary Ordinance promulgated by the 5th of December, 1997. Supreme Court accepted the submission and ordered that the new Ordinance incorporating the provisions relating to Qisas and Diyat should be promulgated by that date. [PLD 1990 S.C. 1772]

55. Commutation of sentence of imprisonment for life.—In every case in which sentence of ³[imprisonment] for life shall have been passed, the Provincial Government of the Province within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years:

["Provided that, in a case in which sentence of imprisonment for life shall have been passed against an offender convicted for an offence punishable under Chapter XVI, such punishment shall not be commuted without the consent of the victim or, as the case may be, of his heirs.".]⁴

SYNOPSIS

1. Scope.
2. Release of convict after 14 years aggregate imprisonment.
3. Proviso.

1. Scope. Section 55 provides that in cases in which sentence of imprisonment for life is passed, the Provincial Government of the Province within which the offender is sentenced, may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding 14 years. The proviso, as was added by the Act II of 1997 has curtailed this power so as to say where offender is convicted for an offence punishable under Chapter XVI, such punishment shall not be commuted without the consent of the victim, or as the case may be of his heirs.

2. Release of convict after 14 years aggregate imprisonment. Section 55 of the Code provides that in every case in which sentence of [imprisonment] for life shall have been passed, the Provincial Government of the Province within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

No vested right accrues in favour of life convict to be released automatically and unconditionally. He can be released only in exercise of powers u/s. 401, Cr.P.C. It is for Provincial government to consider rolls of prisoners for necessary action u/s. 401 for remission to be the ordinary, special or amnesty remission. [NLR 1980 UC 361]

3. Proviso. Amendments brought about in Chap. XVI, s. 55, P.P.C., by Criminal Law Amendment (Act, II of 1997) have put a bar against grant of remission without the consent of the victim or as the case may be of his heirs. [PLD 2004 Quetta 1]

³ Subs. by Ordinance XII of 1972.

⁴ Added by Act II of 1997.

55-A. Saving for President's Prerogative.—Nothing in section fifty-four or section fifty-five shall derogate from the right of the President to grant pardons, reprieves, respites or remissions of punishment.

["Provided that such right shall not, without the consent of the victim or, as the case may be, of the heirs of the victim, be exercised for any sentence awarded under Chapter XVI.".]⁴

SYNOPSIS

2. Scope.
1. **Scope.** Before adding this proviso the President of Pakistan had the prerogative to grant pardons, reprieves, respites or remission of punishment notwithstanding the provision of law in ss. 54 and 55 of the Code but by the addition of proviso by Act II of 1997, a bar has been imposed against grant of remission without the consent of the victim or as the case may be his heirs. [PLD 2004 Quetta 1]
2. **Remission of sentence granted by Central Government.** Remission of sentence granted by Central Government u/s. 401(5), Cr.P.C. Provincial Government not entitled to control, cancel or rescind such remission. [PLD 1965 Pesh 31]
56. **Sentence of Europeans and Americans to Penal servitude.**—[Rep. by the Criminal Law (Extinction of Discriminatory Privileges), Act, 1949 (II of 1950, Schedule)].
57. **Fractions of terms of punishment.**—In calculating fractions of terms of punishment. ⁵[imprisonment] for life shall be reckoned as equivalent to imprisonment for ⁵[twenty-five] years.

SYNOPSIS

1. Scope.
2. Section 57 as amended by Law Reforms Ordinance, 1972.
3. Sentence of life imprisonment.
4. Several offences.
5. Commutation of sentence.
6. Offences tried jointly.
1. **Scope.** Section 57 of Penal Code relates to fractions of terms of punishment. It provides that In calculating fractions of terms of punishment. imprisonment for life shall be reckoned as equivalent to imprisonment for twenty-five years. The object is to lay a basis for the remission system for the purpose of working of the remission. [PLD 1992 S.C. 14] Where the government instructions determining who the sentence of imprisonment may be served by prisoners were such that they could be to the prejudice of a prisoner serving a sentence in jail because it was likely to increase the total period, he would have to spend in jail. It was held that the instructions embodied in the memorandum cannot be allowed to operate retrospectively in a manner so as to authorize the detention of a 'lifer' for an aggregate period including remission of more than 20 years. [PLD 1965 Pesh 31]

⁵ Subs. by Ord. XII of 1972.

2. Section 57 as amended by Law Reforms Ordinance, 1972. The amendment made in this section by Law Reforms Ordinance, 1972 is not retrospective in operation. No sentence of "imprisonment for life" can be awarded in respect of offences committed before coming into force of Law Reforms Ordinance, 1972, nor can a sentence of transportation for life awarded before enforcement of Ordinance be construed as a sentence of "imprisonment for life" as defined in amended section 57 of the Code. [PLD 1980 Kar 164; PLD 1977 S.C. 548 ref.]

3. Sentence of life imprisonment. According to Supreme Court of India, sentence for imprisonment for life ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life. A convict undergoing such sentence may earn remission of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence does not entitle the convict to be released automatically before the full life term is served. Though under the relevant rules a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose. [AIR 2000 S.C. 2762] Life imprisonment is not same as transportation for life. It means imprisonment for 25 years. [PLD 1975 Lah 481] Provincial Government and other authorities competent under law can grant remissions to the prisoners in accordance with law and the rules framed thereunder. Combined effect of Rr. 217 and 140 of the Pakistan Prison Rules, 1978 is that ordinarily the total remissions given to someone, who has been sentenced to life imprisonment, cannot shorten the period of sentence of a convict to less than 15 years. [PLD 2006 S.C. 365] Sentence of life imprisonment unless ordered to run concurrently u/s. 35(1), Cr.P.C. will run consecutively in view of its quantification in terms of years u/s. 57, P.P.C. Execution order of commutation of sentence of death into life imprisonment takes effect forthwith making such sentence to run concurrently with any other sentence ordered by the Court. [PLD 1991 S.C. 1145]

4. Several offences. Aggregate of punishments of imprisonment for several offences at one trial is deemed to be a single sentence, under S. 35, Cr.P.C., and there cannot be more than one life sentence at one trial. Position of a person is different under S. 397, Cr.P.C., who, while already undergoing a sentence of imprisonment for life, is subsequently convicted and sentenced on another trial. Such subsequent sentence would commence at expiration of imprisonment for life for which he had been previously sentenced. [2007 SCMR 548]

5. Commutation of sentence. See item no. 6 S. 54, P.P.C.

6. Offences tried jointly. Sentence of imprisonment for different offences tried jointly, ordered to run consecutively cannot exceed imprisonment for life i.e. 25 years u/s. 57, P.P.C. [1997 P.Cr.L.J. 1043]

58. [Omitted by Law Reforms Ordinance, 1972]

59. [Omitted by Law Reforms Ordinance, 1972]

60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.—In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. Sentence of forfeiture of property.—[Rep. by the Indian Penal Code (Amendment) Act, 1921 (XVI of 1921), s. 4]

62. Forfeiture of property, in respect of offenders punishable with death transportation or imprisonment.—[Rep. by the Indian Penal Code (Amendment) Act, 1921 (XVI of 1921), s. 4].

63. Amount of fine.—Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

SYNOPSIS

1. Section Ss. 63 to 72—Summary.

2. Scope of section 63.

1. Section Ss. 63 to 72—Summary. Sections 63 to 72 of the Code contain provision of the Code as to imposition of fine, award of sentence, limit and description to imprisonment for nonpayment of fine, discharge of prisoner convict on payment and the liability of prisoner for the unpaid amount of fine. According to s. 63 there is no limit for the imposition of fine but it should not be excessive. Where the maximum amount of fine is not laid down by the Code, the Court has a discretion to impose any amount of fine that it considers fit according to the needs of justice in each case. But the fine must not be excessive and the accused must not be made to feel that he is being prosecuted and not prosecuted. [AIR 1957 Assam 74] The amount of fine should among other things, be commensurate with the financial circumstances of the accused and must not be beyond his means to pay so as to subject him to a further term of imprisonment as an inevitable consequence in addition to the substantive term of imprisonment to which he may have been sentenced. [AIR 1957 All 764] Though the fine must not be excessive, it must be sufficiently heavy to make the accused feel that it is a punishment. [AIR 1953 Mys 75] Even though the punishment section may authorize a sentence of fine in addition to a substantial term of imprisonment, such sentence of fine need not be imposed where the accused are poor people and the imposition of the sentence would be too hard upon them. [(1929) 30 Cri. LJ 838] A nominal fine may be sufficient in some cases where the offence is not a serious one, but some punishment must be inflicted wherever there is a conviction and after convicting an accused the Court cannot say that the offence is so trifling that no sentence need be passed. [AIR 1951 Orissa 284] Where the offence is of an aggravated type, the sentence of imprisonment is obviously more suitable than a mere sentence of fine where the punishment section provides for both. [AIR 1924 Lah. 81] Where an offender is convicted under two or more sections and is sentenced to fines of different amounts in regard to the different offences with sentences of imprisonment in case of default if he makes any payment towards the fines inflicted on him, such payments should be first appropriated for the smaller amounts, as otherwise the severity of the punishment may be increased. [AIR 1931 Sindh 73]

Section 64 deals with power of the Court to award a sentence of imprisonment in default of payment of fine in cases in which a sentence of fine may have been passed. This power of passing a sentence of imprisonment in default of payment of fine imposed does not make it imperative on the Court to pass such a sentence of imprisonment in every case in which a sentence of fine may have been passed.

Section 65, the term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Section 66 empowers the Court to award imprisonment in default in payment of fine in cases of offences falling under the Penal Code. Section 66 provides that the imprisonment which the Code imposes in default of payment of fine may be of any description to which the

offender might have been sentence for the offence. If the substantive sentence of imprisonment for the offence can only be simple imprisonment, then the sentence of imprisonment for default in payment of fine can only be simply imprisonment. [1868-69] 5 Bom. HCR 43]

Section 67 of the Code deals with the question of imprisonment in default of the payment of fine in cases in which the offence is punishable with fine only. It provides, if the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Section 68 Section 68 provides that the imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law. The reading of s. 68 clearly indicates that it is the termination of imprisonment which takes place on a convict depositing the fine. A term of imprisonment can terminate provided it has come into existence. A time limit fixed by a Court is dead end for the convict to deposit the money. The Court in order to enable a convict to deposit fine gives him time but it is not the intention of Court to allow a convict to go scot-free if he feels to deposit the amount within the stipulated period. If convict does not deposit amount within that period, he immediately incurs liability of being sent to prison.

Section 69, according s. 69, P.P.C if, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate. Although under this section the accused is entitled to be released from imprisonment on the payment or realization by process of law of the proportionate part of the fine as mentioned in the section, this will not discharge the accused from his liability for the balance nor entitle him to the remission of the balance of the fine and the Magistrate has no power to order such remission, notwithstanding the release of the accused under this section, the balance will still be recoverable from him within the period of limitation laid down in s. 70.

Section 70 enacts a rule of limitation regarding the period within which fine may be recovered. The period of six years follows the English Law of Limitation for recovery of debts, while the provision that fine remains recoverable out of the assets of the deceased offender follows the principle of civil law applicable to debts. It will be noticed that this debt, though a Government debt, is not the first charge upon the assets of the deceased.

Section 71 deals with what may compendiously be called "separable" offences as distinguished from "distinct offences" and lays down the limits of the punishment to which the offender can be sentenced in such cases. It governs the whole Code and regulates the limit of punishment in case in which the greater offence is made up of two or more offences. The section, however, is not a rule of substantive law regulating the measure of punishment, and it cannot, therefore, affect the question of conviction, which relates to the province of procedure. [10 All. 58]

Section 72 of the Code provides that in cases where a person is found guilty of one of several offences but it does not become certain as to commission of specific offence his acts amounts to, he will not escape scot-free but shall be punished of the offence for which the lowest punishment is provided. Where no doubt exists as to the accused's guilt but as to the nature of the guilt the Court is to give him the benefit of this section. This section like Ss. 221(1) and 364(2), Cr.P.C. 1973, applies only to cases where the actual facts are not in doubt and are established but there is a doubt as to the law applicable, namely as to which of several offences, the accused is guilty on the facts established. If there is a doubt as to the facts themselves, the Judge must acquit the accused. [AIR 1914 Lah. 549]

2. Scope of section 63. According to s. 63 there is no limit for the imposition of fine but it should not be excessive. Where the maximum amount of fine is not laid down by the Code, the Court has a discretion to impose any amount of fine that it considers fit according to the needs of justice in each case. But the fine must not be excessive and the accused must not be made to feel that he is being prosecuted and not prosecuted. [AIR 1957 Assam 74] The amount of fine should among other things, be commensurate with the financial circumstances

of the accused and must not be beyond his means to pay so as to subject him to a further term of imprisonment as an inevitable consequence in addition to the substantive term of imprisonment to which he may have been sentenced. [AIR 1957 All 764] Though the fine must not be excessive, it must be sufficiently heavy to make the accused feel that it is a punishment. [AIR 1953 Mys 75] Even though the punishment section may authorize a sentence of fine in addition to a substantial term of imprisonment, such sentence of fine need not be imposed where the accused are poor people and the imposition of the sentence would be too hard upon them. [(1929) 30 Cri. LJ 838] A nominal fine may be sufficient in some cases where the offence is not a serious one, but some punishment must be inflicted wherever there is a conviction and after convicting an accused the Court cannot say that the offence is so trifling that no sentence need be passed. [AIR 1951 Orissa 284] Where the offence is of an aggravated type, the sentence of imprisonment is obviously more suitable than a mere sentence of fine where the punishment section provides for both. [AIR 1924 Lah. 81] Where an offender is convicted under two or more sections and is sentenced to fines of different amounts in regard to the different offences with sentences of imprisonment in case of default if he makes any payment towards the fines inflicted on him, such payments should be first appropriated for the smaller amounts, as otherwise the severity of the punishment may be increased. [AIR 1931 Sindh 73] Where a substantial term of imprisonment has been imposed there should not be heavy sentence of fine except in exceptional cases. [AIR 1952 S.C. 14]

2.1 Hudood laws. Provisions of sections 63 to 72 of Chapter III apply to offences under Prohibition (Enforcement of Hadd) Order (P.O. No. 4 of 1979), Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979) and Offence of Qazf (Enforcement of Hadd) Ordinance (VIII of 1979). Magistrate is competent to discharge the accused when he is taken into custody. However, such an order is administrative order. [1997 P.Cr.L.J. 56]

2.2 Executive Magistrate. Executive Magistrate empowered to try offences falling under Chap. VII, X, XIII and XIV, P.P.C. Offences punishable with imprisonment for a term not exceeding three years triable by Executive Magistrate. [PLJ 1998 S.C. 27]

64. Sentence of imprisonment for non-payment of fine.—In every case an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine.

it shall be competent to the Court which sentences such offender to direct by the sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

SYNOPSIS

1. Scope.

2. Paragraph 2—Imprisonment in default cannot be concurrent with other terms.

1. Scope. Section 64 of the Code deals with the power of the Court to award a sentence of imprisonment in default of payment of fine in cases in which a sentence of fine may have been passed. This power of passing a sentence if imprisonment in default of payment of fine imposed does not make it imperative on the Court to pass such a sentence of imprisonment in every case in which a sentence of fine may have been passed. Under the Criminal Procedure Code also, it is not imperative that a sentence of imprisonment in default should necessarily be passed wherever a sentence of fine is passed. [1878 Pun Re No. 30 p.73] This section only applies to cases where a sentence of fine has been passed. An amount which is recoverable as if it were a fine is not fine. This section, therefore, does not apply to such a case. [AIR 1960 Ker. 86]

The section includes cases of offences which are punishable with imprisonment or fine, with the result that the limitation enacted by s. 65 as to the period of sentence or imprisonment in default of payment of fine will apply not only to offences punishable with imprisonment and fine but also to offences punishable with imprisonment or fine [(1899) ILR 22 Mad 238] Paragraph 2 of this section deals, *inter alia*, with imprisonment in default of payment of fine in cases in which the offender is punishable with fine only and hence, even in such cases, a sentence of imprisonment in default of payment of fine can be passed. [AIR 1967 Tripura 13] The section is, an enabling one and a Court is not compelled, though competent to impose a sentence of imprisonment in default of payment of fine. [ILR (1967) 2 Cal 355] The words "offence punishable with imprisonment as well as fine" should receive the same construction, both under para 1 of this section and u/s. 65. [(1898) 1 Weir 32] After the lapse of six years from the original sentence the fine will not be recoverable at all and the Court will have no power to pass any order for imprisonment in default of payment of fine. [AIR 1936 Lah. 348]

2. Paragraph 2—Imprisonment in default cannot be concurrent with other terms. Sentence of imprisonment in lieu of fine should run in addition to the sentence imposed for the offence, [PLD 1959 Kar. 56] it cannot run concurrently, [1991 P.Cr.L.J. 255] imprisonment in default of payment of fine is not mandatory. Court may not pass order for imprisonment in default of payment. [PLD 1968 Lah 1124] Under s. 31 of the Cr.P.C. when a person is convicted at one trial of two or more offences and is sentenced to a term of imprisonment for each of the offences, the normal rule is that the sentences should run consecutively. [AIR 1953 All 510] The Court has power, while passing sentence to direct that the sentences should run concurrently. But this principle does not apply to a sentence of imprisonment in default of the payment of fine and such sentence cannot be ordered to run concurrently with a substantive sentence of imprisonment. [1970 Ker LT 1018] When s. 64 itself enjoins that default sentence should be in excess of sentence awarded to him to which he is liable under the commutation of sentence, it is clear, that default sentence cannot be directed to run concurrently with substantive sentence. Thus, substantive sentence and sentence in default of fine being two distinct sentences, they cannot be made concurrent. [1993 Cri.LJ 3228] By virtue of s. 64 imprisonment in default of payment of fine is sentence and that being so any subsequent sentence of imprisonment would not begin until the expiry of sentence of imprisonment in default. Moreover, there is no provision in law enabling a Court to direct a sentence of imprisonment in default of payment of fine to run concurrently with sentence of imprisonment passed either at the same trial or at different trials. [1987 MPLJ 480] The principle that a sentence of imprisonment for default in payment of fine should not be concurrent with another term of imprisonment is also applicable to two or more terms of imprisonment to which an offender may be sentenced for default in payment of fine. In other words, the term of imprisonment for default in payment of fine cannot be made to run concurrently with another term of imprisonment for default in payment of fine. [AIR 1967 Pat. 286] Where the Court awards, this sentence in lieu of non-payment of fine, it cannot be deemed to be sentence, it is penalty for non-payment of fine, and it cannot be added to substantive sentences for determining whether Court has exceeded its jurisdiction to impose maximum sentences. [1991 Cri. LJ 166] Where a person, who is already under a sentence of imprisonment for default in payment of fine is sentenced to a substantive term of imprisonment such substantive term of imprisonment cannot be made to run concurrently with the term of imprisonment for default. [AIR 1931 Rang. 51] To make a term of imprisonment in default of payment of fine, run concurrently with another term of imprisonment would be against the spirit of the section, even though the latter term of imprisonment may be one to which the accused has been sentenced subsequently. [1967 Ker LT 1014] Where a person has been ordered to be imprisoned for failure to furnish security u/s. 122 of the Cr.P.C. and is subsequently convicted for an offence and sentenced to fine, the imprisonment in default of the payment of such fine will run from the expiry of the imprisonment u/s. 122, Cr.P.C. [AIR 1932 Rang. 50]

65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.—The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

1. Scope.

2. Amount of fine that can be imposed.

3. Offence under special or local laws.

4. Imprisonment in lieu of fine.

1. Scope. Section 65 of the Code provides for limits to imprisonment for non payment of fine many imprisonment and fine is awardable. It provides that the term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine. The term of imprisonment which can be legally in default of payment of fine is not to exceed one fourth of the maximum term of imprisonment fixed for the offence. [PLD 1956 Dacca 108; 1986 P.Cr.L.J. 249, 1; 1984 P.Cr.L.J. 989] The maximum term of imprisonment referred to in this section is the maximum term fixed in the punishment section in regard to the offence and does not include the enhanced punishment to which an offender with a previous conviction is liable u/s. 75 of the Penal Code. [1890 Oudh SC No. 175] Where an offender is convicted on three separate charges of bribery and sentenced to fine on each of the three charges, a sentence of imprisonment in default for 6 months on each charge, i.e., for a total term of 18 months, is legal. [1919 Punj WR (Cri) 3] Conviction for five different offences, each punishable with imprisonment for seven years. Sentence of fine of Rs. 3,000 as a part of cumulative sentence and in default to undergo 2 years' R.I. On appeal, High Court convicting the appellant for an offence u/s. 419 read with s. 109 and upholding the sentence of the lower Court. By alteration of conviction sentence of two years' imprisonment for default became illegal and violated s. 65. [(1971) 2 SC Cri R 31] Accused sentenced to receive further imprisonment for one year in default of payment of fine though the term of such imprisonment could not exceed 9 months in view of s. 65 P.P.C. That part of judgment severable from rest of the judgment which includes conviction and sentence. To secure ends of justice, that part of clause was ordered to be deleted from sentence awarded in exercise of inherent power u/s. 482. [1981 All LJ 196]

2. Amount of fine that can be imposed. Where a long term of imprisonment has been awarded to the offender by way of substantive punishment and he is also sentenced to a fine, the amount of which is beyond his means to pay, the period of imprisonment in default of payment of fine to which he may be liable under this section may, when added to the substantive term of imprisonment which has been imposed on him, exceed the maximum limit of the substantive term of imprisonment permissible under the punishment section. Although technically speaking there is nothing illegal in this yet, as far as possible the Court should exercise its discretion in the matter of imposing a sentence of fine and avoid such a contingency. [AIR 1941 All 310]

3. Offence under special or local laws. By virtue of s. 40, of the Penal Code paragraph 2, this section applies also to offences under special and local laws and hence even in regard to such offences the limit of the term of imprisonment in default of payment of fine will apply. [1891 Rat Un Cri C 563]

4. Imprisonment in lieu of fine. If Court directs the offender to be imprison for default of payment of fine under S. 65, P.P.C., such imprisonment cannot exceed $1/4^{\text{th}}$ of the term of imprisonment which is the maximum fixed for the offence. Where the petitioner was tried for more than one offence emanating from the same transaction, section 71 of the P.P.C., *inter alia* mandates that where several acts of which one or more than one would be itself or themselves constitute an offence, "the offender shall not be punish with a more severe punishment than the Court which tried him could award for any one of such offences". [2008 SCMR 111]

66. Description of imprisonment for non-payment of fine.—The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

NOTES

Scope. Sections 53 to 70 of the Penal Code empowers the Court to award imprisonment in default in payment of fine in cases of offences falling under the Penal Code. Section 66 provides that the imprisonment which the Code imposes in default of payment of fine may be of any description to which the offender might have been sentenced for the offence. If the substantive sentence of imprisonment for the offence can only be simple imprisonment, then the sentence of imprisonment for default in payment of fine can only be simple imprisonment. [(1868-69) 5 Bom. HCR 43] Where the substantive sentence for the offence can only be a sentence of rigorous imprisonment, the imprisonment in default of the payment of fine must also be rigorous. [(1867) 7 Suth WR (Cri) 31(2)] Where an offence is punishable with imprisonment of either description, the imprisonment in default of payment of fine may be of either description. [(1872-1892) Low Bur Lul 434]

67. Imprisonment for non-payment of fine, when offence punishable with fine only.—If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

NOTES

Scope. Section 67 of the Code deals with the question of imprisonment in default of the payment of fine in cases in which the offence is punishable with fine only. It provides, if the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case. The limit to the period of imprisonment to which an offender can be sentenced in summary trials under the Cr.P.C., only applied to substantive sentences of imprisonment and not to sentence of imprisonment in default of the payment of fine. [(1883) ILR 6 All 61] Where a warrant is issued for an outstanding sum the period of imprisonment must not be more than the maximum for the aggregate sum found on the warrant. As such where the fine outstanding in the name of the accused did not exceed Rs. 200 and the maximum period of imprisonment as per s. 64(1) and the Schedule to s. 65(2) of the Magistrate's Courts Act, 1952 for such sum was of 30 days the order fixing the period of imprisonment of accused at 59 days would be liable to be quashed. [(1981) 1 WLR 374] The period of imprisonment in default of payment of fine varies under this section according to the amount of the fine whereas u/s. 65 such period varies according to the maximum term of imprisonment to which the offender can be sentenced by way of substantive punishment. [(1875-77) ILR 1 All 461] The term or imprisonment in default of the payment of fine varies according to the amount of the fine actually imposed and not according to the amount of fine to which the offender can be sentenced by way of substantive punishment. [(1942) 43 Cri. LJ 121] Where the offence is punishable only with fine, imprisonment in default of payment of fine must always be simple. [1956 All WR (HC) 410] Where an offence under a special and local law is punishable only with fine, the offender can only be sentenced to simple imprisonment in default of the payment of fine. [AIR 1957 SC 645] An accused convicted of an offence to which this section applies can be given the benefit and can be released on admonition and probation under Probation of Offenders Act. [1971 Cri LJ 873] Where sentence

of fine and in default imprisonment is imposed, though imposition of substantive sentence is not specifically provided for in the Narcotic Drugs and Psychotropic Substances Act, it would be valid u/s 30 of Cr.P.C. and ss. 40 and 67, Penal Code read with s. 25 of General Clauses Act, 1897. [1991 Cri. LJ 817]

Fine imposed u/s. 112, Motor Vehicle Ordinance, 1965. The offence u/s. 112, Motor Vehicle Ordinance, 1965 is punishable with fine only, awarding no sentence in default would contravene the provision of s. 67 of the Penal Code. [1975 P.Cr.L.J. 246]

68. Imprisonment to terminate on payment of fine.—The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

NOTES

Scope. Section 68 of the Code provides that the imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law. The reading of s. 68 clearly indicates that it is the termination of imprisonment which takes place on a convict depositing the fine. A term of imprisonment can terminate provided it has come into existence. A time limit fixed by a Court is dead end for the convict to deposit the money. The Court in order to enable a convict to deposit fine gives him time but it is not the intention of Court to allow a convict to go scot-free if he feels to deposit the amount within the stipulated period. If convict does not deposit amount within that period, he immediately incurs liability of being sent to prison. [1986 Cri LJ 617] Where the amount of the fine is paid by the offender while undergoing imprisonment in default, the imprisonment shall terminate. [AIR 1969 All 116] Both under this section and u/s. 69 the imprisonment in default of payment of fine will terminate under either section only on the actual realization of the fine and not merely on the setting in motion of the legal process for the recovery of the fine. [AIR 1963 Bom. 21]

Sections 68 to 69, P.P.C are independent of s. 70. The expiry of limitation for levy of fine imposed u/s. 70 would in no way affect the liability of the convict to undergo imprisonment in default of payment of fine u/s. 68. [1980 Cri LJ 1160] The word "levied" as used in s. 70 in contrast to that word as used in ss. 68 and 69 refers to the setting in motion of the legal process for the recovery of the fine imposed, so that where such legal process has been started within the period of limitation as laid down in the section, the recovery of the fine will not be time barred even if the actual realization of the fine is made afterwards. [AIR 1963 Bom 21] Neither s. 68 nor s. 69 contemplate that the accused should be present in the Court for depositing the fine. [1986 Rajasthan LR 675] While undergoing the default sentence, if the fine amount is paid into Court, the mandate of law, as has been provided u/s. 68 is to operate and the imprisonment has to terminate on the payment of fine amount into Court. [(1992) 3 Crimes 185]

69. Termination of imprisonment on payment of proportional part of fine.—If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration

A is sentenced to a fine of one hundred rupees and to four month's imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while continues in imprisonment, A will be immediately discharged.

SYNOPSIS

1. Scope.

1. Scope. According section 69, P.P.C., if, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate. Although under this section the accused is entitled to be released from imprisonment on the payment or realization by process of law of the proportionate part of the fine as mentioned in the section, this will not discharge the accused from his liability for the balance nor entitle him to the remission of the balance of the fine and the Magistrate has no power to order such remission, notwithstanding the release of the accused under this section, the balance will still be recoverable from him within the period of limitation laid down in section 70. [1882 All WN 85] Where the accused pays the proportionate part of the fine, which entitles him to release under this section but as this fact is not brought to the notice of the Jailor, he is made to undergo the entire further term of the imprisonment, the Court has no power to order refund of the fin. [(1867-68) 4 Bom. HCR (Crown Cas) 37] Imprisonment in default of payment of fine cannot be made to run concurrently with other terms of imprisonment to which the offender may be liable. This principle applies also to two sentences of imprisonment in default of payment of fine. The illustration given under this section makes this position still clearer. [AIR 1950 All 625] Where the High Court grants time for payment of fine, the point of standing the realization is deferred till the time granted because the time to be granted by High Court cannot take away otherwise the rights given to accused u/ss. 68, 69. [1989 Raj Cri C 259] Neither s. 68 nor s. 69 contemplate that the accused should be present in the Court for depositing of fine. [1986 Rajasthan LR 675] Where notwithstanding the provisions of s. 69, the convict who was undergoing sentence for default was prepared to deposit the entire amount of fine before the Trial Court for issue of direction of termination of sentence, order of Trial Court refusing to allow such request was illegal. [(1992) 3 Crimes 185]

1.1 Section 69 & 68. Sections 68 and 69 are independent of s. 70. The expiry of limitation for levy of fine imposed u/s. 70, P.P.C would in no way affect the liability of the convict to undergo imprisonment in default of payment of fine u/s. 68. [1980 Cri. LJ 1160]

1.2 Levied. The term "levied" under this section means realized. In other words, unless the proportion of the fine referred to in the section is actually realized, the accused will not be entitled to release from the imprisonment. This meaning is in contrast to the meaning of the word "levy" as used in section 70. Under that section the word "levy" refers to the taking of legal proceedings for the recovery of the fine and not the actual realization thereof. [AIR 1963 Bom 21]

2. Imprisonment awarded on many counts. Sentence of imprisonment awarded to convict in lieu of default on payment of fine on each count shall run concurrently with sentence of like imprisonment awarded to him on each of the four counts so as not to exceed one fourth of term of imprisonment substantially awarded to him. [2000 UC 436] Where two different cases are registered on two different occasions by means of two separate FIRs resulting in the conviction of the accused by two separate judgments, the sentences in both the cases will run consecutively. [1989 SCMR 1405]

70. Fine leviable within six years, or during imprisonment: Death not to discharge property from liability.—The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period: and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for this debts.

71. Limit of punishment of offence made up of several offences.—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustration

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

SYNOPSIS

- | | |
|----------------------------------|--|
| 1. Scope. | 6. Application to special or local law. |
| 2. Paragraph 1 | 7. Section 71 read with s. 26 General Clauses Act, 1897. |
| 3. Paragraph 2 | 8. Award of sentence. |
| 4. Paragraph 3 | 9. Power of Appellate Court. |
| 5. Award of cumulative sentence. | |

1. Scope. Section 71 of the Code deals with what may compendiously be called "separable" offences as distinguished from "distinct offences" and lays down the limits of the punishment to which the offender can be sentenced in such cases. It governs the whole Code and regulates the limit of punishment in case in which the greater offence is made up of two or more offences. The section, however, is not a rule of substantive law regulating the measure of punishment, and it cannot, therefore, affect the question of conviction, which relates to the province of procedure. [10 All. 58] Fine may be recovered even from property acquired by the accused within the specified period even though he may be unable to pay it immediately. [AIR 1953 Trav-Co. 233] If a case is governed by the first paragraph of the section, sentence can be awarded in respect of one offence only. But if it falls under paragraph 2 or 3, sentences may be awarded in respect of both the offences but the aggregate of such sentences should not be more than what should be awarded under any one of the two offences. [AIR 1952 All. 92] The section governs assessment of punishment. It does not indicate that separate punishments cannot be awarded. [AIR 1969 Guj 62] There has to be a community of time, place and person in order to bring the case within the ambit of this section. [1972 Cri. LJ 1536] In a case in which s. 71 does not come into play, there must be separate sentences for all the offences for which accused is found guilty. [(1991) 2 Guj LR 1243]

1.1 Object. Object of s. 71 is to confirm punishment within reasonable limits. It is based on the rule that where the intention was to commit an offence, the commission of which involves the preparation of acts, by themselves punishable, the offender shall not be punished for them separately, as his object was to commit one crime and not many. Moreover, if in such a case, every criminal act, however subsequent to the main design, were penal there would be no end to the punishment, and the most trivial act might thus be magnified into offences, the punishment of which might be wholly disproportionate to the nature and gravity of the act accomplished. [(1997) 13 OCR 65]

- 8.1 Distinct offences.** Whatever restrictions were implied by the words "subject" to the provisions of Section 71 of the Penal code" in s. 35 of the Criminal P.C. are not applicable to distinct offences. Hence, in such cases the provision as to the passing of separate sentences in s. 35 of the Criminal P.C. will have unrestricted application. [AIR 1935 Bom. 202] This means that separate sentences can be passed for the several offences of which the accused is convicted at the same trial and the aggregate of such sentences need not be restricted to the maximum punishment that can be awarded for the most serious of the offences. [AIR 1928 Bom. 145] Two different cases registered on two different occasions by means of two separate FIRs resulting in the conviction of the accused by two separate judgments. Sentences in both the cases to run consecutively. [1989 SCMR 1405] Where offences are separate and distinct and do not constitute parts of one offence, accused can be convicted separately for each one of the offences. [1985 Cri LJ 1366] Where the accused was charged on double count the order of Trial Court passing only single sentence is impermissible. [1993 Cri LJ 1630] The Court has always to adjust the punishment to the needs of justice in each case, and to see that it is not unduly harsh and out of proportion to the guilt of the accused. [AIR 1932 Lah. 365]
- 8.2 Distinct offences forming part of same transaction.** Where, though the offences charged are distinct and separate offences, the accused can be sentenced only for one of the offences where the offences are committed in the course of the same transaction. [ILR (1978) 2 Kant 1914] Where the accused is charged with the different offences at the same trial this section is no bar to the conviction of the offender of different offences at the same trial. [AIR 1962 SC 1116]
- 9. Power of Appellate Court.** Appellate Court can alter conviction. [1984 SCMR 866]

72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.—In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

SYNOPSIS

1. Scope.

2. Section 72 read with s. 38, Anti-Terrorism Act, 1997.

1. Scope. Section 72 of the Code provides that in cases where a person is found guilty of one of several offences but it does not become certain as to commission of specific offence his acts amounts to, he will not escape scot-free but shall be punished of the offence for which the lowest punishment is provided. Where no doubt exists as to the accused's guilt but as to the nature of the guilt the Court is to give him the benefit of this section. This section like Ss. 221(1) and 364(2), Cr.P.C. 1973, applies only to cases where the actual facts are not in doubt and are established but there is a doubt as to the law applicable, namely as to which of several offences, the accused is guilty on the facts established. If there is a doubt as to the facts themselves, the Judge must acquit the accused. [AIR 1914 Lah. 549]

Where the charge is framed in the alternative in respect of offences under Sections 302 (old) and 201, in view of s. 72 it may be open to the Court to give a judgment that the accused is guilty of one of several offences specified in the judgment but it is doubtful of which of these offences he is guilty. Such a finding is in accordance with s. 354(2) of the Cr.P.C., and will have the consequence that under this section, the offender is to be punished for the offence for which the lowest punishment is provided, the same punishment no being provided for all. [AIR 1940 Pat. 289]

2. Section 72 read with s. 38, Anti-Terrorism Act, 1997. Offence committed prior to its becoming scheduled offence. Conviction to be awarded as provided at the time of commission of offence. [2000 SCMR 1773]