

[S. 73]

73. **Solitary confinement.**—Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say:

a time not exceeding one month if the term of imprisonment shall not exceed six months;

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;

a time not exceeding three months if the term of imprisonment shall exceed one year.

## SYNOPSIS

### 1. Solitary confinement.

### 2. "Not-exceeding three months".

**1. Solitary confinement.** Solitary confinement is a serious deprivation. Blind folding confinement in a dark, unhealthy, underground cesslar, refusal to allow talk with anybody or to see relatives etc. may amount to torture atleast mental if not physical. All types of solitary confinement and/or deprivations are prohibited unless it becomes necessary to resort to the same by way of punishment in accordance with law. [PLD 1977 Lah 1174] Sentence of solitary confinement should not be ordered unless there are special features appearing in the evidence as to exercise of extreme violence, brutality or terrorism in the commission of the offence. This section no doubt gives power to the Court to award solitary confinement but at the same time has prescribed its limits. The Court must be competent to award sentence of rigorous imprisonment to the offender, the offence being also subjected to such sentence in the Code. Secondly the Court cannot award sentence of solitary confinement more than three months in the whole according to the following scale:

a time not exceeding one month if the term of imprisonment does not exceed six months;

a time not exceeding two months if the term of imprisonment exceeds six months but does not exceed one year;

a time not exceeding three months if the term of imprisonment exceeds one year.

Solitary confinement cannot be imposed for the whole of the term of a person's imprisonment merely because that term is a short one coming within the extreme limit of fourteen days prescribed in s. 74(1). Where the accused is sentenced to four months rigorous imprisonment, with a fine and in default, to one month's further rigorous imprisonment, a sentence of one month's solitary confinement would be perfectly legal according to para 2 of the section even though the accused could not lawfully u/s. 74, be subjected to more than 26 days' solitary confinement, if the imprisonment actually continued only for four months. [1878 Pun Re (Cri) No. 7 p. 16 (17) (DB)] Where the sentence passed is exactly one year's rigorous imprisonment, period of solitary confinement must not according to para 3 of the section, exceed two months. [1913 Pun LR No. 161, p. 546 (548)]

The punishment of solitary confinement cannot be awarded for offence not under the Code but under a Special or Local Act in the absence of a provision therein for imposing such punishment. [AIR 1927 All 472] Solitary confinement can be awarded only as part of a substantive sentence of imprisonment and not when such imprisonment is awarded in default of payment of fine, or in default of furnishing security. [1887 Pun. Re. No. 52 (Cr.) p. 142 (DB)] Where the substantive punishment awarded does not include imprisonment but only fine, solitary confinement cannot be awarded. [1882 Pun. Re. (Cr.) No. 9 p.13 (DB)] No solitary confinement can be ordered in the following cases:

(i) The Arms Act. [1866 Pun. Re. No. 120 (Cr.) p. 38 (DB)]

(ii) The Excise Act. [1989 Pun. Re. (Cr.) No. 17, p. 65]

- (iii) The Criminal Tribes Act. [AIR 1924 All. 319 = 25 Cri. L. Jour 654]
- (iv) The Post Office Act. [1879 Pun. Re. No. 24 (Cri.), p. 73 (DB)]
- (v) Recording of summary evidence before Military Tribunal concluded. No reason to keep prisoner in solitary confinement. [PLD 1974 Lah 120]

2. "Not-exceeding three months". Where an accused person is convicted of several offences at the same time and is sentenced to a term of rigorous imprisonment for each of the offences separate sentences of solitary confinement in such cases are not illegal where the period of solitary confinement for each offence does not exceed the maximum period mentioned in this section, even though the aggregate of the periods of solitary confinement awarded for the different offences may exceed the maximum of three months mentioned in the section. [1897 Pun Re (Cri) No. 7, p. 17(18) (DB)] Assuming that separate sentences or solitary confinement for separate offences for which an accused is convicted at one trial may be legal even where the aggregate period of solitary confinement exceeds maximum of three months under this section, such a sentence is not considered expedient and advisable, and it is the practice to limit the aggregate sentence of solitary confinement to a period of three months, even where the accused is convicted of several offences and sentenced to separate terms of rigorous imprisonment at one trial. [AIR 1923 Lah. 104]

74. **Limit of solitary confinement.**—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods and when the imprisonment awarded shall exceed three months the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

### SYNOPSIS

#### 1. Scope.

1. **Scope.** Provisions of s. 74 of the Code are supplementary to the preceding section, i.e., 73. This section has been enacted on medical grounds. Solitary Confinement is a punishment very harsh and crucial for the health of the person confined. It is conducive to his physical deterioration and mental derangement. So it requires to be regulated so as to lesson its effects. Section 74 is meant to regulate the execution of sentence of solitary confinement. It provides that where the solitary confinement is long such confinement should not be more than 14 days at a time with intervals of not less duration than such periods. If the period of substantial sentence does not exceed more than three months the solitary confinement should not exceed seven days in any one month with interval of not less duration than such period. The use of the word 'portion' in s. 74 makes the intention of law giver clear that the Court cannot condemn a prisoner to undergo whole of the term in solitary confinement.

A sentence of solitary confinement passed in accordance with the scale prescribed in Section 73 would be perfectly legal even though the whole term of the solitary confinement cannot be executed in this section. [1878 Pun Re (Cri) No. 7, p. 16(16) (DB)] It would be illegal to order a convict to be kept in solitary confinement for the whole term of imprisonment which he is sentenced even though such term does not exceed the maximum limit of 14 days' duration prescribed by this section. [(1869) 3 Beng LR (A Cri) 49(DB)]

2. 'Month'. A 'month' signifies a period equal to the average duration of a calendar month, that is (disregarding fractions) thirty days. [1978 Pun Re (Cri) No. 7 (DB)]

75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.—Whoever, having been convicted:

- (a) by a Court in Pakistan of an offence punishable under Chapter XII or Chapter XVII of this Code with <sup>2</sup>[imprisonment] of either description for a term of three years or upwards, or
- (b) [Omitted by Ord. XXVII of 1981].

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

### SYNOPSIS

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|---------------------------------------------------------------------|-----------------------------------------|
| 1. Scope.                                                           | 5. Proof of previous conviction.        |
| 2. Charge.                                                          | 6. Evidence as to previous conviction.  |
| 3. "Punishable with imprisonment for a term of 3 years or upwards". | 7. Enhancement of sentence in revision. |
| 4. Previous conviction.                                             | 8. Practice and procedure.              |

**1. Scope.** Section 75 relates to enhanced punishment for offences under Chapter XII or Chapter XVII of the Penal Code. It provides that persons previously convicted of offence falling within the specified chapter's will be liable to higher punishment than they otherwise deserve. It says whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the P.P.C., with imprisonment of either description for a term of three years or upwards or found guilty of any offence punishable under either of these Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years. It is essential for the Court when invoking this section to set out in its judgment with precision the dates and the particulars of each previous conviction which is relied upon for the purpose of applying that section. Where that is not done sentence is liable to be reduced. [1968 P.Cr.L.J. 396 (Lah)] The principle as envisaged in s. 75 of the Code is that if the previous sentence borne by the accused had no effect on him, a more severe sentence should be awarded. But it does not follow as a right and inflexible rule that in all cases of previous convictions, an enhanced sentence should be awarded. It is good as a rule of thumb but the circumstances of each case should be taken into account in inflicting punishment. [AIR 1955 Andh. Pra 190] This section does not create as substantive offence but only provides for enhanced punishment. [AIR 1970 Ker 251] This section applies only to offences under Chapter XII or Chapter XVII of the Penal Code and a conviction under some section not falling under the above Chapters will not come under this section. A fortiori the section does not apply to offences under any other law. [AIR 1966 Madh Pra 271] Under this section both the previous and subsequent convictions must be for the offences mentioned therein. [AIR 1935 Bom. 188] where the subsequent offence is not one under Chapter XII or Chapter XVII of the Code a previous conviction under this Chapter is not relevant for assessing the punishment for the subsequent offence, though it could be taken into consideration. [1968 SCD 477] This section does not apply to a conviction u/s. 369 of the Penal code (Kidnapping or abducting child under 10 years with intent to steal from its person), the reason being that the selection does not fall under Chapter XII or Chapter XVII of the Code. [AIR 1923 Lah. 286] Previous conviction of an accused in cases of similar kind can be taken into consideration u/s. 75 of the Code and in that connection either copies of judgment whereby accused was previously convicted and sentenced can be produced in evidence or a list of same can be produced. Such procedure having been adopted, non-disclosure of previous conviction of accused in charge sheet is not such an illegality or irregularity which can cause any serious prejudice to accused specially when he himself admits his previous conviction. [1996 P.Cr.L.J. 1218]

1 Subs. by Penal Code (Amendment) Act, 1910.

2 Subs. by Ord., XII of 1972.

This section cannot be made applicable to a mere attempt to commit an offence. [1968 P.Cr.L.J. 1857] It is essential for the Court when invoking this section to set out in its judgment with precision the dates and the particulars of each previous convictions which is relied upon for the purpose of applying that section. [1968 P.Cr.L.J. 396] Admission made by the accused can be safely relied upon. [PLD 1961 Dacca 307] Previous conviction can be taken into account for imposing enhanced punishment. [1995 P.Cr.L.J. 140]

Where the accused was charged u/ss. 411, 75 and the maximum sentence provided u/s. 411 was awarded to the accused, charge u/s. 75 held proved and so also the evidence that the convict had many convictions against him to justify an enhanced sentence u/s. 75, P.P.C. Notice for enhancement issued. [PLD 1963 Kar 598]

2. Charge. I \_\_\_\_\_ (name of the office of Magistrate etc.) hereby charge you \_\_\_\_\_ (name of the accused) as follows:

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, committed \_\_\_\_\_ and thereby committed an offence punishable under section \_\_\_\_\_ of the Pakistan Penal Code and within the cognizance of this Court.

And you, the said \_\_\_\_\_ stand further charged that you, before the committing of the said offence, had been convicted on the \_\_\_\_\_ day of \_\_\_\_\_ of an offence punishable under Chapter XII, or XVII of the Pakistan Penal Code with imprisonment for a term of three years, to wit, the offence of \_\_\_\_\_ which conviction is still in full force and effect and that you are thereby liable to enhanced punishment under section 75 of the Pakistan Penal Code.

And I hereby direct that you be tried by the said Court, on the said charge.

If a person is intended to be tried and punished with enhanced punishment for with punishment of a different kind as being a previous offender, the particular of the previous conviction should be stated in the charge. [AIR 1953 Kutch 1] According to Sindh High Court, the prosecution should call all relevant witnesses and produce all material evidence on record so that the accused should know what evidence he has to meet. [AIR 1941 Sindh 173] According to Lahore High Court, in case in which it is proposed to ask the Court to award enhanced punishment under this section on the ground of the accused being a person with previous convictions, the charge itself must include particulars of the previous conviction or convictions. If the above provisions are not complied with, the Court will have no power to act under this section and award enhanced punishment under this section for a subsequent offence on the ground of the accused having previous conviction. [AIR 1944 Lah. 25]

3. "Punishable with imprisonment for a term of 3 years or upwards". Section 75 of the Code applies only to cases in which both the previous as well as the subsequent convictions relate to offences which not only fall under Chapter XII or Chapter XVII of the Penal Code but are also punishable with imprisonment of either description for a period of 3 years or more. When the accused is sentenced to suffer rigorous imprisonment for three years after his previous conviction referred to in the charge u/s. 75, has been taken into consideration, no further notice for enhancement of sentence need be given. [PLD 1963 Kar 602] This section is only concerned with the question as to whether the offence for which the accused was convicted on the previous occasion and is subsequently convicted is one which is punishable with imprisonment for 3 years. The fact that at the previous conviction the accused was actually sentenced for a period less than 3 years is immaterial where the offence itself was one punishable with imprisonment for 3 years and more. [1977 Cri. LJ 88] Where the accused had two previous convictions, only one of which came within the purview of Section 75 and the other did not, it is only the former that can be taken into consideration under this section. [(1928) 20 Cri. LJ 772 (Lah.)] Where the previous conviction was for an offence u/s. 403 of the Penal Code (dishonest misappropriation of property) this section will not apply, although s. 403 falls under Chapter XVII of the Penal Code. [(1928) Cri. LJ 439]

[S. 75]

- 3.1 Attempt to commit offence.** Section 75 cannot be made applicable to a mere attempt to commit an offence. [1968 P.Cr.L.J. 1857] This section applies only where a person has committed an offence and is being tried for it. Where a person has not committed an offence but has only made an attempt to commit an offence, his punishment cannot be enhanced by application of this section. [1968 P.Cr.L.J. 1857] This section will not apply to a case where the previous conviction is for an attempt to commit an offence under Chapter XII or Chapter XVII of the Code. [(1868) 1 Weir 36]
- 3.2 Abetment of offence.** The abetment of an offence under Chapter XII or Chapter XVII of the Code is not an offence under either of those Chapters and hence where either the previous conviction or the subsequent conviction is only for such abetment, this section does not apply. [(1908) 7 Cri LJ 32 (Bom)]
- 3.3 Imprisonment for default.** An order for security for good behaviour is not conviction, no can it be said that when a person is imprisoned for failure to furnish the security ordered he is convicted and sentenced for an offence. Hence this section will not apply in such cases. [AIR 1934 Sindh 195] When an order for security for good behaviour for security and imprisonment in default are proved in the properly may they can be taken into consideration, though not for enhancement of the sentence under this section, but for the purpose of considering the adequacy of sentence that could be awarded to the accused. [AIR 1930 Sindh 58 (DB)]
- 3.4 Section 75 read with s. 511, Cr.P.C.** Section 511, Cr.P.C. is attracted only when s. 75, P.P.C is pressed into service or when offence falls under a special law and such law provides a higher punishment for repetition of offences. Where an enactment does not provide any higher punishment for habitual offenders, s. 511, Cr.P.C. would not be applicable. [PLD 1977 Quetta 56]

**4. Previous conviction.** It is essential for the Court when invoking section 75, P.P.C., to set out in its judgment with precision the dates and the particulars of each previous conviction which is relied upon for the purpose of applying that section. [1968 P.Cr.L.J. 396] Question of punishment in cases of offenders with previous convictions has to be considered from the point of view of cases coming under this section. In such cases the Code itself provides that the offender with previous conviction is liable to enhanced punishment up to the limit mentioned in this section irrespective of the limit of punishment prescribed for the offence under the section under which such offence falls. [ILR (1966) 1 Ker 251 (DB)] In such cases the fact that the offender has previous conviction may be taken into account while determining the sentence to be passed against him. But such sentence cannot exceed the limit prescribed by the section under which the offence falls. [AIR 1941 Sindh 173] The discretion the Court has in the matter of awarding higher punishment applies to the question as to the amount of punishment, i.e., the length of the term of imprisonment that is to be awarded as enhanced sentence on the ground of a previous conviction under this section. The section only lays down the maximum sentence that can be passed against offenders with previous convictions. The sentences mentioned in the section are not the minimum that can be passed in such cases. [ILR (1966) 1 Ker 251] This section is not to be applied mechanically in every case in which the offender may have previous convictions and may be convicted of an offence of the description mentioned in the section. [AIR 1943 Cal. 25]

Where a long time has passed after the previous conviction during which the accused has been leading an honest life, it will not be proper to apply this section to him and award enhanced punishment under it. [1966 Cri LJ 410 (Ker)] Where the second offence was committed after the previous conviction but before the accused had undergone the sentence under the previous conviction, it is not a fit case for applying this section because it cannot be said in such a case that the previous conviction and punishment had no effect on the accused. [(1966) 5 Suth WR (Cri) 66] Where the offender commits the subsequent offence shortly after coming out of jail after the previous conviction he may properly be dealt with under this section and be awarded the enhanced sentence under it. [AIR 1926 Lah. 336] Even where this section applies to a case, the Court should not pass an unduly severe sentence merely because the accused is an old offender with previous convictions. [1968 Cri LJ 410 (Ker)] The principle that the punishment should fit the crime, should not be lost sight of even in such cases. There is no rule that the sentence on an old offender should always be at least a little more severe than the previous sentence. [1968 Cri LJ 410] Where the sentence prescribed for the offence under the section in which the offence falls is itself sufficient to meet the ends of justice recourse

should not be had to the enhanced punishment under this section merely because the accused is an old offender with previous conviction. [AIR 1920 Pat. 526] The enhanced sentence under this section on the ground of previous convictions cannot exceed the limit laid down in the section. [AIR 1915 Lah. 76] Where the previous or subsequent conviction is for an attempt to commit an offence falling under Chap. XII or Chap. XVII of the code, this section does not apply as the conviction in such a case is one under Chapter 23 of the Code and not Chapter XII or Chapter XVII as required by this section. But even in such cases the previous conviction can be taken into consideration while passing sentence on the accused. [AIR 1943 Sindh 172] The enhanced sentence of imprisonment that can be awarded under this section is not included in the expression "the term of imprisonment which is the maximum fixed for the offence" in Section 65 and cannot be taken into account in fixing the term of imprisonment in default of payment of fine under that section. [1890 Oudh SC No. 175]

**5. Proof of previous conviction.** It is the primary duty of the prosecution to see that matters such as the existence of previous conviction are brought definitely into the notice of the Court at the proper time. As the sole object of proving a previous conviction is not to take out weak evidence against the accused but to help the Court to determine the measure of punishment, the Magistrate should try to ignore that fact in considering the judgment and it is only at the close of the trial that evidence of previous conviction should be admitted. Such evidence must be clear and precise and its prove must strictly conform to the requirement of s. 511, Code of Criminal Procedure, 1898. The previous conviction or acquittal may under the Qanun-e-Shahadat be proved by admission of the fact by the accused. [AIR 1944 Lah 25] Failure to take any objection would amount admission. Provisions of secondary evidence as provided in Art. 76 of the Qanun-e-Shahadat can be availed in a proper case where the record of previous conviction has been destroyed. [PLD 1961 Dacca 307] However, s. 511, Cr.P.C. would be attracted only when s. 75, P.P.C is pressed into service or when offence falls under special law and such law provides the higher punishment for repetition of offences. [PLD 1977 Quetta 56] Where the previous conviction is not proved, enhancement of sentence under this section is illegal. The admission made by the accused himself cannot be safely relied upon for imposing enhanced punishment on him u/s. 75. [PLD 1961 Dacca 307]

**6. Evidence as to previous conviction.** Where it is intended to award an enhanced sentence to an accused under this section on the ground of a previous conviction, such previous conviction must be strictly proved before it is made a basis for awarding the enhanced sentence, unless the accused admits such previous conviction. [AIR 1949 Mad. 499] The previous conviction may be proved in addition to any other mode provided by any law for the time being in force. [AIR 1941 Sindh 173] As the evidence about previous conviction can only be taken after the accused has been found guilty of the subsequent offence or after the jury in Jury trial has returned a verdict of guilty, the Court cannot in its examination of the accused u/s. 342 of the Cr.P.C., ask the accused any question about his previous conviction. [AIR 1914 Lah. 25] Under Article 68, of the Qanun-e-Shahadat Order, 1984, where the accused has let in evidence of his good character, the prosecution is entitled to let in evidence about his bad character and for this purpose previous conviction of the accused is relevant as evidence of bad character. [AIR 1960 Andh Pra 490]

**7. Enhancement of sentence in revision.** It is the duty of the prosecution to place before the Trial Court itself, under the provisions of the Cr.P.C., the relevant material relating to the previous conviction justifying an enhanced punishment under this section. If this is not done before the conclusion of the trial that is no ground for asking the Court of revision to enhance the sentence on the ground of previous conviction. [AIR 1929 All 267]

**8. Practice and procedure.** The Court should take care to see that merely because the accused is a person with previous convictions there is no bias against him so far as the trial for the subsequent offence is concerned and during such trial the accused must be treated exactly in the same way as if he had no previous convictions. [AIR 1930 All 17] The question of previous conviction assumes relevance only in connection with a sentence to be passed and the question of sentence will arise only after the accused is found guilty. In the case of substantive offence read with this section the non-compliance with the provisions of s. 310(a) of the Cr.P.C., 1898 would make the conviction illegal. [1971 All Cri. R 21]