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CRIMINAL EVIDENCE LAW

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BASIC LAWS

- PAKISTAN PENAL CODE 1860
- CODE OF CRIMINAL PROCEDURE 1898
- QANUN-E-SHAHADAT ORDER 1984

- ANTI-CORRUPTION LAWS
- ANTI-MONEY LAUNDERING ACT 2010
- PREVENTION OF ELECTRONIC CRIMES ACT 2016
- NATIONAL ACCOUNTABILITY ORD. 1999 & AMEDED ORDINANCE 2023
- ARMY ACT 1952

- SUBSTANTIVE LAW

- PROCEDURAL LAW

CHAPTER I

INTRODUCTION TO CRIMINAL JUSTICE SYSTEM

1.1 CRIMINAL JUSTICE SYSTEM AND ITS OBJECTIVES

- **Criminal justice system in a country comprises of the**
 1. Legislature- Law Maker
 2. Executive- implementation of law,
 3. Judiciary, interpreter of Law

PURPOSE OF CRIMINAL JUSTICE SYSTEM

- Prevention of Crime to provide protection to life and property of citizens and to ensure order in the society

THEORIES OF PUNISHMENT

1. Deterrent
2. Retributive
3. Preventive
4. Reformative

1.2 CRIME AND CRIMINAL LAW

- A **law** is a command which obliges a person or persons

- **Legislation** is the source of law which consists in the declaration of legal rules by a competent authority.

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- **Criminal law** is a body of such norms which is formally recognized and promulgated by State
 - **Crime** may be defined as the violation of such rules and regulations; i.e. criminal law.

THE PAKISTAN PENAL CODE 1860

- Substantive Criminal Law.
- PPC defines offences and provides for their punishment.

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- PPC extends to the whole of Pakistan, every citizen of Pakistan wherever they may be, all ships and vessels registered in Pakistan.

I.3 ELEMENTS OF CRIME

I. Human Being

- The Act must be committed by a human being

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- Def of Person u/s 11 PPC includes a Company, Association or body of person
 - Criminal liability of corporations

2. MENS REA

- The act or omission must take place in pursuance of Guilty / Criminal Intention)
- Fundamental principle of penal liability

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- No crime can be committed without an evil mind
 - Cases where mens rea not necessary to constitute an offence
 - General exceptions under PPC

3. ACTUS REUS

- Some Illegal Act or Omission in pursuance of the guilty intention.
- A duly appointed executioner who hangs to death a criminal

4. INJURY

- Injury to the other person or society at large
- Under S.44 PPC, Injury denotes any harm whatever illegally caused to any person in
 1. Mind
 2. Body
 3. Reputation
 4. Property

I.4 ADVERSARIAL SYSTEM

- Adversarial System and Inquisitorial System
- The Courts in Pakistan function under adversarial system.

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- The Prosecution and Defense compete against each other.

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- The Prosecutor is a public official who represents the state.
 - The Defense counsel is responsible for defense of the accused during the trial.

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- The Court plays a role of a referee or umpire and decide the matter in question in accordance with the law of land.

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- It is not the job of the court to find out the real culprit if the court is satisfied that the accused being prosecuted before it stands either innocent or not guilty beyond reasonable doubt

I.5 AGE OF CRIMINAL RESPONSIBILITY IN PAKISTAN.

- Criminal Responsibility of an individual under law.
- In Pakistan, minimum age of criminal responsibility is **seven years.**

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- Section 82 of the PPC provides that a child below age of seven(ten) years is incapable of committing offence because he is incapable of forming or possessing necessary *mens rea* for an offence.

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- Section 83 of the PPC provides that a child **between age of seven (ten) and twelve (fourteen) years can be capable of forming or possessing necessary *mens rea* for an offence,**

➤ ***unless it is*** established that he has not attained maturity of understanding to judge nature and consequences of his conduct.

- (Section 82 & 83 were amended in 2016)

I.6 COMPONENTS OF CRIMINAL JUSTICE SYSTEM

Three Components of Criminal Justice System in Pakistan.

I. POLICE

- **Police** are concerned about the need to satisfy public opinion requiring the criminals to be caught, convicted and sentenced, and that, criminality in the society is checked.

PROSECUTION AND DEFENCE

- **Prosecution** is an agency which plays intermediary role between the judiciary and the police.

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- **A Defence counsel** is an officer of the court and represents the accused;
 - And has the objective to protect the rights of the accused in accordance with law.

3. COURTS

- **Courts** have a duty to supervise the work of the police, prosecutor and the defence lawyer; it determines the guilt or innocence of the accused and imposes sanctions

I.7 COURTS AND THEIR HIERARCHY

I. Supreme Court of Pakistan

- Article 175 establishes Supreme Court, High Courts and other Courts established under any law.
- Highest Court Appeal in the Country
- Every decision binding on courts below

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- Chief Justice and other judges
 - Supreme Judicial Council

2. HIGH COURT

- Every Province and the Capital
- Court of Appeal over the decisions of Sessions Court and Magistrate

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- Courts below under the supervision and control of High courts
 - Chief Justice and other judges

3. COURTS OF SESSIONS

1. In every District of a Province
2. Sessions Judge and Additional Sessions Judge
3. Court of Appeal over Magistrate

4. COURTS OF MAGISTRATE

- Magistrate of the First Class and Magistrate Section 30
- Remand and Trial

I.8 SENTENCES WHICH MAGISTRATES CAN PASS

- **Magistrates of First Class** may pass sentences of imprisonment **upto three years including solitary confinement as authorized by law and, or, fine not exceeding forty five thousand rupees and [arsh, daman], whipping etc**

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- **Magistrates Section 30**, empowered to try all offences not punishable with death and pass sentences as authorized by law except **sentence of death and imprisonment for a term not exceeding seven years** (Sec. 34, Cr.P.C.)

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- **In default of payment of fine**, Magistrate may award the term of imprisonment which shall not exceed one fourth of the term of imprisonment which is the maximum fixed for the offence, in case the offence is punishable with imprisonment as well as fine

I.9 MECHANISM / OVERVIEW OF CRIMINAL CASE

- **Four Stages of a Criminal Case :**

I. Pre-investigation Stage

The First Information Report sets law in motion.

2. INVESTIGATION STAGE

- The Police investigates the case and submits its report upon completion upon investigation before the court

3. INQUIRY OR PRE-TRIAL STAGE



The court conducts inquiry and decides for the disposal of report submitted by the police. If the Court deems it fit for trial, it takes cognizance of the offence.

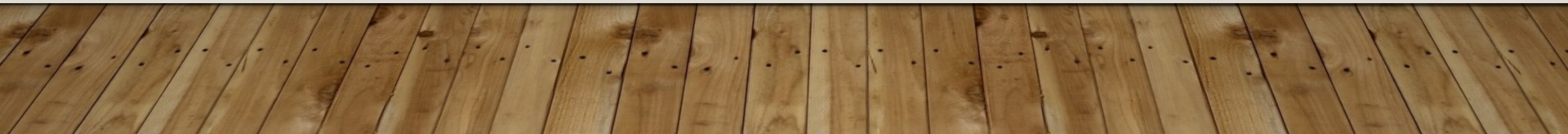
4. TRIAL STAGE

- At the trial charge is framed against the accused and is followed by evidence of the prosecution followed by statement of accused.

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- Upon conclusion of evidence, arguments from both sides are heard.
 - Then the judgment is announced or the decision is given by the judge; the decision culminates into either acquittal or conviction of the accused of such offence.

CHAPTER – II

PRE-INVESTIGATION STAGE



2.1 CRIMINAL INVESTIGATION

- Criminal investigation is the name of **collection of evidence in respect of the crime in question**

2.2 FIRST INFORMATION REPORT (FIR)

- First Information Report (FIR) is a report under section 154 of the Code of Criminal Procedure, 1898 which gives first information of a cognizable offence.

OBJECT OF FIR

- Its objective is to set criminal law into motion, to obtain first hand information about commission of any criminal activity.

(2002 P.Cr.L.J 1785)

SHO DUTY BOUND TO REGISTER FIR

- If from the facts given by the complainant or the informant, there is prima facie commission of a cognizable offence, police are duty bound to record the lodge FIR.

(1992 P.Cr.L.J 1989)

NOT A SUBSTANTIVE EVIDENCE

- FIR is not a substantive evidence nor an exhaustive document

(2002 SCMR 1586)

REGISTRATION OF CASE- EFFECT

- Registration of case does not mean that persons against whom allegations are leveled in FIR are in fact guilty of offences.

(NLR 1998 CR. Quetta 161)

PRESCRIBED FORM

- It is registered in Form 24.5(I) Police Rules 1934, prescribed by the Provincial Government.

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- It has name of police station where registered,
 - FIR number

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- Date and time of occurrence of alleged offence
 - The substance of criminal activity registered.

SIX COLUMNS OF FIR

- Besides, it has six columns;
- (a) date and time when information is reported,
- (b) name and residence of the informant and complainant,

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- (c) brief description of offence along with section and of property, if carried off,
 - (d) place of occurrence and distance and direction from police station,

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- (e) steps taken regarding investigation, explanation of delay in recording information,
 - (f) date and hour of despatch from police station.

SECOND FIR

- Law regarding second FIR has changed in the case of PLD 2018 Supreme Court 595.
- The Supreme Court held that no second FIR will be registered where first FIR has been registered.

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- However, cross version of the other party will be registered in the same FIR.

POWERS OF JUSTICES OF THE PEACE

- An ex officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding

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- (i) non registration of a criminal case;
 - (ii) transfer of investigation from one police officer to another; and
 - (iii) neglect, failure or excess committed by a police authority in relation to its functions and duties.

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- ASJ as notified by the Provincial Government are the Justices of Peace in their district by virtue of their office.

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- If SHO refuses to register a case, the remedy is to approach the Ex-officio Justice of Peace for issuance of appropriate order or direction by moving a simple application for registration of FIR.

2.3 POWER OF POLICE TO INVESTIGATE

- Police is under statutory duty under section 154 Cr.P.C. and have statutory right conferred under section 156(I), Cr.P.C. to investigate into cognizable offences.

COGNIZABLE OFFENCE & COGNIZABLE CASE

- “cognizable offence” means an offence for, and “cognizable case” means a case in, which a police officer may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant

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- In case of investigation into non-cognizable offences, the police by virtue of section 155, Cr.P.C., will be required to obtain permission from Magistrate.

INVESTIGATION

- Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf

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- Once such permission is given, police may carry through the investigation in the same manner as if the offence was cognizable except that the arrest without warrant shall not be made.

STEPS IN INVESTIGATION

- I. Proceeding to the spot
- II. Ascertainment of facts and circumstances of case

III. Discovery and arrest of suspected offender

IV. Collection of evidence

(1999 P.Cr.L.J 1357)

2.4 OPTIONAL INVESTIGATION.

- Section 157(b), Cr.P.C. read with Rule 25.9 of Police Rules, 1934 empowers officer in charge of a police station to refrain from investigation in unimportant cases.

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- The Investigating Officer is not bound to act on information given. When investigating staff of a police station upon receiving information of a cognizable offence

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- is already occupied with more important cases, they may defer the investigation.

CHAPTER – III

INVESTIGATION STAGE

3.1 DAILY DIARIES

- Section 172, Cr.P.C. requires every police officer making an investigation to enter his day by day proceedings in investigation in a diary, setting forth

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- (a) the time at which the information reached him,

 - (b) the time at which he began and closed his investigation,

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- (c) the place or places visited by him, and,
 - (d) a statement of the circumstances ascertained through his investigation.

3.2 ARREST OF ACCUSED BY POLICE-I

- “**Arrest**” is the means through which a person is deprived of his liberty by legal authority.
- The term ‘**taken into custody**’ is generally used to denote ‘arrest’.

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- And the term '**custody**' is only one of the forms of detention.
 - Section 46, Cr.P.C. provides as to how arrest is to be made.

3.2 ARREST OF ACCUSED BY POLICE-II

- Section 54, Cr.P.C. provides for various situations in which a police officer may without warrant.

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- Section 55, Cr.P.C. speaks of arrest of vagabonds etc. by the SHO of a Police Station.

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- Section 57, Cr.P.C. provides for a situation when any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence, refuses, on demand of such officer, to give his name and residence.

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- Section 59, Cr.P.C. provides for power and procedure of arrest by private persons

3.2 ARREST OF ACCUSED BY POLICE-III

- An impression amongst various quarters that arrest of an accused is a must for purpose of investigation is a misconceived one. **F.I.R. is not a license to arrest.**

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- Rule 26.1, Police Rules, 1934 provide that the authority given under section 54, Cr.P.C. for powers of arrest without a warrant, is permissive and not obligatory.

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- Rule 26.2 of the Rules say that Police shall defer making arrest of a particular person if there is no risk of his absconding, till the investigation is sufficiently complete.

3.3 ARREST BY PRIVATE PERSON.

- By virtue of Sec.59, Cr.P.C., a private person may arrest any person who he believes has committed a cognizable and non-bailable offence or is a proclaimed offender.

3.4 ARREST BY OR IN PRESENCE OF MAGISTRATE

- A Magistrate may himself arrest or order any person to arrest the offender who commits offence in presence of the Magistrate within local limits of his jurisdiction; subject to provisions of bail.

3.5.1 PRODUCTION OF ACCUSED BEFORE MAGISTRATE

- Accused has to be produced before a Magistrate within twenty-four hours under all circumstances of his arrest.

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- If a person arrested or taken into custody is not produced within twenty four hours before a Magistrate, his custody is deemed to be illegal any without lawful authority.

3.5.2 REPRESENTATION BY COUNSEL

- Article 10 of the Constitution of Pakistan, 1973 guarantees the right of representation by a counsel and to have access to relatives, to the accused and his counsel, friend or relative may raise an objection to passing an order of remand.

3.5.3 POLICE CUSTODY REMAND

- Remand' denotes sending back a person into custody to secure investigation or trial.

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- If it appears that investigation of a case is not completed within twenty four hours.

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- The investigating officer is of opinion that the custody of the arrested accused is required for the purpose of investigation, he may seek police custody remand of the accused for as long as up-to fifteen days in total.

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- The Magistrate must give the reasons for sending accused to police custody, in his order

3.5.4 WHEN ACCUSED CANNOT BE PRODUCED

- The Magistrate shall not grant police custody remand in absence of accused.

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- When accused is too ill to travel, as is generally seen in cases where accused is injured and is thus hospitalized, and the doctor certifies his inability to move.

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- In such cases, Magistrate may grant sanction for their detention at their homes or in hospital or dispensaries

3.5.5 REMAND IN SESSIONS TRIAL

- A Magistrate is empowered to grant remand in a case triable by Court of Sessions.

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- It is so because he applies his mind as to whether the case should be sent up to the Court of Sessions.

3.5.6 REMAND OF PERSON ALREADY IN JUDICIAL CUSTODY

- Ordinarily, an accused once sent to judicial custody cannot be remanded to police custody.

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- Police may obtain permission from the Magistrate who sent him to jail for his production before the Magistrate from whom remand is required to be requested.

3.5.7 SUCCESSIVE REMANDS

- Once a person is sent to judicial custody, he cannot be handed over to police subsequently and successive remands cannot be given in different cases.

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- However, if the cases are registered at different places or different police stations, remand can be given after completion of necessary formalities which are mandatory in nature.

3.5.8 REMAND IN BAILABLE OFFENCES

- Offences which fall in category of 'bailable' in accordance with statutory law are not open to remand.
- Accused cannot be remanded to police custody in bailable offences.

3.5.9 REMAND OF WOMEN

- The section 167(5), Cr.P.C. provides that a woman cannot be remanded to police custody **except when she is involved in cases of qatal or dacoity.**

-
- In other non bailable offences, she has to be sent to judicial custody.

3.5.10 REMAND OF JUVENILES

- The Sec. 9(5) of the juvenile justice system ordinance, 2000 provides that when a child under fifteen years of age is arrested or detained for an offence which is punishable for less than ten years, he shall be treated as if he were accused of commission of a bailable offence.

3.5.11 JUDICIAL CUSTODY

- In cases, where a Magistrate thinks the case is not fit for remanding accused to police custody and so also, the accused is not to be discharged or released on bail, he shall send the accused to judicial custody in light to provision laid down under **section 344, Cr.P.C.**

3.5.12 TRANSIT REMAND

- There comes a situation where A is required to be produced before a Court in an offence committed in Lahore while he is arrested in Karachi.

-
- The police arresting the accused produce A before the nearest Magistrate in Karachi within twenty four hours.

3.5.13 DISCHARGE OF ACCUSED

- Section 63 read with 167, Cr.P.C. empowers a Magistrate to make a special order for discharging an arrested person by way of bail or bond if it is found that such person was arrested without justification.

-
- Magistrate before whom accused is produced at time of remand, can effectively grant relief to such person by passing order under section 63, Cr.P.C.

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3.5.9 REMAND OF WOMEN

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3.10.1 IDENTIFICATION PARADE

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- THERE IS NO EXPRESS PROVISION PROVIDING FOR CONDUCTING TEST OF IDENTIFICATION PARADE IN CR.P.C OR THE QSO 1984.
 - HOWEVER, IT DERIVES ITS INFERENCE FROM ARTICLE 22 OF THE QSO 1984.

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- Identification test can be conducted of both an accused and some property.

3.11.1 BAIL.

BAIL APPLICATION CAN BE MOVED AT ANY STAGE OF CRIMINAL PROCEEDINGS: AT TIME OF INVESTIGATION OR INQUIRY OR TRIAL.

3.11.2 BAIL DEFINED.

- The Criminal Procedure Code or any statutory law do not define the word, 'bail'. In simple terms, it involves the release of a person who is formally or legally under arrest and in custody.

CHAPTER – IV

INQUIRY / PRE-TRIAL STAGE

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- Inquiry or Pre-trial stage comes in between stages of completion of investigation and commencement of trial by Court, in a criminal case.

4.1 CHALLAN OR POLICE REPORT

- Whatever may be the finding of Investigation Agency about the innocence or otherwise of the accused, the same is to be produced before the Criminal Court by preparing or filing report under S.173. Cr.P.C.

4.2 REPORT OF POLICE OFFICER (SEC. 173, CR.P.C)

- Law provides that every investigation has to be completed without unnecessary delay and as soon as it is completed, the officer in charge of a police station shall through public prosecutor forward a report to the Magistrate.

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- The investigation should be completed within fourteen days from the date of F.I.R. and if it does not happen so, an interim report showing investigation till then, be submitted within three days after then.

4.3 DUTIES OF AN INVESTIGATING OFFICER & MAGISTRATE.

- Investigation Officer is required to collect relevant evidence in a criminal case and to submit the report and the collected evidence / material before the concerned Magistrate; nothing else.

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- It is the job of a Magistrate to decide whether the material placed is sufficient to take cognizance or otherwise, to summon any person to face a trial or not and to frame a charge against a person or not; or if he may deem fit, he may cancel the case.

4.4 FINAL REPORT WHEN ACCUSED ARE NOT SENT UP FOR TRIAL (SUMMARY REPORT).

- Final report of all cases wherein, no accused is sent up for trial, is submitted in the form No. 25.57(2) prescribed by the Provincial Government. The form has eight columns,

4.5 “A”, “B” AND “C” CLASS

- Classes "A", "B" or "C" are in practice to dispose of criminal cases after completion of investigation.

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- Magistrate may dispose of report for disposal of case by police under 'A' class when the case is true but accused remains untraceable;

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- Under 'B' class, the matter should be found to be false, and
 - Under 'C' class where there is insufficient evidence or matter was non-cognizable;

4.6 ESSENTIALS OF CHALLAN WHEN ACCUSED ARE SENT UP FOR TRIAL.

- The police report under section 173 of the Code constitutes the charge sheet and is commonly known as 'challan': a term not known to the Code but having mentioned in the Police Rules.

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- The said report has to be on a form (No. 25.56(I)) prescribed by the Provincial Government. The form has seven columns.

4.7 COGNIZANCE BY COURT

- The Cr.P.C. vide Section 190 provides for cognizance of offences by a magistrate when he is empowered to take it of any offence either:

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

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

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

4.8 RELEASE OF ACCUSED WHEN EVIDENCE IS DEFICIENT

- It is a settled principle of law that the police has power to release a person in custody on his executing a bond with or without sureties, for his appearance before a Magistrate, if and when so required, as is provided under Section 169, Cr.P.C.

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- Once the challan is submitted under S. 173, Cr. P. C. the provisions of S. 169, Cr. P. C. are not attracted.

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- Where accused is declared innocent and has been placed in column 2, he is no more an accused person nor can he be treated as such unless trial court takes cognizance and summons him for trial.

4.9 SUPPLY OF COPIES TO ACCUSED

- The section 241-A, Cr.P.C. for the Magisterial trial and section 265-C for the Sessions trial, provide that in all cases instituted upon police report copies of statements of witnesses under sec. 161 and 164, Cr.P.C.,

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- police report and documents forwarded by police, shall be supplied to accused free of cost not less than seven days before commencement of trial.

4.10 PROCEEDINGS AGAINST ABSCONDERS.

- If the Court is satisfied after taking evidence that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court by adopting procedure laid under section 87, Cr.P.C. proclaim him as offender.

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- The court issuing a proclamation under section 87, Cr.P.C. may at any time order attachment of any property, moveable or immovable or both, belonging to such person under section 88, Cr.P.C.

4.11 RECORD OF EVIDENCE IN ABSENCE OF ACCUSED (SEC. 512 CR.P.C.)

- The Court is satisfied that an accused person has absconded and there is no immediate prospect of arresting him.

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- The competent Court, may examine the witnesses on behalf of prosecution in absence, and record their depositions.

4.12 MAGISTRATE MAY DISPENSE WITH PERSONAL ATTENDANCE OF ACCUSED DURING INQUIRY

- Sec. 205, Cr.P.C. empowers a Magistrate issuing summons in reasonable circumstances at his discretion to dispense with personal appearance of accused and to permit him to appear through counsel.

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- In legal parlance, it entails releasing of a person from the custody of police and delivering him into the hands of sureties, who undertake to produce him before the Court as and when he is required by the Court.

3.11.3 BAIL BY POLICE OR BY MAGISTRATE

- Police and Magistrate have parallel powers for admitting an accused on bail, in Cr.P.C. for bailable offence .

3.11.4 BAIL IN BAILABLE OFFENCES

- The second Schedule of Cr.P.C. divides offences in bailable and non bailable.
- Section 496, Cr.P.C. deals with bailable offences

3.11.5 BAIL IN NON-BAILABLE OFFENCES I

- S. 497, Cr.P.C. deals with non-bailable offences. As a general rule, the Court shall release a person accused of non bailable offence.

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- There are three exceptions to this rule in which court has reasons to believe that the accused is guilty of offence punishable with death or life imprisonment or imprisonment for ten years.

3.11.6 STATUTORY BAIL

- Where the Court believes that the trial of an accused has been delayed not due to default of accused in any manner whatsoever, it shall admit the accused to bail.

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- The provision shall not apply where the accused is a previous convict for an offence punishable with death or life imprisonment or is a hardened or dangerous criminal or is accused of terrorist act punishable with death or life imprisonment.

3.11.7 CASE OF FURTHER INQUIRY

- In non-bailable offences, the Court may admit the accused to bail at any stage of the case if it comes to believe that there are reasonable and sufficient grounds for further inquiry into guilt of the accused [Sec. 497(2), Cr.P.C].

3.11.8 PRE-ARREST BAIL.

- The provision 498, Cr.P.C. empowers High Court and the Court of Sessions to grant this extra ordinary relief to the accused in extra ordinary and exceptional circumstances such as where Court comes to belief that perhaps accused was falsely implicated in a case . (Ref. PLD 1972 Lahore 722)

3.11.9 SURRENDER BEFORE MAGISTRATE FOR BAIL.

- A practice is being observed that an accused allegedly involved in some bailable offence surrenders himself before a Magistrate and procures bail from his Court.

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- It is generally perceived that Magistrates seek sanction for such grant from the word “appears” used in Section 496, Cr.P.C

3.11.10 PROTECTIVE BAIL.

- Protective bail is granted to accused to enable him to approach the concerned Court of other provinces for the purpose of obtaining pre-arrest bail. It is granted without touching merits of the case.

3.11.11 SUBSEQUENT BAIL

- Second or subsequent bail application should be heard and dealt with by the same Judge; the rule applies in cases when the other accused of the same case or even cross-case files bail application.

3.11.12 SURETY

- Once the Court admits an accused to bail, there should not be needless impediment in his release from custody at hands of surety person.

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- Law provides that surety should not be excessive.

3.11.13 BONDS AND THEIR FORFEITURE

- When a bond stands forfeited or a surety dies or becomes insolvent, the procedure to be followed is given in Section 514, Cr.P.C.

3.11.14 GROUNDS FOR REFUSING BAIL20

- In exceptional circumstances, bail of an accused may be declined by the Court keeping in view the theme that each case has to be decided on its own merits and deeper appreciation of evidence is not required at bail stage.

3.11.15 CANCELLATION BAIL

- A High Court or Court of Sessions or a Court which has released an accused on bail for a non-bailable offence, may order his arrest and remand in custody [Sec. 497(5), Cr.P.C].

3.11.16 REQUIREMENTS UPON HEARING OF BAIL.

- It is established practice that an application in writing is filed on behalf of the accused to seek bail.

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- The necessary requirement warranted by law (Sec. 497, Cr.P.C.) in non-bailable offences is that the prosecution should be given notice to show cause why the accused should not be released on bail.

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- The term “identification” means proving that a person, subject or article before the Court is the very same that he or it is alleged or charged to be.

3.10.2 IDENTIFICATION PARADE, WHEN NECESSARY

- Identification parade becomes essential and inevitable only when a witness gets a momentary glimpse of the accused and he claims that he would be able to identify the accused .

3.10.3 ESSENTIALS OF IDENTIFICATION PARADE TEST

- In order to ensure that identification parade is conducted fairly, it becomes the duty of the prosecution to adopt such measures so that identifying witness cannot see

-
- the accused after commission of crime till the identification parade is held immediately after the arrest of accused persons as early as possible

3.10.4 IDENTIFICATION PARADE TEST – PRECAUTIONS AND GUIDELINES

- The identification parade should be conducted in presence of a Magistrate and two respectable witnesses.

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- The identifying witnesses is kept separate from each other.

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- The identification should be carried out as soon as possible/without any delay after the arrest of the suspect.

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- The suspect should be placed among other persons similarly dressed and of the same religion and social status.

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- They should be of similar height, built, structure and colour

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- In other non bailable offences, she has to be sent to judicial custody.

3.5.10 REMAND OF JUVENILES

- The Sec. 9(5) of the juvenile justice system ordinance, 2000 provides that when a child under fifteen years of age is arrested or detained for an offence which is punishable for less than ten years, he shall be treated as if he were accused of commission of a bailable offence.

3.5.11 JUDICIAL CUSTODY

- In cases, where a Magistrate thinks the case is not fit for remanding accused to police custody and so also, the accused is not to be discharged or released on bail, he shall send the accused to judicial custody in light to provision laid down under **section 344, Cr.P.C.**

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3.5.13 DISCHARGE OF ACCUSED

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-
- Magistrate before whom accused is produced at time of remand, can effectively grant relief to such person by passing order under section 63, Cr.P.C.

3.6.1 SEARCH OF DOCUMENTS OR THINGS, OR HOUSE

- When a Court deems that production of a certain document or other thing is necessary for the purpose of such investigation, inquiry or trial.

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- The Court, may issue a summons subject to conditions laid down in sec. 94, Cr.P.C., to the person in whose possession or power such document or thing is believed to be, directing him to attend and produce such thing at the time and place set accordingly.

-
- A Magistrate may issue search warrant directed to a police officer above the rank of a constable for search of a house.

3.6.2 SEARCH OF PERSONS WRONGFULLY CONFINED

- Magistrate is empowered to issue search warrant for recovery of a person he believes to be wrongfully confined and such confinement amounts to an offence.

-
- Such person must be brought before Magistrate after his recovery.

3.7 RECORDING OF STATEMENTS BY POLICE

- Section 160 Cr.P.C., empowers a police officer to require the attendance of any person acquainted with facts and circumstances of a case.

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- Section 161, Cr.P.C. further empowers any investigating officer to examine any person who appears to be acquainted with the facts and circumstances of a particular case.

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- Such statements shall be reduced to writing but shall not be signed by the person giving the statement.

3.8 RECORDING OF STATEMENTS OF WITNESSES BY MAGISTRATE

- Section 164, Cr.P.C., empowers a Magistrate to record statements of witnesses during course of investigation.

-
- Any such statement may be recorded in the presence of the accused and the accused shall be given an opportunity to cross-examine the witness making the statement.

-
- The statement shall be signed by the Magistrate and the witness giving statement.

3.9.1 RECORDING OF CONFESSIONS BY MAGISTRATE

- It is an admission of certain facts by a person which constitute commission of an offence.

-
- It is a voluntary statement made by a person charged with the commission of a crime or communicated to another person, wherein he acknowledges himself to be guilty of the offence charged.

-
- Section 164, Cr.P.C., empowers a Magistrate to record confessions of accused, as confessions before police are inadmissible under Articles 38 and 39 of the Qanun e Shahadat, 1984.

3.9.2 JUDICIAL CONFESSION AND VOLUNTARINESS

- Before recording any such confession, the Magistrate shall explain to the person making it that he is not bound to make a confession and,

-
- If accused makes a confession it may be used in evidence against him.

-
- The element of fear of the accused must be removed.

-
- Failure to question that accused make the confession voluntarily has been held to vitiate the confession.

3.9.3 FORMALITIES TO BE OBSERVED FOR RECORDING JUDICIAL CONFESSION BY A MAGISTRATE

- He should remove the accused from the custody of the police who bring him for the purpose.

-
- He should satisfy himself that no policeman concerned with investigation of the relevant case, is present in the Court or the place where proceeding could be heard or seen.

-
- He should explain to the accused that he is not bound to make a confession and, if he does so, it will be taken down in writing and may be thereafter used as evidence against him.

-
- The Magistrate satisfy himself as to whether the confession is voluntarily made or not, the Magistrate.

3.9.4 MODE OF RECORDING JUDICIAL CONFESSION

- Confessional statement of an accused is recorded under section 164 Code of Criminal Procedure (V of 1898).

-
- Section 364 of Code of Criminal Procedure (V of 1898) lays down the mode of examination of accused.

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- A confessional statement of an accused is also an examination of the accused, the provisions of section 364 Cr.P.C will apply to the recording of the confession of the accused.

3.9.5 NON-COMPLIANCE OF PROVISIONS UNDER 164 READ WITH 364, CR.P.C.

- Where the provisions of the sections 164 and 364 Code of Cr.P.C. have not duly been complied with while recording a confession or statement under section 164 Cr.P.C.

-
- The Section 533 Cr.P.C. provides a mode for the rectification of an error arising from non-compliance with any of the provisions of S. 164 or S. 364.

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- The object is to prevent justice being frustrated by reasons of such non-compliance.

CHAPTER -V

COMPLAINT CASES

5.1 COMPLAINT DEFINED.

- “Complaint” means the allegation made orally or in writing to a Magistrate, with a view to his taking action under Cr.P.C. that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer. [Sec. 4(I)(h), Cr.P.C.).

-
- The requisites of a legal complaint are: It must be
 - ❑ An allegation (oral or written) that some person (known or unknown) has committed an offence,

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- ❑ Made to a Magistrate, and
 - ❑ With the object that he should take action under the law; but a complaint does not include the report of a police officer.

5.1 PROCEDURE WHERE OFFENCE IS TRIABLE BY MAGISTRATE

- Where the complaint shows that the alleged offence is triable by Magistrate, the Magistrate taking cognizance of the offence on complaint shall at once examine the complainant upon oath,

-
- and the substance of the examination shall be reduced to writing and shall be signed by the complainant and also by the Magistrate

-
- Magistrate, if necessary, conduct a preliminary inquiry in order to determine truth or falsehood of the allegation

-
- Section 203 of the Code empowers a Magistrate to dismiss a complaint if he finds himself convinced by the investigation or inquiry that there does not exist sufficient ground for proceeding with the matter.

5.2 PROCEDURE WHERE OFFENCE IS TRIABLE BY COURT OF SESSIONS

- As per section 200(a), Cr.P.C. where a complaint in writing is made before a Magistrate, Magistrate shall not be required to examine the complainant and he may send the case to the Court of Sessions.

5.3 CHALLAN CASE AND COMPLAINT CASE: PREFERENCE BE GIVEN TO COMPLAINT CASE FIRST

- It is settled law that where a person is dissatisfied with the findings of the police in respect of the allegations levelled in his crime report,

-
- criminal complaint lodged by him would be put to trial first, while the proceedings in the challan case would be stopped till the decision of the complaint case;

CHAPTER –VI

TRIAL (STAGE) OF CRIMINAL CASES

6.1.1 CHARGE: DEFINITION AND PURPOSE

- According to encyclopaedia law dictionary 'charge' means an accusation made against a person in respect of an offence alleged to have been committed by him.

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- The purpose of charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial

6.1.2 HOW CHARGE IS TO BE FRAMED: VARIOUS SITUATIONS.

- Sections 221 to 227 of the Code speak of the form and contents of a charge. Section 227 authorizes the Court to alter a charge in the case at any stage of the case before pronouncement of the judgment.

-
- For every distinct offence of which a person is accused, there is to be a separate charge and such charge shall be tried separately except in cases mentioned in

-
- Sec.234 (accused may be charged with and tried for three offence of same kind in last twelve months together),

-
- S. 235 (where offences committed by the accused are connected together forming same transaction),

-
- 236 (when it is difficult to determine exactly what offence out of various alleged offences, the accused has committed) and
 - 239 (giving conditions where accused persons may be charged jointly).

6.1.3 FRAMING OF CHARGE

- The requirement of law is that a charge should state the offence committed by the accused and mention the specific name, section and sufficient description of the offence;

-
- if no any specific name has been given to it by law, there should be sufficient definition of it.

6.1.4 PROCEDURE WHEN ACCUSED PLEADS GUILTY

- When the accused pleads guilty during the course of trial in addition to his plea, such plea of guilt should be recorded in questions and answers form and in the exact words of the accused

-
- in order to find out what the accused exactly meant by pleading guilty and in absence of that the Court cannot convict him on the basis of such plea.

-
- If the accused pleads guilty to the charge framed against him without any qualification or reservation and shows no sufficient cause as to why he should not be convicted,

-
- the Court may proceed to record a conviction under Section 243 Cr.P.C. Great care and caution is required in this regard

6.1.5 PROCEDURE WHEN ACCUSED PLEADS NOT GUILTY

- Where the accused does not plead guilty or does not admit the commission of the offence, the hearing of the case commences and the trial begins (Sec.244, Cr.P.C.)

6.1.6 PROCEDURE WHEN ACCUSED REMAINS SILENT AT THE TIME OF PLEA

- Where accused remains silent on the question of plea of charge, it may not be admission in proper sense.

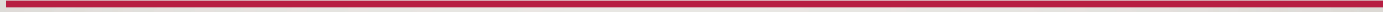
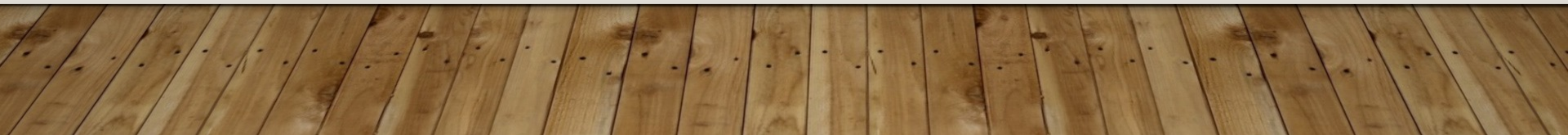
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- To remain silent is the right of accused. As a precautionary measure, in such cases, the trial court should proceed to record prosecution.

6.1.7 PROCEDURE WHEN ACCUSED PLEADS NOT GUILTY AT THE TIME OF CHARGE BUT ADMITS GUILT, LATER.

- In cases where accused pleads not guilty to charge framed against him and his case is fixed for evidence.

-
- He then subsequently makes an application wherein he pleads guilty and prayer for leniency in sentence.

-
- It has been held that second plea on same charge could only be recorded when charge was amended otherwise Courts are not empowered to record other plea.



6.1.8 WITHDRAWAL OF CHARGE

- Section 240, Cr.P.C. provides that when in a case a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them,

-
- the complainant or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges,

6.2.1 LAW OF EVIDENCE

- After the charge is framed and the accused pleads not guilty or when the Court thinks that evidence should be procured, prosecution leads its evidence and prosecutes the accused in the Court of law.

6.2.2 EVIDENCE DEFINED

- “Evidence” is a comprehensive term which includes statement of witnesses, parties and documents which are produced in court or judicial forum to prove or disprove the case.

6.2.3 KINDS OF EVIDENCE.

- **Oral & Documentary Evidence:**
- Oral evidence includes all matters which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry

-
- Documentary evidence means all documents produced for the inspection of the Court. Article 72 of the Qanun-e-Shahadat, 1984, requires that contents of documents may be proved either by primary or secondary evidence

PRIMARY EVIDENCE

- Article 73 of the Qanun-e-Shahadat, 1984, defines 'primary evidence' as the document itself produced for the inspection of the Court.

-
- Where a document is executed in several parts, each part is primary evidence of the document.

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- Where a document is executed in counterparts, each counterpart is primary evidence, as against the party executing it, etc

SECONDARY EVIDENCE

- Article 74 of the Qanun-e-Shahadat, 1984, defines 'secondary evidence' as including

(a) Certified copies;

-
- (b) Copies made from the original by mechanical process which in themselves ensure the accuracy of the copy and copies compared with such copies; etc

6.2.4 COMPETENCY OF WITNESS.

- Article 3 of the Qanun-e-Shahadat, 1984 lays down the eligibility criterion to testify in the Court of law. It provides that all persons shall be competent to testify unless

-
- The Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to them,

-
- (II) They are of tender age,
 - (iii) They are of extreme old age,
 - (iv) They are afflicted with some disease, whether of body or of mind, or any other cause of the same kind, or,
 - (v) Where a person has been convicted by a Court for perjury or giving false evidence, unless the Court is satisfied that he has repented thereafter and has mended his ways.

6.2.5 EVIDENCE OF DEAF AND DUMB.

- As a rule of criminal jurisprudence, a deaf or a dumb person should not be prevented from being a credible and reliable witness merely due to his or her physical inability

-
- Such a person though unable to speak may convey his contention through writing if he or she is literate. In case, he or she is not literate, such person may convey the same through signs and gestures

6.2.6 ORDER IN WHICH EVIDENCE MAY BE RECORDED.

- Article 130 of the Qanun e Shahadat, 1984, regulates the order in which evidence may be recorded. It may proceed in an order: a) prosecution evidence, i.e., evidence which the prosecution produces in support of its case, b) examination of the accused, and, c) defence evidence

6.2.7 PROSECUTION EVIDENCE

- The prosecution discloses its case against the accused through examination in chief of witness, then (if the defense party so desires) cross-examines the witness, then (if the prosecution so desires) re-examines (Article 133, Qanun e Shahadat, 1984).

6.2.8 RELEVANCY AND ADMISSIBILITY OF EVIDENCE

- Question of fact is one which attempts to prove what happened. Such question may arise in connection with legal principles that may be argued in a case
- A fact may be relevant if it enables the Court to reach conclusion with regard to issues placed before it.

-
- Admissibility, on the other hand, is a rule that provides the Courts with the means of excluding evidence that is irrelevant, which for some reasons is too unreliable to be accepted by the Court.

6.2.9 JUDGE TO DECIDE ADMISSIBILITY OF EVIDENCE.

- Under Article 131 of the Qanun-e-Shahadat, 1984, it is the prerogative of the Judge to decide as to admissibility and relevancy or otherwise of evidence before him

6.2.10 BURDEN OF PROOF.

- In criminal law, burden to prove the guilt of accused lies upon prosecution. It is not for the accused to disprove case of prosecution, he is only required to create a doubt in the case of prosecution

6.2.1 | STANDARD OF BURDEN OF PROOF.

- General principle of criminal law is that prosecution has to prove its case against the accused and the standard of proof is to prove the same beyond reasonable doubt

6.2.12 PREVIOUS CHARACTER OF ACCUSED WHEN RELEVANT

- Article 67 of the Qanun-e-Shahadat, 1984 says that in criminal proceedings the fact that the person accused is of a good character is relevant.

-
- Article 68 of the Order, on the other hand, provides that in criminal proceedings the fact that the accused person has a bad character is irrelevant

6.2.13 QUALITY AND NOT QUANTITY IS THE PRINCIPLE

- Plurality of witnesses is not required for proof of a crime. Court should be concerned with quality and not with quantity of evidence necessary for proving or disproving a fact.

6.3 ACQUITTAL AT ANY STAGE

- Under section 249-A Cr.P.C, a Magistrate to acquit the accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence

6.4 DEFENCE PLEA

- Section 342 Cr.P.C. provides that for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry, or trial without previously warning the accused, put such questions to him as the Court considers necessary

6.5 FINAL ARGUMENTS / CLOSING SUBMISSIONS

- After the accused has led his defence, final arguments from prosecution and the accused (himself or through Advocate on his behalf) are called upon

6.6.1 DECISION / JUDGMENT

- After all agony of trial comes to end, there comes a time to award decision or judgment which may result into either acquittal under section 245(i), Cr.P.C. or conviction under section 245(ii), Cr.P.C. of the accused

CHAPTER –VII

MISCELLANEOUS / OTHERS

7.1 COMPOUNDING OF OFFENCES

- There are two types of offences, which are compoundable under section 345, Cr.P.C. The first category of offences, mentioned in Section 345(I), Cr.P.C is compoundable without permission of the Court.

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- The second category of offences mentioned in Section 345(2), Cr.P.C is compoundable with the permission of the Court

7.2 SUMMARY TRIALS (PROCEEDINGS)

- In summary trials under section 260, Cr.P.C Magistrate need not record evidence of the witnesses or frame a formal charge but he may include the particulars

-
- (a) the serial number,
 - (b) the date of the commission of the offence;
 - (c) the date of the report or complaint; etc

7.3 PROVISION OF RELEASE ON PROBATION

- Under Section 4 of the Ordinance, where a Court is of opinion that a person convicted of an offence punishable for not more than two years by it and not having been previously convicted,

-
- after due regard to his various aspects, a probation order is not appropriate, the Court may after recording its reasons in writing, make an order for discharging him after due admonition

7.4 JUVENILE OFFENDERS

- The Juvenile justice system ordinance 2000 was promulgated on July 01, 2000.
- A juvenile is a child who at the time of commission of an offence has not attained the age of eighteen years.

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- The Section 05 of the Ordinance under discussion provides for a separate trial of a child from an adult person

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- The Section 10 of the Ordinance provides for the provisions of the bail or release of the child. According to the said section, where the child is arrested in aailable offence, and not having been already released on bail, be released by the Juvenile Court on bail with or without surety

7.5 PROCEEDINGS IN OFFENCES AFFECTING ADMINISTRATION OF JUSTICE.

- The section 195, Cr.P.C., requires a complaint in writing of the public servant concerned, of or some other public servant to whom he is subordinate, before a Court can take cognizance of these offences and therefor, cognizance upon police report for these offences will not be lawful

7.6 PROCEDURE OF MAGISTRATE IN CASES, WHICH HE CANNOT DISPOSE OF.

- If in course of an inquiry or trial it appears to the Magistrate from the evidence that the case is triable by some other Magistrate, he is to stay proceedings and forward the case with a brief report to this effect to the Session Judge

7.7 PROCEDURE WHEN, AFTER COMMENCEMENT OF TRIAL, MAGISTRATE FINDS CASE SHOULD BE TRIED BY COURT OF SESSION OR HIGH COURT.

- If in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, he shall send the case to the Court of Session or High Court, for trial.

7.8 STOP PROCEEDING OF CASE

- Magistrate has power to stop proceeding of a case at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused; and of course, he has to record reasons for such order (Sec. 249, Cr.P.C).

7.9 AWARD OF COMPENSATION.

- Magistrate has power to award expenses or compensation out of fine imposed by the Court while sentencing in offender

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- Such power may be used in
 - (a) in defraying expenses properly incurred in the prosecution;
 - (b) in the payment of any person of compensation for any loss, {injury or mental anguish or psychological damage} caused by the offence

7.10 DISPOSAL OF (CASE) PROPERTY

- Police are empowered to seize in property which may be alleged or suspected to have been stolen or may have been found to create suspicion of commission any offence (section 550, Cr.P.C.).

-
- The Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof

7.11 SUPERVISORY PROCEEDINGS

- A Magistrate may receive directions under section 491, Cr.P.C. in of nature of a Habeas Corpus from the Sessions Judge to conduct raid its someplace or police station where some innocent person is alleged to have been illegally detained

7.12 CASE DIARIES AND ARRANGEMENT OF CAUSE LIST

- Magistrate should write day-to-day (date-by-date) diaries of criminal cases pending before his court under his hand (if not in his hand then under his dictation) and such shall be signed by him.

7.13 INCORPORATION OF ARGUMENTS FROM ADVOCATES IN ORDERS / JUDGMENTS

- Magistrate should incorporate in their orders and judgments the ideas in brief advanced by learned Advocates during their arguments

7.14 CITATIONS / CASE LAWS RELIANCE.

- Where Magistrates rely upon any citation or case law while deciding any matter, they are obliged to cite the same in an open and obvious manner; with names of the parties, book (journal / digest etc) and page number, and with proper paragraph or specific observation relied upon.

7.15 SHORT ORDERS

- There are some routine applications upon which one-line or few-word orders may suffice

7.16 FINAL NOTE

- The philosophy of criminal justice system is that a criminal act is injurious not just to an individual but to society as a whole. Justice in its truest sense of the word is the ultimate goal of the entire criminal justice system.

6.6.2 ACQUITTAL

- “Acquittal” means the legal and formal certification of the innocence of a person who has been charged with crime.

-
- Section 245(i), Cr.P.C. of the Code empowers the Magistrate to acquit the accused of his charge if upon taking evidence referred to in Section 244 , and examining the accused, finds him Not guilty.

6.6.3 RELEASE ORDERS

- Where an accused is acquitted from charges, and if he be confined in jail, a “Release” writ is issue by the Court directing the Superintendent of jail to execute the same in accordance with law.

6.6.4 PRINCIPLE OF DOUBLE JEOPARDY

- Article 13 of the Constitution of Pakistan, 1973 provides that no person shall be prosecuted or punished for the same offence more than once. Protection against double jeopardy is embodied under said Section 403, Cr.P.C.

6.6.5 CONVICTION

- Conviction means to find guilty of an offence. Sentence is punishment awarded to a person convicted in criminal trial. Conviction is followed by sentence

-
- Sentence follows conviction. It should therefore be commensurate with the gravity of the offence and the manner in which the offence has been committed

6.6.6 MITIGATING CIRCUMSTANCES

- Mitigating circumstances are those; with reference to criminal matters; which do not excuse a person for his criminal act or offence but which may show that the accused had valid reasons for his act and may tend to lessen the culpability of an accused.

6.6.7 QUANTUM OF PUNISHMENT

- The elements to be considered for assessing the quantum of sentence are: (a) The nature of the offence, (b) The circumstances in which it was committed,

-
- (c) The degree of deliberation shown by the offender,
 - (d) The provocation which he received,
 - (e) The antecedents of the prisoner up-to the time of sentence,
 - (f) His age and character

6.6.8 PRINCIPLES OF SENTENCING.

- The four accepted principles of sentencing are as under
- (I) Retribution
- (II) Deterrence
- (III) Prevention
- (IV) Rehabilitation

6.6.8 JUDGMENT WRITING

- There is no set standard of writing judgments; no hard and fast style. Every judge may different way of writing judgments with variation in style. However, the most basic ingredients of a judgment in a criminal case are the facts of the prosecution case,

-
- the points of determination, the decision reached at, the reasons thereto, final order convicting or acquitting the accused, awarding sentence in case of conviction, and signature and the date of decision and announcement