

# LAW GAT HANDBOOK 2021

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## LAW GAT Syllabus Checklist

Serial no.	Title	Allocated Portion
<b>1.</b>	<p><b>Constitution</b></p> <p><b>1) Constitutional History of Pakistan (Recommended book: Constitutional and Political History of Pakistan by Hamid Khan) Cases:</b></p> <ul style="list-style-type: none"> <li>i) Maulvi Tamiz-ud-Din Khan vs. Governor General of Pakistan (PLD 1955 FC 240)</li> <li>ii) The State vs. Dosso and Others (PLD 1958 SC 533)</li> <li>iii) Miss Asma Jilani vs. Government of Pakistan (PLD 1972 SC 139)</li> <li>iv) Begum Nusrat Bhuto vs. Chief of Army Staff (PLD 1977 SC 657)</li> <li>v) Muhammad Nawaz Sharif vs. President of Pakistan (PLD 1993 SC 473)</li> <li>vi) Al-Jehad Trust vs. Federation of Pakistan (Judges Case) (PLD 1996 SC 324)</li> <li>vii) Zafar Ali Shah and others vs General Pervez Musharraf, Chief Executive of Pakistan (PLD 2000 SC 869)</li> <li>viii) Khan Afsandyar Wali and others vs. Federation of Pakistan (PLD 2001 SC 607)</li> </ul> <p><b>2) Constitution of Pakistan, 1973 (Introduction, i.e. Articles 1-8; Fundamental Rights, i.e. Article 8-28; Preamble, Principles of Policy, i.e. 29-40; Parliament, i.e. Articles 50-89; The Judicature, i.e. Articles 175-212)</b></p> <p><b>3) International Law (United Nations Charter &amp; Statute of the International Court of Justice)</b></p>	<p>A total of 20 MCQs with 10 MCQs for Constitution of Pakistan and 5 MCQs each for the other parts</p>
<b>2.</b>	<p><b>Jurisprudence</b></p> <p><b>1) English: (Jurisprudence by Sir John Salmond LLB Student)</b></p>	<p>A total of 10 MCQs with 5 marks each for both the Jurisprudence</p>

	2) Islamic: (Islamic Jurisprudence by Prof. Imran Ahsan Khan Nyazee)	
3.	<p><b>Civil Law</b></p> <p>CPC</p> <p>i) From Preamble to Section 12, Sections 15-20, 47, 75, 96, 104, 115 and 151</p> <p>ii) Orders 1, 6-9, 39, 41,43</p>	A total of 20 MCQs
4.	<p><b>Criminal Law</b></p> <p>1) Pakistan Penal Code (PPC)</p> <p>i) Chapter 2 (General Explanations/Definitions)</p> <p>ii) Chapter 4 (General Exceptions)</p> <p>iii) Chapter 16 (Offences Affecting the Human Body)</p> <p>iv) Chapter 16-A (Wrongful Restraint and Wrongful Confinement)</p> <p>v) Chapter 17 (Offences against Property)</p> <p>2) Code of Criminal Procedure (Cr.P.C.)</p> <p>i) Chapter 1 (Preliminary Definitions)</p> <p>ii) Chapter 5 (Arrest, Escape and Retaking)</p> <p>iii) Chapter 7 (Process to compel the production of documents and other moveable property, and for the discovery of persons wrongfully confined)</p> <p>iv) Chapter 8 (Security for keeping the peace and for good behavior)</p> <p>v) Chapter 10 (Public Nuisance)</p> <p>vi) Chapter 11 (Temporary orders in urgent cases of nuisance and apprehended danger)</p> <p>vii) Chapter 14 (Information to the police and their powers to investigate FIR)</p> <p>viii) Chapter 16 (Complaints to magistrate)</p> <p>ix) Chapter 17 (The commencement of proceedings before court)</p> <p>x) Chapter 31 (of Appeal)</p> <p>xi) Chapter 39 (of Bail)</p>	A total of 20 MCQs with 10 for PPC and 10 for CrPC

<b>5.</b>	<b>Law of Evidence</b> Qanun-i-Shahadat Order, 1984	A total of 20 MCQs
<b>6.</b>	<b>Professional Ethics</b> Canons of professional conduct and etiquette of Advocates Ch 12 (Rule 134-175 B) Pakistan Legal Practitioners and Bar Council Rules, 1976	10 MCQs for this portion

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## Constitutional Law

### **Maulvi Tamizuddin Khan v. Federation of Pakistan (PLD 1955 Sindh 96)**

#### **I. Facts of the Case**

Following are the important facts of the case of Maulvi Tameez-ud-din vs Federation of Pakistan.

- **Dissolution of the Constituent Assembly:**

The Governor-General of Pakistan, Ghulam Mohammad dissolved the constituent assembly on Oct 24, 1954. There were some clashes among the prime minister and governor-general which were caused regarding the dissolution of the constituent assembly.

- **Governor-General also Dissolved Cabinet in 1953:**

Governor-General dissolved cabinet in 1953 before the dissolution of the constituent assembly of Maulvi Tameez-ud-din, the governor-general of Pakistan in 1953 also dismissed cabinet of Nizam-ud-din.

- **Reconstitution Of the Council of Ministers:**

After the dissolution of the constituent assembly, the council of ministers was reconstituted.

- **Action Taken by Maulvi Tameez-ud-din:**

Maulvi Tameez-ud-din who was the head of the constituent assembly filed a writ petition before the Chief Court Sindh. This petition was against the Federation.

- a. Writ Petition.*

Maulvi Tameez-ud-din filed a writ petition in the Chief Court Sindh under section 223 A of the Government of India act 1935.

- b. Numbers Of Writs Filed.*

He filed two writ petitions in order to redress his grievance. They were as follows.

**1. Writ Of Mandamus:**

A writ of mandamus was filed by Maulvi Tameez-ud-din, in order to restrain the enforcement of the proclamation of the governor-general. It was also prayed that the federation and the members of the reconstituted council of ministers should be prohibited from meddling into the functions of Maulvi Tameez-ud-din.

**2. Writ Of Quo Warranto:**

A writ of quo warranto was also filed by Maulvi Tameez-ud-din demanding that the ministers should be asked as under which authority they were holding the offices.

**II. Arguments given by the State**

The federation and the council of ministers gave arguments in respect of writs filed by Maulvi Tameez-ud-din.

Following were the arguments given by the federation.

- **Dissolution of the Constituent Assembly Was Right:**

It was argued that the constituent assembly was dissolved in the right way.

- **No Writ Jurisdiction of the Chief Court:**

It was further argued that the chief court had no jurisdiction to entertain the writ petition.

- **Invalidity Of Section 223-a:**

It was further argued by the federation that the section 223-A which was put into the government of India act 1935, was invalid due to non-assent of the governor-general which was very necessary for all laws.

**III. Decision of the Chief Court**

The chief court of the Sindh declare null and void the step taken by the Gulam Muhammad governor-general and assembly restored.

#### **IV. Appeal of Federation before the Federal Court**

The federation and council of ministers appeared before the federal court against the decision of Chief Court Sindh.

#### **V. Decision by the Federal Court**

- **Governor General Assent Is Necessary:**

It was observed that the constituent assembly also performs its functions as the legislature and all laws passed by it require the assent of the governor-general.

- **Sec 223-a of Government of India Act Was Not Law:**

Section 223-A of the government of India act 1935 was not law due to non-assent of the governor-general.

- a. **No Jurisdiction of Chief Court:**

It was further observed that the section 223-A is not a law therefore the chief court did not have any jurisdiction to issue writs.

- b. **Constituent Has No Sovereignty:**

According to the federal court, the constituent assembly is not sovereign, but governor-general is a sovereign authority.

#### **VI. Effect of the Decision**

In the decision of the federal court, the decision of the chief court of Sindh was suspended.

#### **VII. Conclusion**

In the end, we can say that the federal court decided the case in favour of the federation and the council of ministers. The dissolution of the constituent assembly was held right, and it dismissed the writ petition.

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## **The State v. Dosso and others (PLD 1958 SC 533)**

### **I. Introduction**

State v. Dosso is a simple case of murder committed by a person named, Dosso in Balochistan. He was convicted under the tribal system of justice by Loya Jirga as enumerated in FCR (frontier crimes regulation); but his relatives approached the Lahore High Court which repealed the decision of Loya Jirga. Later on, on an appeal by Federal Government, the Supreme Court reversed the decision of Lahore High Court. The case got prominence because it indirectly questioned the legitimization of martial law imposed by Iskandar Mirza on 7th Oct 1958.

### **II. Background**

A murder was committed in the Lora lai district of Balochistan by a person named Dosso. He was arrested and was handed over to the Council of Elders (Loya Jirga). The Tribal authorities charged him under FCR, 1901. The relatives of Dosso upon this filed a writ petition in Lahore High Court against the decision of Loya Jirga. The Lahore High Court heard the case under the constitution of 1956 and held its verdict in favour of Dosso. Lahore High Court also declared FCR as unconstitutional. The Federal Government filed an appeal against this decision in the Supreme Court of Pakistan (SC). The SC decided the case in favour of the Federal Government.

### **III. Main Events/Facts**

- **Arrest and Conviction of Dosso:** Dosso and others were convicted under Section 11 of FCR 1901 and handed over to Loya Jirga. The Jirga convicted Dosso.
- **Petition in Lahore High Court against FCR:** The relatives of Dosso filed a petition against the proceedings of the council of elders regarding the Dosso case in Lahore High Court. They challenged the references and the convictions on the grounds that the relevant provision of the FCR was void being repugnant to the principle of “Equity before Law”, the provision of equal protection of law, and the right to counsel embodied under Articles 5 and 7 of the 1956 Constitution.
- **The decision of the Lahore High Court:** The High Court decided the case in favour of Dosso and declared FCR repugnant to the 1956 Constitution, Article 5 and 7 of which ensured the equality of all before the law. Thus, Lahore High Court decided the proceedings of the council of elders as null and void under FCR, 1901.

#### **IV. Effect of Lahore High Court**

The effects of this decision were that after the declaration of FCR as repugnant to the constitution; then the validity of those cases was questioned, which were decided under FCR since long before it was enacted, and especially since 1956 when the new constitution was promulgated.

#### **V. Appeal in the Supreme Court of Pakistan**

The Federal Government of Pakistan went into an appeal in SC against the verdict of the Lahore High Court. The Supreme Court decided the case on 13th October 1958 as the date for hearing the case. But prior to that on October 7, 1958, a drastic change came in the political history of Pakistan, when 1st martial law was imposed in the country.

## **VI. Promulgation of Martial Law**

On October 7th, 1958, the President of Pakistan Iskandar Mirza declared martial law in the country and made Ayub Khan the Chief Martial Law Administrator (CMLA). The central and provincial legislature was dissolved with the abrogation of the 1956 Constitution.

## **VII. Laws (Continuance in Force) order**

Three days later the Laws (continuance in force) order was issued according to which all other laws except those of 1956 constitution were validated and also the jurisdiction of all courts was restored. Thus, law (continuance in force) order 1958 was the New Legal Order, which replaced the old legal order i.e. the 1956 constitution.

## **VIII. Some technical points**

Followed by the imposition of martial law some technical points raised in Dosso case throughout the country.

- if Supreme Court would have upheld the decision of the Lahore High Court in Dosso's case, it means the 1956 Constitution was still in force as the Lahore High Court decided the case in accordance with Article 5 and & 7 of the 1956 constitution.
- And if the 1956 constitution was still in force then what was the role of martial law regulation i.e., Laws (continuance in Force) Order 1958. In short, it would have been a challenge to the Martial Law Administration.

## **XI. Judgement of the Supreme Court**

The Supreme Court decided the case unanimously against the verdict of the Lahore High Court. The Supreme Court decision was based on Hans Kelsen's theory of legal positivism.

## **X. Main points/aspects of the judgment**

- **Legislation of 1958 martial law:** The judgment held that the 1958 martial law imposition is a kind of revolution (peaceful revolution) which is not resisted or opposed by the common people; this clearly defines that the people are happy with this change. Thereafter this revolution or martial law is legal as long as it satisfies the common people.
- **KELSEN'S THEORY OF LEGAL POSITIVISM:** According to Kelsen's theory:
  - a. “If there is no change in the constitution or the government with meta-legal means and ways and if there is no opposition resistant to this change internally by the people plus no disturbance in the territorial integrity of the country, then such a change is a successful revolution and is recognised by international law.” Thus, the military coup of 1958 was legalized by the Supreme Court under the Chief Justiceship of Justice Munir.
- **Recognition of Laws (continuance in force) order:** The Supreme Court held that the Laws (Continuance in Force) Order 1958 was the new legal order and the validity of laws and the correctness in the judicial decisions would be determined according to it.
- **Restoration of FCR:** The Supreme Court also held that as the 1956 Constitution was abrogated therefore FCR 1901 was still in force in accordance with the Laws (continuance in force) Order, 1958.
- **The Decision of LOYA JIRGA Is Valid:** The court also made a reference to the decision of the council of elders, that its decision is valid and up to the mark.

## **XI. Critical Analysis/Commentary/Impacts of SC verdict**

- **Recognition of ML:** The judgement of SC recognized the ML as legal and valid action; this had far-reaching effects on the political history of Pakistan. It opened the gates for the future ML's in the country; also, the recognition of ML provided with absolute powers in the hands of ML administrator who used it for the next 10-11 years.
- **Halt Democratic process:** The verdict of SC halted the democratic process of Pakistan which had recently been on the road after the promulgation of 1st constitution of Pakistan and threw the country onto the track of dictatorship.
- **Deprivation from Constitution:** As a result of the judgment, Pak was deprived of its 1st independent constitution framed and promulgated after so many efforts, and a long struggle of 11 years.
- **Encouraged Military intervention:** The verdict of SC encouraged the subsequent military interventions in the politics of Pakistan; which occurred three times i.e., Gen. Yahya 1967; Gen. Zia 1979; and finally, Gen. Musharraf in 1999, after this sad event. These interventions potently damaged the democratization in Pakistan.
- **FCR Revalidated:** The judgement of SC revalidated the British Imperial legacy, the curse, i.e., FCR; popularly known as black law, in the tribal areas of Frontier and Balochistan. Had it not been declared as valid in 1958, the disturbances in these regions would have not existed if these people were brought under the arena of the normal judicial system of Pakistan.
- **Damaged Independence of Judiciary:** The verdict was a serious blow to the independence of the judiciary. The judiciary was bound to render its services under the new legal order of, Laws (continuance in force 11 Oct 1958); even if the judges have to render decisions against the basic principles of justice, they were bound to do so.

- **Curbing of Appellate Jurisdiction:** The decision also took away the power of the courts to hear appeals against the cases/actions of federal Govt.
- **Disturbed ties between East and West Pakistan:** The abrogation of the 1956 constitution also led to the upset of agreements between East and West Pakistan, which were resolved after long struggle under the 1956 constitution. The grievances of East Pakistan have almost pacified in 1956 consensus-based constitution by incorporating both Urdu and Bengali as national language etc. Had ML not been legalized at that time, we would have not lost East Pakistan.

## **XII. Conclusion**

In this case, the Pakistan Supreme Court used jurist Hans Kelsen's theory that a revolution can be justified when the basic norm underlying a constitution disappears and a new system is put in its place.

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### **Asma Jilani v. Government of Punjab (PLD 1972 SC 139)**

#### **I. Introduction**

Judiciary plays a very important role in the interpretation of the statutes and laws. The judiciary has a pivotal role in the development of law. It develops law by giving judgments which become precedents. So, precedents may be regarded as a source of law. In Pakistan, the superior courts rendered judgments which became precedents. There have been a lot of important and leading cases in the history of Pakistan. Asma Jilani vs Government of the Punjab is one of them.

#### **II. Facts of the case**

The facts of the Asma Jalani v. Government of Punjab case are the following:

- **Challenge of Malik Altaf Gauhar's Detention:** The appeals were filed because of the detention of Malik Altaf Gauhar and Malik Ghulam Gillani. The detention of both of them was challenged.
- **Persons challenged the detention:** The persons who challenged the detention were Miss Asma Jilani who filed an appeal for the release of Malik Ghulam Jilani and the other one was Zarina Gauhar who filed an appeal for the release of her husband Altaf Gauhar.
- **Court in which Petition filed:** The writ petition was filed by Asma Jilani in the Lahore High Court for the release of her father Ghulam Jilani and Mrs Zarina Gohar filed an appeal in Sindh-Balochistan High Court.
- **Law under which Mr Altaf Detained:** Altaf Gauhar and Malik Ghulam Jilani were detained under Martial Law Regulation No. 78 of 1971.

### **Principles of law or rule of law:**

Following are the principles of law:

- **Principle laid down in State v. Dosso:** It was held in this appeal that principles, which were laid down in State vs Dosso, were not justified.
- **Constitution of Pakistan 1962:** It was settled in this appeal that courts gave full effect to the constitution of 1962, and all laws made and acts of various civil and military governments became lawful and valid due to that recognition, which constitution of 1962 and courts gave them.
- **Court Duty:** It was held in this appeal that court's judicial function was to adjudicate upon a real and present controversy, which a litigant raised before it, and if litigant did not choose to raise a question, it was not for the court to raise it suo motu.

- **Bias in Judge:** It was settled in this appeal that mere association with the drafting of law could not disqualify a judge from interpreting that law in light of those arguments, which presented before him.
- **Jurisdiction:** It was held in this appeal that superior courts are the judge of their own jurisdiction.
- **Proclamation of Martial Law:** It was decided in this appeal that General Yahya Khan's proclamation of martial law was illegal.
- **Doctrine of Necessity:** Although the doctrine of necessity was once again pleaded to defend the military regime of General Yahya Khan, yet the same was rejected through the judgment of this appeal.

### III. Conclusion

To conclude, it can be stated that judgment of case of Miss Asma Jilani was announced after the end of General Yahya Khan's rule, yet it initially led to the end of Bhutto's martial law and finally, it paved the way for the restoration of democracy and for the adoption of the constitution of 1973.

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## **Begum Nusrat Bhutto v. Chief of Army Staff etc (PLD 1977 SC 657)**

### I. Introduction

After independence of Pakistan, Pakistan was a weak political institution, had a powerful Army with several military coups, and an infamous Article 58(2)(b) of the Constitution of Pakistan 1973. Due to these factors, the constitutional development ceased in Pakistan. Judiciary plays an important role in the interpretation of statutes and laws. These have been a lot of important and leading cases in the history of Pakistan. Begum Nusrat Bhutto v. Chief of Army Staff and Federation of Pakistan case in one of them.

## II. Facts of the Case

Following are the facts of case of Begum Nusrat Bhutto v. Chief of Army Staff

- **Allegation of Official Interference with Elections of 1977**

Opposition parties alleged that there was official interference with elections of 1977 in favour of the ruling party of Prime Minister Zulfiqar Ali Bhutto.

- **Anti-Bhutto Movement**

Opposition parties never accepted results of elections of 1977. Therefore, they started anti-Bhutto movement.

- **Military Coup**

Prime Minister Zulfiqar Ali Bhutto's dialogues with opposition leaders failed to stop military interference, and eventually General Zia-ul-Haq dismissed his government through military coup and imposed martial law.

- **Arrest of Zulfiqar Ali Bhutto**

With imposition of martial law, Zulfiqar Ali Bhutto was arrested.

- **Release of Zulfiqar Ali Bhutto**

After some days, the military government released Zulfiqar Ali Bhutto.

- **Re-arrest of Zulfiqar Ali Bhutto**

After his release, Zulfiqar Ali Bhutto started public campaign, and this campaign eventually caused not only his re-arrest, but also arrest of his colleagues.

- **Institution of Case**

Against re-arrest of Zulfiqar Ali Bhutto, Begum Nusrat Bhutto filed this case against Chief of Army Staff.

## III. Decision of the Supreme Court

Following is the decision of the Supreme Court:

- **Rectification of Objections**

The Chief of Army Staff is also the CMLA, and the objection could be rectified by adding words CMLA to the description of respondents as stated in petition.

- **Kelsen's Theory**

The theory of revolution legality can have no application to a situation where the breach of legal continuity is admitted to be of purely temporary nature and for specified limited purposes. It will be inappropriate to seek to apply Kelsen's theory to such transient and limited change in legal continuity of country thus giving rise to unwarranted consequences of far-reaching character not intended by those responsible for temporary change.

- **Failure to maintain Law and Order**

The Prime Minister faced difficulty to maintain law and order. There was a political crisis in the country, leading to constitutional breakdown. A situation had arisen for which Constitution provided no situation. It was in these circumstances that Chief of Army Staff, General Muhammad Zia-ul-Haq intervened to save country from chaos and bloodshed to safeguard integrity of Pakistan and to separate warring factions, which had brought disaster.

- **Arrangement of Fair Election**

Chief Martial Law Administrator stepped in for a temporary period and for the purpose of arranging fair elections.

- **Jurisdiction of (Law continuous in force order)**

The Chief Martial Law Administrator was justified in providing in Article 2(3) of Law (Continuous in Force) Order 1977 which stated that the right to enforce fundamental rights shall be suspended.

#### **IV. Conclusion**

To conclude that Martial law as enforced due to state necessity and for the welfare of people. The Supreme Court decided in favor of federation.

## **Mian Muhammad Nawaz Sharif v. President of Pakistan & others (PLD 1993 SC 473)**

### **I. Introduction**

Judiciary plays a very important role in the interpretation of the statutes and laws. The judiciary has a pivotal role in the development of law. It develops law by giving judgments which become precedents. So, precedents may be regarded as a source of law. There have been a lot of important and leading cases in the history of Pakistan. Muhammad Nawaz Sharif v. President of Pakistan is one of them.

### **II. Facts of the Case**

- On the evening of 17 April 1993. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan addressed the nation on the National TV. He alleged inter alia that disgruntled political elements were working against his government, hatching conspiracies to destabilize it and trying to undo all the good work he was trying to do. All this, he alleged, was being done under the patronage of the President of Pakistan.
- He ended his speech with the following challenging words, “I will not resign; I will not dissolve the National Assembly; and I was not to be dictated.”
- On the evening of 18 April 1993 barely 24 hours after this emotional and challenging address was delivered, the president of Pakistan exercised of the powers conferred on him under Article 58(2)(b) of the constitution, ordered the dissolution of the National Assembly, dismissed the Prime Minister and his Cabinet and called for General Elections in the country. A Care-taker Cabinet was immediately sworn in the same evening. which was later expanded to include Ministers.

- A week later, the dismissed Prime Minister (Mian Muhammad Nawaz Sharif) moved this court under its original constitutional jurisdiction under Article 184(3) of the Constitution on 25 April 1993, praying that the order of dissolution dated 18-04-1993 be declared mala fide, without lawful authority null and void.

### **III. Preliminary Hearing**

The petition came up for preliminary hearing the next day, viz. the 25 April 1993 before a full bench of the eleven Permanent Judges of this Court, herein, the Attorney-General of Pakistan raised a preliminary objection to the effect that the petition filed under Article 184 of the Constitution direct before the Supreme Court was not maintainable and is liable to be dismissed on this short ground.

### **IV. Final Hearing**

- Coming now to the second question requiring adjudication, namely whether the president in ordering the dissolution of the National Assembly exceeded the powers conferred on him under clause (b) of Article 58 of the constitution. It is appropriate that the terms of this provision be clearly comprehended.
- **Order of Dissolution:** the order passed to dissolve the National Assembly was in the following terms.

Applying Article 58(2)(b), the President said:

*Now therefore, I, Ghulam Ishag Khan, President of the Islamic Republic of Pakistan in exercise of the powers conferred on me by clause (2)(b) of Article 58 of the Constitution of the Islamic Republic of Pakistan and all other powers enabling me, hereby dissolve the National Assembly with immediate effect; and dismiss the Prime Minister and the Cabinet who shall cease to hold office forthwith.*

**Ghulam Ishaq Khan**  
**President**

**V. DECISION OF SUPREME COURT:**

• **Unlawful action of President:**

In these circumstances, the dismissal of the Prime Minister along with his Cabinet and the dissolution of the National Assembly under the purported exercise of powers conferred on the President under Article 58(2)(b) could be upheld. The action taken did not fall within the ambit of this provision. This unlawful action moreover was also violation of Fundamental right.

• **Majority basis decision:**

By majority (of 10 to 1) it was held that the order of the April 1993, passed by the President of Pakistan is not within the powers conferred on the President under Article 58(2)(b) of the Constitution and other enabling powers available to him in that behalf and has, therefore, been passed without lawful authority and is of no legal effect.

• **Consequences of court order:**

As a consequence of our order, the National Assembly, the Prime Minister and the Cabinet shall stand restored and entitled to function as immediately before the impugned order was passed.

• **Caretaker, orders passed, acts done, and measures are taken to have been validly and legally done:**

All steps taken pursuant to the order, dated 18 April 1993 passed under Article 58(2)(b) of the Constitution such as the appointment of the Caretaker Cabinet, etc. will, therefore, be of no legal effect. However, all orders passed acts done and measures taken in the meanwhile by the Caretaker Government, which have been done, taken, and given effect to in accordance with the terms of the

Constitution and were required to be done or taken for the ordinary orderly running of the State shall be deemed to have been validly and legally done.

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## **Al-Jehad Trust v. Federation of Pakistan (PLD 1996 Supreme Court 324)**

### **I. Introduction**

Judiciary plays a very important role in the interpretation of the statutes and laws. The judiciary has a pivotal role in the development of law. It develops law by giving judgments which become precedents. So, precedents may be regarded as a source of law. In Pakistan too, the superior Courts gave judgments which became precedents. There have been a lot of important and leading cases in the history of Pakistan. Al-jehad Trust Versus Federation of Pakistan case is one of them.

### **II. Facts of the Case**

- Constitution of Pakistan (1973) Arts. 196, 177, 193, 180, 181 182 & 197; some relevant Conclusions and directions in the short order of the Court in Constitutional Petition no. 29 of 1995:
- That the permanent vacancies occurring in the offices of Chief Justice and Judges normally should be filled in immediately not later than 30 days but a vacancy occurring before the due date on account of death or for any other reasons, should be filled in within 90 days on permanent basis.
- That permanent Chief Justices should be appointed in terms of the above conclusion No.(ii) in the High Courts where there is no permanent incumbent of the office of the Chief Justice.
- That appropriate action be initiated for filling in permanent vacancies of Judges in terms of above conclusion No. (iii)

### **III. SAJJAD ALI SHAH, C. J.**

The scheme of the appointments of the judges as envisaged in the Constitution clearly indicates that they are of permanent nature and if there are vacancies of temporary nature, then temporary appointments can also be made of Acting and Ad hoc Judges in the Supreme Court and Acting Chief Justices in the Supreme Court and the High Courts. If in the normal course, a permanent vacancy becomes available, the same should be filled in within thirty days. But if such vacancy becomes available before due date of retirement of a judge on account of death or for any other reason, then the same should be filled in within ninety days on permanent basis. Under Article 181 of the Constitution if there is a vacancy in the Supreme Court or a judge of the Supreme Court is absent or unable to perform the functions of his office due to any cause, acting judge can be appointed from a High Court who is qualified for appointment in the Supreme Court. The explanation to this Article further provides that a judge of a High Court includes a person who has retired as a Judge of High Court, which means a retired Judge of a High Court can be appointed as Acting Judge before he attains the age of sixty-five which is the age of superannuation in the Supreme Court. Under Article 182, for want of quorum of the Judges in the Supreme or for any other reason, if it becomes necessary to increase temporarily the number of Judges, the Chief Justice may in writing have appointment of Ad hoc Judges with the approval of the President. The following persons are eligible for such appointment: A retired Judge of the Supreme Court can be appointed if three years have not elapsed from the date of his retirement. A serving judge of a High Court can also be appointed provided he is qualified to be the Judge of the Supreme Court. It appears from the perusal of Article 182 that even these appointments cater for temporary situation in which the number of the Judges is to be increased after the sanctioned strength of the Court is filled with the permanent appointments.

#### **IV. Views of Judges**

- **Views of Chief Justice**

We are of the view that Acting Chief Justices are appointed for a short time and for that reason, in the relevant Articles, automatic arrangement is provided particularly in the appointment of the Acting Chief Justice of Pakistan, but no criterion is laid down in the provision of appointment of Acting Chief Justice of the High Court. In all fairness, the period for such acting appointment should not be more than ninety days during which Acting Chief Justice may perform functions of routine nature excluding recommendations in respect of appointment of Judges.

- **Ajmal Mian, J:**

I may observe that the concept of an Acting Chief Justice was introduced during pre-partition days as the Chief Justice used to be Englishmen and they used to go on leave to United Kingdom. The provisions of Acting Chief Justice were retained by India in its Constitution and by Pakistan in its four Constitutions which we had up to 1973. The object of Acting Chief Justice is to have a stop-gap arrangement. It is a matter of common knowledge that most of the Acting Chief Justice do not take any decision relating to important policy matters of the Court concerned without consulting the permanent Chief Justice. Appointing Acting Chief Justices for long periods was adopted apparently with the intention to keep the Judiciary under the control of executive, which was not a commendable object. It militated against the concept of independence of Judiciary and separation of Judiciary from the executive. I have already stated hereinabove that even now there are Acting

Chief Justices in three High Court and the Federal Shariat Court. It may be pointed out that under **Article 203-C(4)**, the Chief Justice of Federal Shariat Court is to be appointed for a period not exceeding three years, but he may be appointed for further term or terms as the President may determine.

I am, therefore, of the view that it is the constitutional obligation of the President/Executive to ensure that the constitutional offices do not remain vacant, and the vacancies are filled in without any delay. The provisions relating to appointments of Acting Chief Justice of Pakistan, Acting Judges of the Supreme Court and Acting Chief Justice of a High Court are intended and designed to cater for emergency. They cannot be used as a substitute for making permanent appointments under Article 177 and 193 of the Constitution.

- **Manzoor Hussain Sial, J:**

The permanent vacancies occurring in the offices of Chief Justice and Judges of the superior Courts are required to be filled in immediately not later than 30 days, but if the vacancy occurs before the due date on account of death or for any other reason, that should be filled in within 90 days on permanent basis. The Constitutional offices like that of Chief Justice or the Judges should not remain vacant for indefinite period, which may tend to impair the independence of Judiciary. Under **Article 41(5)** of the Constitution, the vacancy of an office of the President is filled in by election not later than 30 days from the occurrence of the vacancy. The date of retirement of the Judges is known to the Federal Government since the day they are appointed. The process of appointment of their successors, therefore, can be commenced in advance, so that the successors-Judges are appointed immediately after the vacancies occur. In case of a vacancy arising suddenly on account of death or

for any other reason the appointment of the successor Judge can be made within reasonable time. The period of 30 days to fill in the vacancy of constitutional office of a Judge has been laid down by adopting the criterion given in the provision of Article 41(5) of the Constitution which prescribes the period for filling in the vacancy of another constitutional office.

- **Sajjad Ali Shah, C.J.:**

Article 200 of the Constitution contemplates transfer of Judges from one High Court to another by the President after "consultation with the Chief Justice of Pakistan and the Chief Justice of both the High Courts. No such consultation is necessary if the transfer is for two years. It appears that this transfer can be allowed if it is in the public interest and is not a way of punishment.

## **V. Final Remarks of the Supreme Court**

- **Sajjad Ali Sajjad, C.J.:**

Although the Constitution does allow under Article 196, which provides for appointment of Acting Chief Justice of a High Court, a Judge of the Supreme Court to act as the Chief Justice of the High Court for a short time but we are of the view that this practice should be avoided and it would be much better if it is not done for reasons firstly that if a Judge of the Supreme Court goes as Acting Chief Justice then his judgments become appealable in the Supreme Court of which he is a permanent Judge. Secondly, such appointment causes embarrassment to the Judge of the Supreme Court because the Judges of the High Court normally do not welcome such an appointment.

There may be exceptional cases in which no control could be exercised over the situation. For instance, after imposition of Martial Law on 5th July 1977, the Chief Justices of the High Courts were made Governors of the Provinces and in their places in the High Courts Acting Chief Justices were appointed. It so happened that the Chief Justices remained away from the High Courts as the Governors for about fifteen months and Acting Chief Justices had to perform their duties. There was Martial Law in the country and the Constitution was held in abeyance and the system under that arrangement had to continue. In such circumstances, the Judges had to be appointed and for such appointments in the High Court, "recommendations" were made by the Acting Chief Justices. The Martial Law remained operative for a long time and the Supreme Court gave it cover of validity on the ground of the doctrine of necessity and empowered the CMLA to amend the Constitution. Article 270-A was inserted in the Constitution by P. O. No. 14 of 1985, which was substituted by Act XVIII of 1985 passed by the Parliament to enable withdrawal of Martial Law vide Proclamation dated 30th December 1985. All the appointments made in the past or for that matter in the distant past on the recommendations of the Acting Chief Justices are void ab initio.

- **Ajmal Mian, J.:**

It may be observed that sending of a Supreme Court Judges to a High Court as an Acting Chief Justice is undesirable in view of the adverse observation in the judgment of this Court in the case of Abrar Hasan v. Government of Pakistan (PLD 1976 SC 315 at 342). Even otherwise this causes heart burning amongst the Judges of the High court concerned, which is not conducive for maintaining congenial working relation.

There seems to be force in the above contention of Mr. S.M. Zafar s admittedly there is no security of tenure for an acting incumbent. We have experienced recently that Mr. Justice Saad Saood Jan, the senior most judge of the Supreme Court, was appointed as Acting Chief Justice of Pakistan against the permanent vacancy but the notification of his appointment was withdrawn within a day without assigning any reason after about one and a half months.

- **Manzoor Hussain Sial, J.:**

Article 196 is different in its import than Article 193, which relates to appointment of permanent Chief Justice of the High Court. The concept of Acting Chief Justice was initially introduced in India during pre-partition days but had always meant appointment of an Acting Chief Justice as stopgap arrangement. He is not supposed to take decisions relating to important policy matters without consulting the permanent Chief.

The definition of Chief Justice as contained in Article 260 of the Constitution includes the Judge for the time being acting as Chief Justice of the Court. The words "time being clearly indicate that the Acting Chief Justice has only been appointed to meet the emergency and for a brief period. Reference to the definition of word "include" Ayer's Judicial Dictionary, 10th Edition, indicates that it signifies something which does not belong to specie. Indeed, the Constitution recognises this distinction. Thus, in Article 209 for the purpose of determining the inter se seniority of Chief Justices of the High Courts the dates of their appointment as Acting Chief Justice have to be ignored. Again, in Article 200 which deals with the transfer of High Court Judges, while a Judge who is for the time being acting as Chief Justice of a

High Court, is deemed to be only a Judge of the High Court; the Chief Justice is not so included. This clearly demonstrates that an Acting Chief Justice of the High Court is treated as a species different from the permanent Chief Justice. Both Mr. Fakhruddin Ebrahim and S. M Zater stated that Acting Chief Justice is not "consultee" within the meaning of two relevant Articles of the Constitution. He is supposed to deal with only routine matters, and himself being holder of an office for a brief period cannot give opinion for the permanent appointment of Judges of the superior Courts, nor can deal with long term policy matters.

## **VI. Conclusion**

To conclude that an acting Chief Justice of High Court is treated as a species different from the permanent Chief Justice, Acting Chief Justice is not "consultee" within the meaning of the aforementioned articles of the constitution. He is supposed to deal with only routine matters.

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### **Zafar Ali Shah vs General Pervez Musharraf (PLD 2000 SC 869)**

#### **I. Background**

In 1999, the military once again became the sole master of the affairs of the country. On October 12, 1999, General Pervez Musharraf, seized the control of the civilian government of the publicly elected Prime Minister Nawaz Sharif. In addressing the nation on 13 October 1999, General Pervez Musharraf announced that the PML(N) government had been removed and the Armed Forces had moved in and taken control of the affairs of the country. On 14 October, he proclaimed emergency throughout Pakistan and assumed the office of Chief

Executive. He proclaimed that the Constitution would be held in abeyance, but the president would however continue in office, while the Parliament and all provincial assemblies stand suspended.

## **II. Facts of the Case**

A number of petitions had been filed by Nawaz sharif and other PML(N) leaders invoking Article 184(3) of the Constitution of Pakistan, challenging the military takeover on 12 October 1999 and seeking restoration of the assemblies. Following ouster of Muhammad Nawaz Sharif on October 12, 1999, the petition was moved to the Supreme Court through Zafar Ali Shah case “Zafar Ali Shah vs General Pervez Musharraf”.

## **III. Framing of Issues**

In this case, the Court addressed various legal and constitutional issues:

1. Firstly, the country was facing a situation where the military intervention became inevitable and was justified on the basis of necessity doctrine, which is recognized not only in Islam but also in other religions, and the same has also been recognized by prominent international jurists such as Hugo Grotius, Chitty, and De Smith.
2. Secondly, the Federal Government provided sufficient material in support of the military intervention through extra constitutional arrangements, which were relevant and admissible for justification of military intervention.
3. Thirdly, all the executive actions, which were indispensably taken for running the state’s affairs and public welfare, were declared valid.
4. Fourthly, the Constitution remained the highest and ultimate law of the land but on the basis of state’s necessity some of its parts held in abeyance.

5. Fifthly, the judiciary has to carry on its functioning under the Constitution and the same position has not been derogated by the Oath Order.
6. Sixthly, the superior courts judges, who either refused to take oath under the order or to whom the oath has not been given, are hit by past and closed transaction doctrine, and cannot be reappointed.
7. Seventhly, the government should advance the accountability mechanism, in order to ensure transparency and the superior courts judges are neither above the law nor the Constitution and are subject to accountability as envisaged by Article 209 of the Constitution.
8. Eighthly, removal of Musharraf without observing principle of natural justice was ab initio void having no legal effects.
9. Ninthly, the Chief Executive shall hold election within three years and the Court reserved the authority to review the continuation of emergency of October 1999 at any subsequent stage.

#### **IV. Decision of the Court**

1. The Supreme Court led by Justice Irshad Hasan Khan and also including Justice Iftikhar Muhammad Chaudhry not only “rejected” the petition but also empowered the fourth dictator of Pakistan to himself amend the constitution.
2. It was held by this Court that on 12th October 1999 a situation arose for which the Constitution provided no solution and intervention by the Armed Forces through an extra-constitutional measure became inevitable and the said act was validated on the basis of the doctrine of state necessity and the principle “salus populi suprema lex” as embodied in Begum Nusrat Bhutto’s case.
3. It was further held that the 1973 Constitution still remains the supreme law of the land subject to the condition that certain parts thereof have been held in abeyance on account of state necessity.

4. The Court, however, limited the scope of the regime, required to conduct the elections within three years.

## V. Conclusion

In Zafarullah Khan case, the “doctrine of necessity” was upheld. The law of necessity recognized and upheld by Pakistan's highest judicial body has proved an honorable protection for military adventure in civil government.

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### **Khan Asfandiyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 Supreme Court 607)**

- Determination of venue of trial under Ordinance in terms of Section 16 (d) does not contravene concepts of federalism and/or provincial autonomy.
- Matter of transfer of cases from one Court to another, either within a province or from one province to another, as contemplated under Section 16-A, prosecutor and accused must be placed on equal footing. To this extent, Section 16-A is declared ultra vires Constitution and needs to be suitably amended.
- Section, 16-A(b) (i) and (ii) do not meet ends of justice, in that, Chairman NAB has been given choice to make a move before appropriate Chief Justice through Prosecutor General, but such right is not available to accused.
- In this case at hand, out of the many provisions of the NAB Ordinance under challenge before the Supreme Court of Pakistan, was also its Section 23 as it stood then. The challenge was on the ground that Section 23 did not at the time provide any right of appeal even to third parties (relatives, associates etc. of the accused) whose property rights were being restricted by said Section,

and therefore it was argued that Section 23 NAB Ordinance 1999 was unconstitutional. It was held by the Honourable Supreme Court (at page 930, para-262) that to the extent Section 23 NAO 1999 makes transfer of property void even where both the transferor and the transferee genuinely remained unaware of the investigation against the accused, said Section was contrary to Articles 2A, 4, 23, 24 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Excepting that said scenario, it was held that Section 23 NAO 1999 was not in conflict with the said articles of the constitution of Pakistan for the reason that reasonable restrictions in the public interest may be imposed by a law on the right to hold, acquire or dispose off property. While discussing the intent behind Section 23 NAO 1999 it was observed by the Honourable Supreme Court that:

- in the context of section 9(b) that it is well settled that superior Courts have the power to grant bail under Article 199 of the Constitution independent of any statutory source of jurisdiction such as section 497 of the Cr.P.C. and had further held that section 9(b) of the Ordinance of 1999, to the extent of excluding constitutional jurisdiction of a High Court, was ultra vires of the Constitution.
- after examining the vires of the Ordinance of 1999 and its provisions, it was held that in the context of section 9(b) that it is well settled that superior Courts have the power to grant bail under Article 199 of the Constitution independent of any statutory source of jurisdiction such as section 497 of the Cr.P.C. and had further held that section 9(b) of the Ordinance of 1999, to the extent of excluding constitutional jurisdiction of a High Court, was ultra vires of the Constitution
- it was held therein that the prosecution has to establish the preliminary facts and, after that, the onus shifts and the defence is then required to disprove the

presumption against the accused charged under section 9(a) (vi) and (vii) of the Ordinance of 1999 and in case the prosecution succeeded in making out a reasonable case to the satisfaction of the learned Accountability Court only then it would have deemed to have discharged the prima facie burden of proof and, in such an eventuality, it would shift to the accused so that the latter rebuts the presumption of guilt.

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### **Fundamental Rights in the Constitution of Pakistan 1973**

Following are the important Fundamental rights in accordance with the constitution.

#### **A. FUNDAMENTAL RIGHTS RELATING TO PERSONS & BODY:**

The Fundamental rights relating to person and body are following:

##### **❖ Security of Person: Article 9**

In this article, it is stated that No person shall be deprived of life or liberty save in accordance with law. It interprets that the state cannot take someone's life. Further, it is the responsibility of the state to take measures and enact laws to safeguard its citizens from harm to their lives. It is also the duty of the state and its institutions to investigate the suspicious death of individuals, which incriminates the state itself. Besides, there are certain exceptions under which the state can interfere and use force to stop violence, make lawful arrests, stop riots and control situations which risk jeopardizing law and order. This Article is based on the concept of rule of law.

##### **❖ Safeguards as to Arrest & Detention: Article 10**

This article directly addresses preventative detention. According to this article, every arrested person has the right to be informed of the grounds of their arrest, they have

the right to consult and be defended by a lawyer of their choice. The police officer is bound to produce the arrested person before the Magistrate within 24 hours of arrest. Any detention beyond this period without the Magistrate's authority is illegal.

❖ **Right to fair trial: Article 10-A**

Article 10A is a continuation of Article 10 and it dilates upon the right of the same person to enjoy the luxury of fair trial and due process. It guarantees the right of fair trial to every person in a civil or criminal matter. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial court/judge, in the determination of his rights and obligations and of any criminal charge against him.

❖ **Prohibition of Slavery, Forced Labour & Child Labour: Article 11**

This article provides safeguards against the trafficking in human beings. Under this Article, slavery, forced labor are prohibited and no child under the age of 14 year be employed in factory and mines.

❖ **Protection against Retrospective Punishment: Article 12**

It is a civilized clause, and it upholds that people should not be punished for acts which have yet to be declared offenses. Under this article, a person cannot be punished for an act which was legally not a crime at the time of its occurrence.

❖ **Protection against double punishment and self-incrimination: Article 13**

It sounds about right that a person should not be punished more than once for one offense. This article states that for one crime/offence the accused cannot be punished twice. It also stated that one person cannot be asked to be a witness against himself, he gets to keep his vote.

❖ **Inviolability of dignity of man, etc.: Article 14**

This Article brings in two very different things together. This Article declares that dignity of the man is inviolable, and privacy of the person is also inviolable as such the police raids on the dwelling house are violative of Article 14. In PLD 2019 SC 449, the court held that a free lady cannot be compelled to give a sample for DNA testing as it would violate her liberty. If a sample is forcibly taken from a lady to determine her paternity it would violate her liberty, dignity, and privacy under Article 14 of the Constitution of the Islamic Republic of Pakistan. Also, this article guarantees privacy forbids torture for the purpose of extraction of evidence. But if the police or any other state agency has the search warrant to enter a home then this provision would not apply.

## **B. FUNDAMENTAL RIGHTS RELATED TO FREEDOM:**

### **❖ Freedom of Movement: Article 15**

People being citizens of Pakistan are entitled to move freely wherever they wish to. This article extends protection to the freedom of movement of every citizen of Pakistan. Every Pakistani is free to: move, live and settle in any part of the country, and also has the right to a passport and to travel abroad.

### **❖ Freedom of Assembly: Article 16**

Freedom of assembly is an essential element in a democratic set up. The right to lead a procession is neither a right of easement nor customary right but it is a Fundamental Rights. This article states that all citizens have the right to assembly in a peaceful manner and without arms, but this right can be restricted by law in the public interest.

### **❖ Freedom of Association: Article 17**

The right to the freedom of association is a fundamental human right and Article 17 of the citizens have

❖ **Freedom of trade, business, or profession: Article 18**

All citizens of Pakistan have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business.

❖ **Freedom of speech: Article 19**

Article 19 of the Constitution talks about the freedom of speech, freedom of expression and freedom of the press. Every citizen of Pakistan has the right to hold opinions, the right to express them, and the right to speech. The law can abrogate this right only in the interest of the glory of Islam and the integrity, security and defense of Pakistan, to maintain public order, decency and morality, or in relation to contempt of court and/or incitement to an offence.

❖ **Right to information: Article 19-A**

The right to information is the fundamental right of citizens, allowing them to access information from government and private bodies that receive public funds. This right is based on the principle that information belongs to the people and public officials are only the custodians of the information. Article 19-A of the Constitution protects this right.

**C. FUNDAMENTAL RIGHTS RELATED TO RELIGION:**

❖ **Freedom to profess religion and to manage religious institutions:  
Article 20**

Law entitles us to profess any religion we want and to manage institutions. This article guarantees that all Pakistanis have the right to believe, practice and spread their religion.

❖ **Safeguard against religious taxes: Article 21**

The religious minorities are protected too from taxes and from being bullied into practicing the prevailing religion.

❖ **Safeguards as to educational institutions in respect of religion: Article 22**

The constitution provides for safeguards in respect of religious educational institutions. No person will be compelled to receive religious instruction in religion other than his own.

**D. FUNDAMENTAL RIGHT RELATED TO PROPERTY:**

❖ **Freedom to acquire property: Article 23**

The constitution recognizes the institution of private property. It declares that every citizen has the right to acquire, hold and dispose of property.

❖ **Protection of property rights: Article 24**

In light of this provision of law, no person can be deprived of her/his property compulsorily. If property, land is needed in public interest, then the government has to give reasonable compensation to the owner.

**E. FUNDAMENTAL RIGHTS RELATED TO EQUALITY:**

❖ **Equality of citizen: Article 25**

All citizens are equal before law and are entitled to equal protection of law. Article 25 of the Constitution guarantees the equality of all citizens without any discrimination on the basis of gender. Despite that, keeping in view the state of women and children in the country, nothing in this article can prevent the state from making any special provision for the protection of women and children.

❖ **Right to education: Article 25A**

The provision of free and compulsory education is a fundamental human right. Article 25-A guarantees the provision of free and compulsory education to all children aged 5–16 years in such a manner as may be determined by the law.

❖ **Non-discrimination in respect of access to public places: Article 26**

The Articles guarantee open access to all for the public places and equal opportunities which is only fair.

❖ **Safeguard against discrimination in services: Article 27**

In this article, it is stated that no person can be discriminated against in the matter of employment on the basis of race, religion, caste, sex, residence or place of birth. There are few exceptions like; specific services can be reserved for members of either sex if such posts/services require duties which cannot be adequately performed by the members of other sex, e.g. Lady Health Visitor

❖ **Preservation of language, script and culture: Article 28**

This article guarantees that if any group of citizens has any other distinct language of its own, they have an absolute right to preserve and promote it. This provision promotes diversity.

## International Law

### Statue of International Court of Justice

- **Article 1** emphasizes on International Court of Justice which is established by the Charter of the United Nations being the judicial organ of United Nations and it provides that it should work under the current statute which is discussed below.
- The judges should be selected according to their qualification, moral and knowledge in international law (**Article 2**).
- The court should have 15 members each from a different state. However, if someone is national of more than one state he would be counted as national of the state he exercises his political and civil rights (**Article 3**).
- The members are decided by General Assembly and Security Council from list provided by national groups in Permanent Court of Arbitration but if not represented in Permanent Court of Arbitration, then the national groups appointed by states government keeping in mind the conditions under Permanent Court of Arbitration and Hague of 1907 can provide a list. Moreover, a state not a member of United Nations however party to present statute can participate in electing members of court but under conditions set by General Assembly upon recommendation of Security Council, in absence of special agreement (**Article 4**).
- The Secretary General of United Nations sends a written request, inviting members of Permanent Court of Arbitration and National Groups under article 4, to undertake nomination to accept duties of a member of court. Groups can nominate up to 4 people, in which up to two can be of their only nationality only. (**Article 5**).
- The national Group before deciding the nominees should consult areas which are related to law (**Article 6**).
- A list of nominees in alphabetical order must be created and submitted by Secretary General to General Assembly and Security Council (**Article 7**).
- Upon which both assembly and council will independently elect members (**Article 8**).

- Moreover, the body altogether should assure main forms of civilization and principal legal systems (Article 9).
- Candidates who get majority votes in General Assembly and Security Council are elected. votes from Security Council are considered without any distinction between permanent and non-permanent members of Security Council. Moreover, the eldest considered elected where more than one national gets majority votes (Article 10).
- Meetings must take place according to seats remaining (Article 11).
- If after third meeting seats are still vacant then a Joint conference consisting of three members from General Assembly and three from Security Council must submit a name chosen by the votes of an absolute majority. That person if fulfils conditions can be someone who was not included on list of nominations under article 7. however, if election is not possible then the elected members shall fill the vacant seats. Moreover, if equality of votes among judges, then eldest judge has a casting vote (Article 12).
- Members of court are elected for 9 years and can be reelected. Five Judges are elected for three years and other five are elected for six years. Members can finish their cases which they have already taken even after their term completion and can continue to serve until their place been filled. For resignation by any member the resignation must be sent to President of court for transmission to Secretary General. (Article 13).
- Vacant seats are filled through the same procedure of elections etc. mentioned above (Article 14).
- Members of court must not be part of any other organization, occupation, job (Article 16).
- In any case Members of Court must not act as agent, counsel or advocate and if they had before then they must not participate in the decision of that case (Article 17).
- Member can be dismissed only if other members unanimously decide to do so through sending formal notification to Secretary Genral (Article 18).

- Members are provided diplomatic privileges and immunities (Article 19).
- Members must in open Court declare that they'll use their powers impartially and conscientiously (Article 20).
- The court should elect its president and vice president for three years and appoint its registrar (Article 21).
- The seat of the court shall be established at the Hague. However, courts can work elsewhere whenever the court considers it desirable (Article 22)
- Court is only not in session during judicial vacations. Members can avail periodic leave. Moreover, members must be available to court unless ill or have serious reasons (Article 23).
- Member can inform president if he does not want to be part of a particular case due to special reason and if the president agrees then he will give a notice. But if the president disagrees then matter is seen by court (Article 24).
- Full court shall sit unless expressly stated. Number of judges shall not reduce below eleven. Quorum of nine judges shall suffice to constitute the court (Article 25).
- Chambers may be formed for dealing with particular kind of cases and number of judges in chamber is decided by court with approval of parties (Article 26).
- The judgment by the chamber is considered as rendered by the court (Article 27).
- Chambers can exercise their function with approval of parties in locations other than at The Hague (Article 28).
- Rules must be laid down by court (Article 30).
- An annual chamber consisting of five judges may hear cases by summary procedure. Furthermore, two judges must be selected to replace judges who find it impossible to sit (Article 29)
- Article 31 focuses on Composition of bench and how to make a panel. Moreover, stated that if there is a judge from the country of either of the parties then the other party themselves can choose preferably from nominated

candidates under article 4 and 5 a judge to sit in the bench. However, if there is no judge from the nationality of parties then each party can choose a judge preferably from nominated candidates under article 4 and 5. This provision also applies to scenarios under Article 26 and 29.

- Members of court receive an annual salary, Presidents receive an annual allowance, Registrar receives a salary, Judges receive compensation for each day, and they all are fixed by General Assembly and free of taxation (Article 32).
- Expenses of court are on United Nations but managed by General Assembly (Article 33).
- Only states may be the parties in Courts and the courts may require public international organizations for information that is relevant for the particular cases. Moreover, If any constituent instrument of public international organization or international convention adopted is questioned in the Courts, then the Registrar shall inform the concerned public organization about its copies for written proceedings (Article 34).
- The Court shall be open to the states parties to present Statute. The Courts shall be open to all the states with subject to special provisions laid down by the Security Council but shall not place the parties in situation of inequality before the Court. The Courts shall fix an amount of expenses to be paid for a state which is not a member of United States. However, this provision shall not apply if such state is already bearing the expenses of the Court (Article 35)
- 1. Courts have the jurisdiction to look after all the cases rather it be for the Charter of United Nations or in treaties and conventions in force; 2. The parties of state may at any time declare that they do recognize the special agreement in relation to any other state accepting obligations, also the jurisdiction of the Court in all legal disputes that concern: the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation; the nature or extent of the reparation to be made for the breach of an international obligation; 3. These declarations may be made unconditionally or on condition of reciprocity for several or certain states, or for a specific time; 4. These declarations made are deposited with Secretary-General of United

Nations, who is liable to transmit its copies to the parties to the Statute and to the Registrar of the Court; 5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and those which are still in force shall be considered, as between the parties to the present Statute, to get accepted by the International Court of Justice for the period which they still have to run in accordance with their terms; 6. In case of disputes regarding whether the Courts has the authority, the matter is settled by the decision of Court. (Article 36)

- If a treaty or convention in force refers for a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, such a matter shall be referred to the International Court of Justice (Article 37)
- The Court, while giving the decision for disputes regarding international law shall apply: international conventions, either general or particular, while establishing rules expressly recognized by contesting states; international custom, as evidence of a general practice accepted as law; general principles of law recognized by civilized nations; subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. This provision shall not assume the power of the Court to decide a case ex aequo et bono, if the parties are agreed. (Article 38)
- The official language of the Courts shall be French and English. If the language in which the case should proceed is not decided initially then the parties may use their preferred language and the Courts would give the decision in that language. It is up to the courts to decide which language is more authoritative. However, the Court at the request of any party may also authorize a language other than English and French (Article 39)
- Cases brought before the Court might be either by notification or a written application addressed to the Registrar. In both circumstances the subject of dispute and the parties are notified. The Registrar then immediately informs the parties about the application. Also informs the Member of United Nations through the Secretary-General, and states which are to appear before the Court (Article 40)

- The Courts have the power to enlighten the circumstances if they require to preserve the rights of either party. If a decision is pending, then the notice shall be suggested immediately to the parties and Security Council (Article 41)
- The parties shall be represented by their agents, may have assistance of counsel or advocates before the Court (Article 42)
- The procedure can either be written or oral. The written proceedings consist of paper and documents in support to be communicated to the Court and parties of memorials also counter-memorials. These notices shall be communicated through the Registrar, in the order and time assigned by the Court. A certified copy of each document produced by one party shall be communicated to the other. Whereas the oral proceedings shall consist of the hearings by the Court of witnesses, experts, agents, counsel, and advocates. (Article 43)
- For the services which are to be provided upon persons the Court shall apply directly to the government of the state upon whose territory the notice has to be served. The same rule shall apply for the provision of evidence (Article 44)
- The hearings before the Courts shall be under the President, or to Vice-President in absence, if neither is able to preside then to the senior judge (Article 45)
- The hearings held in the Court shall be public only if the parties do not object them not to be public (Article 46)
- Measures are made at each hearing and signed by the Registrar and the President. These measures shall be authentic (Article 47)
- The Courts then decide the procedure to decide the form and time in which each party must conclude its arguments, and arrangements regarding the evidences (Article 48)
- The Courts may also ask for the detailed documentation or explanation regarding a case from the agents (Article 49)
- It is up to the Courts to entrust any individual, body, bureau, commission, or other organization about an enquiry or opinion (Article 50)

- Relevant questions are to be asked by the witnesses during the hearing before Courts as given in the rule of procedure referred to in Article 30 (Article 51)
- The Courts may not receive any oral or written evidence once the specific time assigned by the Courts to deliver the evidence has ended (Article 52)
- If any on party fails to appear before the Court or fails to defend its case, then the other party may request the Court to give a decision in their favour. The Courts before doing this need to satisfy that they took the decision in jurisdiction with accordance to Article 36 and 37, also the claim was well found in fact and law (Article 53)
- The President may declare the hearing as closed, once the Courts, agents, counsel and advocates have completed their presentation of the case. The Court then shall withdraw to consider any judgement ahead. The decisions given by the Court shall take place in private and stay confidential (Article 54)
- The decisions shall be given by the majority of judges. In case of equal votes appearing, the President of judge shall place a casting vote (Article 55)
- The judgement shall give the reasons behind the decision. Also declare the name of judges who gave the decision (Article 56)
- If the judgment does not provide a detailed opinion given by a judge, then any judge shall be entitled to give a separate opinion (Article 57)
- The given judgement shall be signed by the President and the Registrar. It shall be read openly in the court since the notice has already been given to the agents (Article 58)
- The decision of the Court has no binding force except for that in between the parties of case (Article 59)
- The given judgement is final. In case of dispute the Court shall review the decision given on request of either party (Article 60)
- An application for revision of a judgment can be made only if a party assumes that the judgement was given negligently. The proceedings for revision shall be opened by a judgement of the Court on the basis of new facts as per the nature of case. The Courts may revise the previous decision given in order to

give a new judgement. The application shall be made at latest within six months. No new application can be made after the lapse of ten years from the date judgment is given. (Article 61)

- If a state considers that their interest of a legal nature is affected by the given decision, then they may request the Court to intervene. It is up to the Courts to accept the request or not (Article 62)
- The registrar shall inform in case of intervention of the party during any proceeding to be held. Every state has a right to be informed about the intervention during proceedings (Article 63)
- Unless the Courts give judgment, each party shall bear their own costs (Article 64)
- The Court may give an advisory opinion on any legal question asked by any authorized body or the Charter of United Nations. The question on which Courts opinion is asked shall be submitted in the Courts in the written form followed by documents (Article 65)
- The Registrar shall immediately inform the concerned states to appear before the Court. The Registrar shall immediately inform the states to appear before Court or President either by notifying them through written documentation or orally. If a state fails to receive the written notice then they may refer to paragraph 2 of this Article and express their desire to the Court by a written statement. States and organization receiving these notice may comment on the statements given by the Court. Likewise, Registrar shall communicate those statements as well (Article 66)
- The Court shall deliver its advisory opinion in open court through a notice been given to Secretary-General and representatives of Members of United Nations (Article 67)
- While giving advisory opinions the Court shall follow the present Statute which is applicable in the state (Article 68)
- Amendments made to the present Statute shall be effected same as provided by Charter of United Nations for amendment to that Charter (Article 69)

- The Court shall have power to ensure such amendments to the present Statute through written communications to Secretary-General, with the provision of Article 69 (**Article 70**).

## Islamic Jurisprudence

### Uṣūl al-Fiqh

#### Introduction

The discipline of *uṣūl al-fiqh* identifies the sources of the law, classifies them in hierarchical order, expounds methodologies by which rules are drawn from the sources through methodological tools, and lays down the conditions for qualified jurists (*mujtahidin*) who are distinguished from the layman (*muqallidin*).

*Fiqh* is the knowledge of the detailed rules of Islamic law in its various branches, and *usul al-fiqh* is the methodology that is applied in the deduction of such rules from their sources.

#### Scope of Fiqh

- ‘Ibādāt (worship rituals)
- Munkihāt (family law)
- Mu‘āmlāt (civil transactions)
- Hudūd or Jināyāt (criminal and tort law)

#### Islamic Timeline

1. Period of Prophet Muhammad | 610 – 632 AD
2. Companions of Prophet | 632 – 661 AD
3. Umayyad Caliphate | 661 – 750 AD
4. Abbasid Caliphate | 750 – 1258 AD
5. Ottoman Caliphate | 1300s – 1700s AD
6. Colonization|1700s onwards

## Hukm Shara‘ī

### Introduction

- Communication from Allah.
- Related to the acts of the subjects:
  - 1) through a demand, or
  - 2) option, or
  - 3) declaration.

### Elements of Hukm Shara‘ī

- 1) Ḥākim (Lawgiver): Allah
- 2) Maḥkūm fī: acts, rights and obligations
  - a. Nature of an act: capacity of performance and authority (hujjiyah)
  - b. Nature of a right: Haq Allah and Haq al-‘Abad
  - c. Nature of obligation: criminal, civil and tort
- 3) Maḥkūm ‘alayh (subject): mukallaf/adult/sane human being
  - a. Receptive legal capacity (ahliyyat al-wujub) and active legal capacity (ahliyyat al-ada)

### Classification of Hukm

#### 1. Taklīfī

- Duty imposing or obligation creating.
- Defining law.
- Hukm Taklifi’s Classifications
  - 1) Commission:
    - a. Obligatory (*Wajib, Fard*) – Binding
      - Binding demand of the lawgiver in respect of doing something.
      - Acting upon *wajib* will lead to a reward but omitting to do it will lead to a punishment.
      - Command conveyed in a clear and definitive text of the Quran and Sunnah, is obligatory in first second degree and is called *wajib*.
    - b. Recommended (*Mandub*) – Non-binding
      - Demand asking the *mukallaf* to do something which is however not binding on the latter.

- Complying with this demand will lead to a reward but not complying is not punishable.
- 2) Omission:
- a. Forbidden (*Haram*) – Binding
    - Prohibited act in binding and certain terms.
    - Haram acts are punishable, and omissions are rewarded.
  - b. Abominable (*Makruh*) – Non-binding
    - Disapproved act which should be avoided.
    - Lowest degree of prohibition.
- 3) Permissible (*Mubah*)
- Permissible acts entail communication from the law giver giving the mukallaf the option to do or not to do something.

## 2. Wad‘ī

- Declaratory or demonstrative.
- Declares the legal relationship between the cause (sabab) and its effect (musabbab) or between the condition (shart) and its object (mashrut).
- It also provides the criterion whether an act is valid, voidable or void.
- Classification of Hukm Wad‘ī
  - 1) Sabab (cause - basis for hukm taklīfī), shart (condition – facts triggering hukm) and mān‘a (obstacle – facts preventing the operation of the hukm)
  - 2) Şihhah (valid), fasād (voidable) and butlān (void/invalid)
  - 3) ‘Azīmah (strict law) and rukhşah (concessionary law/ exceptions)

## Principle Sources

### Quran

- Literally means 'reading' or 'recitation'.
- The Qur'an calls itself *huda*, or guidance, not a code of law.
- Reveled over a period of 23 years with 114 chapters and 6236 verses.
- Began with the Surah Al-'Alaq and ending with the *ayah* in Surah Al-Ma'idah.
- Makki versus Madni Surahs have been distinguished via:
  - a. The time of the revelation
  - b. The place of revelation
  - c. The nature of the audience
- Division of Quran can be done on the basis of the verses that are Definitive (qat'i) and the Speculative (zanni)
  - a. Qat'i: only one interpretation and not open to *ijtihad* (Fasting; Salah).
  - b. Zanni: open to interpretation and *ijtihad*.

### Hadith and Sunnah

- Hadith differs from *Sunnah* in the sense that Hadith is a narration of the conduct of the Prophet whereas *Sunnah* is the example or the law that is deduced from it.
- Jurists are unanimous to the effect that *Sunnah* is a source of *Shari'ah* and that in its rulings with regard to *halal* and *haram* it stands on the same footing as the Qur'an.
- *Athar* (and sometimes '*amal*') is used to imply the precedent of the Companions. The majority of ulema have upheld the precedent of the Companions as one of the transmitted (*naqli*) proofs.
- The Muwatta of Imam Malik contains 1,720 Hadiths, out of which 822 are from the Prophet and the remainder from the Companions, Successors and others.

### Sunnah

- Literally, *Sunnah* means a clear path or a beaten track. But it also implies normative practice, or an established course of conduct.

- In *usul al-fiqh*, *Sunnah* refers to a source of the *Shari'a*. But in *fiqh*, *Sunnah* means *mandub* (recommended). It was by Shafi as the second authoritative source of law by Shafi.
- In the Qur'an the word '*Sunnah*' and its plural, *sunan*, have been used on 16 times. In all these instances, *sunnah* has been used to imply an established practice or course of conduct.

## Hadith

- Literally, *Hadith* means a narrative, communication or news consisting of the factual account of an event.
- The word *Hadith* occurs in the Qur'an 23 times and in all cases, it carries the meaning of a narrative or communication.

## Classification of Sunnah

### A. Mode

1. Verbal (*qawli*)
  - Consists of the sayings of Prophet on any subject.
2. Actual (*fi'li*)
  - Deeds and the actual instructions of the Prophet.
3. Tacitly approved (*taqriri*)
  - Inferred from the silence and lack of disapproval, or from express approval and verbal confirmation of the Prophet.

### B. Value

1. Non-legal: ritual activities of the Prophet which are not a part of the *Shari'ah*.
2. Legal: based on the capacities in which they were laid down by the Prophet
  - a. the Messenger of God,
  - b. the Head of State or imam, or
  - c. the judge

### C. Matter (*matn*)

1. Relates to the body of the text of the Hadith.

### D. Transmission (*isnad*).

1. Continuous (*muttasil*)
  - a. Mutawwatur,
    - Reported by a number of narrators in every age.
    - Equivalent to that of the Qur'an.
  - b. Mashhur, and
    - Reported by some Companions from the Prophet or from another Companion and later became known and transmitted by an indefinite number of people.
  - c. Ahad
    - Reported by a single person or by odd individuals from the Prophet.
2. Discontinued (*ghayr muttasil*).
  - a. Mursal,
    - Where the link between the link between the Successor and the Prophet is missing.
  - b. Mu'dal and
    - Where there is an omission of two or more consecutive narrators from the *Isnad*.
  - c. Munqati'
    - Where the link anywhere before the successor is broken.

## **E. Reliability**

1. Correct (*Sahih*)
  - Narrated by persons well known for their integrity of character, memory, and learning.
  - Continuous chain of reliable narrators
  - Most reliable form of Aḥādīth
2. Approved (*Hasan*)
  - Narrated by persons who are less reputed for their integrity of character, learning or memory.
  - Also reliable Hadith but not of the highest form.
3. Weak (*Dhaief*)
  - Narrated by persons whose character is not well known or a Hadith which has some defects in its *Isnad*.

## Supplementary and Auxiliary Sources

### ‘Urf

- Known as custom, it was not recognized as one of the formal sources in classical Islamic law. In practice, however, custom was frequently drawn on as a material source of law.

### Siyāsa

- Area of law left at the discretion of the ruler.
- This law was to be adapted according to changing times and circumstances, thus, endowing it with the distinctive feature of flexibility in rules of procedure and evidence as compared to *fiqh* (jurists’ law).

### Qānūn

- State legislation

### Judicial Decisions

- Includes fatāwā of official muftīs

### Auxiliary Sources

- Include scholarly books on the exegesis of the Qur’ān, compilations and commentaries of Aḥādīth, Fiqh texts and Sharā‘ min qablinā (Judaism, Christianity, Natural Law).

## **Methodology**

### **Ijtihad**

- Effort made by a qualified Muslim jurist (*Mujtahid*) to arrive at a ruling based on interpretation of *shariah*.

### **Taqlid**

- Adopting the exposition of law as made by the ancient jurists without looking for the authority for such opinion.

### **Takhrīj**

- Extension of the law from the principles by the use of reason, practiced within the same school.

### **Takhyir**

- Selecting or preferring an opinion from amongst the available rulings of a single school or of different schools.

### **Talfiq**

- Literally means ‘to patch up or piece together different opinions’.
- The ruling of one jurist of a school is patched up with the ruling of another jurist of the same or a different school to arrive at an opinion which is suitable.

## Methodological Tools

### Ijma

- According to Allama Iqbal, Ijmā‘ is a mean to extend or limit a particular rule of the Qur’ān.
- Means the consensus of opinion among the jurist of a particular period on a question of law.
- Ijma is an accepted principle in Sunnī and Shī‘a jurisprudence. Some Shī‘a jurists question the authority of Ijmā‘ while others regard the consensus of the mujtahids as the representation of invisible Imām.

### *Types of Ijma*

1. Explicit Ijma (*qawli*): An explicit ijma is one in which the jurists state their opinion explicitly by, for instance, issuing fatwas. It is a binding source of Islamic law by majority of the jurists and is deemed obligatory to act upon. An issue that has been decided upon by ijma no longer remains open to ijthihad.
2. Tacit Ijma (*sukuti*): A tacit ijma takes place when a mujtahid issues a verdict on a legal issue but is neither acknowledged nor refuted expressly by the rest of the mujtahids who remain silent. Its authority is questioned. Some negate it while others regard it as probable.

### Qiyas

- Literally means measuring or estimating one thing in terms of the other.
- Technically means analogy: extension of a Shariah value from an original case to a new case, because the latter has the same effective cause as the former.
- The legal authority of qiyās is speculative/probable.

### *Types of qiyas*

1. Similar to the original meaning [of the disagreement].
2. Similar to several precedents, it must apply to the precedent nearest in resemblance and most appropriate.

### ***Elements of Qiyas***

1. The original case on which a ruling is given in the text and which analogy seeks to extend to a new case (*asl*).
2. The rule governing the original case which is to be extended to the new case (*Hukm al-Aṣl*)
3. The effective cause of the hukm (*'illah*) which provides the rationale for the rule.
4. The new case on which a ruling is needed (*fara'*).
5. The hukm for the new case (*Hukm al-Fara'*)

### **Istihsān**

- Literally means to consider something good.
- Technically entails a comparison of two valid authorities and the preference of the judicially stronger over the apparent analogy.

### ***Types of Istihsān***

1. Analogical istihsan: concerned with a departure from apparent analogy to hidden analogy because hidden analogy is more effective and, thus, preferable to apparent analogy.
2. Exceptional istihsan: when an exception to a general rule is made on the basis of equity and justice. The exception may be authorised on nass, ijma, approved custom, necessity, or considerations of public interest (*maṣlaha*).

### **Istiṣhāb**

- Literally means 'escorting' or 'companionship'.
- Denotes the principle of the presumption of continuity meaning that the past 'accompanies' the present without any interruption or change.
- Thus, facts or rules of law and reason, whose existence or non-existence had been proven in the past, are presumed to remain so in case of lack of evidence to establish any change.
- The legal authority is probable (*zannī*).
- Types:
  1. Presumption of original absence (*istishab al-'adam al-asli*)
  2. Presumption of original presence (*istishab al-wujud al-asli*)

## **Istidlal**

- Inferring from a rule another rule.
- Three types:
  1. Establishing a connection between two propositions without the effective cause (*'illah*).
  2. Presumption of continuity/status quo (*Istishad al-hal*)
  3. Revealed laws before Islam (*Shara' min qablina*)

## **Istislah**

- Avoiding valid analogy to avoid general injury (public welfare).

## **Darūra**

- Necessity whereby an act required by law may be omitted or an act prohibited may be done.

## **Hiyal**

- Literally means artifice, device, expedient, stratagem, a means of evading a thing, or of effecting an object.
- In Islamic jurisprudence are "legal devices" or skills used to achieve a certain objective, even if it is not lawful, through lawful means.
- Means to obey the letter of the law to actualize a legitimate objective.

## **Maṣlaha**

- Literally means utility, well-being, welfare, social weal, public interest, and a cause or source of something good and beneficial.
- Technically it entails attainment of manfa'a (benefit) or repulsion of madarra (harm) in the preservation of purposes of Sharī'a.
- Functions:
  1. Retrospective: justifying the existing laws which have non-Islamic origins.

2. Prospective: Changing existing laws or drawing new laws which respond to social change.
3. Rationalist objectivism: human intellect is capable to discern good or bad independent of revelation.
4. Theistic subjectivism: something is good or bad because of God's commands.

### **Sadd al-dhrā'a'**

- *Dharī'ah* (pl. *dharā'a*) is a mean or way and *sadd* means 'blocking'. *Sadd al-dhara'i'* thus implies blocking the means.
- Technically means blocking permissible acts that lead to evil.

### **Maqasid**

- God's general purpose in revealing the divine law.
- The purpose serves as values of sharia to regulate and govern discretionary justice in Islamic law.

### **Equity**

- Western legal concept grounded in the idea of fairness and conscience.

### **Qawaid Al Fiqhiyyah**

- Legal Maxims based on Fiqh.
- Five Universal Maxims
  1. Harm is to be removed (*al-darar yuzāl*),
  2. Custom has legal consideration (*al-'āda muḥakkima*),
  3. Hardship brings about facilitation (*al-mashaqqa tajlib al-taysīr*),
  4. Certainty is not superseded by doubt (*al-yaqīn lā yazūlu bi'l-shakk*), and
  5. Acts are to be evaluated according to the aims according to which they are executed (*al-umūr bi-maqāṣidihā*).

## **English Jurisprudence**

### **What is Jurisprudence?**

- Science of law which includes all species of obligatory rules of human action.
- It can be classified into: i) Civil Jurisprudence; ii) International Jurisprudence; and iii) Natural Jurisprudence.

### **What is Civil Jurisprudence?**

- It is the law of the land, and its purpose is to give a complete and systematic account of that complex body of principles which is received and administered in the tribunals of the State.

### **What is International Jurisprudence?**

- It is not concerned with the rules which are in force within states, but with those which prevail between states.

### **What is Natural Jurisprudence?**

- It can be termed as law of nature or what can be referred as principles of natural justice as seen in civil and international law.

### **How is law defined?**

The definition of law is very much contested and various jurists have adopted a different approach to define it.

#### **Salmond's definition:**

According to Salmond, law is the body of principles recognized and applied by the State in the administration of justice.

Criticism of Salmond's definition of law: Salmond did not define the expression Justice. **Keeton** says what has been considered to be just at one time has frequently not been so considered at another.

Criticism by **Dean Roscoe Pound**: Dean Roscoe Pound has criticized the definition of Salmond as reducing law to a mass of isolated decisions and the law in that sense to be an organic whole. Further, it is criticized on the ground that Salmond's definition applies only to lax law not to statute.

Despite criticism, Salmond's definition is considered as the workable definition.

### **John Chipman Gray's Definition of Law:**

According to **Gray**, "the Law of the State or of any organized body of men is composed of the rules which the courts, that is the judicial organ of the body, lay down for the determination of legal rights and duties."

Criticism of Gray's definition of law:

Gray's definition is criticized on the ground that he is not concerned with the nature of law rather than its purposes and ends. Further it does not take into account the law of the statute.

### **Positivist definition: Austin's definition of "law"**

a) John Austin (1790-1859): An English Jurist. He expounded the concept of analytical positivism, making law as a command of sovereign backed by sanction. He developed logically, a structure of legal system in which he gave no place to values, morality, idealism, and justice.

According to Austin, a law, in the strict sense is a general command of the sovereign individual or the sovereign body. Issued to those in subjectivity and enforced by the physical power of the state. According to Austin "law is aggregate of rules set by men politically superior or sovereign to men as politically subject." Austin says, "A law is command which obliges a person or persons to a course of conduct."

Criticism of Austin's definition of law:

Austin's definition of law is subjected to criticism on the ground that it ignores completely the moral and ethical aspects of law and unduly emphasized the imperative character of law.

**b) Holland's definition of law**

Thomas Erskine Holland, a reputed jurist, who followed Austin's concept and nature of law attempted to define law as a general rule of external human action enforced by a political sovereign. Holland also measures or defines law with preference to sovereign devoid of moral, ethical, or ideal elements which are foreign to law and jurisprudence.

**c) John Erskine definition of law**

Law is the command of a sovereign, containing a common rule of life for his subjects and obliging them to obedience.

**d) Hans Kelsen's definition of law**

According to Kelsen, a legal order is the hierarchy of the norms; every norm derives its validity from the superior norm and finally there is the highest norm known as grundnorm.

**e) H.L.A. Hart's definition of law**

According to Hart, law is the combination of primary rules of obligations and secondary rules of recognition.

**Definition of Historical School of Law:**

The chief exponent of the Historical School is Von Savigny. Historical Jurisprudence examines the manner or growth of a legal system. It deals with general principles governing the origin and development of law and also the origin and development of legal conceptions and principles found in the philosophy of law.

**Savigny's definition of law:** Savigny says that law is not the product of direct legislation but is due to the silent growth of custom or the outcome of unformulated public or professional opinion. He says that law not as body of rules set by determinate authority but as rules consist partly of social habitat and partly of experience. He says law is found in the society; it is found in custom.

**Sociological school of law:** The sociological school commenced in the middle of nineteenth century, according to sociological school the common field of study of the jurist is the effect of law and society on each other. This approach takes law as instrument of social progress.

a) **Ihering's Definition of law:**

Ihering defines law as “the form of guarantee of the conditions of life of society, assured by state's power of constrain.” He says law is a means to an end and end of the law is to serve its purpose which is social not individual.

b) **Dean Roscoe Pound's definition of law:**

Pound defines law as a social institution to satisfy social wants. He says law is a social engineering, which means that law is an instrument to balance between the competing or conflicting interests.

c) **Dias's Definition of law:**

Law consists largely of “ought” (normative) propositions prescribing how people ought to behave the “ought” of laws to be variously dictated by social, moral, economic, political and other purposes

**Realist definition of law:**

It is branch of sociological school. It studies law as it is in its actual working and effects. It has been summed up by its exponent professor K. Llewellyn as “ferment”.

According to **Georges Guroitch**, the neo-realistic school represents a violent reaction against the dominantly theological and moralizing orientation of “sociological jurisprudence”.

**Holmes J.:** The realist considered the law to be a part of judicial process. He says “that the prophesies of what the courts will do, in fact and nothing more pretentions, are what I mean by law.”

Conclusively, the following are the requirements for the definition of law:

- i) Before the law there is a state.
- ii) Before the state there must be a society.
- iii) State & society develop a legal order to be followed.
- iv) And finally, law always has a purpose.

**What is Administration of Justice?**

According to **Salmond**, “the administration of justice implies the maintenance of right within a political community by civilized substitute for the primitive practice of private vengeance and violent self-help.”

Criticism: It is not the force of the state alone that secures the obedience of law. There are a number of other factors such as the social sanctions, habit and convenience which help in the obedience of law. In civilized societies, obedience to law becomes a matter of habit and in very rare cases the force of the state is used to secure it.

According to **Austin**: “Law is the aggregate of rules set by men as politically superior, or sovereign, to men as politically subject.” It means law is command of sovereign. In his definition command, duty and sanction are the three elements of law.

### **Difference between the two approaches:**

Austin – central point is sovereignty

Salmond – central point is court

### **Types of Administration of Justice?**

#### **1) Civil Justice**

- Subject matter of civil proceedings
- Two kinds that may be enforced such as i) primary and 2) sanctioning or remedial rights
- Primary right are those rights which exists as such and do not have their source in some wrong. Sanctioning or remedial rights are those which come into existence after the violation of the primary rights
- Suit filed in Civil Court
- Main remedy is damages

#### **2) Criminal Justice**

- Object is to determine the crime of a person who is charged with an offence
- Main idea is to punish the wrongdoer

- Proceedings in criminal court
- Remedy is punishment awarded to the offender

### **What is a legal right?**

The concept of legal rights is of fundamental significance in modern legal theory because we cannot live without rights, which are recognized and enforced by law. Different jurists have attempted to define legal rights some of them are as follows.

Many definitions of legal rights have been given by various writers some of them are as follows:

- Holland:** “A right is a capacity residing in one man of controlling, with the assent and the assistance of the state, the action of others.” Every right gets its validity by State.
- Salmond:** “Legal right” is “an interest recognized and protected by the rule of legal justice.”
- Pollock:** “Right is freedom allowed and power conferred by law.”
- Austin:** “A person can be said to have a right only when another or others are bound by law.”
- Allen:** “Right is a legally guaranteed power to realize an interest.”
- Buckland:** “A legal right is an interest, or an expectation guaranteed by law.”
- Ihering:** “A legal right is a legally protected interest.”

### **Theories of Rights:**

- Will Theory:** Based on the will of human being and reflects the inner will of a human being.
- Interest Theory:** Interest is the basis of a right and reflects the external nature of human beings.

### **Elements of Legal Rights:**

- 1) Person of inheritance/subject of the right
- 2) Person of incidence/subject of the duty
- 3) Subject matter of legal rights
- 4) Object of the legal rights
- 5) Title to right

### **What is the Analytical School?**

The jurists of analytical school consider that the most important aspect of law is its relation to the State Law. It is treated as an imperative or command emanating from the state. For this very reason this school is known as the Imperative School. The exponents of this school are concerned neither with the past nor with the future of law but with law as it exists, i.e., as it is (positus) as entailed by John Austin.

### **What is the Command Theory?**

Austin has defined the law in his “Command Theory”. He says that “Law is the command of sovereign.”

The main characteristics of this theory are i) Sovereignty, ii) Command, iii) Duty and iv) Sanction Power

### **HLA Hart and Concept of Law**

According to HLA Hart, there was a primitive society in the pre-legal world which had no legislature to make law. There was no executive which could change the rules and no court to decide the disputes. In the primitive society there were three defects which are as under:

- 1) Uncertainty
- 2) Static character
- 3) Inefficiency

The theory draws an analogy between the medieval times and the modern society with the latter having the executive, legislature, and judiciary.

### **Theory of Natural Law**

- It is in fact a way of looking at things and a humanistic approach of judges and jurists. It embodies within it a host of ideals such as morality, justice, reason, good conduct, freedom, equality, liberty, ethics etc.
- Main attribute is its adaptability to conform to the changes in the social fabric of the society.
- Law is a product of the straight thinking of a human mind.

- According to **Socrates**, the positivist authority should be obeyed but not blindly and it ought to be subject to criticism if deserve so
- **Plato** is of the view that each individual should be given the best suitable reason which is based on his capacities and abilities.
- **Hobbes**: According to him that there should be an absolute authority which should govern and control the affairs of human beings.
- **Rousseau**: Held the two types of will, i) individual and ii) general.

### **Criticism:**

- Moral proposition i.e., ought to be, may not always necessarily conform to the needs of the society.
- The concept of morality is a varying content changing from place to place; therefore, it would be futile to think of universal applicability of law.
- The rules of morality embodied in natural law are not amendable to changes but legal rules do need a change with changing of the society.
- Legal disputes may be settled by law courts but disputes relating to moral, and law of nature cannot be subjected to judicial scrutiny.

### **Judges as lawmakers?**

Two schools of thought such:

#### 1) **Declaratory Theory** (under which judges declare law)

As per Blackstone, no new law is created by the judge; judges do not make law, their mandate is to ascertain and declare what the law is. Judges only discover the existing laws.

Hale enunciates declaratory theory of precedents and contends that whilst Parliament alone legislates in the strict sense, judges only expound the law and their decisions are the best evidence of what law is.

#### 2) **Law-making Theory** (under which judges make law)

The second theory is that judges do not declare law but make the law in the sense of manufacturing or creating entirely new law. Bentham and Austin have opposed the traditional view as a childish fiction and have declared that judges are in fact the makers and fulfill a function very similar to that of the legislature.

The above two views about making of law by judges are not exclusive of each other but they are rather complementary. It will be seen that neither the purely declaratory theory nor the purely legislative theory represents the whole truth.

### **What is the historical school?**

- Opposes the analytical school
- Main proponent is **Savigny** who states that law is based upon the general will or free will of common people. He says that law grows as the growth of nations increases and dies with the dissolution of the nations. In this way law is national character.
- Main features include, i) Law has a national character; ii) it is based upon national conditions, situations, circumstances, customs etc; iii) it is pre-historic; and iv) law develops like the language and manner of society.

### **Criticism:**

- Inconsistency in theory
- Customs not always based on popular consciousness
- No distinction between universal and national
- Juristic pessimism

### **Kelsen's Pure Theory of Law:**

This theory resembles with Austin's command theory because in Kelsen's theory there must be sanction behind law. This is based on grundnorm. According to Kelsen, each country has the formation of grundnorm according to local conditions. The duty of jurists is to interpret the grundnorm in their own language. They are not concerned with the goodness or badness of the grandnorm. They are not concerned with the origin of the grundnorm. In this way the grandnorm is the main source of all the laws in the country.

**Features of Kelsen's theory:**

- 1) Grundnorm as a source of law
- 2) No difference between law and state
- 3) Sovereign is not a separate body
- 4) No distinction between private and public law
- 5) Supremacy of International law

**Criticism:**

- Grundnorm is a vague concept - It cannot be applied where there is no written constitution. The base of grundnorm in the form of positive norms or the rules based only on legal order is not clear.
- International law is a weak law
- No difference between law and state
- No distinction between private and public law
- Customs and Precedents ignored

## The Code of Civil Procedure 1908

### Sections: Sections 9 to 12, 15 to 20, 47, 75, 96, 104, 115, and 151

- The Code is primarily a procedural law, though it contains substantive provisions. It comprises of 158 Sections and 52 Orders. It provides a comprehensive mechanism for the trial of a suit, from its institution till its conclusion.
- The maxim '*ubi jus ibi remedium*' (wherever there is a right, there is a remedy), is a fundamental principle of law. This principle finds expression in Section 9 which grant general jurisdiction to civil courts to try all suits of a civil nature unless its cognizance is expressly.
- The policy of the law is to confine the parties to one suit, thus obviating the possibility of contradictory adjudications with regard to the same matters in issue. Section 10 contains this policy of '*res sub judice*' and prevents courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same matters in issue.
- Justice requires that every cause should be once tried, and public order demands that having been tried once all litigation about that cause should be concluded forever between those parties. This doctrine of '*res judicata*' is contained in Section 11 of the Code.
- Apart from Section 11 which prohibit the trial of matters which are *res judicata*, Section 12 prohibits the institution and trial of suits in cases covered by certain rules i.e., Order 2 rule 2, Order 9 rule 9, Order 23 rule 1. Further, where one challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, the remedy shall be sought from the Court which passed the final judgment, decree or order and not by a separate suit.
- Sections 15 to 25 deal with pecuniary and territorial jurisdiction of Pakistani courts with regard to property and persons within their cognizance. These sections embody the principle that courts cannot have jurisdiction over matters in regard to which they cannot give an effective judgment.

- The law with regard to execution of decrees is mainly contained in Sections 36 to 47 and Order 21 of the Code. Section 47 confers jurisdiction to execute a decree. The object of this section is to afford speedy relief to the parties in matters arising out of a decree, thus obviating a new suit for the resolution of such issues.
- The questions to be settled under Section 47 must have arisen between the parties to the suit in which the decree was passed, or their representatives; and relate to the execution, discharge or satisfaction of the decree.
- To facilitate its functioning, courts can issue commissions to examine any person; to make a local investigation, to examine or adjust accounts; or to make a partition. The powers and functions of the Commissioners are enumerated in Order 26.
- Courts of law are not infallible and can commit an error and resultantly in civilized systems of administration of justice, there is provision of at least one appeal to a superior court. Thus, right of an appeal is provided under Section 96 of the Code. The procedure for appeals from original decrees is contained in Order 41. An appeal may lie from an original decree passed *ex parte*. However, no appeal lies against a consent decree. An appeal may also lie against an order if so, provided by Section 104 or Order 43.
- An appeal is a matter *inter partes*, whilst a revision is a matter between a superior court and a subordinate court. Both the remedies are creation of statute. Section 115 provides the remedy of revision before the High Court or District Court. While the grounds of appeal are unrestricted, a revision lies only on the enumerated grounds i.e., illegal assumption, non-existence, or the irregular exercise of jurisdiction.
- Revisional jurisdiction is a part of the general appellate jurisdiction. It is a supervisory jurisdiction. An appeal is a substantive right whereas revisional jurisdiction is discretionary in nature.
- Laws are general rules, and they cannot regulate for all time to come so as to make express provisions against all the cases that may possibly happen. Thus, Section 151 confers inherent powers on civil courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

- The provisions of Section 151 are intended to prevent the courts being rendered impotent by any omission in the Code and empower the courts to make necessary orders. As the Code is not exhaustive, such wide and indefinable inherent powers lie with the courts to meet the ends of justice.

**Orders: Orders 1, 6 to 8, 9, 39, 41, and 43**

**Order 1 (Parties to suits)**

- All persons may be joined in one suit as plaintiffs or defendants in whom or against whom any right to relief arises out of the same act or transaction or series thereof is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought or brought against separate suits, any common question of law or fact would arise (Rule 1 and 3).
- One person may sue or defend on behalf of all in same interest with the permission of the Court (Rule 8).
- No suit shall be defeated by reason of misjoinder and non-joinder of parties. Objections as to misjoinder and non-joinder of parties should be taken at the earliest possible opportunity (Rule 9 and 13).
- The Court may at any stage of the proceedings, either upon or without the application of either party may strike out or add parties (Rule 10).

**Orders 6 to 8 (Pleadings, Plaint, Written Statement)**

- Pleadings to state material facts and not evidence (O6 R2).
- In case any misrepresentation, fraud, breach of trust, willful default, or undue influence is alleged necessary particulars should be stated in pleadings (O6 R4).
- Pleadings must be signed and verified (O6 R14 and 15).

- The Court may at any stage of the proceedings order to be struck out or amend any unnecessary or scandalous matter in pleadings (O6 R16).
- The Court may at any stage of the proceedings allow amendment in pleadings (O6 R17).
- The plaint must contain the particulars required to be provided in O7R1 such as the name of the court, description of parties, the facts constituting cause of action, jurisdiction, the value of the subject matter of the suit and the relief claimed.
- Relief claimed should be stated specifically (O7 R7).
- In case a Court lacks jurisdiction, the plaint shall be returned to be presented to the court of competent jurisdiction (O7 R10).
- The plaint shall be rejected if it does not disclose a cause of action, is undervalued, insufficiently stamped, and barred by any law (O7 R11).
- The documents sued upon and relied upon should be mentioned in respective lists (O7 R14).
- The defendant is obliged to file written statement (O8 R1).
- The defendant should specifically deny the grounds alleged by the plaintiff; evasive denial amounts to an admission (O8 R3,4,5).
- Particulars of set-off to be given in written statement (O8 R6).

### **Order 9 (Appearance of parties and consequence of non-appearance)**

- When summons not served in consequence of plaintiff's failure to pay costs and also when neither party appears when the suit is called on for hearing the suit shall be dismissed. In such a case, plaintiff may bring fresh suit or court may restore suit on its satisfaction from the plaintiff as to the failure for non-payment of costs or for non-appearance (O9 R2,3,4).
- When the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then the Court may proceed *ex-parte* (when summons duly served); direct second summons (when summons not duly

served); postpone the hearing (when summons served, but not in due time) (O9 R6).

- When the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the suit shall be dismissed. Such decree against plaintiff by default bars fresh suit. However, the plaintiff may apply to the Court for setting aside the decree and the Court can make an order setting aside the dismissal upon its satisfaction as to non-appearance of the plaintiff (O9 R8 and 9).
- When *ex-parte* decree is passed against the defendant, he may apply to the Court which passed such decree for setting it aside and the Court on its satisfaction as to non-service of summons or any other sufficient cause for non-appearance can set aside the decree (O9 R13).

### **Order 39 (Temporary injunctions and interlocutory orders)**

- By its nature an injunction is a preventive remedy for purposes of preserving the *status quo*.
- The Courts can grant injunctions to foster the cause of justice even if the case does not fall within the provisions of rules 1 or 2 of Order 39.
- An injunction is a judicial process whereby a party is ordered to do or to refrain from doing a particular act, and as such can either be mandatory or prohibitory in nature.
- When it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or that the defendant threatens, or intends to remove or dispose of his property to defraud his creditors, the Court shall grant temporary injunction (O39 R1).
- The court can also grant injunction to restrain repetition or continuance of breach of contract or other injury of any kind (O39 R2).
- When the suit property is subject to speedy and natural decay, the Court can issue interlocutory order for the sale of that movable property (O39 R6).

- The Court can also make interlocutory order for detention, preservation, and inspection of the subject matter of suit (O39 R7).

**Order 41 (Appeals from original decrees) and Order 43 (Appeals from orders)**

- Order 41 simply provides procedure for filing appeals against original decrees and Order 43 merely *enumerates* orders from which appeal lies, thus, the course participants are encouraged to consult bare text of the CPC.

## **Pakistan Penal Code**

- The Pakistan Penal Code, 1860 (the ‘PPC’) promulgated a penal code for Pakistan. The first chapter provides an introduction to the PPC and states that every person shall be liable to punishment under this Code and not otherwise.

### **❖ Chapter II**

- Chapter II of the PPC deals with the definitions and interpretations of terms throughout the Code and explicitly states that all definitions within this chapter will apply to the rest of the Code.
- Section 8 of PPC states that the pronouns within the Code are gender neutral and “he” includes any person whether male or female. However, the words “man” and “woman” are differentiated where “man” is defined as a male human being while “woman” is defined as a female human being.
- Section 19 demonstrates the definition of “judge” which is of particular importance as it not only includes any person who is officially designated as a judge but also those who are legally empowered to judge civil or criminal proceedings (which are final if not appealed against).
- Section 24 and 25 deals with the *mens rea* element of offences where “dishonestly” is defined as ‘the intention of causing wrongful gain to one person or wrongful loss to another person.’ Moreover, “fraudulently” is defined as an ‘intent to defraud.’

### **❖ Chapter IV**

- Chapter IV of PPC sets out the general exceptions of what does not constitute an offence. Section 76 states that offences committed under a ‘mistake of fact’ or a ‘mistake of law in good faith’ will not constitute an offence under the Code. For example, A was ordered to arrest Y but he arrests Z while believing that Z is Y, in this case, no offence has been committed. Similarly, Section 79 provides that if a person reasonably or in good faith believes that he is justified by law to commit an act, then he is not liable. However, in both these provisions, there is a strict requirement for a good faith/reasonable belief or mistaken belief to exist.

- An act is not considered an offence when it is committed by a Judge in exercise of any power which is given to him:
  - a. By law or;
  - b. He reasonably believes that he may exercise such power in good faith (Section 77).
- An offence is not punishable when it is done in pursuance of a judgement or an order of the Court provided that it is committed in good faith and in belief that the Court in question has the jurisdiction to make such an order/judgement (Section 78).
- Section 80 of the Code substantiates the *mens rea* element in an offence i.e. it states that an offence cannot be committed or penalised if it is without “criminal intention” or is committed in the “knowledge of doing a lawful act in a lawful manner by lawful means with proper care and caution.” Section 81 also explicitly states that an offence cannot be committed with mere knowledge that it is “likely” to cause harm if such an act can be done:
  - a. Without any criminal intention to cause harm and;
  - b. In good faith for the purpose of preventing or avoiding other harm to person or property.
- The above is a question of fact in deciding whether the harm prevented or avoided was of such a nature or so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.
- The foregoing sections (Section 82 - 86 and 89) deal with the issue of capacity and whether in committing the offence, the person had the capacity or foresight to commit such an offence. Under the Code, an act committed by a child who is below 7 years of age is not an offence; it is also further stated that a child between the age of 7 and 12 is considered to be of immature understanding and is unable to understand the “nature and consequences of his conduct.” Section 89 further states that an act committed in good faith for a person:
  - 1) Under 12 years of age
  - 2) A person of unsound mind; or
  - 3) Consent (express or implied) by guardian or person having lawful charge of that personis not liable for an offence provided that:

- The person has not intentionally caused the death or attempted to cause the death
  - It shall not extend to anything which the person doing it knows it is likely to cause death for any purpose other than the preventing of death or the curing of any grievous disease or infirmity
  - It shall not extend to the voluntarily causing of grievous hurt or to attempting to cause grievous hurt unless it is for the purpose of preventing death or grievous hurt or the curing of any grievous disease or infirmity
  - It shall not extend to the abetment of any offence
- Section 87 posits the defence of consent which states that an act which is not intended or likely to cause death or grievous harm to a person above 18 years of age who has given consent (express or implied) then no offence will be committed. To put it simply, for example, if A and Z agree to fence with each other for amusement then there is an implied agreement that any injury which is committed within the course of it (in good faith) is valid and neither parties would commit an offence.
  - If an act is done in good faith for the benefit of someone without consent such that the circumstances are such where it is impossible for the person to give consent, the person is incapable of giving consent and has no guardian in charge. However, this exception under Section 92 will not apply if:
    - 1) The person has intentionally caused or attempted to cause death
    - 2) It shall not extend to anything which the person doing it knows it is likely to cause death for any purpose other than the preventing of death or the curing of any grievous disease or infirmity
    - 3) It shall not extend to the voluntarily causing of grievous hurt or to attempting to cause grievous hurt unless it is for the purpose of preventing death or grievous hurt or the curing of any grievous disease or infirmity
    - 4) It shall not extend to the abetment of any offence

### **Private Defence:**

- The provisions under Section 96 to 106 set out the law of private defence where an offence committed as an exercise of private defence is not punishable under the PPC.
- Under the Code, every person has the right to defend his own body and the body of any other person against any offence affecting the human body. Secondly, the person also has the right to defend the property (moveable or immovable) of himself or of any other person against any act falling under the purview of theft, robbery, mischief or criminal trespass or if any of them are attempted.
- However, the right of private defence is not applicable against an act which does not reasonably cause the apprehension of death or grievous hurt, an act attempted to be done by the direction of the public servant acting in good faith in the colour of his office or in cases which there is time to recourse to the protection of the public authorities.

### **Private Defence of Body:**

- There is a strict requirement that the right of private defence should not extend such that the infliction of harm is greater than what is necessary to inflict for the purpose of defence i.e. the harm inflicted should be proportionate to the harm the person is in reasonable danger of.
- The right of private defence only extends to voluntarily causing death or any other harm to the assailant in the following situations (Section 100), if the harm is outside the purview of the foregoing list then private defence is only available in the manner specified in Section 96 (Section 101):
  - 1) Where the victim has a reasonable belief that there is an apprehension of death
  - 2) Where the victim has a reasonable belief that there is an apprehension of grievous hurt
  - 3) An assault with the intention of causing rape
  - 4) An assault with the intention of gratifying unnatural lust
  - 5) An assault with the intention of kidnapping or abducting
  - 6) Where the victim has been wrongfully confined and has a reasonable apprehension that he will be unable to have recourse to the public authorities for his release

### **Private Defence of Property:**

- The right of private defence of property only extends to voluntarily causing death or any other harm to the wrong-doer in the following situations (Section 103), if the harm is outside the purview of the foregoing list then private defence is not only available in the manner specified in Section 96 (Section 104):
  - 1) Robbery
  - 2) House breaking at night
  - 3) Mischief by fire committed on any building, tent or vessel which is used as a human dwelling or as a place for the custody of property
  - 4) Theft, mischief or house trespassing which may cause a reasonable belief that death or grievous hurt will be the consequence if the right of private defence is not exercised.

### **❖ Chapter XVI**

#### **Qatl-e-amd:**

- Qatl-e-amd is committed when a person with the intention of causing death or with the intention of causing bodily injury to a person in doing an act which in the ordinary course of nature is likely to cause death or with the knowledge that the act is imminently dangerous and in all probability will cause death (Section 300).
- A person may also be liable for Qatl-e-amd where he does something which he intends or knows to be likely to cause death, causing the death of a person who he neither intends nor knows himself to be likely to cause (Section 301).
- Qatl-e-amd is punishable with (Section 302):
  - 1) death as qisas (punishment by causing similar hurt at the same part of the body of the convict as he caused to the victim or by causing death if he has committed qatl-i-amd).
  - 2) Punished with death for imprisonment for life as ta'zir (depending on the facts and circumstances of the case)

- 3) Punished with imprisonment of either description for a term which may extend to 25 years (if the injunctions of Islam deem the punishment of qisas inapplicable)

However, none of these clauses shall apply to the offence of qatl-e-amd if it is committed in the name or on the pretext of honour.

Qatl-e-amd is also not liable to qisas in the following cases:

- When the offender is a minor or insane (however, where a person liable to qisas associates himself in the commission of the offence with a person not liable to qisas with the intention of saving himself then he shall not be exempted from qisas)
- When an offender causes death of his child or grandchild
- When any wali of the victim is a direct descendant
- When the offender dies before the enforcement of qisas
- When any wali voluntarily and without duress waives the right of qisas under Section 309 or compounds under Section 310
- When the right of qisas devolves on the offender as a result of the death of the wali of the victim or on the person who has no right of qisas against the offender
- In order to provide proof of qatl-e-amd, the accused may make a “voluntary and true” confession of the offence before a competent court or evidence (Article 17 of Qanun-e-Shahadat, 1984).
- The Wali i.e. the person who qisas is payable to shall be either:
  - 1) The heirs of the victim (according to personal law) but shall not include the accused or the convict in the case of qatl-e-amd if committed in the name or on the pretext of honour and;
  - 2) The government (if there is no heir)
- In cases of qatl-e-amd, an adult sane wali may waive his right of qisas (without compensation) provided that the right of qisas shall not be waived where the Government is the wali or where the right of qisas vests in a minor or insane.
- The right of qisas may also be waived where the victim has more than one wali and anyone of them is eligible to waive their right however, the one who does not waive his right shall be entitled to his value of diyat (Section 309).

- Section 324 penalises whoever does any act with such intention or knowledge and under circumstances that if he by act caused qatl then he would be liable for qatl-e-amd and shall be punished with imprisonment for up to 10 years but not less than 5 years if the offence has been committed in the name or pretext of honour and shall also be liable to a fine and may also be liable to punishment for the hurt caused.

### **Qatl shibh-i-amd:**

- A person may be liable for qatl shibh-i-amd where they have with the intent to cause harm to the body or mind of any person causes death or that of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death.
- The punishment for qatl shibh-i-amd is diyat and may also result in punishment in the form of imprisonment of either description for up to 25 years as ta'zir.
- A person who has committed qatl shibh-i-amd or qatl-i-amd and is an heir or beneficiary under a will shall be barred from succeeding to the estate of the victim as an heir or beneficiary.

### **Qatl-e-khata:**

- Qatl-e-khata is committed where a person without any intention to cause death or cause harm to a person causes the death of such person (by mistake of act or mistake of fact).
- A person who has committed qatl-e-khata shall be liable to diyat provided that where qatl-e-khata has been committed by an rash or negligent act other than rash or negligent driving, the offender may in addition to diyat also be punished with imprisonment (of either description) for a term of up to 5 years as ta'zir.
- A person who has committed qatl-e-khata by rash or negligent driving (depending on the facts and circumstances of the case) be punished with imprisonment for a term which may extend to 10 years in addition to diyat.

**Qatl-bis-sabab:**

- A person who without any intention to cause death of or cause harm to does an unlawful act which becomes the cause for the death of another person is said to commit qatl-bis-sabab. The punishment for qatl-bis-sabab is in the form of diyat.

**Suicide:**

- An attempt to commit suicide and any act toward the commission of such offence shall be punished with simple imprisonment for up to 1 year or with a fine (or both).

**Thug:**

- A person who has been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with qatl is a thug. A person deemed a thug shall be punished with imprisonment for life and shall also be liable to a fine.

**Abandonment or concealment of a child:**

- If the father or mother of a child under the age of 12 years or one having the care of such child shall expose or leave such child in any place with the intention of abandoning the child shall be punished with imprisonment of either description for a term which may extend to 7 years or a fine (or both) (Section 328).
- If a person secretly buries or disposes of the dead body of a child (whether the child has died before, after or during birth) with the intention to conceal or the endeavour to conceal the birth shall be punishable with imprisonment of either description for up to 2 years or a fine or both.

**Hurt:**

- A person who causes pain, harm, disease, infirmity or injury to any person who impairs, disables, disfigures, defaces or dismembers any organ of the

body or any part without causing death shall be liable for hurt. For the purposes of this section, disfigure means disfigurement to the face or disfigurement or dismemberment of any organ or any part of the organ of the human body which impairs, injures, condones or deforms the symmetry or appearance of a person.

- Section 332 also sets out the kinds of hurt namely:
  - a. **Itlaf-i-udw (Section 333):** a person dismembers, amputates, severs any limb or organ of the body of another person with the intention of causing hurt or with the knowledge that he is likely to cause hurt shall be punished with qisas (if not executable then shall be liable to arsh and perhaps imprisonment of up to 10 years).
  - b. **Itlaf-e-salahiyat-e-udw (Section 335):** a person destroys or permanently impairs the functioning, power or capacity of an organ of another person or causes permanent disfigurement with the intention of causing hurt or with the knowledge that it is likely to cause hurt shall be liable to qisas (if not executable then shall be liable to arsh and perhaps imprisonment of up to 10 years).
  - c. **Shajjah (Section 337):** if a person causes on the head or face of any person any hurt which does not amount to the aforementioned. There are various kinds of shajjah and each is punishable with either damas, arsh, qisas or imprisonment.
  - d. **Jurh (Section 337B):** a person who wounds (whether temporarily or permanently) any part of the body of another person other than the head or face (can be either Jaifah or Ghayr-jaifah)
  - e. all kinds of other hurts.
- Hurt is not liable to qisas in the following situations:

- 1) When the offender is a minor or insane (still liable to arsh or ta'zir depending on the age of the offender, circumstances of the case and the nature of the hurt)
- 2) When an offender at the instance of the victim causes hurt to him (still liable to ta'zir)
- 3) When the offender has caused itlaf-i-udw of a physically imperfect organ of the victim and the convict does not suffer from similar physical imperfection of such organ (still liable to arsh or ta'zir)
- 4) When the organ of the offender liable to qisas is missing (still liable to arsh or ta'zir)

### **Isqat-i-haml:**

- If a person causes a miscarriage in bad faith or in absence of necessary treatment to a woman with child whose organs have not been developed then he is said to commit isqat-i-haml.
- A person who causes isqat-i-haml shall be liable to imprisonment for a term of up to 3 years (if caused with the consent of the woman) or imprisonment for a term of up to 10 years (if caused without the consent of the woman). If in the process of such an offence, the woman dies then the offender shall also be liable to punishment for the death or hurt depending on the circumstances.

### **Isqat-i-janin:**

- A person who causes a miscarriage in absence of good faith or without the purpose of saving the life of the woman with child whose limbs or organs have been formed to miscarry shall be liable for isqat-i-janin.
- Whoever causes such offence shall be liable to:
  - 1) 1/20th of the diyat if the child is born dead
  - 2) Full diyat if the child is born alive but dies as a result of any act of the offender and;
  - 3) Imprisonment of either description for up to 7 years as ta'zir.

Provided that if there is more than one child in the womb of the woman, the offender shall be liable to separate diyat or ta'zir (as required). It is further provided that if any hurt is caused to the woman or she dies as a result of isqat-i-janin then the offender shall also be liable to such punishment.

## ❖ Chapter XVI-A

### **Wrongful Restraint:**

- A person who voluntarily obstructs any person so as to prevent that person from proceeding in any direction within that person's right is said to wrongfully restrain that person. For example, if A obstructs a path which Z has a right to pass has wrongfully restrained Z so long as he does not reasonably believe that he has a right to stop the path.
- An offender who wrongfully restrains shall be punished with simple imprisonment for a term which may extend to 1 month or with a fine up to Rs.1500 (or both).

### **Wrongful Confinement:**

- A person who restrains any person in a manner which prevents them from proceeding beyond certain circumscribed limits is said to have wrongfully confined that person. For example, if A causes Z to go within a walled space and locks Z in where Z is then prevented from proceeding in any direction beyond what is circumscribed than Z has been wrongfully confined.
- An offender who wrongfully confines another person shall be punished with imprisonment of either description for up to 1 year or a fine up to Rs. 3000 or both.
- Where a person wrongfully confines a person for 3 or more days, they shall be punished with imprisonment of either description for up to 2 years or a fine (or both) whereas the punishment may extend up to 3 years or a fine where a person is wrongfully confined for 10 or more days (Section 343 & 344).
- If a person keeps any person in wrongful confinement with knowledge that their writ of liberation has been duly issued then they shall be liable to

imprisonment for up to 2 years in addition to any term which he may be liable to under any other provision (Section 345).

- According to Section 346, if a person has been wrongfully confined with an indication of an intention that the confinement may not be known to any person interested in the person who has been confined or to any public servant or that the place of confinement may not be known to or discovered by any person or public servant. Such offence shall be punishable with imprisonment of either description for a term which may be up to 2 years in addition to any other punishment.
- A person who has wrongfully confined another person for:
  - 1) the purpose of extorting from the person or any person interested in the confined any property or valuable security or;
  - 2) constraining the confined person or any interested person to do anything illegal; or
  - 3) to give any information which may facilitate the commission of an offence

shall be punishable with imprisonment for up to 3 years and a fine (Section 347).

- The wrongful confinement of a person for the purpose of extorting any information which may lead to the detection of an offence or misconduct or to restore or cause the restoration of any property or valuable security, or to give information which may lead to restoration of any property or valuable security shall be punishable with imprisonment of either description for up to 3 years and shall also be liable to a fine (Section 348).

**Force:**

- A person is said to use force if:
  - 1) He causes motion, change of motion or cessation of motion to that other
  - 2) If he causes to any substance such motion or change of motion or cessation of motion as brings that substance into contact with any part of another's body or anything that the other person is wearing or carrying

Such that the person causing the motion, change of motion or cessation of motion is doing so in one of the following ways:

- 1) By his own bodily power
  - 2) By disposing any substance in a manner that the motion, change or cessation of motion takes place without any further act on his part or on the part of the other person
  - 3) By inducing any animal to move, to change his motion or cease to move
- Criminal force is used where a person intentionally uses force to any person without consent in order to commit any offence or intending by the use of such force to cause, or knowing it to be likely that by the use of such force, he will cause injury, fear or annoyance to the person against whom the force is being used (Section 350).

### **Assault:**

- Assault is committed when a person who makes a gesture or any preparation with the intention or knowledge that the person would be likely to apprehend that he who makes the gesture of preparation is about to use criminal force on that person. Mere words do not amount to assault but the words used may give meaning to his gestures or preparation such that it amounts to assault (Section 351). A person liable for assault shall be punished with imprisonment for up to 3 months or a fine up to Rs.1500 or both.
- However, if the victim has gravely or suddenly provoked the assailant (question of fact) then punishment will not be mitigated if (Section 352):
  - 1) The provocation sought is voluntarily provoked by the offender as an excuse for the offence
  - 2) If the provocation given by anything done in obedience to the law or by a public servant in the lawful exercise of powers
  - 3) If the provocation is given by anything done in the lawful exercise of a private defence
- In accordance with Section 353 of the PPC, a person who uses criminal force to any person being a public servant in the execution of his duty as such public servant or with an intent to deter that person from performing his duty shall

be punished with imprisonment of either description for up to two years or with a fine (or both).

- A person who assaults or uses criminal force on any woman with the intention of outraging her modesty or with knowledge that it would be likely to outrage her modesty shall be punished with death or imprisonment for life and shall also be liable to a fine (Section 354A). Further, it would also constitute an offence if a person assaults or uses criminal force to any woman and strips her of her clothes and in that condition exposes her to the public view shall be punished with death or imprisonment for life and shall also be liable to a fine.
- If a person assaults or uses criminal force to any person with the intention to dishonour that person then they shall be punished with imprisonment or either description for a term which may extend to 2 years or fine or both unless it is on grave or sudden provocation (Section 356).
- A person who assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term of up to 2 years or fine or with both (Section 356).
- Further, a person who assaults or uses criminal force to any person in an attempt to wrongfully confine that person shall be punished with imprisonment of either description for a term which may extend to 1 year or a fine (up to Rs.3000) or both (Section 357).
- In the case where a person assaults or uses criminal force against a person upon their grave and sudden provocation then they shall be liable to simple imprisonment for a term of up to 1 month or with a fine which may extend to Rs.600 or both.

### **Kidnapping:**

- A person may be kidnapped from Pakistan or from lawful guardianship. Under Section 360, a person who conveys any person beyond the limits of Pakistan without the consent of that person or of a person legally authorised to consent shall be liable for kidnapping from Pakistan. Alternately, a person who entices or takes any minor below 14 years of age if a male or under 16 years of age if a female or any person of unsound mind out of the keeping of their lawful guardian without the consent of such guardian is said to kidnap

such person out of lawful guardianship (Section 360 & 361). Both offences are punishable with imprisonment of either description for up to 7 years and shall also be liable to a fine (Section 363).

- However, a person shall not be liable if he, in good faith, believes that he is the father of an illegitimate child or who, in good faith, believes himself to be entitled to lawful custody of the child unless the act is committed for an immoral or unlawful purpose (Section 361).
- A person is said to abduct if they by force or deceitful means compel or induce any person to go from any place (Section 362).
- A person who kidnaps or abducts any person in order to murder or dispose of to be put in danger of being murdered shall be punished with imprisonment for life or rigorous imprisonment for up to 10 years and shall also be liable to a fine (Section 364). In case the person who has been kidnapped or abducted is under the age of 14 for the purpose of being murdered or subjected to grievous hurt or slavery or to the lust of any person or disposed of for such purpose shall be liable to death or imprisonment for life or rigorous imprisonment for a term of up to 14 years but shall not be less than 7 years (Section 364A).
- Kidnapping may also occur in order to secretly and wrongfully confine a person, for extortion of valuable property or valuable security or inducing a woman to compel her for marriage. The aforementioned offences are punishable under Section 365, 365A and 365B of the PPC.
- A person who by any means induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be or knowing that it is likely she will be forced or seduced to illicit intercourse with another person shall be liable to imprisonment of up to 10 years and a fine (Section 366A). It is also an offence to import into Pakistan any girl under the age of 21 years with the intent or knowledge that she will likely be subjected or disposed of for the purpose of grievous hurt or slavery and is punishable with imprisonment of up to 10 years and a fine.

### **Rape:**

- Under Section 375, a man is said to commit rape where he has sexual intercourse with a woman falling under any of the following descriptions:

- 1) Against her will
- 2) Without her consent
- 3) Under consent obtained by putting her in fear of death or of hurt
- 4) Under consent where the man knows that he is not married to her and that the consent is given because she believes that the man is another person whom she believes to be married to
- 5) Where she is under 16 years of age (with or without consent)

In the Code, penetration is sufficient to constitute as sexual intercourse necessary for the offence of rape. Rape is punishable by death or imprisonment of either description which shall not be less than 10 years or more than 25 years and a fine is also payable.

- When rape is committed by two or more persons in furtherance of common intention of all, each person shall be punished with death or imprisonment for life.
- A person who voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life or with imprisonment of either description for a term which shall not be less than 2 years nor more than 10 years and shall also be liable to a fine.

## ❖ Chapter XVII

### **Theft:**

- A person who is intending to dishonestly take any moveable property out of the possession of any person without that person's consent is said to commit theft (Section 378). It is pertinent to note that a thing attached to the Earth is not moveable property however, it becomes capable of being the subject of theft upon severance from Earth. Theft is punishable by imprisonment of either description for up to 3 years or a fine or both (Section 379).
- A person who commits theft in any building, tent or vessel (used as a human dwelling or used for the custody of property) shall be punished with imprisonment of either description for up to 7 years and shall also be liable to a fine (Section 380).

- A person serving or being in the capacity as a clerk or servant commits theft in respect of any property in the possession of his master or employer shall be punished with imprisonment of either description for a term of up to 7 years and shall also be liable to a fine (Section 381).
- Whoever commits theft of a car or any other motor vehicle shall be punished with imprisonment for a term of up to 7 years and a fine not exceeding the value of the stolen vehicle (Section 381A).
- A person who commits theft after preparation for death, hurt, restraint, fear of death or of hurt or restraint to any person in order to effect his escape after committing such theft or in order to retain the property taken by such theft shall be punished with rigorous imprisonment for a term of up to 10 years and a fine.

### **Extortion:**

- A person who intentionally puts any person in fear of any injury to that person or any other and dishonestly induces the person to deliver any person, property, valuable security, signed or sealed out of fear shall be liable to imprisonment of either description which may extend to 3 years or with fine or both (Section 383 & 384).
- If a person puts any person in fear or attempts to put any person in fear of any injury for the purpose of extortion shall be liable to imprisonment of either description for a term of up to 2 years or a fine or both (Section 385).
- A person who commits extortion by putting any person in fear of death or of grievous hurt to that person or any other shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to a fine (Section 386).
- A person who, in order to commit extortion, puts or attempts to put any person in fear of an accusation against that person or another having committed or attempted to commit an offence punishable with death or imprisonment for life shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to a fine (if it is punishable under Section 377 then imprisonment for life) (Section 388).

### **Robbery (Section 390):**

- In all robbery there is either theft or extortion. Theft is robbery if in order to commit theft, in committing the theft, in carrying away or attempting to carry away the property obtained from theft, the offender voluntarily causes or attempts to cause any person death or hurt or wrongful restraint or fear of instant death.
- Extortion is considered robbery if the offender at the time of committing the extortion is in the presence of the person put in fear and commits the extortion by putting that person in fear of instant death, instant hurt or wrongful restraint and by such fear induces the person to deliver the thing which is being extorted.
- A person liable for robbery shall be punished with rigorous imprisonment for a term which shall not be less than 3 years nor more than 10 years and shall also be liable to a fine.
- If the robbery is committed on the highway the imprisonment may be extended to 14 years.
- Under Section 393, an attempt to commit robbery shall be punishable with rigorous imprisonment for a term of up to 7 years and a fine may also be payable.
- In the course of committing robbery, if a person voluntarily causes hurt and any other person jointly concerned in committing or attempting to commit robbery shall be punished with imprisonment for life or with rigorous imprisonment for up to ten years but not less than 4 years and a fine shall also be payable.

### **Dacoity:**

- When 5 or more persons conjointly commit or attempt to commit a robbery or all the persons conjointly committing or attempting to commit a robbery and the persons present and aiding such commission or attempt is considered dacoity (Section 391).
- Under Section 395, the punishment for dacoity is imprisonment for life or rigorous imprisonment for a term of up to 10 years but not less than 4 years and it is also punishable by payment of fine.

- If any of the five or more persons who are conjointly committing dacoity commits murder while committing dacoity, each of those persons shall be jointly liable and punished with death or imprisonment for life or rigorous imprisonment for a term of not less than 4 years nor more than 10 years and a fine will also be payable (Section 396).
- Any person who makes any preparation to commit dacoity shall be punished with rigorous imprisonment for a term of up to 10 years and a fine will also be payable (Section 399).
- A person belonging to a gang of persons associated for the purpose of committing dacoity on a habitual basis (at the time of this Act) shall be liable to imprisonment for life or rigorous imprisonment for a term of up to 10 years and a fine (Section 400). In reference to a gang of thieves, the punishment is rigorous imprisonment for up to 7 years and a fine (Section 401).
- Section 402 penalises assembling for the purposes of committing dacoity, wherever 5 or more persons assemble to commit dacoity, they shall be liable to rigorous imprisonment for a term which may extend to 7 years and a fine.

### **Hijacking:**

- A person who by the use or show of force or by threats seizes or exercises control of an aircraft is said to commit hijacking. Hijacking is punishable with death or imprisonment for life and the offender shall also be liable to forfeit their property and pay a fine (Section 402A and 402B).
- A person who knowingly harbours a person whom he knows or reasonably believes is about to commit or has committed or abetted an offence of hijacking. A person will also be liable where they knowingly permit such person to meet or assemble in any place or premises in their possession or control, they shall be punished with death or imprisonment for life and a fine.

### **Misappropriation of Property:**

- A person who misappropriates or converts any moveable property to his own dishonestly shall be liable to imprisonment of either description for a term which may extend to 2 years or a fine or both (Section 403).

- A person who dishonestly misappropriated or converted to his own use a property, knowing that such property was in the possession of a deceased person at the time of that person's deceased and has not since been in the possession of the any person legally entitled to it shall be punished with imprisonment of either description for a term of up to 3 years and shall also be liable to a fine. If the person at the time of deceasement was a clerk or servant then the sentence may extend to 7 years (Section 404).

### **Criminal Breach of Trust:**

- Any person who is entrusted with property or dominion over property dishonestly misappropriated or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law or in breach of any legal contract (express or implied) which he has made touching the discharge or trust or willfully suffers any other person commits criminal breach of trust and shall be punished with imprisonment of either description for a term which may extend to 7 years and a fine (Section 406 and 407).
- A person who is entrusted with property as a carrier, wharfinger or warehouse-keeper commits criminal breach of trust in respect of that property and shall be punished with imprisonment of either description for a term which may extend to up to 7 years and shall also be liable to a fine (Section 408).
- A person who is entrusted with property or any dominion over property in his capacity as a public servant or in his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property shall be punished with imprisonment for or of either description imprisonment for a term of up to 10 years and a fine (Section 409).

### **Receiving of Stolen Property:**

- Stolen property is property where the possession has been transferred by theft or extortion by robbery and property which has been criminally misappropriated or in respect of which criminal breach of trust has been made or the misappropriation or breach of trust has been committed within or

without Pakistan however, if such property subsequently comes into the possession of a person legally entitled to the possession then it ceases to be stolen property (Section 410).

- A person who dishonestly receives or retains any stolen property (knowing or having reason to believe the same to be stolen property) shall be punished with imprisonment or either description for a term which may extend to 3 years or a fine or both (Section 411).
- A person who habitually receives or deals in property which he knows or reasonably believes is stolen property then he shall be punished with imprisonment for life or with imprisonment in either description for up to 10 years and shall also be liable to a fine (Section 413).
- A person who voluntarily assists in concealing or disposing of or making away with property which he knows or reasonably believes is stolen then he shall be punished with imprisonment of up to three years or a fine or both (Section 414).

### **Cheating:**

- A person who fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain the property or intentionally induces the person to do or not to anything which he would not do had he not been deceived and such act or omission causes or is likely to cause damage or harm to that person or any other person in body, mind, reputation or property is liable for cheating and may be punished with imprisonment for up to 1 year or a fine or both (Section 415).
- If a person pretending to be some other person or knowingly substitutes one person for another or representing that he or any other person as someone other than the person he really is an offence (Section 416) and is punishable with imprisonment for up to 7 years or a fine or both.

### **Fraudulent Deeds and Dispositions of Property:**

- A person who dishonestly or fraudulently removed, conceals or delivers to any person, transfers or causes to be transferred without adequate consideration any property coupled with an intention or knowledge that it would likely prevent the distribution of that property according to law among

his creditors or the creditors of any other person shall be punished with imprisonment for a term of up to 2 years or a fine (or both).

- Dishonestly or fraudulently preventing debt being available for creditors according to law shall be punished with imprisonment for a term of up to 2 years and a fine or both (Section 422).

### **Mischief:**

- A person who has the intent or knowledge that he is likely to cause a wrongful loss or damage to the public or to any person and causes the destruction of any property, any change in property or diminishes the value or utility then he commits mischief. Under Section 426, mischief is punishable by imprisonment of up to 3 months or a fine or both.
- Mischief can be caused by any of the following ways:
  - 1) Mischief causing damage to amount of fifty rupees (imprisonment up to 2 years and/or fine)
  - 2) Mischief by killing or maiming animal to the value of ten rupees (imprisonment up to 2 years and/or fine)
  - 3) Mischief by killing or maiming cattle of any value or any animal of the value of fifty rupees (imprisonment up to 5 years and/or fine)
  - 4) Mischief by injury to works of irrigation or wrongfully diverting water (imprisonment up to 5 years and/or fine)
  - 5) Mischief by injury to public road, bridge, river or channel (imprisonment up to 5 years and/or fine)
  - 6) Mischief by causing inundation or obstruction to public drainage (imprisonment up to 5 years and/or fine)
  - 7) Mischief by destroying, moving or rendering less useful a light-hour or seamark (imprisonment up to 7 years and/or fine)
  - 8) Destroying or moving a landmark fixed by public authority (imprisonment up to 1 years and/or fine)
  - 9) Mischief with intent to destroy or make unsafe a decked vessel (imprisonment up to 10 years and/or fine)
  - 10) Intentionally running a vessel a ground or ashore with intent to commit theft (imprisonment up to 10 years and/or fine)
  - 11) Among others

## **Criminal Trespass:**

- Criminal trespass is committed when a person who enters into or upon property in the possession of another with the intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or lawfully entering a property but remaining unlawfully to intimidate, insult or annoy any person in possession of such property (Section 441).
- When criminal trespass is committed by entering into or remaining in any building such as a dwelling, vessel, tent, place for worship then house trespassing is committed.
- A person will commit the offence of house breaking if he commits house trespass and effects his entrance into the house or any part of it in any of the six ways following:
  - 1) If he enters or quits through a passage made by himself or an abettor
  - 2) If he enters or quits through any passage not intended by any person other than himself or an abettor of the offence for human entrance or through any passage to which he has obtained access by scaling or climbing over a wall or building.
  - 3) If he enters or quits through any passage which he or any abettor of the house trespass opened and the passage was not intended to be opened by the occupier of the house
  - 4) If he enters or quits by opening a lock in order to commit the house trespass or to quit after it.
  - 5) If he affects his entrance or departure by using criminal force, committing or threatening an assault.
  - 6) If he enters or quits by a passage which he knows to have been fastened against such entrance or departure

If the act hereinabove takes place after sunset then it is referred to as housebreaking by night.

## Code of Criminal Procedure

- The Code of Criminal Procedure, 1898 (the ‘**CRPC**’) promulgated a criminal procedure for Pakistan.

### ❖ Chapter I

- **Advocate General:** includes a Government Advocate or where there is no Advocate General or Government Advocate then the Provincial Government may appoint in this behalf
- **Bailable Offence/NonBailable Offence:** an offence shown as bailable in the second schedule or made bailable by another law. A non-bailable offence is any other offence.
- **Charge:** includes head of charge when the charge contains more heads than one
- **Cognizable offence/case:** an offence for and a case in which a police officer may (according to the second schedule) arrest without a warrant.
- **Complaint:** means the allegation made orally or in writing to the Magistrate that some person has committed an offence but it does not include the report of a police officer
- **High Court:** means the highest court of criminal appeal or revision for a province and the Islamabad Capital Territory
- **Inquiry:** means every inquiry other than a trial conducted by a Magistrate or Court
- **Investigation:** includes all proceedings for the collection of evidence conducted by a police officer or by any person who is authorised by a Magistrate on this behalf.
- **Judicial Proceeding:** any proceeding in the course of which evidence is or may be legally taken on oath
- **Magistrate:** a Judicial Magistrate and includes a Special Judicial Magistrate appointed under Section 12 and 14
- **Non-cognizable offence/case:** an offence for which or case in which a police officer may not arrest without warrant

- **Offence:** means an act or omission made punishable by any law for the time being in force
- **Officer in charge of a police station:** includes when the officer in charge of the police station is absent from the station house or unable from illness, the officer present at the station who is next in rank to such officer
- **Place:** includes a house, building, tent and vessel
- **Pleader:** used with reference to any proceedings in any Court means a pleader or a mukhtar authorised under any law for the time being in force to practice in such court and includes an advocate, a vakil and an attorney of a High Court so authorised and any other person appointed with the permission of the Court.
- **Police Station:** means any post or place declared by the Provincial Government to be a police station
- **Public Prosecutor:** a person appointed under Section 492 and includes any person acting under the direction of a Public Prosecutor and any person conducting a prosecution on behalf of the State in any High Court in exercise of its original criminal jurisdiction.

## ❖ Chapter II

- There are two classes of Criminal Courts in Pakistan namely the Court of Sessions and the Court of Magistrates. There are also three classes of Magistrate namely Magistrate of the first class, Magistrate of the Second Class and Magistrate of the third class (Section 6).
- Each Province shall consist of sessions divisions and every sessions division shall be a district or consist of districts. The Provincial Government may alter the limits of the number of such divisions and districts (Section 7). The Provincial Government may also divide any district into sub-divisions or make any portions of any such district a sub-division and may alter the limits of any sub-division.
- The Provincial Government shall establish a Court of Session for every sessions division and appoint a Judge of such Court. The Provincial Government may direct the places at which the Court of Sessions shall hold its sitting (Section 9(1) and (2)).

- The Provincial Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more of such courts (Section 9(3)).
- The Provincial Government may appoint as many persons as it thinks fit to be Magistrates of the three classes in any district and the Sessions Judge may from time to time define local areas within which such persons may exercise all or any of the powers with which they may be invested. The Provincial Government may also direct one or more Magistrates of the first class to work as Mobile Court to try an offence or offences (determined under this Code) (Section 12).
- A Special Judicial Magistrate may be appointed by the Provincial Government on recommendation of the High Court and shall hold all or any of the powers conferred by or under the CRPC on a Judicial Magistrate in respect to particular cases or to particular classes of cases (Section 14(1)). These judges will be appointed for a term as will be decided by the Provincial Government in consultation with the High Court (Section 14(2)).
- Pursuant to Section 14A, the Provincial Government may appoint Special Magistrates with the powers of a Magistrate First Class exclusively for the trial of offences relating to price control under any Federal or Provincial law.
- The Provincial Government may direct any two or more Judicial Magistrates in any place to sit together as a Bench and may by order invest such Bench with any of the powers conferred under the CRPC on a Magistrate of first, second or third class and direct it to exercise such powers in such cases or classes of classes only as the Provincial Government sees fit.
- The Provincial Government may make rules consistent with this Code for the guidance of all Magistrates and Benches in any district respecting the following subjects (Section 16):
  - 1) The classes of cases to be tried
  - 2) The time and places of sitting
  - 3) The constitution of the Bench conducting trials
  - 4) The mode of settling differences of opinion which may arise between the Magistrates in session
  - 5) The mode and manner of conducting raids and trials on the spot
- All Magistrates appointed under Section 12 and 14A and Benches constituted under Section 15 shall be subordinate to the Sessions Judge and he may make

rules or give special orders consistent with this code and any rules framed by the Provincial Government (Section 17(1)). All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction (Section 17(2)). The Sessions Judge may also in his absence make a provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or if there is no Additional or Assistant Judge then the Judge or magistrate shall have jurisdiction to deal with any such application (Section 17(3)).

### **Justices of the Peace:**

- the Provincial Government may appoint for a specified period and subject to the rules as may be made by it, any person who is a citizen of Pakistan and whose integrity and suitability is satisfied to be a Justice of the Peace for a local specified area and more than one Justice of the Peace may be appointed for the same local area (Section 22).
- A Justice of the Peace for any local area shall have within such area all the powers of a police officer and of an officer in charge of a police station for the purpose of making an arrest (Section 22A (1)). A Justice of the Peace making an arrest shall take or cause to be taken the person arrested before the officer in charge of the nearest police station and furnish a report with the circumstances of the arrest (Section 22A (2)).
- A Justice of the Peace shall also have the powers within their area to call upon a member of the police force on duty to aid him in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made and in the prevention of crime in general and the prevention of a breach of peace or disturbance in the public tranquillity (Section 22A (3)).
- A Justice of the Peace for any local area shall (Section 22B):
  - 1) On receipt of information on the occurrence of any event involving a breach of peace or of commission of any offence make inquiries into the matter and report the result in writing to the nearest Magistrate or officer in charge

- 2) If the offence is cognizable then prevent the removal of anything from or the interference with the place of occurrence of the offence.
- 3) When requested render all assistance to the police officer in making an investigation and record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed.

## ❖ Chapter V

### **Arrest generally:**

- In making an arrest, the police officer or the other person making the same shall actually touch the body or confine the body of the person to be arrested unless there is a submission to the custody by word or action (Section 46(1)).
- If a person forcibly resists arrest or attempts to evade arrest then a police officer or other person may use all means necessary to effect the arrest (Section 46(2)). However, it does not give the police officer the right to cause the death of a person who is not accused of an offence punishable with death or imprisonment for life (Section 46(3)).
- If any person acting under a warrant of arrest or any police-officer having authority to arrest has reason to believe that the person arrested has entered into or is within any place the person residing in or being in charge of such place shall on demand of such person allow him free ingress and afford all reasonable facilities for a search (Section 47).
- Any police officer or another person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any person who have lawfully entered for the purpose of making an arrest (Section 49)
- A person who is arrested may not be subjected to more restraint than is necessary to prevent his escape (Section 50). Whenever a person is arrested by a police officer under a warrant which does not provide for bail or under a warrant of bail but the person cannot furnish bail and whenever a person is arrested without warrant or by a private person under a warrant and cannot be legally admitted to bail or is unable to furnish bail then the officer making the arrest or when the arrest is made by a private person, the police-officer may

search such person and place all articles other than necessary wearing apparel found upon him (Section 51). In the case of women, wherever it is necessary to cause a woman to be search, the search shall be made by another woman with strict regard to decency (Section 52).

**In rape cases, sexual abuse or unnatural offence cases:**

- When a person is arrested on a charge of committing an offence of rape, unnatural offence or sexual abuse or an attempt to commit rape, unnatural offence of sexual abuse and there are reasonable grounds for believing that an examination of arrested person will afford evidence as to the commission of such an offence, it is within the bounds of the law for a medical practitioner employed in a Government hospital or by a local authority to make an examination of the arrested person and to use such force as reasonably necessary (Section 53A).
- The registered medical practitioner conducting the exam shall without delay examine such person and prepare a report of his examiner by providing the following:
  - 1) Name and address of the accused and of the person by whom he was brought
  - 2) The age of the accused
  - 3) Marks of injury on the person accused
  - 4) Description of material taken
  - 5) Other material particulars in reasonable detail
  - 6) The exact time of commencement and completion of the examination

**Arrest without warrant:**

- Any police officer may without an order from a Magistrate and without a warrant arrest (Section 54):
  - 1) Any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned

- 2) Any person having in his possession without lawful excuse any implement of house-breaking (the burden is on the person)
  - 3) Any person who has been proclaimed as an offender under this Code by order of the Provincial Government.
  - 4) Any person who has possession of anything which may be reasonably suspected to be stolen property and who may reasonably be suspected of having committed an offence
  - 5) Any person who obstructs a police officer while in the execution of his duty or who has escaped or attempted to escape from lawful custody
  - 6) Any person reasonably suspected for being a deserter from the armed forces of Pakistan.
  - 7) Any person who has been concerned in or whom a reasonable complaint or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Pakistan which in Pakistan would have been an offence
  - 8) Any released convict for committing a breach of any rule made under Section 565(3)
  - 9) Any person whose arrest a requisition has been received from another police officer provided that the requisition has specified the person to be arrested and the offence or cause for which the arrest is to be made
- When any officer in charge of a police station or any police officer making an investigation requires any officer subordinate to him to arrest without a warrant, any person who may lawfully be arrested without a warrant then he shall deliver to the officer required an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer shall before making the arrest, notify the person of the substance of the order and may also show him the order (Section 56).
  - A police officer may pursue without warrant any person whom he is authorised to arrest into any place in Pakistan (Section 58).

**Arrest by private persons (Section 59):**

- Any private person may arrest any person who in his view commits a non-bailable cognizable offence or any proclaimed offender without unnecessary

delay and shall make over any person to the police officer or take him to the nearest police station.

- If there is reason to believe that such person falls under the purview of Section 54 then the police officer may re-arrest him
- If there is reason to believe that he has committed a non-cognizable offence and he refuses to give his name and residence or gives a false residence then he shall be dealt with in accordance with Section 57. However, there is no valid apprehension or sufficient reason to believe that he has committed any offence then he shall be released.
- No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and in the absence of a special order of a Magistrate the time shall not exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

## ❖ Chapter VII

- Whenever any Court or any officer in charge of a police station considers that the production of any document or the other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding by or before such Court or officer then such Court may issue a summons or such officer a written order to the person in whose possession or power such document or thing is believed to be requiring him to attend and produce it (Section 94).
- If any document, parcel or thing in such custody is in the opinion of any Magistrate or High Court of Session wanted for the purpose of any investigation, inquiry, trial or other proceeding under this code then the Magistrate or Court may require the postal or telegraph authorities to deliver such document, parcel or thing to such person as the Magistrate or Court directs.
- A search warrant may be issued (Section 96):
  - 1) where any Court has a reason to believe that a person to whom a summon or order;

- 2) requisition has been or might be addressed will not produce the document or thing required;
- 3) where the document or thing is not known to the Court to be in possession of any person;
- 4) where the Court considers the purposes of any inquiry, trial or proceeding under this Code will be served by general research or investigation

and the person to whom the warrant is directed may search or inspect in accordance.

- The Court may specify in the warrant the particular place to which the search or inspection shall extend and the person charged with the execution of such warrant shall search or inspect only such place then (Section 97).
- If any Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence then he may issue a search warrant and the person to whom such warrant is directed may search for the person so confined (Section 100).
- Whenever any place liable to search or inspection is closed then any person residing in or in charge of such place shall on demand of the officer and on production of the warrant allow him free ingress and afford all reasonable facilities (Section 102).
- Before making a search, the officer or other person about to make it shall call upon two respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search (Section 103(1)).
- The occupant of the place searched or some person in his behalf shall be permitted to enter during the search and copy of the list prepared, signed by the witnesses shall be delivered at the occupant's request (Section 103(3)).
- A Magistrate may direct a search to be made in his presence of any place for a search of which he is competent to issue a search warrant (Section 105).

### ❖ Chapter VIII

- Whenever any person accused of an offence punishable under PPC other than Section 143, 149, 153A or 154 or assault or other offence involving breach of

peace or of abetting the same or any person accused of committing criminal intimidation is convicted if such offence before a High Court, Court of Session or the Court of the Magistrate of the first class and the Court is of the opinion that it is necessary to require such person to execute a bond for keeping peace then it may at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means for keeping the peace during such period not exceeding 3 years (Section 106(1)). If the conviction is set aside on appeal or otherwise then the bond shall become void (Section 106(2)).

- Whenever a Magistrate of the first class is informed that any person is likely to commit a breach of the peace, disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the Magistrate (if there is sufficient ground for proceeding) may require such person to show cause why he should not be ordered to execute a bond for keeping peace for such period not exceeding 3 years as the Magistrate thinks to fix (Section 107(1)).
- When a Magistrate not empowered under subsection to proceed but has reason to believe that any person is likely to commit a breach of the peace or disturb the tranquillity or do any wrongful act which may occasion a breach of peace or disturb the public tranquillity and that such breach cannot be prevented otherwise than by detaining such person in custody, such Magistrate may after recording his reasons, issue a warrant for his arrest and may send him before a Magistrate empowered to hear his case (Section 107(3)).
- Where a Magistrate of the first class has information that there is within the limits of his jurisdiction any person who either orally or in writing or in an intentional manner disseminates or attempts to disseminate or abets the dissemination of a seditious matter (publication is punishable under PPC), any matter the publication of which is punishable under PPC or any matter concerning a Judge which amounts to criminal intimidation. In such case, if the Magistrate believes there is sufficient ground for proceeding then he may require such person to show cause for why he should not be ordered to execute a bond for his good behaviour for such period not exceeding 1 year (Section 108(1)).

- Where the Magistrate of the first class receives information that any person within the local limits of their jurisdiction is:
  - 1) By habit a robber, house breaker, thief or forger
  - 2) By habit a receiver of stolen property knowing the same to have been stolen
  - 3) Habitually protecting or harbouring thieves or aids in the concealment or disposal of stolen property
  - 4) Habitually commits or attempts to commit or abets the commissions of offences involving a breach of the peace
  - 5) So desperate and dangerous as to render his being at large without security hazardous to the community

The Magistrate may require such person to show cause why he should not be ordered to execute a bond for his good behaviour for such period of less than 3 years as the Magistrate thinks fit to fix (Section 110).

- Where a Magistrate acting under Section 107, 108, 109 or 110 deems it necessary to require any person to show cause under the relevant section then he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if required) (Section 112).
- As per Section 120, a person in respect of whom an order for security is made under Section 106 or 118 is at the time such order is made, sentenced to or undergoing a sentence of imprisonment the period for which such security is required shall commence on the expiration of such sentence. In other cases, it shall commence on the date of the order unless the Magistrate for sufficient reason fixes a later date (Section 120(2)).
- The bond may be executed by any such person and shall bind him to keep the peace or to be of good behaviour as the case may be and in the latter case, the commission or attempt to commit, or the abetment of any offence punishable with imprisonment is a breach of the bond (Section 121).
- The Magistrate retains the power to refuse to accept any surety offered or may reject any surety previously accepted by him or his predecessor on the ground that such surety is an unfit person for the purposes of the bond (Section 122(1)). However, before refusing to accept or rejecting such surety, the

Magistrate shall hold an inquiry on oath into the fitness of the surety and shall give reasonable notice of the surety to the person who the surety as offered (Section 122(2)).

## ❖ Chapter X

- Whenever a Magistrate of the first class considers on receiving a police report or other information and on taking such evidence as he thinks fit that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public or from any public place or that the conduct of any trade or occupation or the keeping of any goods or merchandise is injurious to the health or physical comfort of the community and that in consequence such trade or occupation should be prohibited or regulated. In such cases, the Magistrate may make a conditional order requiring the person causing such obstruction or nuisance on carrying on such trade or occupation or keeping any such goods or merchandise or owning or controlling such a structure etc. to (Section 133):
  - 1) To remove the obstruction or nuisance
  - 2) To desist from carrying on or to remove or regulate in such manner as may be directed for the trade or occupation
  - 3) To remove such goods or merchandise to regulate the keeping thereof in such manner as may be directed
  - 4) To prevent or stop the erection of or to remove, repair or support such structure or building
  - 5) To alter the disposal of substance; or
  - 6) To appear before the Magistrate of the first class at a time and place fixed by the order and move to have the order set aside or modified in the manner provided.
- The order shall be served on the person against whom it is made in the manner provided for service of summons. However, if such an order cannot be served, it shall be notified by proclamation, published in a manner as prescribed by the Provincial Government may by rule direct and a copy thereof shall be stuck up at such place or places as may be the fittest for conveying the information (Section 134).

- Under Section 135, if an order to appear has been issued then he must:
  - 1) Perform within the time, the act directed; or
  - 2) Appear in accordance with such order and either show cause against the same or apply to the Magistrate by whom it was issued to appoint a jury to try whether the same is reasonable and proper.
- Procedurally, if a person appears and shows cause against the order then the Magistrate shall take evidence in the matter (Section 137(1)) and if the Magistrate is satisfied that the order is not reasonable and proper (Section 137(2)) then no further proceedings shall take place however, if the Magistrate is not satisfied then the order shall be made absolute (Section 137(3)).
- Where a person claims for a jury under Section 135 the Magistrate shall appoint a jury consisting of an uneven number of persons of no less than five of whom the foreman and one half of the remaining members shall be nominated by the Magistrate. Thereafter, the Magistrate may summon such foreman and fix a time within which they are to return their verdict (may be extended by the Magistrate) (Section 138).
- When an order has been made absolute under Section 136, 137 or 139, the Magistrate shall give notice of the same to the person against whom the order was made and further require him to perform the act directed by the order within a time to be fixed in the notice and inform him that in case of disobedience he will be liable to the penalty under Section 188 of PPC.
- If the applicant due to neglect or otherwise prevents the appointment of the jury or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit and such order shall be executed in the manner provide in Section 140.

## ❖ Chapter XI

- Under Section 144 in cases where the opinion on the Zila Nazim upon the written recommendation of the District Superintendent of Police or Executive District Officer, there is sufficient ground for proceeding and under this section and speedy remedy is desirable. The Zila Nazim by written order

stating the material facts of the case direct any person to abstain from a certain act or take certain order with certain property in his possession if he feels that this direction is likely to prevent or tends to prevent nuisance, obstruction, annoyance or injury (Section 144(1)). An order in case of emergency or in cases where the circumstance do not admit of serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte* (Section 144(2)).

- Where an application is received by the Zila Nazim it shall be afforded an early opportunity of appearing before him either in person or by a pleader or showing cause against the order. If the Zila Nazim rejects the application (whole or in part) then he shall record his reasons in writing for doing so (Section 144(5)).

#### ❖ Chapter XIV

- All information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be noted in writing by him or under his direction and be read over to the informant. All such information, whether given in writing or reduced to writing shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in the form as demonstrated by the Provincial Government (Section 154).
- However, if the information is given by the woman against whom an offence under Section 336B, Section 354A, Section 306 or Section 509 of the PPC is alleged to have been committed or attempted then such information shall be recorded by an investigating officer in the presence of a female police officer or female family member (or any other person with the consent of the complainant) (Section 154).
- Furthermore, if the information is given by a woman in respect of an offence under Section 336B, Section 354, Section 354A, Section 376 or Section 509 of the PPC is alleged to have been committed or attempted and the woman is distressed then the information may be recorded by the investigating officer at residence of the complainant or at a convenient place of the complainant's choice in presence of a police officer or family member or any other person with consent of the complainant (Section 154).

- When information is given to the officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter into a book for the substance of such information to be kept and refer the informant to the Magistrate (Section 155).
- A non-cognizable case shall not be investigated by a police officer without the order of a Magistrate of the first- or second-class having power to try such case or send the same to trial at the Court of Sessions.
- if an officer in charge of a police station has reason to suspect the commission of an offence based on the information received then he shall send a report to the Magistrate who is empowered to take cognizance of such offence upon police report and shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case and if necessary, take measures for the discovery and arrest of the offender provided that:
  - 1) when any information as to the commission of any offence is given against any person by name and the case is not of a serious nature, the officer in charge of the police station need not proceed in person or depute a subordinate officer to make an investigation on the spot
  - 2) If it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation
- Every report sent to a Magistrate under Section 157 shall if the Provincial Government so directs be submitted through such superior officer of police as the Provincial Government by general or special order appoints in that behalf. The Magistrate on receiving such report may direct an investigation or if he thinks fit proceed or depute any Magistrate subordinate to him to proceed and hold a preliminary inquiry into (Section 158 and 159).
- A police officer making an investigation under this chapter or not below such a rank as the Provincial Government may prescribe. Acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the fact. The statement of a woman against whom the offence under Section 336B, Section 354, Section 354A, Section 376 or Section 509 of the PPC is alleged to have been committed or attempted shall be recorded by an investigating officer in presence of a female police officer or family member or other person of her choice (Section 161).

- Where an offence under Section 354A, Section 376, Section 377 or Section 377B of the PPC has been committed or attempted to be committed, the police officer recording the information shall inform the victim of his right to legal representation (Section 161A). In such cases, the victim shall be examined by a registered medical practitioner and in the case of a female victim by a registered female medical practitioner immediately after the commission of such offence (Section 164A). Further, in respect of such offence being committed or alleged to be committed DNA samples shall be collected from the victim with his or her consent or with the consent of her natural or legal guardian (Section 164B).
- In an investigation under this chapter, if the officer in charge of the police station believes that there is not sufficient evidence or reasonable grounds of suspicion to justify the forwarding of the accused to a Magistrate then such officer shall release him on his execution of a bond as the officer may direct before a Magistrate empowered to take cognizance of such offence (Section 169). If upon investigation, there is sufficient evidence or reasonable grounds to suspect the commission of an offence then the officer shall take the accused under custody to a Magistrate empowered to take cognizance of the offence and to try to accused. If the offence is bailable and the accused is able to give security for his appearance before a Magistrate then he shall be released (Section 170).
- Every investigation shall be completed without unnecessary delay and as soon as it is completed, the officer in charge of the police station shall forward the case to a Magistrate through the public prosecutor. The officer in charge shall also communicate in such manner the action taken by him to the person by whom the information relating to the offence was first given.

## ❖ Chapter XVI

- The Magistrate taking cognizance of an offence on complaint shall at once examine the complaint upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the Magistrate provided that where the complaint is made in writing, it shall not

require a Magistrate to examine the complainant before transferring the case. Further, when the complaint is made in writing, it shall not require the examination of the complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act on discharge of his official duties (Section 200).

- If the complainant has written to a Magistrate who is not competent to take on the case, then he shall return the complaint for the presentation to the proper Court with endorsement to that effect. If the complaint has not been made in writing, then the Magistrate shall direct the complaint to the proper Court (Section 201).
- A complaint made or transferred to a Court may dismiss the complaint if after considering the statement on oath of the complainant, the result of the investigation or inquiry provides no sufficient ground for proceeding (Section 203).
- A complaint in the case of Zina shall not be taken cognizance of unless it is lodged in a Court of competent jurisdiction. The presiding officer of the Court taking cognizance of an offence shall examine the complainant and at least four Muslim male adult eye witnesses whom the Court is satisfied regarding the tazkiyah-al-shahood requirement.

## ❖ Chapter XVII

- If in the opinion of a Court taking cognizance of an offence, there is sufficient ground for proceeding and the case appears to be one in which according to the fourth column of the second schedule, a summons should be issued in the first instance. If the case appears to be one in which a warrant is to be issued then it may issue a warrant or summon to bring the accused to appear before the Court or if it does not have jurisdiction then some other Court having jurisdiction (Section 204(1)).

## ❖ Chapter XXXI

- There is no appeal lying from any judgement or order of a Criminal Court except as provided under this code. Any person whose application under Section 89 for delivery of property has been rejected may appeal to the Court

in which appeals ordinarily lie from the sentences of the former Court (Section 405).

- A person who has been ordered by a Magistrate for keeping of peace or for good behaviour may appeal in the Court of Sessions unless the proceedings were laid before a Sessions Judge (Section 406).
- A person aggrieved by an order refusing to accept or rejecting a surety under Section 122 may appeal in the Court of Sessions (Section 406A).
- Any person convicted on a trial held by an Assistant Sessions Judge or a Judicial Magistrate, Special Magistrate or a person sentenced under Section 349 may appeal to the Court of Session provided that:
  - 1) In any case where an Assistant Sessions Judge or Magistrate passes a sentence of imprisonment for a term exceeding 4 years, the appeal shall lie to the High Court.
  - 2) A person convicted by a Magistrate of an offence under Section 124A of PPC shall appeal to the High Court.
- An appeal to the Court of Sessions or Sessions Judge shall be heard by the Sessions Judge or an Additional/Assistant Sessions Judge provided that the Additional Sessions Judge shall only heard such appeals as the Provincial Government has directed to take over. No appeal shall lie to the Assistant Sessions Judge unless the appeal is of a person convicted on a trial held by a Magistrate of a second or third class (Section 409).
- Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge may appeal to the High Court (Section 410).
- Section 411A posits that barring cases in which an appeal lies to the Supreme Court under Article 185 of the Constitution, any person convicted on a trial held by a High Court in exercise of its original criminal jurisdiction may appeal to the High Court:
  - 1) Against the conviction on any ground of appeal on a matter of law
  - 2) With the leave of the Appellate Court or upon certificate of the Judge who tried the case that is fit for appeal against the conviction on any ground of appeal which involves a matter of fact only or a matter of mixed law and fact or any other sufficient ground; and
  - 3) With the leave of the Appellate Court against the sentence passes unless the sentence is one fixed by law.

- Where an accused person has pleaded guilty and has been convicted by a High Court, a Court of Session or Magistrate of the first class on such plea, there shall be no appeal except as to legality of the sentence (Section 412).
- There is no appeal by a convicted person in cases in which a High Court passes a sentence of imprisonment not exceeding 6 months only or of fine not exceeding Rs.200 only or in which a Court of Session passes a sentence not exceeding 1 month or a Court of Session or Magistrate passes a sentence of fine not exceeding Rs.50 only.
- There is no appeal in any case tried summarily in which the Magistrate under Section 260 passes a sentence of fine not exceeding Rs.2000 (Section 414).
- A special right of appeal lies when more than one person is convicted in one trial and an appealable, judgement or order has been passed in respect of any such persons, all or any of the persons convicted a such trial (Section 420).
- When the appellant is in jail, he may present his petition for appeal and the copies accompanying the same to the officer in charge of the jail who shall forward such petition to the proper Appellate Court.
- When the judges in the Court of Appeal are equally divided in opinion then the opinions thereon shall be laid before another Judge of the same Court and such judge after such hearing shall deliver his opinion and the Judgement shall follow such opinion.

#### ❖ Chapter XXXIX

- When any person other than a person accused of non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court and is prepared at any time while in the custody of such officer at any stage of the proceedings shall be released on bail.
- Section 497 posits that when any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before Court, he may be released on bail but he shall not be so released that if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or life imprisonment or imprisonment for 10 years. Provided that the Court may

direct any person under the age of 16 years or any woman or any sick or infirm person accused of such an offence be released on bail.

- Provided further that where a woman accused of an offence is refused bail, she shall be released on bail if she has been detained for a continuous period of six months whose trial for such offence has not been concluded unless the Court is of the opinion that the delay in trial has been occasioned by an act or omission of the accused or any other person acting on their behalf.
- Provided further that the Court shall except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf shall be released on bail:
  - 1) Who being accused of any offence not punishable with death has been detained for such offence for a continuous period exceeding 1 year or in case of a woman exceeding 6 months and whose trial for such offence has not been concluded.
  - 2) Who being accused of an offence punishable with death has been detained for such offence for a continuous period exceeding 2 years or in the case of a woman exceeding six months.
- Nothing in the foregoing sections shall be deemed to require or authorise a Court to release on bail or to direct to be admitted to bail, any person who is not in custody or is not present in Court or against whom no case stands registered for the time being and order for release shall only be effective in respect of the case that so stands registered against him.

## Qanun-e-Shahadat Order

The Qanun-e-Shahadat Order 1984 is very important piece of legal document in Pakistan. It repealed the Evidence Act of 1872. It governs the law related with evidence in all law courts of Pakistan. The Qanun-e-Shahadat 1984 is an objective law. It is the compendium of rules of procedure/practices according to which the court is to record evidence of the parties. It prescribes rules, methods with regard to evidence of parties. This order except with few exceptions, and the repealed Evidence Act, 1872 are subjectively the same but objectively they are poles apart.

Description	Article	Detail
<b>Qunun-e-Shahadat Order, 1984</b>	Preamble	To bring it in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah.
<b>Court</b>	2	Includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.
<b>Document</b>	2	<ul style="list-style-type: none"> <li>• Any matter written, expressed or described upon any substance</li> <li>• By means of letters, figures or marks</li> <li>• Used or intended to be used for purpose of recording matter.</li> </ul>
<b>Evidence</b>	2	<p>All statements which court requires or permits to make before it by witnesses-<b>Oral Evidence</b></p> <p>All documents produced for inspection of Court-<b>Documentary evidence</b></p>
<b>Fact</b>	2	<p>Anything, state of things capable of being perceived by senses</p> <p>And any mental condition of which any person is conscious.</p>

<b>Who may testify</b>	3	All persons, unless understand question and give rational answer due to tender years, old age, disease  Not convicted by court for false evidence and Lunatics
<b>Judges and Magistrates</b>	4	No judge except upon special order of higher court be compelled to answer a question about his information as to his own conduct in Court as Judge or Magistrate, or as to anything which come to his knowledge in Court as such Judge or Magistrate.
<b>Communication during marriage</b>	5	Cannot be compelled to disclose communication.  Except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.
<b>Evidence of unpublished official record</b>	6	No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of state, except with the permission of the officer at the head of the department concerned.
<b>Official communication</b>	7	No public officer shall be compelled to disclose communications made to him in official confidence.
<b>Information as to commission of offence</b>	8	<ul style="list-style-type: none"> <li>• No Magistrate or Police Officer shall be compelled.</li> <li>• No Revenue Officer shall be compelled.</li> </ul>
<b>Professional communication</b>	9	No advocate shall at any time be permitted. unless with his client's express consent, to disclose any communication made to him in the course of his employment.
<b>Communication with legal adviser</b>	12	Cannot be compelled to disclose to court, tribunal unless he offers himself as a witness.

<b>Production of document which another person, having possession, could refuse to produce</b>	14	No one shall be compelled to produce, unless that person consents
<b>Witness not excused from answering on ground that answer will criminate</b>	15	A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceedings, upon the ground that the answer to such question will criminate.
<b>Accomplice</b>	16	<ul style="list-style-type: none"> <li>• Accomplice means partner in crime</li> <li>• An accomplice shall be a competent witness against an accused person, except in the case of an offence punishable with had</li> <li>• conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.</li> </ul>
<b>Competence and number of witnesses</b>	17	<ul style="list-style-type: none"> <li>• Will be determined in accordance with injunctions of Islam</li> <li>• Unless otherwise provided, in any law relating to the enforcement of Hudood or any other special law</li> <li>• In financial or future obligations or attestation of document</li> <li>• Two man or one man and two women</li> <li>• In all other matters one man or one woman</li> </ul>
<b>Evidence may be given of facts in issue and relevant facts</b>	18	<ul style="list-style-type: none"> <li>• Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.</li> </ul>

<b>Relevancy of facts (Res gestae)</b>	19	<ul style="list-style-type: none"> <li>• Facts which though not in issue,</li> <li>• are so connected with a fact in issue as to form part of the same transaction, are relevant,</li> <li>• whether they occurred at the same time and place or at different times and places.</li> </ul>
<b>Motive, preparation &amp; previous or subsequent conduct</b>	21	<ul style="list-style-type: none"> <li>• Any fact is relevant</li> <li>• Which shows or constitutes a motive or preparation</li> <li>• For any fact in issue or relevant issue</li> <li>• Previous or subsequent conduct is also relevant</li> </ul>
<b>Facts necessary to explain or introduce relevant facts</b>	22	Are relevant
<b>Irrelevant facts become relevant</b>	24	<ul style="list-style-type: none"> <li>• If they are inconsistent with fact in issue or relevant fact</li> <li>• When are connected with other facts.</li> </ul>
<b>Act either accidental or intentional</b>	28	<ul style="list-style-type: none"> <li>• Is relevant</li> </ul>
<b>Existence of course of business when relevant</b>	29	When there is a question whether a particular act was done, the existence of any course of business, is a relevant fact.
<b>Admission</b>	30	<ul style="list-style-type: none"> <li>• Statement oral or documentary</li> <li>• About fact in issue or relevant fact</li> <li>• Made by any person</li> </ul>
<b>Admission by party or his agent</b>	31	Party himself may appear or by his agent
<b>Oral Evidence as to content of document</b>	35	<ul style="list-style-type: none"> <li>• Is not relevant, unless person proves that he entitled to give secondary evidence of the content of such document</li> </ul>

<b>Admission in civil cases</b>	36	<ul style="list-style-type: none"> <li>• No admission in civil cases is relevant</li> <li>• If made upon any express condition</li> </ul>
<b>Confession under inducement, threat or promise</b>	37	<ul style="list-style-type: none"> <li>• Confession made by accused in criminal proceedings</li> <li>• Is irrelevant</li> <li>• If made under inducement, threat or promise</li> <li>• For gaining any advantage or</li> <li>• Avoiding any evil</li> </ul>
<b>Confession to Police officer not to be Proved</b>	38	No confession made to a police officer shall be proved as against a person accused of any offence. Unless it be made before immediate presence of magistrate.
<b>How much information received from accused may be proved</b>	40	Any information which is received from an accused about any fact may be proved
<b>Confession under promise of secrecy</b>	42	Cannot make it irrelevant merely on this ground
<b>Confession made by one offender</b>	43	If proved shall be considered to others.
<b>Cross examination</b>	44	All accused persons including accomplice shall be liable to cross examination
<b>Statement of dead and disappeared person</b>	46	<ul style="list-style-type: none"> <li>• If dead</li> <li>• Can't be found or</li> <li>• Become unable to give evidence</li> <li>• Is relevant when given</li> <li>• About his death</li> <li>• While made in course of business</li> </ul>

		<ul style="list-style-type: none"> <li>• Related to any relationship</li> <li>• Relating to family affairs</li> </ul>
<b>Dying Declaration</b>	46(1)	<ul style="list-style-type: none"> <li>• Statement made by a person</li> <li>• As to cause or result of his death</li> <li>• Who is near to die</li> <li>• May be oral or reduced to writing by Magistrate or any other person, in either case must be duly proved</li> <li>• Examine the person who recorded or in whose presence it was recorded or who heard the same</li> <li>• Evidentiary value of dying statement is as good as evidence of any other case</li> </ul>
<b>Entries in book of account are relevant</b>	48	<ul style="list-style-type: none"> <li>• Entries in book of account</li> <li>• Regularly kept in course of business</li> </ul>
<b>Entry in public record while doing duty</b>	49	<ul style="list-style-type: none"> <li>• If made in public or other official book, register</li> <li>• Stating fact in issue or relevant issue</li> <li>• Made by public servant while discharging duty</li> <li>• Is relevant</li> </ul>
<b>What evidence to be given when statement forms part of a conversation, document, book or series of letters of papers</b>	53	All content of statement which necessarily is related to any fact.

<b>Previous judgment bars a second suit or trial</b>	54	The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.
<b>Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved</b>	58	<ul style="list-style-type: none"> <li>• Any party to suit or other proceeding</li> <li>• Any judgment relevant under article 54, 55 &amp; 56</li> <li>• Obtained by Fraud or collusion or</li> <li>• Delivered by court not competent to deliver</li> </ul>
<b>Opinion of experts</b>	59	<ul style="list-style-type: none"> <li>• When court has to make any opinion</li> <li>• About any foreign law or science, hand writing etc</li> <li>• Opinion of a person specially skilled in such field is relevant</li> </ul>
<b>Facts bearing upon opinion of experts</b>	60	Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.
<b>Opinion as to handwriting when relevant</b>	61	Written or signed by that person by verified from the person acquainted with such expertise
<b>Opinion on relationship when relevant</b>	64	Whether A & B are married. The fact that they were received and treated by their friends as husband and wife, is relevant fact
<b>Previous Good character in criminal cases</b>	67	Is relevant regarding an accused person
<b>Previous bad character in criminal cases</b>	68	Is irrelevant, Except in reply

<b>Proof of facts by Oral evidence</b>	70	All facts except contents of document, be proved by oral evidence
<b>Oral evidence must be direct</b>	71	It must be evidence of witness, who says <ul style="list-style-type: none"> <li>• he saw it</li> <li>• he heard it</li> <li>• he perceived it by the senses</li> <li>• Upon his opinion</li> </ul>
<b>Proof of content of documents</b>	72	Be proved either by primary or secondary evidence
<b>Primary evidence/ Documentary Evidence</b>	73	<ul style="list-style-type: none"> <li>• Document itself is produced for inspection of court,</li> <li>• Each part of document when it is executed in several parts.</li> <li>• Printout or automated information.</li> <li>• Electronic document, First generated, sent, received or stored.</li> <li>• Documentary evidence is all that which is documented</li> </ul>
<b>Secondary evidence</b>	74	<ul style="list-style-type: none"> <li>• Certified copies.</li> <li>• Made from original by mechanical process</li> <li>• Made from or compared with original.</li> <li>• Oral account of contents of document by a person who himself has seen it</li> </ul>
<b>Cases in which secondary evidence relating to document may be given</b>	76	<ul style="list-style-type: none"> <li>• When document is in the possession or power of the person against whom it is needed</li> <li>• When original has been <i>destroyed or lost</i></li> <li>• When due to bulk of documents <i>microfilming</i> has been made</li> </ul>

		<ul style="list-style-type: none"> <li>• When original is <i>not easily movable</i></li> <li>• When original is <i>public document</i> u/a 85</li> <li>• When certified copy of the original is permitted</li> <li>• Which cannot conveniently be examined by the court</li> </ul>
<b>Attest of documents</b>	79	<ul style="list-style-type: none"> <li>• If document is required by law to be attested</li> <li>• It shall not be used as evidence</li> <li>• Unless it be attested by two witnesses</li> <li>• Who has seen while its execution</li> </ul>
<b>Where no attesting witness found</b>	80	Must be proved that witnesses have either died or can't be found
<b>Public document</b>	85	<ul style="list-style-type: none"> <li>• Documents forming acts or record of acts</li> <li>• Of sovereign authority</li> <li>• Of official bodies or tribunal</li> <li>• Of public officer, legislative, judicial or executive</li> <li>• Of public record</li> <li>• Record of judicial proceedings</li> <li>• Documents required to be maintained by public officer</li> <li>• Registered documents</li> <li>• Eg. Nikahnama is a public document</li> </ul>
<b>Private document</b>	86	All other documents made in personal capacity or any personal record
<b>Genuineness of document</b>	90 92	<ul style="list-style-type: none"> <li>• Any certified copies admissible as evidence</li> <li>• Kept under any law</li> </ul>

	100	<ul style="list-style-type: none"> <li>• 30-year-old produced from any custody</li> </ul>
<b>Genuineness of Facts</b>	104 111 113	<ul style="list-style-type: none"> <li>• When language used in document is plain</li> <li>• Facts judicially noticeable need not to be proved</li> <li>• Facts admitted by parties, or their agents need not to be proved</li> </ul>
<b>Estoppel</b>	114	<ul style="list-style-type: none"> <li>• When one person by his declaration, act or omission</li> <li>• intentionally cause or permit another person to believe a thing to be true</li> <li>• And act upon such belief</li> <li>• So he will not be allowed to deny the truth of that thing</li> </ul>
<b>Burden of proof</b>	117	<ul style="list-style-type: none"> <li>• Whoever desires any court to give judgment</li> <li>• About any legal right or liability</li> <li>• On the existence of facts which he asserts</li> <li>• Must prove that those facts exist</li> </ul>
<b>On whom burden of proof lies</b>	118	The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
<b>Legitimacy of child</b>	128	<ul style="list-style-type: none"> <li>• If child born during valid marriage</li> <li>• Not earlier than expiration of 6 lunar months from date of marriage</li> <li>• Within two years of dissolution of marriage if woman remained unmarried</li> <li>• Unless husband refuse to own or</li> <li>• Born before expiration of six lunar months or after two years</li> </ul>

<b>Examination in-chief</b>	132	Examination of a witness by the party who calls him
<b>Order or examinations</b>	133	<ul style="list-style-type: none"> <li>• Witness shall be first examined-in-chief, by party who calls him</li> <li>• Then if adverse party desires cross-examine him</li> <li>• Then if party calling him desires re-examine him</li> </ul>
<b>Cross-examination of person called to produce a document</b>	134	<ul style="list-style-type: none"> <li>• Person summoned to produce document</li> <li>• Does not become witness</li> <li>• So he cannot be cross-examined</li> <li>• Unless and until he is called as witness</li> </ul>
<b>Leading question</b>	136	<ul style="list-style-type: none"> <li>• Any question suggesting to answer which the person putting it wishes or expects to receive</li> </ul>
<b>When Leading question must not be asked</b>	137	<ul style="list-style-type: none"> <li>• If objected by adverse party,</li> <li>• In examination-in-chief/re-examination</li> <li>• Without permission of the court</li> </ul>
<b>Cross-examination as to previous statements in writing</b>	140	<ul style="list-style-type: none"> <li>• Witness be cross-examined of previous statement</li> <li>• Made by him</li> <li>• In writing</li> <li>• Without showing him such writing</li> </ul>
<b>Re-examination</b>	150	Its court's discretion to permit party to question witness
<b>Impeaching credit of witness</b>	151	<ul style="list-style-type: none"> <li>• By adverse party or</li> <li>• With the permission of court by the party who calls him</li> </ul>

		<ul style="list-style-type: none"> <li>• By the evidence of a person who proves him un-worthy</li> <li>• By proof that witness has been bribed, has accepted bribe or any other corrupt inducement to give evidence</li> <li>• By proof of former statement</li> <li>• By immoral character</li> </ul>
<b>Former statements of witness may be proved to corroborate later testimony as to same fact:</b>	153	<ul style="list-style-type: none"> <li>• In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.</li> </ul>
<b>Refreshing memory</b>	155	<ul style="list-style-type: none"> <li>• Witness may, under examination</li> <li>• Refresh his memory</li> <li>• By referring any such document</li> </ul>
<b>Refreshing memory by adverse party as to writing used to refresh memory</b>	157	Any writing referred to under the provisions of the two last preceding Articles must be produced and shown to the adverse part
<b>Production of document</b>	158	Witness summoned to produce in his possession should produce
<b>Judges power to put questions or order production</b>	161	<ul style="list-style-type: none"> <li>• Judge may for finding proof asks any question, any time, in any form, from any witness.</li> <li>• Neither party will object.</li> </ul>
<b>No new trial for improper admission or rejection of evidence</b>	162	<ul style="list-style-type: none"> <li>• Shall not be ground for new trial</li> <li>• Or reversal of any decision in any case</li> </ul>
<b>Acceptance or denial of claim on oath</b>	163	<ul style="list-style-type: none"> <li>• When plaintiff takes an oath in support of his claims</li> <li>• Court will call defendant to deny claim on oath</li> </ul>

<b>Production of evidence of modern devices</b>	164	<ul style="list-style-type: none"><li>• Which court consider appropriate</li><li>• May allow to produce</li><li>• Become available due to any modern device or technique</li></ul>
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## Professional Ethics

### CHAPTER XII OF PAKISTAN LEGAL PRACTITIONERS & BAR COUNCILS RULES, 1976

#### Canons of Professional Conduct and Etiquette of Advocates

##### A – Conduct with regard to other Advocates (Rule 134 – 144):

- Duty of every Advocate to uphold dignity and high standing of his profession and of himself as a member. (Rule 134)
- Advocates not to solicit professional employment by advertisement or by other means. Publication or use of ordinary professional cards, name plates or conventional listing in directories is fine as long as it only contains information regarding professional and academic qualifications and public offices held and does not contain any information which may look like a personal advertisement. (Rule 135)
- An Advocate shall not employ or remunerate any other person for soliciting or obtaining professional employment for him. He shall neither share with an unlicensed person any compensation arising out of or incidental to professional employment nor shall he aid or abet an unlicensed person to practice law or to receive compensation therefor; nor shall he knowingly accept professional employment offered to him as a result of the activities of an unlicensed person. (Rule 136)
- An Advocate shall not discuss a subject of controversy with a party when their Advocate is absent and without the consent of such Advocate. (Rule 137)
- An Advocate is not allowed to communicate with a judge or judicial officer in the absence of the opposing counsel – except in open Court and upon the merits of a contested matter pending before such court. If the Advocate wishes to address a written communication to a judge or judicial officer concerning the merits of a contested matter pending before such judge or judicial officer, she must furnish the opposing Advocate with a copy of the written communication. This rule does not apply to ex parte matters or in respect of matters not sub-judice before the judge or judicial officer is concerned. (Rule 138)

- Client should determine if he wishes to engage additional Advocates for assistance. An Advocate should decline association as a colleague unless the dues of the Advocate first detained are paid. (Rule 139)
- Clients are litigants. Any ill-feeling between clients shall not affect or influence the conduct and demeanor of Advocates towards each other or towards the parties in the case. All personal clashes, references to personal history, or personal peculiarities should be avoided. (Rule 140)
- Division of fees for legal services is only appropriate with another Advocate based upon the principle of division of work as expressed in the agreement between Advocates. (Rule 141)
- Subject to precedence of Attorney and Advocate General, it is the duty of Advocate to maintain and uphold the order of precedence in accordance with the roll of Advocates maintained by the Bar Council. (Rule 142)
- Junior and younger members must always be respectful to senior and elder members. Seniors should be courteous and helpful to their juniors. (Rule 143)
- Juniors should assist seniors and seniors should lead the case unless the senior says so otherwise. (Rule 144)

**B – Conduct with regard to Clients (Rule 145 – 158):**

- Advocate must not acquire interest adverse to a client in the property or interest involved in the case. (Rule 145)
- Advocate must not accept employment adverse to a client or former client relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such a client or former client. (Rule 146)
- Advocate must not accept professional employment unless he discloses his relation, if any, with the adverse party, and his interest, if any, in the subject matter of such employment. (Rule 147)
- Advocate must not represent conflicting interests. (Rule 148)
- Advocate must not purchase any property in an auction or proceeding where such Advocate appears for the party. (Rule 149)
- Advocate must not commingle the property of client with his own and inform client immediately of receipt by him of any money or other property belonging to such client. (Rule 150)

- Advocate must not advise the commencement of prosecution or defense in a case unless he has been consulted for the same. (Rule 151)
- Advocate must not advise the violation of any law except when in good faith that a law is invalid. (Rule 152)
- It is the Advocate's right to undertake defense of a person accused of a crime regardless of his personal opinion, as distinguished from knowledge as to the guilt of the accused. The Advocate is bound by all fair and honourable means to present every defense that the law of the land permits – so that no person is deprived of life or liberty except by the process of law. (Rule 153)
- Fees charged by Advocates should neither over-estimate their advice and services nor undervalue them. In respect of widows and orphans of an Advocate, all Advocates shall assist them free of charge.

In determining the amount of fee, it is proper to consider the following:

- I. the time and labour required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the case;
  - II. whether the acceptance of employment in a particular case will preclude the Advocate's appearance for others in cases likely to arise out of the transaction, about which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of their business while employed in a particular case;
  - III. the customary charges of the Bar for similar service;
  - IV. the amount involved in the controversy and the benefits resulting to the client from the service;
  - V. the contingency of the certainty of the compensation, and
  - VI. the character of the employment, whether casual or for an established and constant client. (Rule 154)
- Compensation by clients should avoid controversies and the Advocate has the right to receive reasonable compensation for his services. Any law suits with clients should be restored to only prevent injustice and imposition or fraud. (Rule 155)
  - Advocate must not assert in argument his personal belief in the client's innocence or in the justice of his cause. Professional duty is strictly limited to making submissions at the Bar consistently with the interest of his client.

Advocate must obey the voice of his own conscience and not that of his client. (Rule 156)

- If an Advocate is a witness for his client – except as to merely formal matters such as attestation etc – he should leave the trial of the case to other Advocates. Except when essential to the ends of justice, an Advocate should avoid testifying in Court on behalf of his client. (Rule 157)
- No client can force or demand his Advocate to do anything that is repugnant to his own sense of honor and property. (Rule 158)

### **C – Duty to the Court (Rule 159 – 167):**

- It is the Advocate's duty to maintain respectful attitude towards Court always for the maintenance of its supreme importance. (Rule 159)
- Advocate must not advise a person whose testimony could establish or tend to establish a material fact to avoid service of process or conceal himself or otherwise to make this testimony unavailable. (Rule 160)
- An Advocate should not misquote to a judge, judicial officer or jury the testimony of a witness, the argument of the opposing Advocate or the contents of a document, the language of a book, statute or decision nor shall he cite a decision that has been overruled, repeated or declared unconstitutional. (Rule 161)
- An Advocate should not communicate or argue privately with the judge as to the merits of a pending case and he deserves rebuke and denunciation for any advice or attempt to gain from a judge special consideration or favour. (Rule 162)
- The primary duty of Advocate engaged in public prosecution is not to convict but to see that justice is done. Suppression of facts or concealing of witnesses capable of establishing the innocence of accused is highly reprehensible. (Rule 163)
- Publications in newspaper by an Advocate as to pending or anticipated litigation may interfere with fair trial in courts and are generally to be condemned. Ex-parte reference to facts should not go beyond what is quoted in records and papers on file in the Court. (Rule 164)

- It is the duty of Advocates to protest actively against the appointment and selection of judges who may be unsuitable for the Bench and must actively try to prevent political considerations from outweighing judicial fitness when referred to for cases of appointment and selection. Aspiration of Advocates for judicial positions should be governed by an impartial estimate of their ability to add honour to the office and not by a desire for the distinction the position may bring. (Rule 165)
- It is the duty to appear in Court and, if possible, make satisfactory alternative arrangements when a matter is called. (Rule 166)
- Advocate is not to volunteer his legal opinion unless called upon to do so in open Court by a judge or judicial officer and if he does so, he must do it with a sense of responsibility and impartiality. (Rule 167)

**D – Conduct with regard to the public generally (Rule 168 – 175B):**

- Advocate must not accept employment to prosecute or defend a case out of spite or for the purpose of harassing anyone or delaying any matter. (Rule 168)
- Advocate must always treat adverse witnesses and parties with fairness and due consideration. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf. (Rule 169)
- Advocate must decline to conduct a civil cause or make a defense when convinced that it is intended to merely harass or injure the opposite party. An Advocate's appearance in Court should be deemed equivalent to an assertion on his honour that in his opinion his client's case is one proper for judicial determination. (Rule 170)
- Advocates are not obliged to act either as an adviser or Advocate for any and every person who wishes to become their client. He has the right to decline professional employment. (Rule 171)
- No client and no Advocate should render any service or advice involving disloyalty to the law nor should they indulge in deception or betrayal of the public. (Rule 172)
- Advocate must not communicate with or appear before a public officer, board, committee or body, in his professional capacity, without first disclosing that

he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body. (Rule 173)

- Advocate must not accept employment as an Advocate in any matter where he has acted previously in a judicial capacity. (Rule 174)
- No Advocate is allowed to use his previous designation or post such as 'Retired Justice' etc. on letterheads, name plates, visiting cards etc. during the period of his practice as an Advocate. (Rule 174-A)
- Size of board outside an Advocate's office shall not be more than 1.5' x 2'. (Rule 174-B)
- (1) An Advocate shall not join or carry on any other profession, business, service or vocation or shall not be an active partner or a salaried official or servant in or be subject to the terms and conditions of service of the Government, semi-Government or autonomous body or any other organization or institution, public or private. (2) Any violation of the aforesaid provision by an Advocate shall entail consequences as provided in Rule 108-O.] (Rule 175)
- Nonobservance or violation of the canons of professional conduct and etiquette mentioned in this chapter by an Advocate shall be deemed to be professional misconduct making him liable for disciplinary action. (Rule 175-A)
- Nonobservance or defiance of decisions/instructions of the Pakistan Bar Council by any Bar Council or Bar Association or any Member of the Bar/Advocate shall be deemed to be a gross professional misconduct. (Rule 175-B)

## Multiple Choice Questions (MCQs) for LAW GAT Preparation

### Constitutional law

#### Constitutional History of Pakistan

1. Government of India Act 1935 established the Federal Court for
  - a. **Interpretation of law**
  - b. Amendment of law
  - c. Both a and b
  - d. None of above
  
2. Indian Independence Act provided that for each of the new dominions, there shall be
  - a. **Governor**
  - b. President
  - c. Prime Minister
  - d. None of the above
  
3. The Objectives Resolution appeared as a preamble in the constitution of
  - a. 1956
  - b. 1962
  - c. 1973
  - d. **All of the above**
  
4. The Government of India Act 1935 provided .... Legislative lists
  - a. **3**
  - b. 2
  - c. 4
  - d. None of the above
  
5. How many judges of Supreme Court and High Courts refused to take oath under PCO 1981
  - a. **19**
  - b. 20
  - c. 23
  - d. None of above

6. General Parvez Musharraf suspended the constitution on
- October 12, 1999**
  - December 12, 1999
  - April 12, 1999
  - None of above
7. The purpose of due process is
- To maintain a fundamental level of fairness in all trial procedures
  - To prevent predetermined outcome of trials
  - To have unbiased and reasonable outcome of trials
  - All of above**
8. The constitution of a country or organization is the systems of
- Laws and rules**
  - Structure
  - Code of running govt
  - None of the above
9. Objectives Resolution combines the important characteristics of the
- Western democracy
  - Islamic democracy
  - Both a and b**
  - None of above
10. In 1962 constitution, new system was introduced as
- Basic democracies
  - Elected democracies
  - Both a and b**
  - None of the above
11. 25<sup>th</sup> Amendment relates
- To the ECP Powers deputed to Chief Election Commissioner
  - To reestablish the military court for further two years
  - To Reallocation of National Assembly seats
  - To merges FATA with KPK**

12. According to 24<sup>th</sup> Amendment, total seats of Balochistan in National Assembly are

- a. **20**
- b. 48
- c. 174
- d. 75

13. An incumbent Prime Minister or chief Minister will continue to hold office till the appointment of

- a. Chief Justice
- b. Governor
- c. President
- d. **Their replacements**

14. .... has given the Election Commission of Pakistan such powers which have no parallel in the world

- a. **The Parliament**
- b. Supreme Court
- c. High Court
- d. Federal Court

15. For speedy trial military courts to deal with terrorism (21<sup>st</sup> Amendment) was passed on .....

- a. June 7, 2015
- b. March 7, 2015
- c. February 7, 2015
- d. **January 7, 2015**

16. Under the 18<sup>th</sup> Amendment, among other changes, courts will no longer be able to endorse suspensions of the constitution, a judicial commission will appoint judges, and the president will no longer be able to appoint the head of .....

- a. Supreme Court
- b. **Election Commission**
- c. High Court
- d. Federal Court

**Constitution of Pakistan 1973 (Fundamental Rights, Parliament, Judicature)**

**17.**Salient features of 1973 Constitution

- a. Federal form of government
- b. Parliamentary form of government
- c. Bicameral legislature
- d. All of the above**

**18.**Fundamental rights relating to person and body are described in article

- a. 7
- b. 8**
- c. 9
- d. None of the above

**19.**Federal Shariat Court will consist of 8 Muslim judges

- a. True**
- b. false

**20.**Freedom to acquire property is given in article

- a. 21
- b. 22
- c. 23**
- d. None of the above

**21.**Right to information is described in

- a. 10-A
- b. 19-A**
- c. 25-A
- d. 26

**22.**Writ of prohibition is issued to

- a. Any person
- b. Any officer of government
- c. To any inferior court
- d. All of the above**

**23.**If other remedy is available. Writ jurisdiction can still be entertained

- a. True
- b. False**

**24.**Principles of Policy can be enforced in court

- a. True
- b. False**

**25.**Prime Minister is the member of the council of common interests and is its chairman

- a. True**
- b. False

**26.**Who will preside over the Senate .....

- a. President
- b. Speaker
- c. Chairman**
- d. None of the above

**27.**Supreme Judicial Council consists of

- a. Chief Justice of Pakistan
- b. Two next most senior judges of the supreme court
- c. Two most senior chief justice of High Court
- d. All of the above**

**28.**Ground for removal of judges under article 209 of the Constitution are .....

- a. Gross misconduct
- b. Violation of the Constitution
- c. Physical unfitness
- d. All of the above**

**29.** The Federal Shariat Court has been constituted under chapter

- a. 3 A part VII**
- b. 3 A part V
- c. 3 A part III
- d. None of the above

- 30.** Supreme Court has the power to review any judgment under article
- a. 186
  - b. 187
  - c. 188**
  - d. None of the above
- 31.** A person may be appointed as a judge of supreme court if he is an advocate of high court for ... years
- a. 10
  - b. 15**
  - c. 20
  - d. 5
- 32.** What is the age of retirement of a judge of the High Court?
- a. 60
  - b. 61
  - c. 62**
  - d. None of the above
- 33.** If there's a deadlock on a bill between the two houses, then the matter will be send to
- a. Selection committee
  - b. Mediation committee**
  - c. President for advice
  - d. None of the above
- 34.** The National Economic Council is established under article.....
- a. 156**
  - b. 157
  - c. 158
  - d. None of the above
- 35.** Each province has a .....
- a. Unicameral assembly**

- b. Bicameral assembly
- c. Speaker of assembly
- d. Provincial assembly

**36.** Prime Minister will have to take vote of confidence from

- a. Senate
- b. National Assembly**
- c. In either house
- d. None of the above

**37.** Residuary powers in Pakistan vest in the .....

- a. Federal government
- b. Province**
- c. Both a and b
- d. None of the above

**38.** Which amendment has closed the door of horse trading?

- a. 12
- b. 13
- c. 14**
- d. None of the above

**39.** President is elected under

- a. 2<sup>nd</sup> schedule**
- b. 3<sup>rd</sup> schedule
- c. 4<sup>th</sup> schedule
- d. None of the above

**40.** Generally, President follow the advice of

- a. Prime Minister**
- b. Parliament
- c. Chief Justice of Pakistan
- d. None of the above

**41.** How many seats of technocrats are in the Senate?

- a. 16**
- b. 6

- c. 8
- d. None of above

**42.**How many sessions of the Senate are held in a year?

- a. 3**
- b. 4
- c. 5
- d. None of above

**43.**Assent of President is required for

- a. Amending the constitution
- b. New constitution
- c. Not required for amending constitution
- d. a and b**

**44.**Governor has .....

- a. a fixed tenure
- b. not a fixed tenure**

**45.**Full faith and credit for public acts will be given throughout Pakistan under article .....

- a. 149
- b. 150**
- c. 156
- d. None of the above

**46.**Constitution of 1973 provides .....

- a. Unitary system
- b. Federal system**
- c. Confederation system
- d. None of the above

**47.**Which amendment has reduced the power of Prime Minister during 1980 to 1990

- a. 6<sup>th</sup>
- b. 7<sup>th</sup>
- c. 8<sup>th</sup>**

d. None of the above

**48.**Total numbers of seats of Punjab provincial Assembly are

**a. 371**

b. 168

c. 124

d. None of the above

**49.**Resolution of impeachment passed against President by .....

a.  $\frac{1}{4}$  Majority of the two houses cast votes

**b.  $\frac{2}{3}$  majority of the two houses cast votes**

c.  $\frac{3}{4}$  majority of two houses case votes

d. None of the above

**50.**Protection of rights of minorities is described in article .....

a. 34

b. 35

**c. 36**

d. None of above

**51.**The state shall ensure inexpensive and speedy justice describes in article .....

a. 37(a)

b. 37(b)

**c. 37(d)**

d. None of above

**52.**Who will appoint members of the cabinet .....

a. Prime Minister

**b. President**

c. Parliament

d. None of above

**53.**Speaker can approve or overrule the adjournment motion in the house

**a. True**

b. False

54. Pardon can be tendered by President under article ..... of the 1973 Constitution.
- a. **45**
  - b. 55
  - c. 56
  - d. None of above
55. Writs are issued by High Court under article ..... of the 1973 Constitution.
- a. 186
  - b. **199**
  - c. 199 A
  - d. None of above
56. Prime Minister can remove the judge of the Supreme Court
- a. True
  - b. **False**
57. There is a party system in Pakistan called .....
- a. Uni-party
  - b. **Multi-party**
  - c. Bi-party
  - d. None of above
58. The ban on ..... prime ministership and chief ministership has been lifted
- a. Fourth time
  - b. Second time
  - c. Fifth time
  - d. **Third time**
59. Total Amendments in constitution are
- a. 21
  - b. **25**
  - c. 23
  - d. 22
60. The 19<sup>th</sup> Amendment bill proposed that parliamentary committee meetings will be held in camera and a record of its proceedings shall be

- a. Abolished
- b. Restored
- c. Maintained**
- d. Included

## Islamic Jurisprudence

1. What does *Mandub* mean?
  - a. Obligatory
  - b. Recommended**
  - c. Forbidden
  - d. None of the above
  
2. *Hadith* and *Sunnah* can be considered as \_\_\_\_\_ source of Islamic law.
  - a. A primary**
  - b. A secondary
  - c. An unreliable
  - d. Subsidiary
  
3. Which type of *talaq* is valid in Islam?
  - a. *Talaq-e-Raj'i*
  - b. *Talaq-e-Ba'in*
  - c. *Talaq-e-Mughallazah*
  - d. All of the above**
  
4. Which of the following is an Islamic legal maxim?
  - a. Certainty is not superseded by doubt.**
  - b. The law will not assist a volunteer.
  - c. When all other factors are equal, the one earlier in time shall prevail.
  - d. Equity looks on that as done which ought to be done
  
5. A *hiba* / gift without delivery is considered as \_\_\_\_\_.
  - a. Voidable

- b. Valid
  - c. Void**
  - d. None of the above
6. \_\_\_\_\_ hadith is that which is narrated by persons whose character is not well known or a Hadith which has some defects in its *Isnad*.
- a. *Sahih*
  - b. *Dhaief***
  - c. *Hasan*
  - d. *Matn*
7. Which regime followed the period after the Companions of the Prophet (PBUH)?
- a. Ottoman
  - b. Abbasid
  - c. Turkmanish
  - d. Umayyad**
8. If there is only one daughter, what is her share of inheritance?
- a. Full
  - b. Half**
  - c. One-thirds
  - d. Two-thirds
9. \_\_\_\_\_ means to to patch up or piece together different opinions.
- a. Taqlid
  - b. Takhrij
  - c. Takhyir

**d. Talfiq**

**10.**Qiyas is a \_\_\_\_\_ source of law in Shia jurisprudence.

- a. Accepted**
- b. Disapproved
- c. Secondary
- d. Tertiary

**11.**Wills under Islamic law are \_\_\_\_\_.

- a. Void
- b. Voidable
- c. Valid**
- d. Recommended

**12.**What law would a Sunni woman be subject to upon marriage to a Shia man?

- a. Sunni**
- b. Shia
- c. Both of the above
- d. None of the above

**13.**A gift to an unborn person is \_\_\_\_\_.

- a. Valid
- b. Void**
- c. Voidable
- d. None of the above

**14.**Custom is a tertiary source of Islamic law?

- a. True

- b. False**
  - c. Only in Shia law
  - d. Only in Sunni law
- 15.** Which of the following is an element of *Hukm Sharai*?
  - a. *Makhum fi***
  - b. *Taklif*
  - c. *Sabab*
  - d. *Qanun*
- 16.** Can a person who recovered property as *hiba* be compelled to give anything in exchange or return?
  - a. Yes
  - b. No**
  - c. Sometimes
  - d. Only if agreed to previously
- 17.** *Isnad* of a *Hadith* can be:
  - a. *Muttasil*
  - b. *Ghayr muttasil*
  - c. Both of the above**
  - d. None of the above
- 18.** \_\_\_\_\_ means inferring a rule from another rule.
  - a. Istishab
  - b. Istislah
  - c. Istihsan

**d. Istidlal**

**19.** Acts inferred from the silence of the Prophet are \_\_\_\_\_.

- a. Recommend
- b. Discouraged
- c. Tacitly disapproved

**d. Tacitly approved**

**20.** A gift under Islamic law can \_\_\_\_\_.

- a. Be revoked before delivery of possession**
- b. Be revoked by the heirs of the donor
- c. Be revoked upon the death of the done
- d. Never be revoked.

## Civil Procedure Code

1. Section 9 of the Code confers jurisdiction in:
  - a. **Civil matter**
  - b. Political matter
  - c. Religion matter
  - d. All of the above
2. Normally\_\_\_\_\_ is called appellate Court
  - a. Court of Civil Judge First Class
  - b. **Court of District Judge**
  - c. High Court
  - d. Supreme Court
3. The term "Res judicata" means
  - a. Further proceeding
  - b. **A matter already adjudicated**
  - c. Stay of proceeding
  - d. Bar the Proceedings
4. Amendments of pleadings may be allowed by the court:
  - a. Before framing the issues
  - b. Before close of the evidence
  - c. **At any stage of the proceedings**
  - d. None of the above
5. According to section 15, of C.P.C. every suit shall be instituted in the Court of
  - a. **Lowest grade competent to try it**
  - b. Highest grade competent to try it
  - c. Both (a) and (b)
  - d. None of the above

6. Orders from which appeal lies are provided in
  - a. Section 103, C.P.C
  - b. Section 103-A C.P.C.
  - c. Section 104 C.P.C**
  - d. Section 105 CPC
7. Time limitation for filing revision petition before High Court as provided under section 115, is
  - a. Fifteen days
  - b. Thirty days
  - c. Sixty days
  - d. Ninety days**
8. Revisional power exercised by High Court or Court of Session is \_\_\_\_\_ in nature
  - a. Substantive
  - b. Discretionary**
  - c. Procedural
  - d. None of the above
9. Section\_\_\_\_\_ of C.P.C deals with inherent powers of Court
  - a. 9, C.P.C
  - b. 115, C.P.C
  - c. 104 C.P.C
  - d. 151, C.P.C**
10. As per Order II, Rule 2, suit include
  - a. Whole of claim**
  - b. Only opening portion of a suit
  - c. Both (a) and (b)
  - d. None of the above

11. The Order of C.P.C which deals with written statement is

- a. Order VII
- b. **Order VIII**
- c. Order IX
- d. Order X

12. Application under section 12(2) shall be moved to

- a. **The Court which passed the final judgment, decree or order**
- b. Appellate Court
- c. High Court
- d. Supreme Court

13. Section \_\_\_\_\_ of CPC deals with making of application to challenge the validity of a judgment, decree or order on plea of fraud, misrepresentation or want of jurisdiction

- a. 10
- b. 11
- c. 12(1)
- d. **12(2)**

14. Order 1, of C.P.C deals with

- a. Litigation
- b. **Parties to the suit**
- c. Pleadings
- d. Appeal

15. Under Order 1, Rule 2, where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial Court can

- a. **Order for separate trial**
- b. Struck off plaintiffs rights
- c. Both (a) and (b)

- d. None of the above
- 16.**As per principle laid down in Order VI, Rule 2, of C.P.C. Pleadings need to state.
- a. Material facts only**
  - b. Evidence only
  - c. Material facts & evidence
  - d. None of the above
- 17.**Order VII, Rule 9, of C.P.C. deals with
- a. Procedure of admitting plaint**
  - b. Procedure of admitting written statement
  - c. Procedure of collecting Court fee
  - d. Procedure of filing an appeal
- 18.**Trial Court is empowered by Order XII, \_\_\_\_\_ of C.P.C to pass judgment on the basis of admissions made by parties in their pleadings or at any stage of proceedings
- a. Rule 2
  - b. Rule 4
  - c. Rule 6**
  - d. Rule 8
- 19.**Section 96 of C.P.C. deals with
- a. 1st appeal**
  - b. 2nd appeal
  - c. Both 1st and 2nd Appeal
  - d. None of the above
- 20.**An ex parte decree can be set aside on the ground that—
- a. An ex parte decree cannot be set aside under any circumstances
  - b. Summons were not duly served**

- c. Defendant refused to receive the summons and thereafter no fresh summons were issued to him
- d. Non-appearance of defendant as copies of documents filed with plaintiff were not provided to defendant.

## Pakistan Penal Code

### PPC Topic wise MCQs

#### Chapter 2 (General Explanations/Definitions)

1. According to section-19 of PPC the word “Judge” means:
  - a. Person who is officially designated as Judge
  - b. Person empowered by law to conduct legal proceedings in civil and criminal to give a such judgment
  - c. **Both A and B**
  
2. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing:
  - a. Fraudulently
  - b. Wrongfully
  - c. **Dishonestly**
  
3. A person who intends to do defraud is deemed to commit an offence
  - a. **Fraudulently**
  - b. Wrongfully
  - c. Dishonestly
  
4. U/S 44 PPC Any harm whatever illegally caused to a person, in body, reputation or property is called
  - a. Assault
  - b. **Injury**
  - c. Hurt
  
5. According to section 51 of PPC any declaration required by law made before a public servant or for the purpose of proof is called
  - a. **Oath**
  - b. Official declaration
  - c. Statement

## Chapter 4 (General Exceptions)

6. Section 76 states that offences committed under \_\_\_\_\_ in good faith will not constitute an offence under the Code:
- mistake of fact
  - mistake of law
  - mistake of fact or mistake of law**
7. A was ordered to arrest Y but he arrests Z while believing that Z is Y, in this case, which offence has been committed:
- Kidnapping
  - Assault
  - No offence**
8. Section 96 to 106 set out the law of private defence where an offence committed as an exercise of private defence is \_\_\_\_\_ under the PPC.
- Punishable
  - Not Punishable**
  - Bailable
9. A criminal act of person of unsound mind is:
- An offence
  - Depends upon nature of the act
  - Not an offence**
10. Section 99, P.P.C. deals with acts against which there is
- Right of private defence
  - Right of defence of property
  - No right of private defence**
11. Section 105, P.P.C. deals with:
- Right of defence of other person

- b. **Right of private defence of property**
- c. Right of defence of minor

### Chapter 16 (Offences Affecting the Human Body)

12. U/S 300 \_\_\_\_\_ is committed when a person with the intention of causing death or with the intention of causing bodily injury to a person in doing an act which in the ordinary course of nature is likely to cause death.
- a. **Qatl-e-amd**
  - b. Qatl shibh-i-amd
  - c. Qatl-e-khata
13. A person may be liable for \_\_\_\_\_ where they have with the intent to cause harm to the body or mind of any person causes death or that or any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death.
- a. Qatl-e-amd
  - b. **Qatl shibh-i-amd**
  - c. Qatl-e-khata
14. \_\_\_\_\_ is committed where a person without any intention to cause death of or cause harm to a person causes the death of such person (by mistake of act or mistake of fact).
- a. Qatl-e-amd
  - b. Qatl shibh-i-amd
  - c. **Qatl-e-khata**
15. A person who without any intention to cause death of or cause harm to does an unlawful act which becomes the cause for the death of another person is said to commit:
- a. **Qatl-bis-sabab**
  - b. Qatl shibh-i-amd
  - c. Qatl-e-khata

- 16.**Daman means the compensation determined by the Court to be paid by the offender to the victim for causing hurt not liable to:
- Divat
  - Arsh**
  - None of these
- 17.**Punishment of Qatl-e-amad is provided U/S
- 301
  - 300
  - 302**
- 18.**According to section 333 of PPC, whoever Whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause:
- Shajjah
  - Itlaf-i-udw**
  - None of these
- 19.**Where Qisas is not executable U/S 334, offender shall be liable for \_\_\_\_\_.
- Arsh
  - Imprisonment upto 10 years
  - Both a and b**
- 20.**Whoever causes shajjah by causing fracture of the skull of the victim and the wound ruptures the membrane of the brain is said to cause:
- shajjah-i-damighah.**
  - Shajjah-i-ammah
  - shajfah-i-munaqqilah

### **Chapter 16-A (Wrongful Restraint and Wrongful Confinement)**

- 21.**Whoever voluntarily obstructs any person so as to prevent person from proceeding in any direction in which he has right to proceed, is said to commit:
- Wrongful confinement
  - Wrongful restraint**

c. None of these

22. Wrongful confinement is defined U/S

- a. 339
- b. **340**
- c. 338

23. A causes Z to go within a walled space and locks Z in where Z is then prevented from proceeding in any direction beyond what is circumscribed than Z has been:

- a. **Wrongfully confined**
- b. Assaulted
- c. Wrongfully restrained

24. U/S 350 \_\_\_\_\_ is used where a person intentionally uses force to any person without consent in order to commit any offence or intending by the use of such force to cause, or knowing it to be likely that by the use of such force, he will cause injury, fear or annoyance to the person against whom the force is being used.

- a. **Criminal force**
- b. Force
- c. Civil force

25. U/S 351 What do not amount to assault?

- a. Action
- b. **Words**
- c. Force

26. Under Section 360, a person who conveys any person beyond the limits of Pakistan without the consent of that person or of a person legally authorised to consent shall be liable for \_\_\_\_\_ from Pakistan.

- a. **Kidnapping**
- b. Hijacking
- c. Assault

## Chapter 17 (Offences against Property)

27. The elements which constitute theft U/S 378 of PPC are
- Malice and motive
  - Intention and dishonestly**
  - Consent and dishonestly
28. A person who intentionally puts any person in fear of any injury to that person or any other and dishonestly induces the person to deliver any person, property, valuable security, signed or sealed out of fear has committed:
- Extortion**
  - Criminal force
  - Theft
29. U/S 390 in all robbery there is
- Either theft or extortion**
  - Consent
  - Wrongful confinement
30. A person liable for robbery shall be punished with rigorous imprisonment for a term which shall not be less than \_\_\_ years nor more than \_\_\_ years
- 3,10**
  - 5,14
  - 1,10
31. U/S 391 when 5 or more persons conjointly commit or attempt to commit a robbery or all the persons conjointly committing or attempting to commit a robbery and the persons present and aiding such commission or attempt is considered:
- Dacoity**
  - Theft
  - Trespass
32. A person who by the use or show of force or by threats seizes or exercises control of an aircraft is said to commit:
- Robbery

- b. **Hijacking**
- c. Theft

**33.** Any person who is entrusted with property or dominion over property dishonestly misappropriated or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law or in breach of any legal contract (express or implied) which he has made touching the discharge or trust or wilfully suffers any other person commits:

- a. **Criminal breach of trust**
- b. Dacoity
- c. Trespass

**34.** A person who has the intent or knowledge that he is likely to cause a wrongful loss or damage to the public or to any person and causes the destruction of any property, any change in property or diminishes the value or utility then he commits

- a. **Mischief**
- b. Dacoity
- c. Hijacking

**35.** U/S 441 when a person who enters into or upon property in the possession of another with the intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or lawfully entering a property but remaining unlawfully to intimidate, insult or annoy any person in possession of such property, has committed:

- a. **Criminal Trespass**
- b. Theft
- c. Mischief

## Code of Criminal Procedure

1. Under Section \_\_\_ of the CRPC, temporary orders in urgent cases of nuisance or apprehended danger can be made.
  - a. Section 134 of CRPC
  - b. Section 140 of CRPC
  - c. Section 144 of CRPC**
  - d. Section 146 of CRPC
  
2. Section 145 of CRPC deals with disputes regarding
  - a. Moveable property
  - b. Immoveable property**
  - c. Tangible property
  - d. None of the above
  
3. The basic ingredient to exercise power under Section 145 of CRPC by a Magistrate regarding immoveable property is likely to cause
  - a. Breach of peace**
  - b. Breach of trust
  - c. Breach of contract
  - d. None of the above
  
4. Section 4(c) defines
  - a. Charge**
  - b. Cognizable Offence
  - c. Investigation
  - d. Bailable Offence
  
5. Section 4(t) defines
  - a. Sub-division
  - b. Pleader
  - c. Offence
  - d. Public prosecutor**
  
6. What are the two classes of criminal courts in Pakistan?

- a. **Court of Sessions and Court of Magistrates**
  - b. High Court and Supreme Court of Pakistan
  - c. Court of Criminal Appeals and High Court, Criminal Jurisdiction
  - d. None of the above
7. The \_\_\_\_\_ establishes the Court of Sessions
- a. **Provincial Government**
  - b. Federal Government
  - c. Magistrates
  - d. Judicial Commission of Pakistan
8. Section \_\_\_ of CRPC empowers a police officer to arrest any person without a warrant or order from a Magistrate who have any design to commit any cognizable offence
- a. Section 150 of CRPC
  - b. **Section 151 of CRPC**
  - c. Section 152 of CRPC
  - d. Section 153 of CRPC
9. The CRPC contains \_\_\_\_\_ sections?
- a. 511
  - b. 550
  - c. **565**
  - d. None of the above
10. The CRPC is a \_\_\_ law?
- a. **Procedural**
  - b. Substantive
  - c. Provincial
  - d. Special
11. An offence in which a police officer may in accordance with the Second Schedule or any other law for the time being in force arrest without a warrant is called a \_\_\_\_\_
- a. **Cognizable offence**
  - b. Non-cognizable offence

- c. Non-bailable offence
- d. None of the above

12. A non-cognizable offence is one in which a police officer can arrest anyone without a \_\_\_\_\_

- a. Warrant**
- b. Authority letter
- c. Notice
- d. None of the above

13. A person in jail can make his appeal petition through \_\_\_\_\_

- a. His attorney
- b. Inspector General of the Police
- c. The Attorney General of Pakistan
- d. Officer in charge of the jail**

14. Appeal in case of an acquittal can be made under Section \_\_\_\_\_ of CRPC

- a. Section 407 of CRPC
- b. Section 417 of CRPC**
- c. Section 427 of CRPC
- d. Section 429 of CRPC

15. There is no appeal in \_\_\_\_\_ cases

- a. Summary cases**
- b. Death cases
- c. Rape cases
- d. None of the above

16. Appeal from the sentence of a High Court shall lie to

- a. High Court
- b. Supreme Court
- c. Sessions Court
- d. Both A and B**

17. Which provision of the CRPC deals with 'double jeopardy'?

- a. Section 402 of CRPC
- b. Section 403 of CRPC**
- c. Section 405 of CRPC
- d. Section 407 of CRPC

**18.** There are \_\_\_\_ classes of Magistrates

- a. 2
- b. 4
- c. 3**
- d. None of the above

**19.** The police have to inform a victim of their right to legal representation where an offence is conducted under \_\_\_\_

- a. Section 354A, Section 376, Section 377 and Section 377B**
- b. Section 345, Section 355, Section 374 and Section 375
- c. Section 354A and Section 377
- d. None of the above

**20.** No police officer or person in authority shall offer or make any inducement, threat or promise under Section \_\_\_\_ of CRPC

- a. Section 160 of CRPC
- b. Section 167 of CRPC
- c. Section 163 of CRPC**
- d. Section 176 of CRPC

## **The Qanoon-e-Shahadat Order 1984 (QSO)**

1. The law of evidence, i.e. Indian Evidence Act 1872, on which the QSO is substantially founded was originally drafted by:
  - a. Lord Mountbatten
  - b. Sir James F. Stephen**
  - c. John Stuart Mill
  - d. Sir Henry Summer Maine.
  
2. The QSO consists of:
  - a. Islamic rules of evidence
  - b. Common law's rules of evidence
  - c. Rules founded on logic and practical convenience
  - d. All the above.**
  
3. Relevancy and admissibility under the QSO are:
  - a. Synonymous
  - b. Co-extensive
  - c. Neither synonymous nor co-extensive**
  - d. Both synonymous & co-extensive.
  
4. 'Self-regarding' statements:
  - a. Are self-serving statements only
  - b. Are self-harming statements only
  - c. May either be self-serving or self-harming**
  - d. None of the above.
  
5. What is correct as regards the admissibility of self-regarding statements?
  - a. Self-harming statements are admissible but self-serving statements are not generally admissible**
  - b. Self-serving statements are admissible but self-harming statements are not generally admissible
  - c. Both self-serving and self-harming statements are generally admissible

d. Both self-serving and self-harming statements are generally inadmissible.

6. Under the QSO, as a general rule:

- a. An opinion on a matter of fact is relevant but not on a matter of law
- b. An opinion on a matter of law is relevant but not on a matter of fact
- c. An opinion on both matters of fact and law are relevant
- d. Neither the opinion on a matter of fact nor law is relevant.**

7. The QSO applies to:

- a. Proceedings before tribunals
- b. Proceedings before a court martial
- c. Judicial proceedings in the courts
- d. All the above.**

8. The QSO is generally categorised as:

- a. A substantive law
- b. An adjective law**
- c. Both (a) and (b)
- d. Neither (a) nor (b).

9. Facts can be:

- a. Physical facts
- b. Psychological facts
- c. Both physical and psychological facts**
- d. None of the above.

10. An accomplice is:

- a. Not competent witness in Hudood cases
- b. Incompetent in cases of *Qisas*
- c. Competent in *Tazir* cases
- d. All the above.**

**11.** Fact in issue means

- a. A fact whose existence or non-existence is admitted by the parties
- b. A fact whose existence or non-existence is contested by the parties**
- c. A fact whose existence or non-existence is not disputed by the parties
- d. All the above.

**12.** Evidence under the QSO includes:

- a. Oral evidence
- b. Documentary evidence
- c. Both oral and documentary evidence**
- d. Oral evidence founded on documentary evidence.

**13.** A relevant fact in light of the QSO:

- a. Must only be declared as relevant by one provision only
- b. May be relevant under more than one provision**
- c. Must also be fact in issue
- d. All the above.

**14.** Proof of a fact depends on:

- a. Fluency of the statement of a witness and not upon the probability of its existence
- b. Not upon fluency of the statement but upon the probability of its existence**
- c. Artificial probative value assigned to a fact
- d. Mathematical probability.

**15.** Standard of proof in:

- a. Both civil and criminal cases is the same
- b. Criminal cases is higher than civil cases**
- c. Criminal cases is lower than civil cases
- d. None of the above.

**16.** Presumptions under the QSO are:

- a. Presumptions of fact
- b. Presumptions of law

- c. Conclusive proof
- d. All the above.**

17. Read the following propositions in light of the QSO:

- I. Presumptions of fact are always rebuttable
- II. Presumptions of fact can be either rebuttable or irrebuttable
- III. Presumptions of law are always irrebuttable
- IV. Presumption of law can be either rebuttable or irrebuttable.

Which of the aforesaid propositions are accurate?

- a. I & III are correct but II & IV are incorrect
- b. I & IV are correct but II & III are incorrect**
- c. II & III are correct but I & IV are incorrect.
- d. II & IV are correct but I & III are incorrect.

18. Under the QSO, a relevant fact:

- a. Must be legally relevant**
- b. Must be logically relevant
- c. Must be legally and logically relevant
- d. Must be legally and logically relevant and admissible.

19. Relevancy is:

- a. A question of law and can be raised at any time**
- b. A question of law but can only be raised at the first opportunity
- c. A question of fact that can be ignored
- d. A question of procedure which depends on judicial discretion.

20. A question pertaining to mode of proof is:

- a. A question of law which can be raised at any time
- b. A question of procedure but has to be raised at the first opportunity and stands waived if not raised at the first opportunity**
- c. A question of procedure which depends on judicial discretion
- d. A question of fact.

**21.** Facts forming part of the same transaction are relevant:

- a. Under Article 19 of the QSO**
- b. Under Article 20 of the QSO
- c. Under Article 21 of the QSO
- d. Under Article 22 of the QSO.

**22.** A fact forming part of the same transaction is relevant:

- a. If it is in issue and have occurred at the same time and place
- b. If it is in issue and may have occurred at different times and places
- c. Though not in issue but may have occurred at the same time and place as well as at different times and places**
- d. Though not in issue but must have occurred at the same time and place.

**23.** Motive, preparation, and conduct are relevant:

- a. Under Article 19 of the QSO
- b. Under Article 20 of the QSO
- c. Under Article 21 of the QSO**
- d. Under Article 22 of the QSO.

**24.** For conduct to be relevant under Article 21 of the QSO:

- a. It must be previous only
- b. It must be subsequent only
- c. It may be either previous or subsequent**
- d. None of the above.

**25.** Facts which are necessary to explain or introduce relevant facts pertaining to place, name, date, relationship, and identity of parties are relevant:

- a. Under Article 20 of the QSO
- b. Under Article 21 of the QSO
- c. Under Article 22 of the QSO**
- d. None of the above.

**26.** Under Article 22 of the QSO:

- a. The identification parades of persons are relevant
- b. The identification parades of things are relevant
- c. Both (a) and (b) are relevant**
- d. None of the above.

**27.** Identification of a suspect/accused by photo is:

- a. Admissible in evidence**
- b. Inadmissible in evidence
- c. The QSO prohibits such identification
- d. None of the above.

**28.** Things said or done by a conspirator with reference to the common design are relevant:

- a. Under Article 21 of the QSO
- b. Under Article 22 of the QSO
- c. Under Article 23 of the QSO**
- d. Under Article 24 of the QSO.

**29.** A confession made by a conspirator involving other members is relevant against the co-conspirator jointly tried with him and is admissible:

- a. Under Article 22 of the QSO
- b. Under Article 23 of the QSO
- c. Under Article 43 of the QSO**
- d. Both (b) & (c).

**30.** Relevancy of alibi is governed by:

- a. Article 20 of the QSO
- b. Article 21 of the QSO
- c. Article 23 of the QSO
- d. Article 24 of the QSO.**

**31.** Article 26 of the QSO applies to:

- a. Tangible rights
- b. Intangible rights
- c. Both tangible and intangible rights**
- d. Neither (a) nor (b).

**32.**Article 26 of the QSO:

- a. Is confined to public rights and does not cover private rights
- b. Deals with both public and private rights**
- c. Is confined to private rights and does not cover public rights
- d. None of the above.

**33.**Mode of proof of a custom is provided in:

- a. Article 26 of the QSO
- b. Article 46(7) of the QSO
- c. Article 62 of the QSO
- d. All the above.**

**34.**Article 27 of the QSO makes relevant those facts which show the existence of:

- a. State of mind only
- b. Both state of body and bodily feeling
- c. Either state of mind or of body or bodily feeling**
- d. None of the above.

**35.**Under Article 27 of the QSO:

- a. Evidence of general disposition or tendencies is inadmissible
- b. Evidence having a distinct and immediate reference to the particular matter in question is admissible
- c. Both (a) & (b) are correct**
- d. None of the above.

**36.**Under Article 28 of the QSO, facts showing series of similar occurrences involving the same person are relevant:

- a. When it is uncertain whether the act is intentional or accidental**

- b. When it is certain that the act is with guilty knowledge
- c. When it is certain that the act is done innocently
- d. None of the above.

**37.** Admission is a statement made by a party or any person connected with him that suggests any inference as to a fact in issue or relevant fact under certain circumstances as per Article:

- a. 29 of the QSO
- b. 30 of the QSO**
- c. 31 of the QSO
- d. 32 of the QSO.

**38.** Admissions:

- a. Must be examined as a whole and not in parts**
- b. Can be examined in parts
- c. May either be examined as a whole or in parts
- d. All statements above are incorrect.

**39.** Admissions are binding on the maker:

- a. With respect to the facts stated therein**
- b. With respect to the question of law admitted
- c. Both on questions of facts and of law
- d. None of the above.

**40.** Admissions must be:

- a. Written
- b. Oral
- c. Either oral or in writing**
- d. All of the above are inaccurate.

**41.** Admissions to be relevant

- a. Must be made to the party concerned and not to a stranger
- b. Must be made to a stranger

- c. **It is immaterial as to whom an admission is made for qualifying as relevant**
- d. It is immaterial to whom the admission is made but must be made to someone intimately connected to the judicial proceedings.

**42.** Please identify the correct proposition under the QSO:

- I. Statement is a genus, admission is a species, and confession is a sub species.
- II. Statement and admission are species whereas confession is a sub species.
- III. Statement and admission are genus whereas confession is a species.

- a. **I is correct, whereas II and III are incorrect**
- b. I and II are correct but III is incorrect
- c. II and III are correct but I is incorrect
- d. III is correct whereas I and II are incorrect.

**43.** Admission can be:

- a. Formal only
- b. Informal only
- c. **May be either formal or informal**
- d. None of the above.

**44.** Admissions:

- a. Are conclusive proof of the matters admitted
- b. **Are not conclusive proof of the matters admitted but may operate as estoppel**
- c. Are conclusive proof of the matter in addition to operating as estoppel
- d. None of the above.

**45.** Admissions by agents are:

- a. Admissible in civil proceedings under all circumstances
- b. Admissible in civil proceedings only if the agent has the authority to make admissions
- c. Not admissible in criminal proceedings

**d. Both (b) and (c).**

**46.** Admissions made by a party are evidence against:

- a. Privies in blood
- b. Privies in law
- c. Privies in estate
- d. All the above.**

**47.** Which of the following admission is admissible:

- a. An admission of one co-defendant against another when they do not share any interest
- b. An admission by a guardian against the interest of his minor ward
- c. An admission by one of the partners of a firm against other partners**
- d. Both (a) and (b).

**48.** Please select the correct proposition:

- a. Communication made 'without prejudice' is protected in all civil and criminal cases
- b. Communication made 'without prejudice' is protected in all civil cases only**
- c. Communication made 'without prejudice' is neither protected in civil nor in criminal cases
- d. None of the above.

**49.** Article 37 of the QSO excludes such confession which is obtained:

- a. By the inducement, threat, or promise comes from a person in authority
- b. When the inducement is of a temporal kind
- c. When the inducement is spiritual or religious
- d. Only (a) and (b) are correct.**

**50.** A confession made to a police officer is inadmissible under:

- a. Article 37 of the QSO
- b. Article 38 of the QSO**
- c. Article 39 of the QSO

d. Article 40 of the QSO.

**51.** A confession to be inadmissible under Article 38 of the QSO:

- a. Must relate to the same crime for which he is charged
- b. Must relate to another crime
- c. May relate to the same crime or another crime**
- d. None of the above.

**52.** A retracted confession:

- a. Can become sole basis of conviction
- b. Cannot be made solely the basis of conviction under any circumstances
- c. Cannot be made solely the basis of conviction unless the same is corroborated.**

**53.** A confession made by a person while in police custody is inadmissible as per:

- a. Article 38 of the QSO
- b. Article 39 of the QSO**
- c. Article 40 of the QSO.

**54.** A confession made while in police custody is admissible under Article 39 of the QSO:

- a. If made in the presence of a doctor
- b. If made in the presence of a civil servant
- c. If made in the presence of a Magistrate**
- d. All of above.

**55.** Article 40 is an exception and possesses implications for:

- a. Article 37 of the QSO
- b. Article 38 of the QSO
- c. Article 39 of the QSO
- d. All the above.**

56. Article 40 of the QSO applies to:

- a. **Discovery of some fact which the police had not previously learnt from other sources and was first derived from the information given by the accused**
- b. Discovery of some fact which the police had previously learnt from other sources
- c. Discovery of some fact which the police had previously learnt from other sources and the accused has also given information regarding the same
- d. All the above.

57. Under Article 37 of the QSO, 'discovery of fact' means and includes:

- a. The object found
- b. The place from where any object is recovered
- c. **Both (a) and (b)**
- d. Neither (a) nor (b).

58. Article 39 of the QSO applies:

- a. When the person giving information is an accused but not in police custody
- b. **When the person giving information is an accused and is in police custody**
- c. When the person is in police custody but not an accused
- d. When the person is neither in police custody nor an accused.

59. Under Article 40 of the QSO:

- a. The whole statement is admissible unconditionally
- b. **Only that portion which is distinctly related to the discovery is admissible**
- c. Only that portion which is not distinctly related to the discovery is admissible
- d. None of the above.

60. Confession of an accused is admissible against the other co-accused:

- a. **Article 43 of the QSO**
- b. Article 42 of the QSO
- c. Article 40 of the QSO
- d. Article 41 of the QSO

61. Confession of one accused is admissible against co-accused under Article 43 of the QSO:

- a. If they are tried jointly for the same offences**
- b. If they are tried jointly for different offences
- c. If they are tried for the same offences but not jointly
- d. If they are tried for different offences and not jointly.

**62.** Necessity is the reason for the admissibility of indirect (hearsay) evidence under:

- a. Article 45 of the QSO
- b. Article 46 of the QSO**
- c. Article 43 of the QSO
- d. Article 44 of the QSO.

**63.** Necessity permits the admissibility of evidence when the maker of a statement:

- a. Is dead or has become incapable of giving evidence
- b. Is a person whose attendance cannot be procured without unreasonable delay or expense
- c. Is a person who cannot be found
- d. All the above.**

**64.** A statement of a person, who is dead, to be admissible under Article 46 of the QSO:

- a. Must relate to the cause of his own death**
- b. May relate to the cause of someone else' death
- c. May relate to the cause of his own death or someone else' death
- d. Both (b) and (c) are correct.

**65.** The person whose statement is admitted under Article 46 of the QSO:

- a. Must be competent to testify
- b. Need not be competent to testify
- c. May or may not be competent to testify**
- d. None of the above.

**66.** A dying declaration is admissible:

- a. In criminal proceedings only
- b. In civil proceedings only

**c. Both in civil and criminal proceedings.**

**67.**A dying declaration:

- a. May form the sole basis of conviction without any corroboration by independent evidence**
- b. Can form the basis of conviction only on corroboration by independent witness
- c. Cannot form the sole basis of conviction unless corroborated by independent witness
- d. Both (b) and (c) are correct.

**68.**A dying declaration to be admissible:

- a. Must be made before a Magistrate
- b. Must be made before the police officer
- c. May be made before a doctor or a private person
- d. All the above.**

**69.**Opinions of experts are relevant under:

- a. Article 40 of the QSO
- b. Article 48 of the QSO
- c. Article 59 of the QSO**
- d. Article 72 of the QSO.

**70.**Under Article 59 of the QSO, the opinion of expert is admissible on:

- a. Identity of hand writing or finger impression
- b. A question of science or art
- c. A point of foreign law
- d. All the above.**

**71.**Under Article 59 of the QSO, the opinion of expert is admissible on the question of

- a. Pakistani law
- b. Foreign law**
- c. Both (a) and (b).

**72.**Opinion of an expert under Article 59 of the QSO:

- a. Is a conclusive proof
- b. Is not a conclusive proof
- c. Is supportive and corroborative in nature**
- d. None of the above.

**73.**A disputed handwriting can be proved under the QSO:

- a. By calling an expert
- b. By examining a person acquainted with the handwriting of the writer of the questioned document
- c. The judge may compare the admitted or proved with the disputed handwriting
- d. All the above.**

**74.**Entries in the books of accounts regularly kept in the course of business are admissible under Article 48 of the QSO:

- a. When they by themselves create a liability
- b. When they by themselves do not create a liability
- c. Irrespective of whether they themselves create a liability or not**
- d. Either (a) or (b).

**75.**When the court has to ascertain the relationship between one person and another, the opinion of any person having special means of knowledge and expressed by conduct is admissible under:

- a. Article 64 of the QSO**
- b. Article 63 of the QSO
- c. Article 60 of the QSO
- d. Article 59 of the QSO

**76.**Identify the most accurate proposition:

- a. In civil cases, character evidence is inadmissible unless the character of a party is a fact in issue
- b. In criminal cases, the evidence of good character is admissible generally
- c. In criminal proceedings, evidence of bad character is inadmissible unless the same is a fact in issue

**d. All the above.**

**77.**Facts of which the judicial notice is to be taken are enumerated in:

- a. Article 111 of the QSO
- b. Article 112 of the QSO**
- c. Article 113 of the QSO
- d. Article 114 of the QSO.

**78.**List of facts of which the judicial notice is required to be taken under Article 112 of the QSO is:

- a. Exhaustive
- b. Illustrative only**
- c. Both (a) and (b)
- d. Neither (a) nor (b).

**79.**Facts which need not be proved by the parties include:

- a. Facts of which judicial notice has to be taken
- b. Facts which have been admitted by the parties at or before the hearing
- c. Both (a) and (b)**
- d. Neither (a) nor (b).

**80.**Oral evidence under Article 72 of the QSO is primarily required to be:

- a. Direct**
- b. Indirect
- c. Both (a) and (b).

**81.**Documentary evidence is divided into:

- a. Primary evidence
- b. Secondary evidence
- c. Original and derivative evidence
- d. Both (a) and (b).**

**82.** Hostile witness:

- a. Cannot be cross-examined by the party producing it
- b. Can be cross-examined by the party producing it**
- c. Is not legally required to be cross-examined by any party
- d. Is exclusively cross-examined by the court.

**83.** Financial and future transactions are required to be witnessed under the QSO:

- a. By two male witnesses
- b. By one male and two female witnesses
- c. By four female witnesses
- d. Both (a) and (b).**

**84.** Children:

- a. Are incompetent as witnesses under the QSO
- b. Are declared to be competent unconditionally under the QSO
- c. Are considered competent or incompetent in each case on the basis of their appreciation and understanding of evidence**
- d. The competency of children is exclusively based on their specific age.

**85.** A lunatic:

- a. Is incompetent witness unconditionally
- b. Is competent witness categorically
- c. Is competent only during lucid intervals**
- d. None of the above.

**86.** A non-Muslim witness:

- a. Is not qualified under the QSO for all kinds of civil and criminal cases
- b. Is qualified in all civil cases
- c. Is competent only in *Tazir* cases but not in *Hudood* and *Qisas* cases
- d. Both (b) and (c).**

**87.** Select the most accurate proposition:

- a. All competent witnesses are always treated as truthful and reliable witnesses

- b. Competent witnesses may be found either truthful or unreliable in context of overall evidence adduced in each case**
- c. The courts are prohibited to evaluate the evidence adduced by the competent witnesses
- d. Both (a) and (c).

**88.** Various kinds of examinations are:

- a. Examination-in-chief
- b. Cross examination
- c. Re-examination
- d. All the above.**

**89.** In examination-in-chief:

- a. Leading questions are not allowed
- b. Leading questions are allowed on introductory or undisputed matters**
- c. Leading questions are allowed unconditionally
- d. None of the above.

**90.** Husband's confession to his wife is:

- a. Inadmissible as evidence**
- b. Admissible in grave and serious cases such as murder
- c. Admissible in all kinds of criminal cases
- d. None of the above.

## Professional Ethics

1. What does the Professional Conduct of a lawyer look like?
  - a. compliance with his own will
  - b. prevention of his client alone from being exposed to “Legal Grief”
  - c. compliance with high standards of profession**
  - d. compliance with his political interests
  
2. ‘Professional Ethics’ tend to regulate?
  - a. the conduct of legal practitioners**
  - b. the conduct of court
  - c. the conduct of clients
  - d. none of the above
  
3. The primary duty of a lawyer engaged in public prosecution is?
  - a. suppress the facts
  - b. to get the accused convicted
  - c. ensure that justice is done**
  - d. all of the above
  
4. The lawyer shall charge for his services:
  - a. What is his due in his own judgment**
  - b. what the law of the country prescribes
  - c. what his client can offer
  - d. all of the above
  
5. Where the lawyer indulges into ‘self-advertisement’ it amounts to:
  - a. Breach of etiquette of profession**
  - b. High dignity of a lawyer
  - c. An attempt to obtain fair advantage on others
  - d. None of the above
  
6. A lawyer is to take instruction regarding the case from:
  - a. Party to suit**

- b. Stranger
- c. Adverse party
- d. Clerk

7. A lawyer must always:

- a. be encouraging towards his juniors**
- b. bear ill towards them
- c. cast a bad influence upon them
- d. communicate with a judge without informing the opposing party

8. Canons of professional conduct and etiquette for lawyers are outlined by:

- a. Punjab Bar Council
- b. Sindh Bar Council
- c. Pakistan Bar Council**
- d. None of the above

9. A lawyer must treat adverse witness:

- a. Fairly**
- b. Debasingly
- c. Impetuously
- d. All of the above

10. Where the lawyer fails to comprehend the case of his client, he must:

- a. retain the same
- b. advise his client to consult someone else**
- c. try to give any advice he deems appropriate
- d. none of the above

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