

**THE AZAD GOVERNMENT OF THE STATE OF JAMMU &
KASHMIR LAW & PARLIAMENTARY AFFAIRS
SECRETARIAT, MUZAFFARABAD**

Dated the 20th February, 1981

No. 1095/SL/81. The following Ordinance made by the President on the 20th day of February, 1981, is hereby published for general information:-

(ORDINANCE XXXV OF 1981)

AN

ORDINANCE

further to amend the Code of Criminal Procedure, 1898

WHEREAS it is necessary further to amend the Code of Criminal Procedure, 1898 (Act V of 1898), for the purposes hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance:-

1. **Short title and Commencement.**- (1) This Ordinance may be called the Code of Criminal Procedure, (Amendment) Ordinance, 1981.
(2) It shall come in to force at once.
2. **Insertion of New Section 382-A, 382-B, 382-C, Act V of 1898.**- In the Code of Criminal Procedure, 1898 (Act V of 1898), as in force in Azad Jammu & Kashmir, hereinafter referred to as the said Code, after Section 382, the following new Section **382-A, 382-B, 382-C** shall be inserted:-
“382-A. Postponement of execution of sentences of imprisonment under Section 476 or for a period of less than one year.- Notwithstanding anything contained in Section 383 or 391, where the accused-
 - (a) is awarded any sentence of imprisonment under Section 476, or
 - (b) is sentenced in cases other than those provided for in Section 381, to imprisonment whether with or without fine or whipping, for a period of less than one year.

The sentence shall not , if the accused furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, be executed, until the expiry of the period prescribed for making an appeal against such sentence or, if an appeal is made within that time, until the sentence of imprisonment is confirmed by the Appellate Court, but the sentence shall be executed as soon as practicable after the expiry of the period prescribed for making an appeal, or in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

382-B. Period of detention to be considered while awarding sentence of imprisonment.-Where a Court decides to pass a sentence of imprisonment on an accused for an offence, it shall take into consideration the period, if any, during which such accused was detained in custody for such offence.

382-C. Scandalous or false and Frivolous pleas to be considered in passing Sentence.- In passing a sentence on an accused for any offence, a Court may take into consideration any scandalous or false and frivolous plea taken in defence by him or on his behalf.”

3. **Amendment of Section 497, Act V of 1898.**- In the said Code, in Section 497, in sub-section (1), in the second proviso, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided further that the Court shall, except where in his opinion that notwithstanding anything contained in Section 27 of the Azad Jammu and Kashmir Islami (Tazeerati Qawanin Nafaz) Act, 1974, 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, direct that any person shall be released on bail:-

- (a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year and whose trial for such offence has not concluded; or
- (b) who, being accused of an offence punishable with death has been detained for such offence for a continuous period exceeding two years and whose trial for such offence has not concluded”.

4. **Amendment of Section 510, Act V of 1898.-** In the said Code, for Section 510, the following shall be substituted, namely:-

“510 Report of Chemical Examiner, Serologist, etc.-Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to any Serologist, finger print expert or fire-arm expert appointed by Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code.-

Provided that the Court may, if it considers necessary in the interest of justice, summon and examine the person by whom such report has been made.”

5. **Amendment of Schedule II, Act V of 1898.-** In the Code of Criminal Procedure, 1898 (Act V of 1898), in schedule II, after the entries relating to Section 298 the following entries shall be inserted, namely:-

1	2	3	4	5	6	7	8
298-A	Use of derogatory remarks etc. in respect of holy personages.	May arrest without warrant	Ditto	Ditto	Not Compoundable	Imprisonment of either description for three years, or fine, or both.	Ditto

6. **Amendment of Second Schedule, Act V of 1898.-** In the Code of Criminal Procedure, 1898 (Act V of 1898), in the Second Schedule, for the heading ‘Offences against other Laws’ and the entries there under the following heading and entries shall be substituted, namely:-

(Mohammad Hayat Khan)
President
Azad Jammu and Kashmir

Sd/- (Syed Muhammad Akram Shah)
Secretary Law

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OFFENCES AGAINST OTHER LAWS							
1	2	3	4	5	6	7	8
	If punishable with death (imprisonment for life) or imprisonment for 7 years or upward.	May arrest without warrant.	Warrant	Not bailable	Net compoundable	Ditto	Court of Session
	If punishable with imprisonment for 3 years, and upward, but less than 7 years.	Ditto	Ditto	Ditto Except in cases under the Arms Act, 1878, Section 19, which shall be bailable.	Ditto	Ditto	Magistrate of the first class.
	If punishable with imprisonment for 1 year, and upwards, but less than 3 years	Shall not arrest without warrant	Summons	Bailable	Ditto	Ditto	Magistrate of first or second class
	It punishable with imprisonment for less than 1 year, or with fine only.	Ditto	Ditto	Ditto	Ditto	Ditto	Any Magistrate

Offences against Tazeerate Islami, Hudood and Qasas.

1	2	3	4	5	6	7	8
	If punishable with death, imprisonment for life, imprisonment exceeding 7 years, amputation of hand or foot or both hand and foot or with whipping exceed 80 stripes with or without any other of the said punishment.	May arrest without warrant	Warrant	No bailable	Not compoundable	Ditto	Zilae Adalat
	If punishable with imprisonment for 3 years and upwards but not exceeding 7 years or with whipping not exceeding 80 stripes with or without imprisonment.	Ditto	Ditto	Ditto	Ditto	Ditto	Tehsili Adalat
	If punishable with imprisonment for 1 year and upwards but less than 3	Shall not arrest without warrant	Summons	Bailable	Ditto	-	Tehsili Adalat

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	years or with whipping not exceeding 40 stripes with or without imprisonment.						
	If punishable with imprisonment for less than 1 years or with whipping not exceeding 10 stripes with or without imprisonment or with fine only.	Ditto	Ditto	Ditto	Ditto	-	Tehsili Adalat