



Proposed Package of Amendments in Civil Procedure Code, 1908

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SUMMARY.

The Provincial Government of Khyber Pakhtunkhwa through Secretary Law ,Parliamentary Affairs and Human Rights Department approached this Academy for giving input as to any reforms in the Civil Procedure Code of 1908 (Act V of 1908). The Provincial Government has constituted a Law Reforms Committee for examining all the provincial laws relating to administration of justice in the wake of 18th amendment in the Constitution of the Islamic Republic of Pakistan. After the 18th Amendment the Civil Law including Civil Procedure has fallen within the legislative competence of Province. The purpose of suggestions is to table the same before the Committee.

Mr Zia-Ud-Din Khattak, the learned DG assigned the task to the Research Wing and the Wing in consultation and active advice of the DG has prepared the Law Reforms Package which is consolidated in this document. The Legal Reform Package consists of four different proposals for amending the Civil Procedure Code. The details of the four proposals are as under.

1. Proposed Amendment in Section 11 Civil Procedure Code, 1908.
2. Proposed Amendments in Section 89A and Order X Civil Procedure Code 1908.
3. Proposed Amendments in The First Schedule to Civil Procedure Code, 1908—Scheme of Civil Prison.
4. Proposed Amendments in The First Schedule to Civil Procedure Code 1908---Dismissal In Default, Particulars in Pleadings etc.

The detail background of each amendment is given in respective document with proposed amendments and Annotated format of existing and proposed provisions. This would help the Committee in comprehending the reason for the proposed amendments and the existing and new shape of the laws.

Regarding item no 2 above it may be added that KPJA in collaboration with UNDP arranged two workshops for setting Judicial Guidance on ADR in November and December 2015 at Peshawar. This moot was attended by cross section of the stake holders all over the country.

After thorough deliberations a legal reform package was proposed which is made part of this document.

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Senior Director (R&P)
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**Letter to the Secretary Law, Parliamentary Affairs & Human Rights
Department, Government of Khyber Pakhtunkhwa.**

Subject: **MINUTES OF THE MEETING OF PROVINCIAL CABINET DATED: 19-03-2015**

Dear Sir,

I am directed to refer to your department letter # NLD-III/LEGIS: 4(2) 2015/Peshawar, Dated the 07-12-2015 and submit the following four legal reforms packages in Civil Procedure Code, 1908 for consideration.

1. Proposed Amendment in Section 11 Civil Procedure Code, 1908.(Annexure A)
2. Proposed Amendments in Section 89A and Order X Civil Procedure Code 1908. (Annexure B)
3. Proposed Amendments in The First Schedule to Civil Procedure Code, 1908—Scheme of Civil Prison. (Annexure C)
4. Proposed Amendments in The First Schedule to Civil Procedure Code 1908--- Dismissal In Default , Particulars in Pleadings etc. (Annexure D)

Regards,

Niaz Muhammad Khan
Senior Director Research & Publications
KP Judicial Academy Peshawar.

**PROPOSED AMENDMENT IN SECTION 11 CIVIL PROCEDURE CODE.
(ANNEXURE A)**

1. Section 10 CPC makes it mandatory for the court to stay subsequent suit involving the same matter in issue in an earlier instituted suit between the same parties or any one claiming under the parties.

2. But once the earlier suit is disposed of then the stayed suit becomes *resjudicata* under section 11 CPC.

3. The problem in the issue is that in some situations the defendant suffers due to principle of *resjudicata*. The defendant in such situations then cannot get an executable decree in his favour if the earlier suit is decided in his favour. The following example will clarify the position.

Example:- An earlier suit of declaration regarding certain property is dismissed in favour of defendant. Now the defendant wants to seek possession of the same property for which his suit for possession was stayed under section 10 CPC. But due to principle of resjudicata his suit cannot be revived and he would not be able to get possession having no executable decree of possession though issue is decided in his favour.

4. Though reliefs claimed in both the suits were different but for the purpose of stay of suit identity of relief is not must (1991 CLC 409,1298; PLD 1968 Dacca 557; AIR 1962 A 108; 2009 CLC 354).

5. The consolidation of both the suits under section 151 CPC can be a solution but when a suit falls within section 10 CPC consolidation cannot be resorted to(PLD 1999 Karachi 81, PLD 1982 Karachi 745, PLD 1972 Supreme Court 34).

6. Another situation may arise where no suit of defendant at all is pending or stayed and in case of dismissal of above mentioned suit the defendant shall have to file fresh suit for possession which falls within the ambit of *resjudicata*.

7. In order to obviate such situations the following explanation 7 to section 11 CPC is proposed.

“ Explanation 7.-The defendant may obtain an executable decree in his favour in the suit decided in his favour by moving an application or stayed under section 10 of the Code.”

8. The annotated format of existing provision and proposed provision is annexed as Annexure I.

Existing and Proposed Amendments in Annotated Form (Annexure I)

S.No	Existing Provision	Proposed Provision
1.	<p>11. No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.</p> <p>Explanation I.- The expression "former suit" shall denote a Suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.</p> <p>Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of</p>	<p>11. No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.</p> <p>Explanation I.- The expression "former suit" shall denote a Suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.</p> <p>Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of</p>

	<p>appeal from the decision of such Court.</p> <p>Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly, or impliedly by the other.</p> <p>Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue -in such suit.</p> <p>Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.</p> <p>Explanation VI.-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the</p>	<p>appeal from the decision of such Court.</p> <p>Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly, or impliedly by the other.</p> <p>Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue -in such suit.</p> <p>Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.</p> <p>Explanation VI.-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the</p>
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	person so litigating.	person so litigating. <i>Explanation</i> 7.-The defendant may obtain an executable decree in his favour in the suit decided in his favour by moving an application or stayed under section 10 of the Code.
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PROPOSED AMENDMENTS IN SECTION 89A AND ORDER X CIVIL PROCEDURE CODE 1908 (ANNEXURE B)

1. After the introduction of ADR in CPC through insertion of section 89A and Rule 1A of Order X a need was felt to provide for detail procedure of ADR in legal circles.
2. As a consequence some amendments were passed by the National Assembly by substituting Section 89A vide Legal Reforms Bill 2007 (Annexure I)
3. But the same could not be got through the Senate due to some technical reasons.
4. The debate gained impetus in judicial and legal circles for providing an effective and detailed procedure for the proper use and implementation of ADR regime.
5. In this respect the KPJA in collaboration with UNDP arranged two workshops for setting Judicial Guidance on ADR in November and December 2015 at Peshawar. This moot was attended by cross section of the stake holders all over the country. After thorough deliberations a legal reform package has been proposed which is attached as Annexure II.
6. The annotated format of existing provisions and proposed provisions is annexed as Annexure I.

Section 89 A by Law Reforms of 2007 as passed by National Assembly (Annexure I)

Section 89A. All courts shall, in cases of civil or commercial nature at any stage of the case, preferably at the initial stage require the parties to have resort to one of alternative dispute resolution methods such as mediation or conciliation.

Notwithstanding anything contained in sub-section (1), the parties may resort to mediation or conciliation before the legal proceedings are commenced in a court and in that case the parties or either of them may apply to court for resolution of their dispute through mediation or conciliation. If either of the parties applies to the court for resolution of their dispute through mediation or conciliation, the court shall serve notice on the other party or parties and if both or all of them agree to on resolution of their dispute through mediation or conciliation, the court shall refer the matter to a mediator or conciliator as provided in sub-section (3) and upon such reference other provisions of this section shall mutatis mutandis apply.

The court may refer the matter to a retired judge of a superior court or a sub-ordinate court, a technocrat having experience in the relevant field or a lawyer from a panel maintained for the purpose or any other person agreed by the parties. Upon referring the matter, the court shall direct the parties to appear before the conciliator on date and time fixed by the court under intimation to the mediator or conciliator.

The parties to the dispute shall take part in the mediation or conciliation proceedings in person or through an authorized representative.

A mediator or conciliator to whom a matter is referred for mediation or conciliation under this section shall try to resolve the dispute within a period of sixty days, extendable by the court for sufficient cause for another period of thirty days and during this period the court proceedings shall remain stayed.

In dealing with the dispute or difference referred to him, the mediator or conciliator may follow such fair procedures as may be necessary in the circumstances of the case.

If as a result of the efforts of mediator or conciliator, a settlement is reached between the parties, the mediator or conciliator shall record such statement, duly signed by him and the parties and submit it to the court. The court shall pronounce judgment in terms of settlement and upon the judgment so pronounced a decree shall follow.

If the efforts of mediator or conciliator, fail in bringing about a settlement between the parties, the mediator or conciliator shall submit a report certifying that the parties have not reached any settlement and the court shall proceed with the case.

Save as otherwise provided in this section, the proceedings before the mediator or conciliator shall not be admissible before any court and the mediator or conciliator shall not be required to appear as witness or otherwise in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of mediation or conciliation. The mediator or conciliator shall also not act as an arbitrator or as representative or counsel of a party in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of a mediation or conciliation.

The Code and the Qanoon-e-Shahadat, 1984 (P.O o 10 of 1984)) shall not apply to the proceedings before the mediator or conciliator.

No appeal or revision shall lie from a decree or order made a result of the consent of the parties.

The High Court or Federal Government may make rules for giving effect to the provisions of this section.

Proposed Legal Package of Civil Law on ADR (Annexure II)

89-A. Alternative dispute resolution. (1) The court shall, at any stage of the case, preferably at the initial stage require the parties for settlement of any dispute through any mode of alternative dispute resolution as agreed to by the parties and shall then refer the matter for settlement as prescribed.

(2) The court shall, on the application of any of the parties to the suit, cause to be issued to the parties and their Legal Practitioners (if any) a notice for settlement of any dispute through any mode of alternative dispute resolution as agreed to by the parties and shall then refer the matter to the settlement as prescribed.

(3) The court shall, on the application of any parties before any legal proceedings are commenced in a court issue a notice to the parties and their Legal Practitioners (if any) for settlement of any dispute through any alternative dispute resolution as agreed to by the parties and shall then refer the matter to the settlement as prescribed.

(4) No appeal shall lie from a decree or order made as a result of the consent of the parties.

Order X

1A. The court shall refer the matter to a settlement forum for an amicable settlement as agreed by the parties. Upon referring the matter, the court shall direct the parties to appear before the settlement forum on date and time fixed by the court under intimation to the settlement forum. The parties to the dispute shall take part in the settlement proceedings in person or through an authorized representative.

Provided that the court may in fit cases refer the party or parties to any orientation facility for convincing him or them to resort to any of the modes of alternative dispute resolution.

Explanation: The term “settlement forum” used in this Order means an accredited or recognized mediator, a forum created by any law, a customary forum or any other person agreed by the parties for amicable settlement

1B. The settlement forum to which a matter is referred for settlement under this section shall try to resolve the dispute within a period of thirty days, extendable by the court for sufficient cause

for another period of fifteen days and during this period the court proceedings shall remain stayed.

1C. In dealing with the dispute referred to it, the settlement forum may follow such fair procedures as may be necessary in the circumstances of the case.

If as a result of the efforts of the settlement forum, a settlement is reached between the parties; the settlement forum shall record such statement, duly signed by each member of the settlement forum and the parties and submit it to the court. The court shall pronounce judgment in terms of settlement and upon the judgment so pronounced a decree shall follow.

Provided that no such judgment shall be pronounced if the terms of the settlement are clearly illegal and in such event the court shall remit the case back to the settlement forum by bringing the illegality in to its notice and for resubmission within seven days.

1D. If the efforts of the settlement forum fail in bringing about a settlement between the parties initially or on remand, the settlement forum shall submit a report certifying that the parties have not reached any settlement and the court shall proceed with the case.

1E. Save as otherwise provided in this section, the proceedings before the settlement forum shall not be admissible before any court and no member of the settlement forum shall be required to appear as witness or otherwise in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of the settlement. No member of the settlement forum shall act as an arbitrator or as representative or counsel of a party in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of the settlement.

1F. The Code and the Qanoon-e-Shahadat, 1984 (P.O o 10 of 1984)) shall not apply to the proceedings before the settlement forum.

1G. The fee, if any, of settlement proceedings shall be borne by the parties as fixed by the court in each case.

Existing and Proposed Amendments in Annotated Form (Annexure III)

S.No	Existing Provisions	Proposed Provisions
1.	<p>Section 89-A. Alternate dispute resolution. The Court may, where it considers necessary, having regard to the facts and circumstances of the case with the object of securing expeditious disposal of a case, or in relation to a suit, adopt with the consent of the parties alternate dispute resolution method, including mediation and conciliation.</p>	<p>Section 89-A. Alternative dispute resolution. (1) The court shall, at any stage of the case, preferably at the initial stage require the parties for settlement of any dispute through any mode of alternative dispute resolution as agreed to by the parties and shall then refer the matter for settlement as prescribed.</p> <p>(2) The court shall, on the application of any of the parties to the suit, cause to be issued to the parties and their Legal Practitioners (if any) a notice for settlement of any dispute through any mode of alternative dispute resolution as agreed to by the parties and shall then refer the matter to the settlement as prescribed.</p> <p>(3) The court shall, on the application of any parties before any legal proceedings are commenced in a court</p>

		<p>issue a notice to the parties and their Legal Practitioners (if any) for settlement of any dispute through any alternative dispute resolution as agreed to by the parties and shall then refer the matter to the settlement as prescribed.</p> <p>(4) No appeal shall lie from a decree or order made as a result of the consent of the parties.</p>
<p>2</p>	<p>Order X Rule 1A. The Court may adopt any lawful procedure not inconsistent with the provisions of this Code to :</p> <p>(i) Conduct preliminary proceedings and issue order for expedition processing the case;</p> <p>(ii) issue, with the consent of parties, commission to examine witnesses, admit documents and take other steps for the purpose of trial;</p> <p>(iii) adopt, with the consent of parties, any alternative method of dispute resolution including</p>	<p>1A. The court shall refer the matter to a Settlement Forum for an amicable settlement as agreed by the parties. Upon referring the matter, the court shall direct the parties to appear before the Settlement Forum on date and time fixed by the court under intimation to the Settlement Forum. The parties to the dispute shall take part in the settlement proceedings in person or through an authorized representative.</p> <p>Provided that the court may</p>

	mediation, conciliation or any such other means.	in fit cases refer the party or parties to any orientation facility for convincing him or them to resort to any of the modes of alternative dispute resolution.
3	Nil	1B. The Settlement Forum to which a matter is referred for settlement under this section shall try to resolve the dispute within a period of thirty days, extendable by the court for sufficient cause for another period of fifteen days and during this period the court proceedings shall remain stayed.
4	Nil	1C. In dealing with the dispute or difference referred to it, the Settlement Forum may follow such fair procedures as may be necessary in the circumstances of the case. If as a result of the efforts of the Settlement Forum, a settlement is reached between the parties; the Settlement Forum shall

		<p>record such statement, duly signed by each member of the Settlement Forum and the parties and submit it to the court. The court shall pronounce judgment in terms of settlement and upon the judgment so pronounced a decree shall follow.</p> <p>Provided that no such judgment shall be pronounced if the terms of the settlement are clearly illegal and in such event the court shall remit the case back to the Settlement Forum by bringing the illegality in to its notice and for resubmission within seven days.</p>
5	Nil	<p>1D. If the efforts of the Settlement Forum fail in bringing about a settlement between the parties, the Settlement Forum shall submit a report certifying that the parties have not reached any settlement and the court shall proceed with</p>

		the case.
6	Nil	1E. Save as otherwise provided in this section, the proceedings before the Settlement Forum shall not be admissible before any court and no member of the Settlement Forum shall be required to appear as witness or otherwise in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of the settlement. No member of the Settlement Forum shall also act as an arbitrator or as representative or counsel of a party in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of the settlement.
7	Nil	1F.The Code and the Qanoon-e-Shahadat, 1984 (P.O o 10 of 1984)) shall not apply to the proceedings before the mediator or conciliator.

8	Nil	1G. The fee, if any, of settlement proceedings shall be borne by the parties as fixed by the court in each case. Explanation: The term “Settlement Forum” means an accredited or recognized mediator, a forum created by any law, a customary forum or any other person agreed by the parties for amicable settlement.

PROPOSED AMENDMENTS IN THE FIRST SCHEDULE TO CIVIL PROCEDURE CODE, 1908—SCHEME OF CIVIL PRISON (ANNEXURE C)

- 1) In the scheme of laws, there are two types of prisons i.e., the civil prison and prison.
- 2) All those held responsible for civil liability are sent to civil prison and those for criminal liability to prison.
- 3) This basic categorization is meant; inter alia, for the purpose of differentiating between two categories of prisoners for the following reasons.
 - a) To identify whether the prisoner is involved or guilty of offence or a civil liability only. The legal repercussions of both kind of imprisonment are quite different as to their effect on the future career of prisoner.
 - b) To treat the prisoner accordingly if involved in offence or civil liability like remissions, labor, class etc.
- 4) This categorization of both types of prison is basically made not by Civil Procedure Code, in force for the time being, but by prison laws and rules.
- 5) In order to highlight it we may refer to Section 514 Criminal Procedure Code where under a surety is sent to civil prison.
- 6) Similarly under CPC judgment debtor and some others are sent to civil prison and not the prison.
- 7) But the scheme of CPC prior to 1980 was that in cases of execution the judgment debtor could not be sent to civil prison unless subsistence allowance was paid under section 57. By virtue of Section 7 of Ordinance X of 1980, Section 57 was omitted in order to give relief to decree holders not to deposit subsistence allowance. It did not mean that civil prison was abolished as highlighted earlier that civil prison is not the creation of CPC; nor is it confined to judgment debtors only and furthermore it cannot be abolished so long as we are to make difference between both types of prisoners.
- 8) As mentioned above that under Criminal Procedure Code even a surety can be sent to civil prison having never been linked to subsistence allowance. Similarly under Order 39 Rule 2(3) CPC a contemnor is sent to **civil prison** without having ever been linked with deposit of subsistence allowance. And secondly the person sent to civil prison under Order 39 CPC is to be differentiated from the person sent for criminal contempt of court as to their legal post detention/ conviction repercussions.

9) But ironically the word “**Civil**” has been omitted by Section 5 of same Ordinance X of 1980 from some of the Sections and by Act XIV of 1994 from some of the Orders of First Schedule of CPC and not all. These Sections and Orders wherefrom the word “**Civil**” is omitted are as under;

- a. Section 55(1)
- b. Section 56
- c. Order 21 Rule 30.
- d. Order 21 Rule 31(1)
- e. Order 21 Rule 32(1).
- f. Order 21 Rule 32(2)
- g. After Order 21 Rule 36 in the heading
- h. Order 21 Rule 37(1)
- i. Order 21 Rule 40(1)
- j. Order 21 Rule 40(3)
- k. Order 21 Rule 98
- l. Order 38 Rule 4
- m. Order 39 Rule 2(3)
- n. In Appendix E in Form 12,14 and 41
- o. In Appendix F in Form 4

10) All this was done under the wrong impression that with the omission of Section 57 the concept of civil prison is no more available; but this amendment left the word intact in some of the Sections and Orders of CPC, perhaps by failure of drafter in making complete list of words ‘**Civil Prison**’ in CPC. The detail of left over Sections and Orders of CPC is as under.

- a. Section 94(c)
- b. Section 104
- c. Order 16 Rule 16(2)
- d. Order 16 Rule(18)

- 11) Now there is a legal anomaly in CPC as to the word “**Civil**” preceding the word “**Prison**” by omissions and retentions.
- 12) The proper course is now to revive the word “**Civil**” in all the places mentioned in para 9 above.
- 13) The amendments Annexure I are ,therefore, proposed.
- 14) The annotated format of existing provisions and proposed provisions is annexed as Annexure II.

Annexure I

1. In sub section 1 of section 51 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detention in**” the word “**civil**” shall be substituted.
2. In section 56 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**in the**” the word “**civil**” shall be substituted.
3. In Order XXI rule 30 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detention in**” the word “**civil**” shall be substituted.
4. In Order XXI in sub rule 1 of rule 31 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detention in**” the word “**civil**” shall be substituted.
5. In Order XXI in sub rule 1 of rule 32 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detention in**” the word “**civil**” shall be substituted.
6. In Order XXI in sub rule 2 of rule 32 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detention in**” the word “**civil**” shall be substituted.
7. In the heading after Order XXI rule 36 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detention in**” the word “**civil**” shall be substituted.
8. In Order XXI in sub rule 1 of rule 37 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detention in**” the word “**civil**” shall be substituted.
9. In Order XXI in sub rule 1 of rule 40 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detained in**” the word “**civil**” shall be substituted.
10. In Order XXI in sub rule 3 of rule 40 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**judgment-debtor in**” the word “**civil**” shall be substituted.
11. In Order XXI in rule 98 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detained in**” the word “**civil**” shall be substituted.
12. In Order XXXVIII in rule 4 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**him to**” the word “**civil**” shall be substituted.
13. In Order XXXIX in sub rule 3 of rule 2 of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**detained in**” the word “**civil**” shall be substituted.

14. In Form 12 of Appendix E of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**committed to the**” the word “**civil**” shall be substituted.

15. In Form 14 of Appendix E of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**in to the**” the word “**civil**” shall be substituted.

16. In Form 41 of Appendix E of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**committed to the**” the word “**civil**” shall be substituted.

17. In Form 4 of Appendix F of the Code of Civil Procedure, 1908 (Act No V of 1908) after the words “**committed to the**” the word “**civil**” shall be substituted.

Existing and Proposed Amendments in Annotated Form (Annexure II)

S.No	Existing Provisions	Proposed Provisions
1	<p>Section 55.--(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court which may make an order for his detention in prison to suffer simple imprisonment for a period not exceeding one year;</p> <p>-----</p>	<p>Section 55.--(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court which may make an order for his detention in civil prison to suffer simple imprisonment for a period not exceeding one year;</p> <p>-----</p>
2	<p>Section 56. Notwithstanding anything in this Part, the Court the arrest or detention in the prison execution of a decree for the payment of money.</p>	<p>Section 56. Notwithstanding anything in this Part, the Court the arrest or detention in the civil prison execution of a decree for the payment of money.</p>
3	<p>Order XXI Rule30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in prison of the judgment-debtor, or by the attachment and sale of his property, or by the both.</p>	<p>Order XXI Rule30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in civil prison of the judgment-debtor, or by the attachment and sale of his property, or by the both.</p>

4	<p>Order XXI Rule 31(1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in prison of the judgment-debtor, or by the attachment of his property, or by both.</p>	<p>Order XXI Rule 31(1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in civil prison of the judgment-debtor, or by the attachment of his property, or by both.</p>
5	<p>Order XXI Rule 32(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it the decree may be enforced [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a</p>	<p>Order XXI Rule 32(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it the decree may be enforced [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a</p>

	contract or for an injunction] by his detention in prison, or by the attachment of his property, or by both.	contract or for an injunction] by his detention in civil prison, or by the attachment of his property, or by both.
6	Order XXI Rule 32(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation, or with the leave of the Court, by the detention in prison of the directors or other principal officers thereof or by both attachment and detention.	Order XXI Rule 32(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation, or with the leave of the Court, by the detention in civil prison of the directors or other principal officers thereof or by both attachment and detention.
7	Heading after Order XXI Rule 36. Arrest and Detention in [...] Prison	Heading after Order XXI Rule 36. Arrest and Detention in civil Prison
8	Order XXI Rule 37(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in prison of a judgment-debtor who is liable to be arrested in pursuance of	Order XXI Rule 37(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in civil prison of a judgment-debtor who is liable to be arrested in pursuance of

	the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be detained in prison.	the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be detained in prison.
9	Order XXI Rule 40(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be detained in prison.	Order XXI Rule 40(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be detained in civil prison.
10	Order XXI Rule 40(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions	Order XXI Rule 40(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions

	of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in prison and shall in that event cause him to be arrested if he is not already under arrest:	of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in civil prison and shall in that event cause him to be arrested if he is not already under arrest:
11	Order XXI Rule 98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation it shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession the Court may also at the instance of the applicant order the judgment-debtor or any person acting at his instigation to be detained in prison for a term which may extend to thirty days.	Order XXI Rule 98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation it shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession the Court may also at the instance of the applicant order the judgment-debtor or any person acting at his instigation to be detained in civil prison for a term which may extend to thirty days.
12	Order XXXVIII Rule 4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to prison until the	Order XXXVIII Rule 4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to civil prison

	decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:	until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:
13	Order XXXIX Rule 2 (3) In case of disobedience, or breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience of breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months, unless in the meantime the Court directs his release.	Order XXXIX Rule 2 (3) In case of disobedience, or breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience of breach to be attached, and may also order such person to be detained in civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

Appendix E in Form 12,14 and 41- Existing Format	Appendix E in Form 12,14 and 41- Proposed Format
No 12.NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE. (O.21, r.37) <i>(Title)</i> Whereas has made application to the Court for execution of decree in Suit No. of 19 by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19 , to show cause why you should not be committed to the prison	No 12.NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE. (O.21, r.37) <i>(Title)</i> Whereas has made application to the Court for execution of decree in Suit No. of 19 by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19 , to show cause why you should not be committed to the civil

<p>in execution of the said decree. GIVEN under m hand and seal of the Court, this day of 19 .</p> <p><i>Judge</i></p>	<p>prison in execution of the said decree. GIVEN under m hand and seal of the Court, this day of 19 .</p> <p><i>Judge</i></p>
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<p>No 14.WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL.</p> <p style="text-align: center;">(O.21, r.40) (Title)</p> <p>To</p> <p style="padding-left: 40px;">The Officer in charge of the Jail at</p> <p>WHEREAS who has been brought before this Court the day of 19 , under a warrant in execution of a decree which was made and pronounced by the said Court on the day of 19 , and by which decree it was ordered that the said should pay ;</p> <p>And whereas the said has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody ;You are hereby commanded and required to take and receive the said into the prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908; and the Court does hereby fix annas per diem as the rate of the monthly allowances for the subsistence of the said during his confinement under this warrant of committal.</p> <p>GIVEN under m hand and seal of the Court, this day of 19 .</p>	<p>No 14.WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL.</p> <p style="text-align: center;">(O.21, r.40) (Title)</p> <p>To</p> <p style="padding-left: 40px;">The Officer in charge of the Jail at</p> <p>WHEREAS who has been brought before this Court the day of 19 , under a warrant in execution of a decree which was made and pronounced by the said Court on the day of 19 , and by which decree it was ordered that the said should pay ;</p> <p>And whereas the said has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody ;You are hereby commanded and required to take and receive the said into the civil prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908; and the Court does hereby fix annas per diem as the rate of the monthly allowances for the subsistence of the said during his confinement under this warrant of committal.</p> <p>GIVEN under m hand and seal of the Court, this day of 19 .</p>
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<p><i>Judge</i></p> <p>No 41.WARRANT OF COMMITTAL. (O.21, r.98) (Title)</p> <p>To</p> <p>The Officer in charge of the Jail at</p> <p>WHEREAS the under-mentioned property has been decreed to _____, the plaintiff in this suit, and whereas the Court is, satisfied that without any just cause resisted or obstructed and is still resisting or obstructing the said in obtaining possession of the property, and whereas the said _____ has made application to this Court that the said be committed to the prison; You are hereby commanded and required to take and receive the said _____ into the prison and keep him imprisoned therein for a period of _____ days.</p> <p>GIVEN under m hand and seal of the Court, this _____ day of 19 _____.</p> <p><i>Judge</i></p>	<p><i>Judge</i></p> <p>No 41.WARRANT OF COMMITTAL. (O.21, r.98) (Title)</p> <p>To</p> <p>The Officer in charge of the Jail at</p> <p>WHEREAS the under-mentioned property has been decreed to _____, the plaintiff in this suit, and whereas the Court is, satisfied that without any just cause resisted or obstructed and is still resisting or obstructing the said in obtaining possession of the property, and whereas the said _____ has made application to this Court that the said be committed to the civil prison; _____ You are hereby commanded and required to take and receive the said _____ into the prison and keep him imprisoned therein for a period of _____ days.</p> <p>GIVEN under m hand and seal of the Court, this _____ day of 19 _____.</p> <p><i>Judge</i></p>
<p>Appendix F in Form 4-Existing Format</p>	<p>Appendix F in Form 4--Proposed Format</p>
<p>No 4.ORDER OF COMMITTAL. (O.38, r.4) (Title)</p> <p>To</p>	<p>No 4.ORDER OF COMMITTAL. (O.38, r.4) (Title)</p> <p>To</p>

<p>WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of , the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant be committed to the civil prison until the decision of the suit; or. If judgment be pronounced against him, until satisfaction of the decree.</p> <p>GIVEN under m hand and seal of the Court, this day of 19 .</p> <p><i>Judge</i></p>	<p>WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of , the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant be committed to the civil prison until the decision of the suit; or. If judgment be pronounced against him, until satisfaction of the decree.</p> <p>GIVEN under m hand and seal of the Court, this day of 19 .</p> <p><i>Judge</i></p>
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**PROPOSED AMENDMENTS IN THE FIRST SCHEDULE TO CIVIL
PROCEDURE CODE 1908---DISMISSAL IN DAFULT, PARTICULARS IN
PLEADINGS ETC.(ANNEXURE D)**

15) The suits dismissed in default under rules 2,3 & 8 of Order IX are restored under rule 4 & 9 of the same Order through an application to be filed within 30 days under Article 163 of the Limitation Act, 1908. But there is no express provision for dismissal in default of such application nor enabling provision for restoration . As a result the dismissal and restoration of such application is dealt with under Section 151 of CPC. This practice then leads to the limitation for the application as 3 years under Article 181 of the Limitation Act, 1908. This creates an anomalous situation which on the one hand results in delay and on the other to an unreasonable leverage of limitation than that of the first application.

In order to rectify this anomaly the following amendments are proposed in rules 4 & 9 of Order IX CPC :

- Amendment of Rule 4 of Order IX.

After full stop at the end of rule 4, the following proviso shall be added:

“Provided that the court may also dismiss in default an application for restoration of suit dismissed in default and all subsequent applications for restoration of such applications and provisions of this rule including limitation shall apply *mutatis mutandis* to such applications”

- Amendment of Rule 9 of Order IX.

After full stop at the end of sub rule 1 of rule 9, the following proviso shall be added:

“Provided that the court may also dismiss in default an application for restoration of suit dismissed in default and all subsequent applications for restoration of such applications and provisions of this rule including limitation shall apply *mutatis mutandis* to such applications”

16) Under Rule 1(b)&(c) of Order VII CPC the particulars of the parties are required to be furnished which include name, description and place of residence of the parties but with fast changing scenario in new millennium the IDs of the parties have undergone substantial changes and additions like NIC, Email, Cell No and the like. In order to bring this provision in accord with the new IDs the following amendments are proposed.

- Amendment of Rule 1(b) of Order VII.

After the word “**description**” in Rule 1(b) a comma shall be inserted and thereafter the following shall be added “ **national identity card number, e-mail address, cellular number, fax number, telephone number, so far as available**”

- Amendment of Rule 1(c) of Order VII.

After the word “**description**” in Rule 1(c) a comma shall be inserted and thereafter the following shall be added “ **national identity card number, e-mail address, cellular number, fax number, telephone number**”

17) After the repeal of provincial small causes courts by the Small Claims & Minor Offences Courts Ordinance 2002, there is no need of further retention of Order L in the First Schedule of CPC, which Order should be Omitted.

18) The annotated format of existing provisions and proposed provisions is annexed as Annexure I.

Existing and Proposed Amendments in Annotated Form (Annexure I)

S.No	Existing Provisions	Proposed Provisions
1	<p>Order IX Rule 4.-Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.</p>	<p>Order IX Rule 4.-Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.</p> <p>Provided that the court may also dismiss in default an application for restoration of suit dismissed in default and all subsequent applications for restoration of such applications and provisions of this rule including</p>

		limitation shall apply <i>mutatis mutandis</i> to such applications.
2	Order IX Rule 9 (1). - Where a suit is wholly or partly dismissed under rule 8. the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.	Order IX Rule 9 (1). - Where a suit is wholly or partly dismissed under rule 8. the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit. Provided that the court may also dismiss in default an application for restoration of suit dismissed in default and all subsequent applications for restoration of such applications and provisions

		<p>of this rule including limitation shall apply <i>mutatis mutandis</i> to such applications.</p>
<p>3&4.</p>	<p>Order VII Rule 1.The plaint shall contain the following particulars:- a) the name of the Court in which the suit is brought; b) the name, description and place of residence of the plaintiff; c) the name, description and place of residence of the defendant, so far as they can be ascertained; d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect; e) the facts constituting the cause of action and when it arose; f) the facts showing that the Court has jurisdiction; g) the relief which the plaintiff claims; h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and i) a statement of the value of the</p>	<p>Order VII Rule 1.The plaint shall contain the following particulars:- a) the name of the Court in which the suit is brought; b) the name, description, national identity card number, e-mail address, cellular number, fax number, telephone number, so far as available and place of residence of the plaintiff; c) the name, description, national identity card number, e-mail address, cellular number, fax number, telephone number and place of residence of the defendant, so far as they can be ascertained; d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect; e) the facts constituting the cause of action and when it arose; f) the facts showing that</p>

	<p>subject-matter of the suit for the purposes of jurisdiction and of court-fees so far as the case admits.</p>	<p>the Court has jurisdiction; g) the relief which the plaintiff claims; h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees so far as the case admits.</p>
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**Letter of Government of the KP Law, Parliamentary Affairs and Human
Rights Department**