



Khyber Pakhtunkhwa
Judicial Academy

REPORT

ONE DAY SEMINAR ON DRAFT RULES OF CODE OF CRIMINAL PROCEDURE

27th March 2018

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REPORT ON ONE DAY SEMINAR on “ DRAFT RULES UNDER THE CODE OF CRIMINAL PROCEDURE”

Abstract:

This report documents the proceedings of a Seminar on “**Draft Rules under the Code of Criminal Procedure**” held on 27th March, 2018 in the Khyber Pakhtunkhwa Judicial Academy. The Khyber Pakhtunkhwa Judicial Academy prepared draft rules which were made available on the Academy’s website for suggestions. In view of the directions given by hon’ble the Chief Justice, Peshawar High Court, Peshawar one day seminar was held in the Khyber Pakhtunkhwa Judicial Academy for deliberations on the draft recommendations. The report is divided into three parts i.e Introduction, Proceedings and Annexures. The introduction part gives the brief background of the draft rules. The proceedings part aims at providing the details as to sessions, deliberations, recommendations, wrap up and conclusion. The annexure part contains the Agenda as Annex “A”, the list of participants as “B” and the photographs as Annex “C”.

Part One: Background

Effective criminal justice system is a pre-requisite for uploading the rule of law that underpins human rights including political rights, civil liberties and mechanism of accountability which in turn guarantees the right to equality of all individuals before the law and equal protection of law. The criminal justice system of Pakistan swarms with faults; is exploitative and inequitable. Delays in the judicial system are endemic. Pointing figures at external factors is nothing more than the blame game shifting. The most glaring causes include outmoded court procedures and inefficient case management techniques. Criminal cases may take marginally less time to finally resolve in comparison with the civil cases.

The Code of Criminal Procedure is 118 years old and no rules have been framed thereunder so far, case management techniques vary from province to province. The causes of delay may be addressed by a resolute judiciary with recognition of systematic flaws in

the system. In order to introduce greater efficiency, keeping in view the current realities and new developments in global practices the KPJA recommended draft rules under the Code of Criminal Procedure. The first draft was prepared in April, 2017 on the basis of Woolf report, and the subsequent Criminal Procedure Rules of England and Wales and the recommendations of Lord Justice Auld Review of the Criminal Courts of England and Wales

The second draft of proposed rules was prepared by the KPJA in September, 2017 and suggestions were invited from concerned quarters. A seminar was arranged in collaboration with Justice System Support Program, with the aim to reach the real actors of the criminal justice sector to explore their input in the efforts for implementation of better case management techniques in the criminal courts.

Part Two: Proceedings

SESSION I:

The program started with recitation of the Holy Quran by Dr. Qazi Attaullah, Director Research & Publication Khyber Pakhtunkhwa Judicial Academy. The participants were formally welcomed by Dr. Khurshid Iqbal, Director General of the Academy. He maintained that the presence of the distinguished gathering reflect their interest in the topic. He apprised the participants that the High Court under Section 554 (c) of the Code of Criminal Procedure Code is empowered to frame rules. He expressed the view that though the criminal cases do take little time for disposal yet the abnormal delays in the disposal of the criminal cases is a matter of concern. Therefore the Academy took the initiative to introduce reforms in the criminal justice system and remained focused on the case management techniques.

Mr. Muahammad Masood Khan, Team Leader JSSP presented an overview of the draft rules. He stated that the exercise emanated from the proposals of Mr. Kamran Basharat,

Additional District & Sessions Judge, Islamabad. He said that though the Code of Criminal Procedure is a federal subject yet after the introduction of 18th Amendment in the Constitution of Islamic Republic of Pakistan it is listed in the concurrent list thereby enabling the provinces to legislate only if the proposed law is not in conflict with federal legislation. He emphasized the need for introduction of the case management techniques in order to address the issue of delay in disposal of cases. He explained that these rules are meant to introduce case management procedures in the criminal courts. He explained the concept of case management by saying that this concept is different from “Case Tracking” and “Diary Management”. He stated that the concept of case management includes the following:

- Taking control by the court.
- Comprehension & identification of issues.
- Disposal of applications and issuance of orders.
- Scheduling conference.
- Involving case progression officers.
- Sentence indication.
- Charge negotiation.

At the end of this session Justice Waqar Ahmed Seth, Senior Puisne Judge of the Peshawar High Court spared some moments out of his precious time to visit the Academy during the seminar which had a salutary effect upon the morale of the participants.

SESSION II: Group Activity

The participants, including judicial officers, prosecutors, lawyers, representatives of the non-governmental organizations, police officers, representatives of other government departments were divided into three groups, to come up with diverse deliberations and recommendations.

SESSION III: Group Presentations & Recommendations:

After the group activity, one participant from each group presented the collective recommendations of his group. A brief sketch of the said presentations is drawn below:

GROUP A:

Group “A” was represented by Mr. Muhammad Masood Khan, Team Leader of JSSP. He was also the moderator of the group. He made the following recommendations on behalf of his group:

1. In Rule 1(iii) after the word High Court the word “inclusive” may be added.
2. In Rule 2 (ii) (c) The word “Criminal Case” be replaced by the “Criminal Proceedings” since CrPC relates to two kinds of proceedings one is preventative and the other is punitive. This will include both.
3. The definition of the word “Court” has been given in section-6 clause-b of CrPC hence in Rule 2 (ii) (d), the definition of the word “Court” should read “Court shall mean the court defined u/s 6 CrPC including Tribunals”.
4. In rule 2 (i) word “Serious” may be deleted and same be read as “an offence means as defined u/s 4(o) CrPC”.
5. In Rule 2 (k) the word trial may be defined as; “Trial” includes framing of charge and recording of evidence on oath.
6. In Rule 4 (2) (a) the early identification of the real issue shall mean that the matter of identification of the real issue is required to be resolved before framing of charge so that the charge is framed, taught fully on which the entire sequence of evidence is to be produced.
7. Rule 4 (2) (c) shall be read as “Sequence of production of evidence must be decided by the court and recorded”.
8. In Rule 5 (1) instead of “parties” the word “Party” shall be used.
9. In Rule 6 (1) (e) (i) after the words “(the duty of the Court: use of live link or telephone facilities)” the words “where identification can be ensured” shall be added.
10. In Rule 8 sub rule 6 may be deleted as such provisions already exists in the CrPC e.g. Section 87, 88, etc.
11. In Rule 17 Sub- rule 3 which reads as under may be inserted
“(3) In case the accused informs the court that he is unable to engage a counsel for his defence the court shall immediately appoint a pauper counsel of not less than 10 years practice at the Bar”.

- 12 In Rule 22 after the words proceeding “and no adverse/negative inference shall be drawn against the accused” may be added.
- 13 In Rule 23 (2) the word “charged” may be replaced with the word “appeared”.
- 14 Rule 23 (4) (a) may be replaced with the words “Settle the modalities of the trial”.
- 15 In Rule 23(5) clause “b” may be inserted as “Any violation of the above by any party without any justifiable cause shall entail a penalty which may extend to Rs. 100,000/- and shall not be less than Rs. 10,000/.

GROUP B:

Group “B” was represented by Ms. Nusrat Yasmeen Intikhab, Judge Special Court (Control of Narcotics Substances), Peshawar and was moderated by Dr. Khurshid Iqbal, Director General of the Academy. Group “B” presented the following recommendations:

1. The language of Rule 1 is not clear and specific, particularly sub rule (iii)
2. In Rule 2 sub clauses (a), (c), (f), (i), (j) and (k) are neither clear nor specific; sub clauses (c), (f) and (k) may be deleted whereas (i) and (j) required serious consideration to be re-visited. The phrase “pre-trial” needs to be redefined.
3. Rule 3 seems to be unnecessary and looks more as a preamble.
4. The meaning and intent of the language of Rule 4 is not clear. Moreover, the very Rule seems to be unnecessary.
5. The meaning and intent of the language of Rule 5 is not clear. Moreover, the very Rule seems to be unnecessary.
6. Rule 6 is all the same confusing in its language. No role of complainant reflects in the Rule.
7. Rule 7 does not seem to be feasible and practical. It rather requires human resource. It may cause delay.
8. Rule 8 seems to be mostly superfluous. Sub rule 6 is in conflict with the Code of Criminal Procedure.
9. Rules 9, 10 and 11 tend to cause delay by giving an open hand to the parties and that too to vary the directions of the court. The proposed variations seem to be time consuming. The concept of “Direction” is vague, being not explained anywhere.

10. Rule 18 is totally inconsistent with the Code of Criminal Procedure and it would encourage the criminals to avoid appearance before court and face trial, and the execution of trial would become a mockery.
11. Rule 19 is missing.
12. Rule 20 is vague in itself not applicable in our jurisdiction. It will put the court and accused in a bargaining situation and may prejudice the concept of fair trial.
13. Rule 21-27 also reflect the same superfluity as noted above which will further cause delay and as a result fair trial will be compromised.

GROUP C:

Mr. Haroon Latif, District & Sessions, Judge from Punjab represented the third group. Mr. Muhammad Shoaib, Director Instructions Khyber Pakhtunkhwa Judicial Academy and Mr. Zia-ur-Rahman, Senior Director Administration of the Academy facilitated the group as moderators. Mr. Latif presented following recommendations on behalf of his group.

1. Test piloting

As a model the rules may be implemented in one or two districts initially (Peshawar & D.I Khan districts) were recommended.

2. Consistency with Substantive Law

It should be ensured that the rules are consistent with the law and are not overriding the same. For example, rule 18 should be revisited in light of provisions of section 250 A of Cr.PC .

3. Clarity

a/ The definitions and the provisions are required to be simplified .

b/ Brevity of language of the rules is needed.

c/ Rule 6 regarding active assistance should be in definition part .

4. Right to Fair trial

a/ Sentence negotiations should not be before commencement of trial .

b/ Complainant should not be deprived of the right of fair trial and hearing .

5. Case progression officer

a/ Need of definition.

b/ Criteria for appointment and TORs need to be specified .

6. Plea of guilt in absentia

a/ Provisions regarding identity of the accused should be made .

b/ The rule 18 should be revisited in view of section 250-A Cr.PC.

7. Custody Cases

The cases of under trial accused person particularly those in custody should be brought under focus.

8. Intentional delay

Penal consequences should be incorporated for Intentional delays.

9. Other Recommendations

a/ Capacity of the Judges needs improvement for better service delivery .

b/ Co-ordination between police and prosecution requires improvement.

c/ Provincial justice committee be requested for providing SOPs .

d/ Legal empowerment committees may be made functional .

e/ ADR act may be made applicable to whole of Pakistan .

SESSION IV:

Wrap Up:

Justice Qalandar Ali Khan, one of the senior judges of the Peshawar High Court graced the occasion by his presence. He presented his views during the wrap up session by saying that “Journey of thousand miles begin with a single step”. He observed that the rules are sub-ordinate legislation and some of the proposed draft rules are in conflict with the Code of Criminal Procedure. He stated that the police cannot be assigned a role during the trial of the case. He opined that abrupt changes lead to destruction. He recommended that new rules be framed which must reconcile with the existing laws and then the new draft rules may be considered as pilot project in few districts.

Concluding Session:

Hon’ble the Chief Justice, Peshawar High Court, Peshawar, Justice Yahya Afridi, graced the occasion by his presence. In concluding remarks he expressed the views that the intention for arranging the seminar was to call experts from different criminal justice sector and to seek their opinion for improvement. The intention was not to get draft rules, the aim and intention was to sit together and to have better proposals for the improvement. Hon’ble the Chief Justice said that the Judiciary of the Khyber Pakhtunkhwa believe that some sustainable steps for improvement should be taken. He maintained that we honor suggestions for improvement and the deliberations shall be carried on for improvement. He thanked all the participants for their participation and recommendations. During the concluding session of the seminar the Director Generals of the Khyber Pakhtunkhwa Judicial Academy and Balochistan Judicial Academy signed _____ an _____ MOU.

Schedule of Activities

Inaugural Session

- 08:30-09:00 Arrival of Participants & Registration
09:00-09:10 Recitation from the Holy Quran
9:10- 09:20 Welcome Note
9:20 – 9:30 Introduction
9:30 – 10: 50 Draft Rules of Criminal Procedure (An overview)
Raja Masood Khan
DSJ/ JJSP Team Lead, Peshawar

Tea Break 10:50-11:30

Deliberative Session

- 11:30-11:40 Group Formation
11:40-01:00 Group Discussion
(Facilitated by moderators)
Structure and Theme of the Draft Rules
Grey Areas
Suggestions for improvement
The way forward

Lunch and Prayer Break 01:00-01:45

- 01:45-03:45 Group Discussions & Summing up of
Recommendations

Concluding Session

- 03:50-04:30 Recommendations by Groups
04:30- 5:00 Certificates
Remarks by hon'ble Chief Guest
Group Photograph
Tea

National Seminar

on

**Draft Rules of the Code
of Criminal Procedure,
1898**

March 27, 2018

By:

**Khyber Pakhtunkhwa
Judicial Academy,**

Peshawar

LIST OF PARTICIPANTS National Seminar on Draft Rules of the Code of Criminal Procedure, 1898 March 27, 2018	
1.	Mr. Justice Rooh-ul-Amin Khan, Hon'ble Judge, Peshawar High Court, Peshawar
2.	Mr. Justice Qalandar Ali Khan, Hon'ble Judge, Peshawar High Court, Peshawar
3.	The Registrar, Supreme court of Pakistan, Islamabad
4.	The Registrar, Lahore High Court, Lahore
5.	The Registrar, Sindh High Court, Karachi
6.	The Registrar, Baluchistan High Court, Quetta
7.	The Registrar, Peshawar High Court, Peshawar
8.	The Registrar, Islamabad High Court, Islamabad
9.	The Registrar, Azad Jammu & Kashmir High Court, Muzaffarabad
10.	The Registrar, Chief Court Gilgit- Baltistan, Gilgit
11.	The Director General, Federal Judicial Academy, Islamabad
12.	The Director General, Punjab Judicial Academy, Lahore
13.	The Director General, Sindh Judicial Academy, Karachi
14.	The Director General, Baluchistan Judicial Academy, Quetta
15.	The Secretary, Law & Justice Commission of Pakistan, Islamabad
16.	The Chairperson, Human Right Commission of Pakistan, Islamabad
17.	The Chairman, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
18.	The Secretary, Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar
19.	The Secretary, Law, Parliamentary Affairs and Human Rights Department, Government of Khyber Pakhtunkhwa, Peshawar
20.	The Director General Prosecution, Government of Khyber Pakhtunkhwa, Peshawar
21.	The Director General, Directorate of Probation & Reclamation, Government of Khyber Pakhtunkhwa, Peshawar
22.	The Inspector General of Police, Government of Khyber Pakhtunkhwa, Peshawar
23.	The Inspector General Prisons, Government of Khyber Pakhtunkhwa, Peshawar
24.	The Advocate General, Government of Khyber Pakhtunkhwa, Peshawar
25.	The Chairman, Pakistan Bar Council, the Attorney General for Pakistan, Islamabad
26.	The Chairman, Khyber Pakhtunkhwa Bar Council, the Advocate General Khyber Pakhtunkhwa, Peshawar
27.	The Principal, Law Collage, University of Peshawar
28.	The President, Peshawar High Court Bar Association, Peshawar
29.	Mr. Rustam Khundi Advocate, D I Khan.
30.	The Team Leader JSSP, Peshawar
31.	The Provincial Head UNDP
32.	The Provincial Head CJPP
33.	The Provincial Head UNODC
34.	The Provincial Head RSIL
35.	The Provincial Head SHARP

SEMINAR IN PICTURES















KHYBER PAKHTUNKHWA JUDICIAL ACADEMY *National Seminar on Draft Rules of the “Code of Criminal Procedure, 1898 (Case Management)” March 27, 2018*



Sitting L to R
 Dr. Khurshed Iqbal (Director General), Ms. Memoona Khan, Ms. Hamsheeda Begum, Ms. Farah Jamshed, Ms. Nusrat Yasmeen Intekhab, Mr. Harroon Latif, Mr. Justice Qalandar Ali Khan, Hon'ble The Chief Justice Mr. Justice Yahya Afridi(PhC), Mr. Justice Muhammad Nadir Khan, Sardar Liaqat Hussain, Mr. Ghulam Rasool Samoon, Mr. Rustam Khan Kundli, Mr. Shahid- Qayum Khattak, Mr. Tariq Yousaf Zai,

Standing L to R
 Mr. Muhammad Masood Khan, Ms. Samina Shah, Ms. Iram Noshreen(D.J), Mr. Muhammad Shoaib Khan(D.J), Syed Abdul Basit Gillani, Mr. Nasir Ahmad Khan, Mr. Junaid Hamid, Mr. - Muhammad Arif Khan, Mr. Kamran Ullah, Mr. Ijaz Ali, Dr. Qazi Attaullah(D.J), Mr. Anees Badshah Bukhari (Dean Faculty), Mr. Arif ur Rahman, Mr. Zia Ur Rahman (SDA),