

The Research Center High Court of Balochistan Quetta



The Impact of the Criminal Law Amendment Act 2022 on Section 188 of the Pakistan Penal Code:

This analysis, conducted by the *Research Center of the Balochistan High Court*, delves into the profound implications of the *Criminal Law Amendment Act 2022* (the Act) on *Section 188 of the Pakistan Penal Code* (PPC), which governs disobedience to a public servant's order. The Act has ushered in significant changes to the procedural and substantive aspects of this offense, marking a departure from historical legal practices. The Research Center, committed to providing in-depth legal research and analysis, aims to shed light on these changes and their broader implications for legal professionals and the judges of the District judiciary. By examining the relevant provisions of law, historical context, and the Act's impact, this analysis seeks to clarify ambiguities and provide a comprehensive understanding of the new legal landscape. This research is part of an ongoing effort by the Research Center to contribute to the development of the legal profession in Pakistan. The Center will continue to undertake such studies to assist legal practitioners in navigating the evolving legal framework and ensuring the effective administration of justice.

Historical Overview

Historically, section 188 PPC categorized the offense as non-cognizable, meaning police required a warrant to arrest and needed prior approval from a magistrate to initiate an investigation, and Section 195(1) (a) Cr.P.C, mandated that no court could take cognizance of an offense under Section 188 PPC without a written complaint from the public servant who issued the order or a superior officer. This implied that the police had no authority register first information report in in terms of section 154 of the Code Criminal Procedure 1898 (Cr.P.C) on receiving information concerning offense under section 188 PPC without the permission of

the Magistrate as required under section 155 (2) of Cr.P.C. In the same vein, section 195 (1) (a) Cr. P.C obligated that the Court shall only take cognizance of the offense on a complaint in writing filed by the concerned public servant or his superior officer.

Legislative Change in 1969 and its Legal and Procedural Implications

In the year 1969, the classification of the offense under section 188 PPC undergone a paradigm shift on the landscape of law, on the publication of *Notification No. Judl.-I-3 (I)/69 in the official Gazette of West Pakistan, Extraordinary, 14th March 1969*. This legislative Notification altered the nature of offense under section 188 PPC as “**Cognizable Offense**” with the aid of the powers exercised conferred by *subsection (1) of section 10 of the Criminal Law Amendment Act, 1932 (Act XXIII of 1932)*¹. The notification is reproduced below for convenience of the readers:

CRIMINAL LAW AMENDMENT ACT, 1932

(Notification under section 10 (1))

[Gazette of West Pakistan, Extraordinary, 14th March 1969]

No. Judl.-I-3 (1)/69—In exercise of the powers conferred by sub-section (1) of section 10 of the Criminal Law Amendment Act, 1932 (Act XXIII of 1932), The Governor of West Pakistan is pleased to declare that any offense punishable under section 186, 188, 189, 190, 228, 295-A, 298, 205, 506 or 507 of the Pakistan Penal Code committed in any place in West Pakistan, shall be cognizable.

Evidently, through such notification, the classification of the offense under section 188 Cr.P.C was transformed as “**Cognizable Offense**”, and the police was thus authorized to investigate the case and submit a challan in the Court of a Magistrate, yet the Magistrate was not empowered to take cognizance thereof in view of the bar placed upon the same by section 195(1)(a), Cr.P.C. It seemed that making offence under section 188, P.P.C. cognizable, was made in a hurry, overlooking the necessity for making a corresponding amendment in section 195(1)(a), Cr.P.C. the result was that a Magistrate could not take cognizance of a case under section 188, P.P.C. unless and until the concerned officer filed a complaint before the learned Magistrate. This question many time cropped up before the Courts for determination and the judicial interpretation of Section 188 PPC was heavily influenced by the procedural requirements of Section 195

Cr.P.C. The Courts consistently held that legal proceedings under Section 188 PPC could not be initiated by a police challan alone.

In the case of Ghulam Abbas Abbasi v. Senior Superintendent of Police, Islamabad and others (2004 YLR 380), the *Lahore High Court* dealt with the applicability of Section 195(1)(a) of the Criminal Procedure Code (Cr.P.C.) and the cognizability of a case under Section 188 of the Pakistan Penal Code (PPC). The petitioner, Ghulam Abbas Abbasi, was accused of firing in the air in violation of an order under Section 144 of the Cr.P.C., issued by the District Magistrate, Islamabad. The Assistant Sub-Inspector of Police lodged an FIR against him under Section 188 of the PPC. The primary question was whether the Assistant Sub-Inspector, a police official, had the authority to lodge a complaint under Section 188 PPC without a formal complaint from the concerned public servant, as required by Section 195(1)(a) Cr.P.C. The court held that, according to Section 195() (a) Cr.P.C., only the public servant who issued the order or their subordinate could lodge such a complaint. Since the Assistant Sub-Inspector was not authorized to register the case, the FIR was deemed invalid and illegal. The FIR lodged against the petitioner was canceled, as it was not compliant with the legal requirements of Section 195(1)(a) Cr.P.C.

In the case of Muhammad Inamul Haque v. The State (1998 P Cr. L J 93), the *Karachi High Court* addressed the applicability of Section 195(1)(a) of the Criminal Procedure Code (Cr.P.C.) concerning the cognizability of an offense under Section 188 of the Pakistan Penal Code (PPC). Muhammad Inamul Haque was implicated in a case under Section 188 PPC for violating an order under Section 144 Cr.P.C., which prohibited the assembly of more than four persons. An Assistant Sub-Inspector (A.S.I.) of Police lodged an FIR against the petitioner, stating that he and a group of 300-400 people had gathered to listen to a speech, thereby violating the order. The case was registered, and the petitioner was facing trial in the Court of the Sub-Divisional Magistrate. The central question was whether the police officer had the authority to lodge an FIR for an offense under Section 188 PPC without a complaint being filed by the District Magistrate, as required by Section 195(1)(a) Cr.P.C. The court noted that although Section 188 PPC had been made cognizable through an amendment, the corresponding amendment in Section 195 Cr.P.C. was still lacking. Therefore, the court could not take cognizance of the offense based solely on the FIR lodged by the police.

The law required that a complaint be filed by the public servant who issued the order under Section 144 Cr.P.C. The court held that taking cognizance of the offense by the Magistrate was illegal, as it was not in accordance with Section 195(1)(a) Cr.P.C. Consequently, the proceedings against the petitioner were deemed an abuse of the court's process and were quashed. This case emphasizes the necessity of following proper legal procedures under Section 195 Cr.P.C. for initiating prosecution under Section 188 PPC, reinforcing that only a complaint from the concerned public servant can lawfully set the process in motion.

Thusly, the transformation of Section 188 PPC into a cognizable offense was a significant legal development, but its effectiveness stood compromised by the failure to amend Section 195(1)(a) Cr.P.C.

The Criminal Law Amendment Act 2022

Eventually, the legislature took note of such anomaly in the law and hardship faced by all the stakeholder to initiate proceedings against any delinquent for breach of any lawful order of public authorities. Consequently, Criminal Law Amendment Act 2022 was introduced which removed such procedural barriers. The Criminal Law Amendment Act 2022 has brought a significant change by excluding Section 188 PPC from the ambit of Section 195 Cr.P.C. This legislative alterations have made the offense cognizable, thereby allowing police to register cases and initiate investigations without the prior requirement of a written complaint from a public servant. This shift empowers courts to take cognizance of the offense on police report, bypassing the procedural barriers that previously existed.

Conclusion

In conclusion, the Criminal Law Amendment Act 2022 has revolutionized the approach to Section 188 of the Pakistan Penal Code, which deals with the disobedience to orders duly promulgated by a public servant. The Act has removed the procedural requirement of a written complaint from a public servant for the court to take cognizance of offenses under Section 188 PPC, thereby making it a cognizable offense. This significant legislative change simplifies the prosecution process and the law enforcement agencies, already empowered through Notification *ibid*, to act more decisively against violations of lawful orders of public servants.