

## Chapter 4 Part VIII

### Sections of the Penal Code of 1960 Omitted in the CILS Harmonised Sharia Penal Code

1. Summary. The Penal Code of 1960 (PC) is divided into 409 sections. Of these, 19 are omitted from the CILS Harmonised Sharia Penal Code (HSPC) outright (i.e. they do not seem to be covered, even impliedly, by other HSPC sections), and 23 more are left out by virtue of the collapsing of distinctions made in PC but not in HSPC. By this calculation 367 out of 409, or 90 % of PC sections are included in the HSPC.

2. PC sections omitted outright from HSPC.

A. Definitions.

7. The word “Magistrate” denotes a Magistrate under the Criminal Procedure Code.
38. Such grave and sudden provocation as under any section of this Penal Code modifies the nature of an offence or mitigates the penalty which may be inflicted shall not be deemed to include:
- (i) provocation sought or voluntarily provoked by the offender as an excuse for committing an offence;
  - (ii) provocation given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant;
  - (iii) provocation given by anything done in the lawful exercise of the right of private defence.<sup>725</sup>

B. Fractions of term of punishment

70. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

C. Fine not discharged by death or service of sentence in default of payment

75. Where a fine or any part thereof remains unpaid the offender or his estate, if he is dead, is not discharged from liability to pay the fine or the unpaid part thereof notwithstanding that he has served a term of imprisonment in default of payment of the fine.<sup>726</sup>

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<sup>725</sup> Three illustrations follow this section in PC. Related to the omission of the PC definition of ‘provocation’ from the HSPC, are (1) omission of the definition of “culpable homicide not punishable with death” (PC §222, see ¶3A below), which among other things remits death “if the offender whilst deprived of the power of self control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident”; (2) omission of variations on the punishments for causing hurt with or without provocation (PC §§244-247, see ¶3C below), (3) omission of PC §266, quoted in its place in this ¶2 below, on “punishment for assault or criminal force with provocation”, and (4) omission of PC §399, also quoted in its place in this ¶2 below, on “intentional insult with intent to provoke breach of the peace”, which uses the notion of provocation.

<sup>726</sup> This provision is contained in the SPCs of Gombe, Jigawa, Kebbi, Sokoto, Yobe, and Zamfara states. Bauchi has the same provision but changes “not discharged” to “discharged”. Kaduna, Kano and Katsina omit the provision entirely.

D. Contempts of the lawful authority of public servants: preventing service or publication of summons, etc.; refusing oath or affirmation when duly required by public servant to make it.

135. Whoever in any manner:
- (a) intentionally prevents the serving on himself or on any other person of any summons, notice or order proceeding from any public servant legally competent as such public servant to issue such summons, notice or order; or
  - (b) intentionally prevents the lawful affixing to any place of any such summons, notice or order; or
  - (c) intentionally removes any such summons, notice or order from any place to which it is lawfully affixed; or
  - (d) intentionally prevents the lawful making of any proclamation under the authority of any public servant legally competent as such public servant to direct such proclamation to be made,
- shall be punished:
- (i) with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both; or
  - (ii) if the summons, notice, order or proclamation is to attend in person or by agent or to produce a document in a court of justice with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.
141. (1) Whoever refuses to bind himself by an oath or affirmation to state the truth when required to so bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.
- (2) The provisions of this section shall not apply to a witness in a judicial proceeding who, having been called upon to take an oath or make a solemn affirmation that he will speak the truth under subsection (1) of section 229 of the Schedule to the Criminal Procedure Code Law, refuses to take such oath or make such affirmation under the provisions of section 230 of the Schedule to the Criminal Procedure Code Law.

E. Abetment of suicide; attempt to commit suicide.

228. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.
231. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

F. Punishment for assault or criminal force with provocation

266. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to twenty

pounds or with both.<sup>727</sup>

G. Buying or disposing of slave.

279. Whoever imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

H. Offences Relating to Marriage: deceitfully inducing belief of lawful marriage; marrying again during life-time of husband or wife; re-marriage with concealment of former marriage; marriage ceremony fraudulently gone through without lawful marriage; enticing or taking away or detaining with criminal intent a married woman.

383. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

384. (1) Whoever having a husband or wife living marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) This section shall not extend:

(a) to any person whose marriage with such husband or wife has been legally dissolved; nor

(b) to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage take place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

385. Whoever commits the offence defined in section 384 having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

386. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married knowing that he is not thereby lawfully married, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

389. Whoever takes or entices away any woman, who is and whom he knows or has

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<sup>727</sup> In PC this section is preceded with a section, which HSPC also has, on “Punishment for assault or criminal force without provocation.” Here is HSPC’s version of this section = HSPC §224: “Whoever assaults or uses criminal force to any person or criminal force otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to one month or with fine or with both.” One wonders whether HSPC intends not to punish at all assault or criminal force with provocation. Is it perhaps to be excused under HSPC §80 (non-voluntary act) or §81 (act of necessity)?

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reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

I. Injurious falsehood; printing or engraving matter known to be defamatory; sale of printed or engraved substance containing defamatory matter.

393. (1) Whoever, save as hereinafter excepted, by words either spoken or reproduced by mechanical means or intended to be read or by signs or by visible representations makes or publishes any false statement of fact, intending to harm or knowing or having reason to believe that such false statement of fact will harm the reputation of any person or class of persons or of the Government or of any Native Authority in Northern Nigeria or of any Local Government Authority in Northern Nigeria shall be punished with imprisonment for a term which may extend to two years or with fine or with both.
- (2) It is not an offence under this section to make or publish in good faith a false statement of fact which the accused had reasonable grounds for believing to be substantially true and proof that he had such reasonable grounds shall lie on the accused.
394. Whoever prints or engraves any matter or prepares or causes to be prepared any record for the purpose of mechanical reproduction of any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.
395. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter or any record prepared for the purpose of the mechanical reproduction of defamatory matter, knowing that such substance or record contains such matter, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

J. Intentional insult with intent to provoke breach of the peace.

399. Whoever intentionally insults and thereby gives provocation to any person intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

3. PC sections omitted from HSPC by virtue of collapsing of distinctions made in PC but not HSPC. In sum: same ground covered, but in fewer sections.

A. Homicide. PC has 7 sections, the ground of which is covered by 5 in HSPC:

PC:

- 220 Culpable homicide defined  
221 Culpable homicide punishable with death  
222 When culpable homicide is not punishable with death  
223 Culpable homicide causing death of person other than person whose death was intended

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- 224 Culpable homicide not punishable with death
- 225 Death caused when intention is to cause hurt only
- 226 Death caused in act of committing offence

HSPC:

- 198 Intentional homicide defined
- 199 Punishment for intentional homicide
- 200 Unintentional homicide defined
- 201 Punishment for unintentional homicide
- 203 Remittance of *qisas*

B. Attempts to commit homicide. PC has 2 sections, the ground of which is covered by 1 in HSPC:

PC:

- 229 Attempts to commit culpable homicide
- 230 Attempt to commit culpable homicide not punishable with death

HSPC:

- 204 Attempts to commit intentional homicide

C. Punishment for causing hurt. PC has 10 sections, the ground of which is covered by 3 in HSPC:

PC:

- 244 Voluntarily causing hurt on provocation
- 245 Voluntarily causing grievous hurt on provocation
- 246 Voluntarily causing hurt without provocation
- 247 Voluntarily causing grievous hurt without provocation
- 248 Voluntarily causing hurt or grievous hurt by dangerous means
- 249 Causing hurt by means of poison with intent to commit an offence
- 250 Voluntarily causing hurt to extort property or to constrain to an illegal act
- 251 Voluntarily causing hurt to extort confession or to compel restoration of property
- 252 Voluntarily causing hurt or grievous hurt to deter public servant from his duty
- 253 Causing hurt by endangering life or personal safety of others

HSPC:

- 218 Punishment for causing hurt
- 219 Punishment for causing grievous hurt
- 220 Punishment for unintentionally causing grievous hurt

D. Punishment for theft. PC has 4 sections, the ground of which is covered by 2 in HSPC:

PC:

- 287 Punishment for theft
- 288 Theft in dwelling house etc.
- 289 Theft by clerk or servant of property in possession of master

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290 Theft after preparing to cause death, hurt or restraint in order to commit theft

HSPC:

144 Punishment for theft punishable with *badd*  
147 Punishment for theft not punishable with *badd*

E. Robbery and brigandage (*hirabah*). PC has 12 sections, the ground of which is covered in 4 in HSPC:

PC:

296 Robbery defined  
297 Brigandage defined  
298 Punishment for robbery  
299 Punishment for attempted robbery  
300 Voluntarily causing hurt in committing robbery  
301 Brigandage  
302 Brigandage with culpable homicide punishable with death  
303 Robbery or brigandage with attempt to cause death or grievous hurt  
304 Making preparation to commit brigandage  
305 Belonging to a gang of brigands  
306 Belonging to a gang of thieves  
307 Assembling for the purpose of committing brigandage

HSPC:

151 *Hirabah* defined  
152 Punishment for *hirabah*  
153 Making preparation to commit *hirabah*  
154 Belonging to a gang of persons associated for the purpose of committing *hirabah*

F. Receiving stolen property. PC has 5 sections, the ground of which is covered in 4 in HSPC:

PC:

316 Stolen property defined  
317 Dishonestly receiving stolen property  
318 Dishonestly receiving property stolen in the commission of brigandage  
319 Assisting in concealment of stolen property  
319A Possessing thing reasonably suspected of having been stolen

HSPC:

168 Stolen property defined  
169 Dishonestly receiving stolen property  
170 Assisting in concealment of stolen property  
171 Possessing thing reasonably suspected of having been stolen

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It will be observed that in this case the omission involves no reorganisation of the underlying ideas; HSPC simply does not single out “dishonestly receiving property stolen in the commission of brigandage” for special punishment.

G. Drunkenness. PC has 3 sections, the ground of which is covered in 1 in HSPC:

PC:

- 401 Drunkenness in a public place
- 402 Drunkenness in private place
- 404 Effects of previous convictions under section 401, 402 or 403

HSPC:

- 150 Punishment for drunkenness in a public or private place