

**THE KHYBER PAKHTUNKHWA CODE OF CIVIL
PROCEDURE (AMENDMENT) ACT, 2020
(ACT NO. XLIX OF 2020)**

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(Extraordinary), dated the 28th December, 2020)*

**AN
ACT**

further to amend the Code of Civil Procedure, 1908

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908 (Act No. V of 1908) for bringing procedural reforms, in order to provide inexpensive and expeditious justice, deal with the cases justly and fairly, encourage parties to alternate dispute resolution procedure if considered appropriate to save expense and time both of courts and litigants and to enforce compliance with the provisions of the aforesaid Code;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Code of Civil Procedure (Amendment) Act, 2020.

(2) It shall extend to the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Substitution of section 3 of the Act No. V of 1908.---In the Code of Civil Procedure, 1908 (Act No. V of 1908) hereinafter referred to as the said Act, for section 3, the following shall be substituted, namely:

“3. Hierarchy of courts.---For the purpose of this Code, the hierarchy of Civil Courts shall be the same as provided in the West Pakistan Civil Courts Ordinance, 1962 (W.P. Ordinance No. II of 1962).”.

3. Substitution of section 6 of the Act No. V of 1908.---In the said Act, for section 6, the following shall be substituted, namely:

“6. Pecuniary jurisdiction.---Save in so far as is otherwise expressly provided, all civil suits shall be filed in the following manner, namely:

(a) where the amount or value of the subject matter of the suit is below rupees fifty million, the suit shall be filed in the Court of Civil Judge, as may be prescribed by the High Court; and

(b) where the amount or value of the subject matter of the suit is rupees fifty million or above, the suit shall be filed in the Court of District Judge, as may be prescribed by the High Court.”.

4. Deletion of section 7 of the Act No. V of 1908.--- In the said Act, section 7 shall be deleted.

5. Substitution of section 26 of the Act No. V of 1908.--- In the said Act, for section 26, the following shall be substituted, namely:

“26. Institution of suits through plaint.---(1) Every suit shall be instituted by the presentation of a plaint in such manner as may be prescribed.

(2) On presentation of the plaint, it shall be the duty of the Court to prima facie, satisfy itself of jurisdiction, cause of action and question of limitation:

Provided that if the Court does not satisfy itself, it shall be bound to record reasons for doing so.

(3) The plaintiff shall, at the time of institution of suit, file two sets of the plaint and other accompanying documents. He may further be required to file as many additional sets of the plaint, as may be determined by the Court.

(4) It shall be duty of the Court to maintain electronic record of proceedings in suits in the manner, as may be prescribed.

Explanation: For the purpose of this sub-section, suits include any proceedings in applications, appeals, review or anything incidental thereto.”.

6. Insertion of new sections 26A, 26B and 26C in the Act No. V of 1908.--- In the said Act, after section 26, as so amended, the following new sections shall be inserted, namely:

“26A. Written statement.---(1) The defendant shall file written statement not later than thirty days from the date of his first appearance in the Court:

Provided that if the defendant fails to file written statement on the date fixed, the Court may grant an opportunity to file the same not later than fifteen days, subject to payment of reasonable adjournment costs:

Provided further that if the defendant fails to file written statement after the opportunity given under the first proviso, a final opportunity may be given by the Court to file written statement not later than fifteen days, subject to payment of reasonable adjournment costs, after which the defendant shall lose the right to file written statement:

Provided also that the written statement may be allowed to be filed by the Court upon payment of costs to be determined by it, if the defendant through an application supported by an affidavit within thirty days satisfies the Court that he had just and sufficient cause and the Court record reasons for it.

(2) The defendant shall, at the time of filing of written statement, submit two sets of written statements and other accompanying documents. He may further be required to submit as many additional sets of written statement, as may be determined by the Court.

26B. Framing of issues, filing of list of witnesses and recording of evidence.-

--(1) The Court shall, within seven days of filing of the written statement, frame issues.

(2) The parties may, within seven days of framing of issues, raise objections on such issues.

(3) After finalizing the issues, the Court shall order the parties to file list of witnesses not later than fifteen days.

(4) If any party fails to comply with the orders of the Court in sub-section (3), a final opportunity may be given by the Court to file list of witnesses not later than fifteen days, subject to payment of adjournment costs.

(5) Upon framing of issues and filing of the list of witnesses, the Court shall proceed to record evidence itself or may order the recording of evidence through Commission in the prescribed manner.

(6) For the purpose of sub-section (5) of this section, the Court shall appoint a Commission from a list of approved panel, comprising advocates and retired judges, maintained by the District Judge concerned in the prescribed manner, on such fee and terms and conditions as may be determined by the Court.

(7) The Court may, in appropriate cases, require the parties to file affidavits of their respective oral witnesses before the Court or the Commission, as the case may be, which shall be construed to be examination-in-chief.

(8) On the affidavits so filed in evidence, the witnesses shall be subjected to cross examination and if necessary, just and expedient, shall be subjected to re-examination followed by cross-examination.

(9) The Court or the Commission, as the case may be, shall record the evidence and proceedings thereof in written and audio and video recording.

(10) The Court or the Commission, as the case may be, may ordinarily finalize the recording of evidence, within six months of the order, under sub-section (5), and, in case of Commission, it shall submit a report in this regard to the Court alongwith the complete written, audio and video record of the proceedings conducted under sub-section (9).

(11) The High Court may frame rules for the purposes of recording of evidence through Commission, inter alia, empowering the Commission to regulate the Commission's proceedings including but not limited to allowing or disallowing questions, documents, choosing sides, extension of Commission and passing such ancillary or other orders which are necessary to carry out the functions of the Commission.

26C. Hearing of final arguments.---(1) The Court shall, after submission or closing of evidence, as the case may be, fix a date not later than thirty days, for hearing of final arguments by the parties.

(2) The Court may require the parties to file their written arguments in addition to oral arguments and the written arguments so filed shall be made part of the record.”.

7. Amendment of section 27 of the Act No. V of 1908.--- In the said Act, in section 27, after the word “claim”, the words “not later than fifteen days” shall be inserted.

8. Insertion of new section 27A to the Act No. V of 1908.--- In the said Act, after section 27, as so amended, the following new section shall be inserted, namely:

“27A. Process of summons.---(1) Summons shall be sent simultaneously, unless otherwise ordered by the Court, to the defendant, through its process serving agency and by registered post acknowledgment due, and if so desired by the Court, another copy of the summons may be sent by courier service signed and sealed in the prescribed manner, or as the Court may determine, by urgent mail service of Pakistan Post or any other courier service, at the cost of plaintiff.

(2) The acknowledgement, purported to be signed by the defendant, of the receipt of the registered communication or an endorsement by a courier messenger or postal employee that the defendant refused to take delivery of the summons shall be deemed by the Court issuing the summons to be prima facie proof of the service of summons.

(3) Alternatively, the Court shall order service by-

- (a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain;
- (b) any modern device including electronic device of communication which may include mobile, telephone, telegram, phonogram, telex, fax, radio, television etc., in a prescribed manner;
- (c) urgent mail service or public courier services;
- (d) beat of drum in the locality where the defendant resides;
- (e) announcement through mosque, temple, community center etc;
- (f) publication in the press in the prescribed manner; or
- (g) any other manner or mode as it may think fit:

Provided that the Court may order the use of all or any of the aforesaid manners and modes of service simultaneously.

(4) If the defendant fails to appear, the Court may direct service again by any of the modes, mentioned in sub-section (3), to appear on a date not later than seven days.

(5) Location of bailiff or process server serving the summons shall be monitored by modern devices, in a prescribed manner, and a photograph shall be taken of the defendant or the premises or the person accepting summons on behalf of the defendant and be made part of the record as a proof of delivery.”.

9. Amendment of section 33 of the Act No. V of 1908.---In the said Act, in section 33, after the word “judgment”, the words “within thirty days of the final hearing” shall be inserted.

10. Insertion of new section 75A to the Act No. V of 1908.---In the said Act, after section 75, the following new section shall be inserted, namely:

“75A. Spot Checks.---(1) The Court may, in its discretion or on the application of any of the parties, at any stage carry out spot checks including inspection of documents and premises in order to ascertain issues of partition, demarcation, possession, state of construction and anything incidental or ancillary thereto.

Explanation: For the purposes of this sub-section, spot checks conducted by the Presiding Officer of a Court shall not be construed to be an inspection through the appointment of Commission under section 75 of this Code.

(2) The Court may call for the evidence or record statement of any person or documents at the spot.

Explanation: For the purposes of this sub-section, person includes parties to the suit, individuals present at the spot or any other individual, the Court may deem appropriate to give evidence in the matter.

(3) Any evidence or statement recorded during a spot check shall be subject to the right of objection and cross-examination.”.

11. Substitution of section 96 of the Act No. V of 1908.---In the said Act, for section 96, the following shall be substituted, namely:

“96. Appeal from final judgment or decree.---Save where otherwise expressly provided in the body of this Code and notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the District Court from the final judgment and decree passed by the Civil Court, while an appeal shall lie to the High Court from the final judgment and decree of the District Court while exercising original jurisdiction on any question of law or fact erroneously determined by the original court and the Appellate Court shall decide the appeal within six months, after completion of service of summons.”.

12. Deletion of sections 100, 101, 102 and 103 of the Act No. V of 1908.---In the said Act, sections 100, 101, 102 and 103 shall be deleted.

13. Amendment of section 106 of the Act No. V of 1908.--- In the said Act, for section 106, the following shall be substituted, namely:

“106. What Courts to hear appeals.---Appeals against order, passed under this Code, shall lie to the Court, directly from its subordinate court exercising original jurisdiction adjudicating the suit, in the prescribed manner.”.

14. Amendment of section 111 of the Act No. V of 1908.---In the said Act, in section 111, clause (b) shall be deleted.

15. Amendment of section 114 of the Act No. V of 1908.---In the said Act, in section 114,

(a) in clause (b), the word “or”, occurring at the end, shall be deleted; and

(b) for clause (c), the following shall be substituted, namely:

“(c) may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon, as it thinks fit.”.

16. Amendment of section 128 of the Act No. V of 1908.---In the said Act, in section 128, after sub-section (2) the following new sub-section (3) shall be added, namely:

“(3) The High Court may make rules, not inconsistent with the provisions of this Code, for case management and scheduling conferences, binding the parties to follow the schedules and timelines prescribed therein.”.

17. Substitution of section 141 of the Act No. V of 1908.---In the said Act, for section 141, the following shall be substituted, namely:

“141. Proceedings regarding application for injunctions and other miscellaneous application and issues.---(1) The procedure provided in this Code with regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

(2) The Court in which the main case is pending shall maintain separate files each for the main case as well as for interlocutory applications respectively and shall proceed with both of them separately.

(3) At all material times, the Court shall keep both the files, updated and tallied with each other in duplicate and identically including the respective orders and diary sheets.

(4) The Court shall proceed collaterally with the main suit and interlocutory applications respectively according to the timelines prescribed in this Code and the rules or by any order of the Court.

Explanation: It is clarified that the pendency of any interlocutory application shall be no ground to stay or delay the proceedings before the Court hearing the main case.

(5) All applications in the main case for addition, deletion and substitution of parties, amendments to pleadings, modification or alteration of issues, rejection of plaint and stay of suits including miscellaneous or

interlocutory applications, shall be heard and adjudicated by the Court hearing the main case.

(6) The filing of any application, including an application for the rejection of the plaint or a dismissal of suit, shall be no ground to dispense with or waive the requirement of filing a written statement within the timelines prescribed in this Code.

(7) This section shall have effect notwithstanding any other provision in this Code or any other law for the time being in force.”.

18. Amendment of section 151 of the Act No. V of 1908.---In the said Act, in section 151, after word “Court” occurring for the first time, the words “to be exercised after recording reasons” shall be inserted.

19. Repeal and savings.---(1) The Khyber Pakhtunkhwa Code of Civil Procedure (Amendment) Act, 2019 (Khyber Pakhtunkhwa Act No. XL of 2019) is hereby repealed and shall be deemed to have never existed on the statute book.

(2) Notwithstanding the repeal of the above said Act, all suits, applications or appeals instituted and any other proceedings commenced, initiated or continued under the repealed Act, till the commencement of the Khyber Pakhtunkhwa Code of Civil Procedure (Amendment) Act, 2020, shall be deemed to have been validly instituted, commenced, initiated or continued under the Khyber Pakhtunkhwa Code of Civil Procedure (Amendment) Act, 2020.

20. Repeal.---(1) The Khyber Pakhtunkhwa Code of Civil Procedure (Amendment) Ordinance, 2020 (KHYBER PAKHTUNKHWA ORDINANCE NO. XVI of 2020) is hereby repealed.