CRIMINAL PROCEDURE LAW

5 Jawza 1344

(Articles 1 to 144 amended 15 Hamal 1353)

PART ONE

CRIMINAL ACTION

CHAPTER ONE: PERSONS EMPOWERED TO PROSECUTE CRIMINAL CASES

ARTICLE 1: In Afghanistan, the Saranwali (i.e. the Attorney General's Office), exclusive of other bodies, has been empowered to file and prosecute a criminal action unless as otherwise expressly provided for by the law.

Waiving and staying a criminal action is not permissible except as otherwise provided by the law.

ARTICLE 2: Loai-Saranwal (i.e. Attorney-General of the Republic of Afghanistan) conducts the prosecution of criminal cases in person or by a member of Saranwali in accordance with the provisions of the law.

ARTICLE 3: When a criminal action is initiated by an offense perpetrated against the heads of foreign states or their political representatives to the Republic of Afghanistan, no prosecution shall be conducted except on a written demand made by the Loai-Saranwal (i.e. the Attorney-General).

ARTICLE 4: Investigation and filing a criminal suit as well as making any decision with respect to a criminal contempt committed against the Parliament, the courts, the military and other State institutions, shall not be permissible except on a written request of the authorized organs of the said institutions.

ARTICLE 5: The requesting bodies provided in the foregoing article shall be entitled to waive their claims in every stage, at their will, provided that the court has not issued a sentence on the case.

A criminal case shall be dropped as a result of its waiver. In this event, waiver of a criminal action for one accused shall be recognized as the waiver for the rest of the accused persons.

CHAPTER TWO: PROSECUTION OF A CRIMINAL ACTION AND COMPLETION OF ITS DEFECTS UNDER COURT ORDER

ARTICLE 6: When the court during consideration of a case brought before it finds that the bill of indictment does not include certain accused persons, or that some facts present in the case have not been attributed to the accused (or defendants), or that a felony or a misdemeanor related to the charge against the accused has been ignored, it can order the prosecution and investigation of such crimes and incidents. The court shall be duty-bound to state in the judicial ruling its finding as well as the reasons substantiating the necessity for prosecution or investigation. The Saranwal (i.e. Public Prosecutor or the member of the Attorney-General's Office) can appeal against the judicial ruling.

ARTICLE 7: When during the consideration of a case a crime is committed which disrupts the proceedings or is detrimental to the court's prestige and respect, or affects the court's judgment or the witness' testimony, the court can order the prosecution thereof through the Saranwal subject to the provision of Article 6 of this law. The Saranwal, however, cannot appeal against such a judicial ruling.

CHAPTER THREE: FILING AND PROSECUTION OF A CASE BY THE PLAINTIFF IN A CIVIL ACTION

ARTICLE 8: The Plaintiff in a civil action can directly initiate a criminal suit against the accused in instances of petty-offenses and misdemeanors according to the provisions of this law, unless:

a. The court has already dismissed the case by a conclusive order.

b. The case originates out of a crime committed by an official or employee of the State or a judicial officer in the discharge of his duties or as the result thereof.

If the Complainant in his petition does not include his civil action, the petition shall be regarded as a criminal suit.

The Plaintiff shall not be recognized as the civil action party unless he expressly presents his civil action in a petition or by a separate or written demand afterwards, or he claims indemnity (i.e. compensation for damage) by other means.

CHAPTER FOUR: DISMISSAL OF A CRIMINAL CASE

ARTICLE 9: The death of the accused shall cause the dismissal of a criminal case. However, if the accused's death occurs in the course of a trial, it shall not prevent the issuance of a judgment in the confiscation of goods and articles whose manufacture, utilization, maintenance, sale and supply have been recognized as crime per se.

ARTICLE 10: Except as otherwise provided by the law, a criminal case may not be initiated and if initiated shall be dismissed after the expiration of the following time-limits:

— ten years in a felony case;
— three years in a misdemeanor case;
—one year in petty-offenses;
from the date of their commission.

ARTICLE 11: No reasons can interrupt the expiration of the time-limit set for the dismissal of a criminal case except as otherwise expressly provided in the law.

ARTICLE 12: The time-limit set for terminating a criminal action shall be interrupted by the conduct of investigation, interrogation, trial, and the collection of evidence provided that such measures be taken in the presence of the accused or he be officially notified thereof. Expiration of the time-limit shall be reckoned from the day it was interrupted.

Should the time-limit for dismissing a criminal case be interrupted on several occasions, it shall be computed again from the last day of its termination.

ARTICLE 13: With regard to co-defendants, interruption of the time-limit pertaining to one accused shall be considered as interruption against other accused persons in to to.

PART TWO

EVIDENCE GATHERING AND PROSECUTION

CHAPTER ONE: JUDICIAL OFFICERS AND THEIR OBLIGATIONS

ARTICLE 14: Within the limits of their jurisdiction, and in the order provided by this law, Momoorin-e-Zabt-e-Qazayee (i. e. judicial officers) consist of the following:

a. Police

b. Sarawal

c. Officials who with the consent of their respective superiors have been commissioned by the Loai-Sarawal as judicial officers, with respect to crimes perpetrated in their jurisdiction and relating to their duties.

The term "judicial officers," in crimes-detection generally, and in the instances of the investigation of crimes by the police without the cooperation of Sarawal, shall signify the policy only.

ARTICLE 15: Judicial officers in the performance of their duties shall be subject to the orders given by the Attorney-General.

The Attorney-General may assign an authoritative organ to examine and consider the negligence and violations committed by judicial officers in the discharge of their duties, and he, likewise, can demand the initiation of a disciplinary action against them. Taking of these measures shall not preclude the initiation of a criminal prosecution against the offender.

Negligence and violations perpetrated by the police shall be considered in accordance with the special provisions relating to the police.

ARTICLE 16: Judicial officers are charged with the detection of crimes, apprehension of the perpetrators as well as gathering evidence for investigation and prosecution purposes.

ARTICLE 17: Judicial officers are duty-bound to receive reports on the commission of crimes and immediately send such reports to the respective police. The police are obligated to officially send this information, within twenty-four hours, to the Sarranwali (i.e. office of the public prosecutor).

The police shall be duty-bound to obtain the necessary explanations and conduct the examinations which facilitate investigation of the reported incidents or the incidents which he has been informed thereof.

Accordingly, he is duty-bound to take proper measures to protect the evidence of the crime.

ARTICLE 18: Subject to provisions made by Article 14 of this law, the judicial officers have been empowered to hear the statements made by persons who are informed of the commission of the crime and its perpetrators, and to inquire the accused therefor. Likewise, the judicial officers may receive assistance from physicians and other experts thereby obtaining their opinions orally or in writing.

ARTICLE 19: The judicial officers have been duty-bound to prepare records of their activities with the specification of time and place; and the records after being signed shall be entered in the Investigation Registry (i.e. Mahzar-e-Tahqiq).* It is likewise necessary that the investigation registry shall be signed by the experts and the witnesses who have testified thereon. The investigation registry along with other papers and confiscated items shall be dispatched to the public prosecutor's office.

ARTICLE 20: Anyone having information of the commission of a crime can notify the nearest police office. Accordingly, every one of the public officials charged with general supervision as well as the watchmen who, in the performance of their functions or the results thereof, become aware of the commission of a crime, shall be bound to inform the nearest police station.

ARTICLE 21: Anyone having a claim for indemnity as a result of crime can introduce himself in the petition submitted to one of the judicial officers as the plaintiff of the civil action.

CHAPTER TWO: WITNESSED CRIME

ARTICLE 22: An offense in the following instances shall be considered a witnessed crime:

a. If the offender has been apprehended during its commission.

b. When the perpetrator has been pursued by the victim or the public immediately after the commission of the crime.

ARTICLE 23: Should the witnessed crime be a felony or misdemeanor, the judicial officer shall attend the scene of the crime in person and examine and protect the evidence of the crime. He shall as well dispose and establish the status of the circumstances involved and the persons concerned and other

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* Mahzar-e-Tahqiq: or "Investigation-Registry" designates the book or records maintained by judicial officers for recording all matters related to investigation.

measures helpful in the discovery of the truth; and hear the statements of persons present at the time the incident took place and of persons who presumably have knowledge of the incident or the perpetrator thereof.

On occasions when these measures are taken without the cooperation of the Saranwal, the police shall be duty-bound to inform the respective Saranwal at his earliest convenience.

ARTICLE 24: As soon as the judicial officer arrives at the scene of the crime, he can order the persons present not to leave the scene until the completion of his report. Likewise, he may issue urgent summons to be served upon persons whose information about the incident seem material to proper investigation.

ARTICLE 25: To exercise his legal power specified for the conduct of investigation in witnessed crime, it is necessary that the judicial officer observes in person the perpetration of the crime in either instances provided by the above-stated article 22 of this law

CHAPTER THREE: APPREHENSION OF THE ACCUSED

ARTICLE 26: If there are sufficient grounds to believe that the suspect present has committed the crime, the judicial officer can issue a warrant for his arrest in the ensuing instances:

a. in felonies

b. in misdemeanors

ARTICLE 27: In the absence of the suspect in the instances mentioned in the foregoing article, the judicial officer shall issue a summons for his appearance and make entry of the subject in the registry.

The order so issued shall not be executed after the lapse of six months unless the judicial officer renews its enforceability for another term.

ARTICLE 28: The judicial officer is duty-bound to hear the statements of the present suspect as soon as possible. When the judicial officer finds the evidences adduced by the suspect for his acquittal (or innocence) insufficient, he shall be obligated to interrogate the suspect within 24 hours and in accordance with the realities of the situation, either release him or keep him in custody within his own limits of authority.

If circumstances require the detention of the suspect, the police shall make such a proposal by the presentation of inculpatory evidence to the Saranwal for obtaining a detention order from the court of competent jurisdiction.

ARTICLE 29: When the police finds lawful and well grounded evidence for the inculpation of the suspect, he shall propose the matter to the Saranwal within 72 hours. The Saranwal shall be duty-bound to make a decision, with proper consideration of the gathered evidences, whether to release, put into custody, or to detain the accused, and shall inform the police in writing thereof.

The Saranwal's power to keep in custody shall not exceed one week.

ARTICLE 30: When the Saranwal finds that the evidence collected is not legally sufficient for the prosecution of the case, he can demand all the related papers from the police. The Saranwal shall notify the police of his decision in writing within 48 hours.

ARTICLE 31: No one may be apprehended or detained except on the order of a lawfully authorized organ. The accused's detention shall be enforced on order of the judge of a competent court.

CHAPTER FOUR: SEARCH OF PERSONS, ENTRY AND INSPECTION OF RESIDENCE, AND THE SEIZURE OF "THINGS"

ARTICLE 32: The judicial officer can search and inspect a suspect on those occasions when arrest is permitted by law.

ARTICLE 33: Should the suspect be a woman, her inspection shall be performed by a woman assigned by the judicial officer.

ARTICLE 34: The judicial officers shall not enter a residence except on permission of the resident or the writ of a competent court.

In cases of witnessed crimes, whether felony or misdemeanor, the judicial officer can enter the resident of the accused and search it as well as make seizure of the articles and papers bearing evidence of the crime thought material from the viewpoint of the judicial officers conceived material for the detection of the truth.

In the event of witnessed crimes, the judicial officer shall, within one month after entering and searching a residence, procure through the Saranwali an order from the court on the verification of his actions.

ARTICLE 35: In the course of searching the suspect, if on the strength of available evidence it appears that the resident might have concealed something useful for the discovery of the crime, the judicial officer can inspect him therefor.

ARTICLE 36: Search of a residence is permitted only for the inspection and examination of things related to the commission of a crime under investigation or in the course of gathering traces and evidence thereof.

If, however, during the performance of search the inspecting officer comes across materials, the possession of which constitutes a crime, or are useful in the disclosure of another crime, the judicial officer can make seizure thereof.

ARTICLE 37: Search of a residence, to the extent possible, shall be performed in the presence of the accused or his legal successors. In the event of impossibility of the presence of the accused or his successor, the search shall be made when two witnesses are present. Insofar as it is possible, the said witnesses shall be from his relatives, or roommates, or from his neighbors. The process shall be entered in the report.

ARTICLE 38: The judicial officer shall have no rights to search papers which are found sealed or otherwise packed in the residence of the suspect.

ARTICLE 39: The judicial officer can seal, look and assign guards to places wherein traces and materials useful for the disclosure of the crime have been found. The judicial officer shall immediately notify the Saranwal of the incident. Should the Saranwal deem feasible this measure, he shall propose the subject to the judge of a competent court and request his permission.

ARTICLE 40: The possessor of the property can make complaint against the order issued by the judge. His complaint shall be submitted to the Saranwali and the Saranwali shall present it to the judge as soon as possible. The judge can review his order.

ARTICLE 41: The judicial officer can make seizure of the weapons, commodities, papers and any other things which might have been used in the commission of the crime, or shall be obtained as the result of the crime or be the objective of the commission of the crime as well as things that may serve useful in the discovery of the truth.

Things so acquired shall be brought to the notice of the accused and his views shall be demanded thereon.

The process shall be entered, and signed or fingerprinted by the accused. If the accused refuses to sign or place his fingerprint thereat, this shall be recorded as well.

ARTICLE 42: Articles and papers so seized shall be placed in a closed case and sealed. If possible, the exhibits shall be ribbon bound, sealed and stamped. Date of seizure and its reasons shall be written on the ribbon inside the seal.

ARTICLE 43: Exhibits sealed and stamped under Article 42 of this law shall not be disclosed except in the presence of the accused, or his defense counsel or the person seized from, or by a request made by them.

ARTICLE 44: Anyone having urgent need for the documents seized from him can get their copies certified by the judicial officer.

PART THREE

INVESTIGATION PROCEDURES

CHAPTER ONE: COOPERATION OF THE SARANWALI, PARTICIPATION OF THE PLAINTIFF OF CIVIL ACTION AS WELL AS THE PARTY RESPONSIBLE FOR CIVIL ACTION

ARTICLE 45: Conduct of investigation and the occasions for the cooperation of the Saranwali shall be formulated as follows:

a. Investigation of the offenders of misdemeanor and petty-offenses shall be conducted by the police.

b. The Saranwal shall be duty-bound to cooperate with the police in the investigation of a felony.

c. Police shall be duty-bound to accomplish measures relating to the investigation of misdemeanors and felonies calling for the writ of the competent court through the office of the Saranwali.

ARTICLE 46: Should a member of the Saranwali be unable, for certain reasons, to cooperate in the investigation, he shall be bound to delegate authority for the conduct of investigation in writing as well as to issue legal instructions to the police.

The document consisting of the delegation of authority shall be attached to the records of the case.

ARTICLE 47: When the member of the Sarranwali has delegated authority for the investigation of a felony case, the investigation shall be conducted by the police personally.

ARTICLE 48: When the judicial officer has been obliged under circumstantial necessities to accomplish certain measures in spheres outside his jurisdiction, he can assign a judicial officer of competent jurisdiction to personally perform the needed measures provided that the conduct of investigation requires the accomplishment of the said measures.

ARTICLE 49: When a member of the Sarranwali assigns another person to perform a part of the investigation, he shall be duty-bound to clearly state and explain all issues to be investigated as well as the necessary measures to be adopted by the assignee.

The assignee, if fearful of the waste of time, can take any measure relating to the conduct of investigation and interrogation of the accused provided the said measures be relevant to his assignment and to the exposure of the truth.

ARTICLE 50: Anyone who is the victim of a crime shall have the right during the investigation to present his claim for civil action. The Sarranwal shall make his decision respecting the acceptance of the civil action within five days, at the maximum, from the date the claim is presented.

ARTICLE 51: Any of the accused, the plaintiff (i.e. inclusive of the victim and the civil action claimant), and the Masoool-e-Haq-ul-Abd* as well as their proxies can attend the investigation proceedings. The judicial officer, however, is empowered to investigate the case in the absence of the said parties when deemed useful for the discovery of the truth; and following the fulfillment of the stated requirement, the concerned parties may be informed of the contents of the investigation.

The judicial officer shall be authorized to conduct parts of investigation, on urgent cases, in the absence of the contesting parties. Nonetheless, the contesting parties shall be entitled to demand the study of the records of measures taken in their absence. The contesting sides have the right to have the presence of their defense counsel during the entire investigation period.

ARTICLE 52: The judicial officer gives advance notice to the contesting parties of the beginning day and the place of the conduct of investigation.

ARTICLE 53: Any of the accused, the plaintiff (i.e. Mojna-Alahe**, including the victim and the party claiming civil action), and Masoool-e-Haq-ul-Abd, shall have the right to ask for a copy of the papers relating to investigation proceedings at their own expenses. The judicial officer shall be bound, subject to the foregoing provision, to provide duplicates of the papers thereby placing them at the disposal of the parties concerned, unless the investigation has been conducted in their absence according to a lawfully made decision.

*Masoool-e-Haq-ul-Abd designates some one who should be held liable to compensate damage done others, for example by children or the mentally incompetent under his guidance or by animals.

**Mojna-Alahe designates the victim or the injured party to a crime.

CHAPTER TWO: ON-THE-SPOT EXAMINATIONS, AND THE SEIZURE OF THINGS RELATED TO THE CRIME

ARTICLE 54: The judicial officer shall be duty-bound, upon receiving the report of the commission of a felony and misdemeanor, to immediately attend the scene of the crime. He can attend anywhere he wishes in order to establish the location of the places concerned, the things, the persons, and the fact of the criminal action as well as other circumstances whose determination may be necessary.

ARTICLE 55: The judicial officer has the right to search the suspect of the perpetration of a felony or a misdemeanor. If, on the strength of the available evidence, the judicial officer is convinced that a certain person has concealed things useful for the disclosure of the truth, he can search him.

ARTICLE 56: The search of a residence is a part of the investigation proceedings, and it shall not be permissible, except on the existence of a charge originated by the commission of or the complicity in a felony or misdemeanor lawfully attributed to the resident and this search is necessary for the disclosure of the crime committed or there shall be present such indications disclosing that the resident is keeping things related to the crime with him.

ARTICLE 57: The judicial officer on the order of a competent court can intercept all letters and all kinds of postal communications in the post offices and any kind of telegram in its related office, and also can control any kind of wired and wireless conversations provided that they relate to the accused or the crime under investigation and be considered useful for revealing the truth. In [illegible] cases, such measures can be taken without permission of the judge; however, the confirmation of the competent court judge on the authenticity of the said measures shall be obtained within three days following the execution thereof.

ARTICLE 58: The judicial officer shall have no rights to make seizure of the papers and documents which the [illegible] subscribes to his defense counsel or to the expert for receiving their opinions, nor shall he confiscate letters exchanged between the accused and the experts on the subject.

ARTICLE 59: The judicial officers themselves shall study and convey their views as to the confiscated papers to the extent possible in the presence of the accused.

When deemed necessary, the judicial officer can assign another official to keep the said papers. Accordingly, upon his own discretion, he can order the papers be attached to the dossier of the case or issue an order to return them to the person to which they belong or to the sender.

ARTICLE 60: Original copies of the seized letters and telegrams or their duplicates shall be sent as soon as possible to the accused or the person addressed to unless it is deemed detrimental to the investigation proceedings.

CHAPTER THREE: TESTIMONY OF INVESTIGATION WITNESSES

ARTICLE 61: The judicial officer can hear testimony given by witnesses selected by the contesting parties provided he finds it useful. He shall be bound to hear witnesses whose testimony may be helpful in disclosing facts proving the crime, or the proof of the crime, or the circumstances related to it, or are helpful in attributing the charge to the accused or in establishing his innocence

ARTICLE 62: The judicial officers subject to the provisions of Article 61 of this law can hear the testimony of a person who voluntarily testifies on the case. In such an event, the subject shall be entered in the investigation registry.

Witnesses whose testimony has been considered essential by the judicial officer shall be summoned by the security police.

ARTICLE 63: The judicial officer shall ask every witness to give information concerning his name, surname, age, occupation and his residence and to explain his relationship to the accused. All these statements shall be entered in the investigation registry.

ARTICLE 64: Statements made by the witness and his testimony shall be entered in the investigation registry without any additions, deletions, or crossing out or erasing, and shall not be valid until it is verified by the judicial officer, the witness and the person who made a record thereof.

The judicial officer, and the person writing the testimony, shall be obligated to sign the said testimony.

Likewise, the witness himself, after hearing the record of his statements read to him and confirmed by him, shall sign his testimony or attest it by fingerprint. Should the witness refuse to sign or fingerprint his testimony, or if it is impossible to do so, the matter as well as the attending circumstances, shall be entered in the investigation registry. For purposes of marking, the judicial officer shall sign every page of it.

ARTICLE 65: Witnesses called to give evidence shall be interrogated by the judicial officer separately and one by one. He can confront some witnesses with other witnesses as well as with the suspect of the case.

ARTICLE 66: Contestants can express their views on the statements made by the witness during his testimony. They can request the judicial officer to interrogate a witness from a different viewpoint which they suggest. In all instances, the judicial officer shall have the right to strike out all irrelevant questions as well as to reject questions containing words which involve other persons.

ARTICLE 67: Provisions made by Articles 234, 236, 237, 238 and 239 of this law shall apply to witness testimony.

ARTICLE 68: Should the witness be unable to attend the investigation place due to sickness or other legal excuses, his testimony shall be heard at his residence.

ARTICLE 69: The amount of fees and travel expenses which the witness may receive for his attendance to give evidence shall be determined by the Saranwali.

CHAPTER FOUR: USE OF EXPERTS

ARTICLE 70: The judicial officer can make use of the opinions of physicians and other experts for ascertaining the circumstances of the case. The judicial officer shall be present in person while making use of the expert opinions. However, if the expert investigation is to be conducted in the absence of the judicial officer for the fulfillment of certain preparatory measures or repeat examinations or due to other reasons, the judicial officer must clearly describe in his demand from the expert the kind of examination required and the object whose state is to be ascertained. The experts are entitled to perform their assignments in the absence of the contesting sides.

ARTICLE 71: The judicial officer for purpose of establishing the facts can order that the blood sample of the accused be taken by experts. Accordingly, he can get the accused's fingerprints and photo for establishing his identity.

ARTICLE 72: When the experts are not selected from the list of experts who have alleged honesty under oath at the beginning of their occupation, they shall be bound to take oaths of honesty and probity in the presence of the judicial officer for the performance of their assignments.

ARTICLE 73: A list of experts shall be prepared and maintained by the Saranwali. The Saranwali shall send a copy of the prepared list to the interested offices from time to time. The experts report their findings in writing. The period during which the experts report their findings shall be determined by the judicial officer.

Should an expert be unable to fulfill his assignment within the specified time, the judicial officer can in his place select someone else from among the experts to give the required assignment.

ARTICLE 74: Likewise, the judicial officer can assign more than one expert for ascertaining circumstances of the case, if he deems it necessary. The accused can obtain information from the experts on documents and other things referred to the experts by the judicial officer provided that such measures do not delay the process of investigation.

ARTICLE 75: Both contesting parties shall have the right to challenge on reasonable grounds the appointment of experts. In such an event, the request of the challenging party as well as the reasonable grounds therefor shall be offered to the judicial officer. The judicial officer is bound to make a decision on whether or not to approve of the request within three days from the date it was presented, and on the existence of admissible reasons, the judicial officer dismisses the experts unless the stage of urgency necessitates continuation of their work.

Should a difference of opinion emerge among the experts, or their findings become suspect from the standpoint of the judicial officer, the judicial officer then may invite other experts or send the expert opinion to professional specialists of the field for appraisal thus demanding their views on it.

ARTICLE 76: Proof of the following traces of crime, with proper consideration of their degree of importance in technical examination, shall be considered as material evidence:

a. Fingermarks of hand or fingerprints and prints of hands and feet.

b. Ballistical traces on bullets and shells.

c. Traces of metal instruments and tools on metals and on other hard materials.

d. Pieces of glassware.

e. Traces of blood.

f. Traces and signs of footwear.

g. Traces and signs of writing.

h. Traces and marks of teeth.

i. Traces and vestiges of hair.

j. Traces and vestiges of dentures.

k. Other traces which in the view of experts can be scientifically established.

ARTICLE 77: The judicial officer shall have the right to send a corpse to be examined by the experts of forensic medicine for the exposure of truths, or to obtain permission of the competent court for excavating a buried corpse which is suspect from the point of view of the forensic medicine experts. The court, for the issuance of permission for the excavation of the corpse buried, consults experts on whether or not it is needed.

CHAPTER FIVE: INTERROGATION

ARTICLE 78: The investigator is bound to make records of the accused's identity on his first visit of him, and to inform him of the charge legally attributed to him as well as to enter his statements and explanations in the investigation registry.

A statement obtained from an accused or any other person by compulsion is not valid.

ARTICLE 79: Should the accused have assigned a defense counsel, he shall be bound to introduce his name to the judicial officer.

The defense counsel, as well, shall have the right to introduce his name to the judicial officer as the defense counsel of the accused.

ARTICLE 80: Should it not be a witnessed crime nor it be the state of urgency for fear of loss of evidential facts, the interrogator can neither question the accused in felony cases, nor confront him with other defendants or witnesses unless his defense counsel has been already called to attend the interrogation or confrontation sessions.

ARTICLE 81: The defense counsel can obtain information about the investigation records and proceedings before the conduct of interrogation and confrontation.

CHAPTER SIX: SUMMONS

ARTICLE 82: Subject to the provisions of Article 36 of this law, the judicial officer can for all crimes issue summons to be served on the accused.

ARTICLE 83: The summons shall contain name, occupation, full identity, residence and the charge attributed to him. The summons shall be dated and signed by the judicial officer and stamped by the official seal. The summons shall provide the date assigned for the appearance of the person subpoened as well as instructions on the security officers obligation in the event of the accused's refusal to obey the summons.

ARTICLE 84: Orders issued by a judicial officer shall be applicable throughout the territory of the Republic of Afghanistan. The accused shall be informed of the orders so issued by the security officers and a transcript thereof shall be submitted to him. Such instances shall be governed by the Police and Gendarmerie Law. When the summons has been submitted to the legal address of the accused, it shall be legally recognized as though submitted to the summoned person himself.

CHAPTER SEVEN: DETENTION ORDER

ARTICLE 85: When, in pursuing interrogation or in the case of attempted flight, there is sufficient evidence to assume that a person may be accused of the commission of a felony or a misdemeanor punishable by more than three months imprisonment, the Saranwal may request his detention order from the competent court as a precautionary measure.

Should the crime be a misdemeanor subject to imprisonment up to three years, and the accused does not have an established and known place of domicile in Afghanistan, the Saranwal can demand a detention order against him.

ARTICLE 86: When the Saranwali feels the necessity of detaining an accused, it shall present the matter to the court of competent jurisdiction and demand his detention. The judge, after getting informed of the reasons submitted by the Saranwali issues due orders, and if deemed necessary, the judge may also hear the statements made by both Saranwali and the accused thereon.

The judge can extend the detention term once or more provided that the detention term as a whole shall not exceed three months.

ARTICLE 87: When investigation is not completed after the termination of the detention period provided in Article 84 of this law, the Saranwal shall be bound to present the records of the case to the president of the related higher court. In cases of necessity, he can extend the detention period.

When the president of the provincial court issues the detention order as well as the order of extension as the court of first instance under Article 86 of this law, upon the necessity of extending the detention period in the later stage, the president, with the consent of the member judges of the competent collegium of the provincial court, can extend the detention period.

The court president has the authority to extend the detention period once or more provided that the period extended in every time shall not exceed 45 days. In any case, the extension terms collectively shall not exceed nine months.

If the president of the provincial court does not find it necessary to extend the detention period, he shall order the release of the person detained with or without the admission of bail within the limits envisaged by this law.

ARTICLE 88: In the absence of reasonable excuse, the judicial officers are duty-bound to complete the investigation of crimes as soon as possible. However, following the accused 's arrest, investigation of crimes shall be completed within the following time limits:

a. Investigation of petty offenses within one month at the maximum.

b. Investigation of misdemeanors within two months at the maximum.

c. Investigation of felony crimes within six months at the maximum.

Should the investigation of crime be not completed during the alloted time due to exceptionally reasonable excuses and the accused be not detained, the reasons causing the failure to complete the investigation shall be proposed to the Saranwal. In such a case, the Saranwal can extend the said time limit for another three months.

to extend for more than three months on the above-stated instances as well as to extend the investigation period for more than six months in the instances that the accused is detained on court order shall be the exclusive right of the Attorney-General (i.e. Loye-Saranwal).

This authority, however, shall in no way affect the obtaining of the detention order and its extention which is contemplated in Article 87 of this law.

ARTICLE 89: Detaining a person under thirteen years of age is not permissible. Should the circumstances of a crime necessitate adopting precautionary measures against the minor, the Saranwali can order submission of the minor to a trustworthy person or a welfare institution until the case is duly decided, to look after him and show him or return him to the Saranwali, when so demanded. This period of submission/of the minor/ shall not exceed one week unless the judge of a competent court agrees to the extention of the said period.

ARTICLE 90: The following rules shall be observed in the determination of age:

a. The age written in the nationality card shall be considered of prime validity provided that one's revised age shall not differ from the age originally written in the nationality card.

b. The age determined by forensic medicine experts, and in their absence by other physicians, shall be valid. When the court of competent jurisdiction finds that the age determined is different from the appearance (or the outward look), it can, at all times, refer the matter to a medical committee consisting of not less than three physicians.

ARTICLE 91: The detention order shall provide for the acceptance and obligation of the officer in charge of the detention house, and shall also state the article of the law applied to the accused.

ARTICLE 92: The detention of a person is not permissible except in a detention house. Detention officers shall not admit any one in the detention house nor shall keep him longer than the period foreseen by Article 87 of this law except on written instruction of the public organs of competent jurisdiction.

ARTICLE 93: The judicial officer can, during the investigation period, prohibit an accused from contacting other detainees and everybody else deemed necessary. Such a state of facts shall not prevent the accused to consult his defense counsel which shall be done in private.

ARTICLE 94: Members of the Attorney-General's Office have been authorized to inspect detention houses and prisons in their jurisdictions in order to ensure the legality of detention and to examine circumstances of detainees and prisoners. Should the inspection time not correspond with the office hours, the Saranwali member shall inform the Chief of Police of the place. The Chief of Police of the place shall be bound to immediately accept the demand made by the Saranwali.

ARTICLE 95: Any detained person shall have the right, at any time, to complain orally or in writing to the official in charge of prison (i.e. the jailor) or to the court and demand that his complaint be taken to the judicial officer or to the Saranwali.

The jailor shall be duty-bound to accept the complaint and notify it, after it is entered in the respective records (or book).

ARTICLE 96: Anyone obtaining information of the unlawful detention of a person or knowing that the said person has been detained in a place other than a detention house, can inform the judicial officers of the fact, and the judicial officer upon receiving the information shall attend the place where the detainee has been kept.

Following the investigation of the incident, the judicial officer shall release the unlawfully detained person and enter the state of facts in the investigation registry.

CHAPTER EIGHT: BAIL

ARTICLE 97: A member of the Saranwali can, at any time, on his own initiative or on the request of the accused, issue an order for his release with or without bail on the consent of the head of the local administration except in instances provided in the Annex Table of this chapter.

ARTICLE 98: The amount of money required for bail shall be fixed by the judge of the competent court or the President of the Provincial Court in their own jurisdictions. The judge shall be bound to take into consideration, when issuing the bail order, details of the appropriated sums, as well as the proportion of the extent of the gravity of the criminal charge.

ARTICLE 99: The order respecting bail provides that a forfeiture shall be enforced in the event the accused fails to appear at the investigation, prosecution or the execution of the court orders and the remaining amount of money shall be set aside for the following expenses:

a. Expenses incurred by the State.

b. Fines which the accused may likely be subjected to.

ARTICLE 100: The Saranwal, in cases of felony, shall have the right to appeal within 24 hours against the order of the primary court judge on the release of a detained accused.

The appeal petition shall be filed with the president of the provincial court and shall be promptly considered. The president of the provincial court can extend the term of detention subject to the provisions of Article 87 of this law.

When, after the issuance of a ruling on the acceptance of appeal, the subject has not come under appellate consideration, the order of the primary court shall be applied immediately.

ARTICLE 101: The amount of money needed for bail shall be accepted from the accused as well as from others. The money shall be deposited in the bank or the State treasury in cash or as valuable documents.

ARTICLE 102: If the accused fails to fulfill any of his lawful commitments without reasonable excuse, the first part of the bail shall be transferred to the government accounts automatically and without court order. The accused shall be refunded the remaining part in the event of the dismissal of the case by the court or on his acquittal by the court decision.

ARTICLE 103: If the Saranwal is convinced that the accused cannot give bail, he with proper consideration of the circumstances, can require, instead of bail, that he regularly report to the police office at designated times. In such a case, guarantee for appearance and other similar obligations shall be imposed on him, and he shall also provide surety that he will not make an escape.

ARTICLE 104: On the emergence of strong evidence against the accused, or if there be a breach of his commitments as well as on the evidence of other reasons, the granting of conditional release shall not preclude issuance of a new warrant of arrest or his detention in accordance with the provisions of this law.

ARTICLE 105: Demands for the detention of the accused made by the injured party or by the plaintiff of the civil action, as well as his statement made during the deliberations on the release of the accused, shall not be heard.

ANNEX TABLE RELATING TO ARTICLE 97 OF CHAPTER EIGHT OF THE AMENDMENT TO CRIMINAL PROCEDURE LAW

No.	Kind of Charge
1.	High treason
2.	Espionage
3.	Conspiracy against the State
4.	Attempt against the lives of outstanding national and foreign personalities
5.	Banknote forgery
6.	Forgery of State official documents as well as of valuable documents
7.	Forgery of government securities
8.	Adulteration of food detrimental to health
9.	Blasphemy
10.	Premeditated murder and the "Like-Premeditated-Murder" (Qatel-e-Aamad and Shebh-Aamad[1]).
11.	Homosexuality with violence
12.	Rape
13.	Kidnapping of outstanding personalities, married women, and minors.
14.	Arson
15.	Concealment of the perpetrators of misdemeanors and felonies
16.	Theft (including burglary and larceny), coupled with aggravating circumstances as follows:
	a. Burglary at night
	b. Theft by fraud
	c. Armed robbery
	d. Burglary with use of tools and instruments ordinarily applied by burglars
	e. Theft committed by house employees
	f. Theft of official records
	g. Theft from sealed and locked places
17.	Pickpocketing:
	a. Recidivist pickpocket
	b. The pickpocket who prior to his conviction by a final sentence of the court has been charged with /at least/ three incidents of pick-pocketing.

[1] Qatel-Aamad: "Aamad" implies premeditation and "Qatel" means killing. Together, in Islamic jurisprudence, they denote premeditated murder with the use of established means of killing such as firearms (cf. Alat-e-Qatela), and such means as knife, sword, etc. (Alat-e-Jareha). Qatel-e-Shebh Aamad: premeditated murder yet without the use of deadly weapons such as killing by beating, suffocating, etc.

No.	Kind of Charge
18.	Looting
19.	Hold-up/Robbery
20.	Concealment of stolen property
21.	Embezzlement
22.	Fraud
23.	Recidivist criminals in misdemeanor and felony crimes
24.	Smuggling -- provided that price of the goods smuggled exceeds twenty thousand Afghanis or the offense has been committed with the participation of two or more persons or it has been coupled with aggravating circumstances
25.	Armed resistance against the representatives of the Public Authority (i.e. the State)
26.	False accusation
27.	Bribery -- when witnessed and the amount of money involved exceeds ten thousand Afghanis.

CHAPTER NINE: MEASURES RELATING TO SEIZED "THINGS"

ARTICLE 106: A member of the Saranwali or the president of the provincial court can order the return of goods seized during investigation, even prior to the passing of a sentence in the case, on the condition that the said goods have no relation with the proceedings of the case nor are subject to a confiscation order.

ARTICLE 107: The court shall have the authority to order the return of seized goods during consideration of the case.

ARTICLE 108: Order of the return of seized goods can also be issued without a request. However, the Saranwali can not order the return of goods when there exists a dispute about them.

ARTICLE 109: In the event of a dispute pertaining to the seized goods as well as in the event of uncertainty and doubts with regard to the identity of the real owner, the matter shall be presented to the president of the provincial court for consideration.

ARTICLE 110: Any person who is a claimant in a civil action with regard to the seized goods can request their return from the Saranwali. Should his request be rejected by a member of the Saranwali, he can file his complaint with the competent court's judge for due hearing thereof.

ARTICLE 111: Seized objects shall be returned to the person whom they were seized from. Should the seized object be one of the articles forming an objective of the crime or its cause, it shall be returned to the person who lost its possession as a result of the crime provided that the person from whom it was seized lacks the right to lawfully keep the seized object.

ARTICLE 112: Should the dispute over the seized objects assume the nature of a civil action so that the court is not lawfully competent to consider such a case, the subject shall be dispatched to the civil court for consideration. On such occasion, the seized objects shall be placed under necessary custody.

ARTICLE 113: An order for return (of the property) shall not preclude the contesting parties from bringing a case in the civil court. If the court order is issued on the motion made by one side and in the presence of the litigant opponent, neither the accused nor the claimant of the civil action shall have the right to raise the claim again.

ARTICLE 114: Should the case be dismissed or dropped, the question of the possession of goods shall be resolved as well. Accordingly, if the motion for returning the seized goods is made in the course of trial before the court, the above-mentioned action shall be taken.

ARTICLE 115: Should the contesting parties fail to demand the return of the seized goods within three years from the termination of the case, they shall become State property without the issuance of an order.

ARTICLE 116: Goods liable to damage with the lapse of time as well as objects whose cost of maintenance involves expenses equivalent to their prices can be sold by way of bid, by permission of the competent court, provided that the status of the investigation does not prevent such an action. In this event, the owner can demand the amount of money obtained from their sale within the time limit set in Article 115 of this law.

CHAPTER TEN: TERMINATION OF INVESTIGATION AND SUBSEQUENT MEASURES

ARTICLE 117: The Sarawal can make a decision on the dismissal of a case in the following instances:

a. On the occasion that the actor's fault and the consequences of the deed are so trivial that the public does not seem interested in its legal pursuit.

b. When originally the crime had not been committed.

c. Under circumstances of insufficiency of inculpatory evidence against the accused.

The Sarawal can issue legal instructions for further investigation of the case to the police, and subject to provisions of Article 189 of the Criminal Procedure Law concerning the above-mentioned accused, may decide on terminating action relating to his legal pursuit. The accused shall be released immediately provided that he has not been placed into custody or detained for another case.

Decisions made by Sarawal on the foregoing instances shall be subject to verification by the head of local administration. The decision made by the head of local administration shall be final.

The order so issued shall explain the grounds for making such a decision. This order shall be informed to the injured party and the civil litigant. When a party has died, the matter shall be notified to his heirs at his domicile in writing.

d. In other instances provided by law.

ARTICLE 118: Both the injured party and the plaintiff can appeal against the order for the dismissal of the case unless the order relates to a charge attributed to a civil servant, or an employee of the State, or to a member of the judiciary, stemming from or resulting from the performance of their duties. The appeal petition shall be submitted to the secretariat of the court within ten days from the date that the injured party and the plaintiff of the civil action were informed of the said order.

The protest shall be presented to the judge of the competent court and shall be considered immediately.

ARTICLE 119: The Loye-Saranwal can revoke the order prescribed in Article 118 of this law within three months following its issuance, provided that the judge of the competent court has not already rejected the appeal made against the said order.

ARTICLE 120: The Saranwal, the injured party and/or the civil action plaintiff shall have the right to protest, before the final judicial authority, the decision made by the judge of the competent court in respect to the motion made by the injured party and/or the civil action plaintiff against the Saranwal's decision to dismiss the case. Provisions made by Articles 167 and 168 of this law shall apply in this instance.

ARTICLE 121: Should the Saranwal after the completion of the investigation find that the incident is a felony, or misdemeanor or a petty offense and that there is sufficient evidence proving the guilt of the accused, he shall prosecute him therefor.

ARTICLE 122: Following the completion of investigation, the Saranwal shall be bound to file a criminal suit and prosecute it as soon as he can. If there exists reasonable grounds, the Saranwal can prosecute cases within the following deadlines:

a. Petty offenses within ten days at the maximum after the completion of the investigation.

b. Misdemeanor cases within twenty days at the maximum following the termination of the investigation.

c. Felony cases within thirty days at the maximum following the end of investigation.

ARTICLE 123: After bringing the case before the court, the Saranwal shall be duty-bound to take measures, with regard to the execution of the detention order, or his release, or the reissuance of a warrant of arrest if the accused has been released after his arrest, in accordance with the provisions of the law.

ARTICLE 124: Orders issued by the Saranwal under the provisions of Articles 122 and 123 of this law shall contain the name of the accused, his identity, age, birth place, place of domicile, and the legal explanation of the charge attributed to him.

CHAPTER ELEVEN: PENAL PROVISIONS.

ARTICLE 125: When contrary to the orders of the judicial officer issued under Article 24 of this law someone leaves the scene of the crime or a person subpoened refuses to appear, the incident shall be entered in the report and the violator shall be punished by imprisonment not exceeding one week and a fine not exceeding one hundred Afghanis or by either of the two punishments.

The sentence shall be drawn by a court of competent jurisdiction on the basis of the report written by the concerned judicial officer.

ARTICLE 126: Anyone who by means of inspection obtains information of the contents of documents or things and discloses it to another person or avails himself of it in any other manner shall be punished in accordance with the provisions of the law.

ARTICLE 127: Investigation proceedings and the outcome thereof shall be considered as /official/ secrets. Judicial officers and their counterparts such as clerks, experts, persons involved in the conduct of investigation or who participate in the investigation in view of their trade and functions shall be duty-bound not to disclose such secrets.

ARTICLE 128: The judicial officer who deems necessary the seizure of an object or the knowledge thereof, can order its owner to present it to the judicial officers for completion of the investigation. Violators shall be punished in pursuance of the provisions of the law except persons who by any means are relieved from giving evidence subject to the provisions made by the law.

ARTICLE 129: Anyone summoned for giving evidence is duty-bound to appear in response to a subpoena issued in writing. In the event of violation, the perpetrator shall be subject to a fine not exceeding one thousand Afghanis.

The judicial officers have the authority to subpoena such a person at his own expense or to issue a warrant of arrest against him (i.e. to send him under the custody of the security officers).

ARTICLE 130: If the witness attends the investigation offices but refuses to give testimony on events other than those permitted by law, in charges of felony and misdemeanor, he shall be subject to an imprisonment of not more than two months or a fine not exceeding four thousand Afghanis.

ARTICLE 131: If the judicial officer attends personally the witness's residence for hearing his testimony and finds that his excuse was false, the said witness shall be punishable by an imprisonment not exceeding one month or a fine of not more than two thousand Afghanis.

ARTICLE 132: If an expert without a reasonable excuse fails to accomplish his assignment within the time limit set by the judicial officer, he shall be punished in accordance with the provisions of this law.

ARTICLE 133: Should both contestants challenge the appointment of experts on reasonable grounds, the judicial officer shall be bound to dismiss the expert if the grounds are justified and to take appropriate measures against the violator pursuant to the provisions of the law.

ARTICLE 134: Reference to proceeding articles of this law whose observance have been made obligatory in the succeeding articles shall be corrected and amended as follows:

a. Instead of Article 142 referred to it in Article 145, the provision made by Article 121 of this amendment shall be observed.

b. In place of Articles 83, 83 and 84 referred to in Article 176, the provisions of Articles 130, 131 and 132 of this amendment shall prevail.

c. Article 87 of this amendment replaces Article 107 referred to in Article 181.

d. Article 100 of this amendment replaces Articles 121 and 122 referred to in Article 182.

e. Article 109 referred to in Article 186 has been omitted.

f. Instead of Article 129 referred to in Article 188, Article 108 of the present amendment shall prevail.

g. In place of Article 9 referred to in Article 208, provisions of Article 8 of the present amendment shall prevail.

h. Instead of Article 8 referred to in Article 268, provisions of Article 7 of the present amendment shall be observed.

ARTICLE 135: The present amendment of the law shall come into force following its publication in the Official Gazette; and with its enforcement, the provisions made by Articles 1 to Article 144 of the Criminal Procedure Law published Jawza 5, 1344 A.H. shall be rescinded.

Whenever any provision from the provisions made by the present Amendment comes into conflict with any provision from the provisions of other laws, the provision of the present Amendment of the Law shall prevail.

[Articles 1-144 amended 15 Hamal 1353]

(Articles 136 - 139: Deleted)

Article 140: The Saranwal can revoke the order so issued within three months from the date of its issuance provided that the Provincial Court, as a result of the examination of the appeal, has not taken the decision leaving the Saranwal's order unchanged and the appeal unsatisfied.

Article 141: The Attorney General, the injured party and/or the plaintiff have the right to protest the decision made by the President of the Provincial Court, in respect to the motion made against the Procurator's decision not to prosecute the case, in the Supreme Court. Provisions made by Articles 167 and 168 of this Law shall be observed therein.

Article 142: If the Procurator, on studying the material gathered, is fully convinced of the guilt of the accused of a felony, misdemeanor or petty offense and that there is sufficient grounds for passing the case on to the court, he draws up the act of indictment and prosecutes the case.

If the case is a misdemeanor or a petty offense, he orders the accused person to appear in the Primary Court. If the case is a felony, it shall be prosecuted by the Procurator or his deputy in accordance with the provisions made on Qaza-i-Bhaalah (i.e., Reference Judgement).

Article 143: Having prosecuted the case, the Attorney for the Government shall take legal measures with regard to the prolongation of the detention order or, if the offense is bailable, until a bond with sufficient sureties is given or the re-issuance of a warrant if the accused was arrested and then released.

Article 144: Orders issued by Saranwali (Attorney General's Office) in accordance with Articles 138-142 of this Law, shall contain the name of the accused, his identity, age, birthplace, residence and the legal quality of the charge made against him as well.

Chapter 11: Reference Judgment or "Qazai-E-Haalah"

Article 145: As used here, "reference" or "Bhaalah" implies referring a matter to a court for due consideration.

Within the jurisdiction of a Provincial Court, reference judgment is the function of the Provincial Court's President.

Pursuant to the provisions made by Articles 142-187 of this Law, cases of felony and misdemeanor shall be forwarded to the Court's President, and he may make use of his potential authorities mentioned by the law.

The President of the Provincial Court may hold sessions outside the normal schedule and the Court's center, if necessary.

Upon necessity, a judge who holds seniority over other Provincial judges can be entrusted the reference judgment authority and avail of the powers lawfully vested with the Provincial judges.

Article 146: As soon as the file of a case is received by the Provincial Judge, he is duty bound to ascertain a session for consideration of the case and order the accused as well as the contesting parties to be notified thereof.

Article 147: Sapanwali (the Attorney General's Office) shall give notice of the session's date to the accused person and the parties concerned at least three days in advance.

Article 148: The Provincial Court's President holds secret sessions thereby issuing due orders after the examination of the filed documents as well as the statements made by the Procurator and the parties involved.

The Provincial Court's judge may ask the investigator to participate in the session and make explanations therein.

Article 149: In any case, the Provincial Court's judge can personally conduct supplementary investigation or may assign the Attorney's Office to supplement the investigation.

In the performance of investigation, the president of the Provincial Court assumes the very authority of the investigator judge. Having terminated the investigation, the contesting parties are informed thereof. The session date is then appointed, and the parties involved are given notice of the session day to make their statements at the trial. The Court's President dispatches the case to the Attorney's Office for preparing the indictment within three days if the accused is detained and if otherwise within ten days, in writing.

Article 150: If the Provincial Court judge is convinced that the action charged is not punishable by the law or the grounds for arraigning the accused are insufficient, he may dismiss the case and release the detained accused person if he is not detained for another charge.

Article 151: If the President of the Provincial Court finds that the case is either a misdemeanor or a petty-offense, he passes the case onto the Primary Court therefor. The Procurator, in this event, is bound to submit all related papers to the Court and notify the contesting parties for their appearance within the time limit set by Article 209 of this Law.

Article 159: When the President of the Provincial Court orders referral of a case to the Court of Felony, he, in the meantime, attaches to the file a list of the witnesses whose evidence seems material as well as their names, residence and the questions to be testified on.

Article 160: Saranwali (Procuratorate or the Attorney's Office) informs the contesting parties of the case within three days from the issuance of the referral order thereon.

Article 161: If in a felony case referred to the Felony Court the accused had not assigned a defense counsel, the President of the Provincial Court may instruct him of his right to do so; and, if necessary, to grant him a time-allowance to appoint his defense counsel.

Article 162: After the referral of the case, the file therewith shall immediately be transmitted to the Felony Court. However, if the accused's defense counsel demanded time for the inspection and the study of the file, the Provincial Court's President may grant a time not exceeding ten days. Within the ascertained time, the counsel is bound to study the case in the secretariate of the Provincial Court.

Article 163: For the ensurance of order in the conduct of proceedings the Provincial Court's President has the same power as that provided for the judge of the Primary Court.

Article 164: Upon the arrest or presence of an accused in whose absence the reference judgment was drawn, the question of referral shall be reconsidered in his presence.

Article 165: If, after the issuance of reference, there is a need felt for the performance of supplementary investigation, the Procurator is bound to conduct the investigation, place his findings on the records, and submit it to the court.

Chapter 12: Protesting the Court Orders

Article 166: The Attorney General, the injured party and/or the civil party have the right to protest the dismissal of the case ordered by the President of the Provincial Court in the Supreme Court.

Article 167: A protest can be made if there is a question on the legality of the order issued by the Court, or if there is an error in the execution or interpretation of the law, or in case of an annulment of the order or the procedure affecting the order. The protest shall be processed according to the rules of procedure for the examination of protests by the Supreme Court. The time limits for the submission of protests by the Attorney General as well as the contesting parties commences on the day the order has been issued.

Article 168: The Court, after hearing the statements made by Saranwali and other contesting parties, shall make a decision. If the protest is accepted by the court, it orders reference of the case to the Provincial Court as well as defining the crime form as the result of the committed actions.

Chapter 13: Renewal of Investigation as the Result of Finding Fresh Evidence

Article 169: Dismissal of a case by the Attorney General's Office or by the court does not prohibit the renewal of investigation of the case, if within the time limit set for the termination of prosecuting a crime some fresh evidences emerge.

Testimony of witnesses and records filed therewith which have not been transmitted to the Attorney General's Office or the court but may give strength to the evidence deemed insufficient or may shed light on the unknown points of the case thereby helping in the exposure of the truth, are considered as fresh evidence.

Chapter 14: Investigation Conducted by a Judge

Article 170: If in cases of felony the Attorney General's Office feels that the investigation can better be conducted by a judge, then it asks the President of the Provincial Court for the appointment of a judge therefor in every stage of criminal prosecution.

The Attorney General's Office continues the conduction of investigation until the judge arrives.

Article 171: The investigating judge cannot engage in the investigation of a certain case, unless demanded by the Attorney General's Office or otherwise the power to investigate being accorded to him by an authorized organ prescribed by the law.

Article 172: When the case is referred to the investigating judge, no one except him has the right to conduct the investigation.

Article 173: In the performance of his duty, the investigating judge observes the rules prescribed for the conduction of investigation by the Attorney General's Office as well as the principles laid down in the present chapter of this Law.

Article 174: The investigating judge may entrust a member of the Attorney General's Office or a judicial official with the performance of functions within his own discretion.

Article 175: The investigating judge informs the Attorney General's Office of his decisions to make on-the-spot examinations and inspection of the circumstances surrounding the criminality.

Article 176: A witness who refuses to appear before an investigating judge to testify on the case, or appears before him but refuses to take an oath, or who forwards excuses which consequently are proven false shall be punished in accordance with the provisions made by Articles 82, 83 and 84 of this Law, determined by the investigating judge himself.

Article 177: Orders so issued by the investigating judge against the witnesses are subject to protests made according to the rules of the law.

Article 178: If the witness voluntarily appears before the investigating judge or upon a second summons served upon him and forwards feasible excuses, the investigating judge may, after hearing the statements made by the Procurator, exempt him from the fine. If prior to the termination of investigation, the witness continues to not give testimony or take the oath, the investigating judge is authorized to pardon part or the whole of his sentence.

Article 179: The investigating judge is duty bound to hear the statements made by the Procuratorate (or the Attorney's Office) prior to the issuance of the detention order.

The Procurator (or the Attorney for the Government or the Suramwal) can demand the accused person's detention in every stage of investigation.

Article 180: A detention order issued by the investigating judge is enforceable only for fifteen days. However, he can, after hearing the explanations made by the Attorney General's Office, extend the detention term once or more provided that the whole term does not exceed two months.

Article 181: If the investigation is not concluded and the investigating judge deems it feasible to prolong the detention term for a period exceeding the term specified by the foregoing article, then, before the time is expired, the case shall be referred to the President of the Provincial Court for the issuance of a due order in pursuance to Article 107 of this Law.

Article 182: The Attorney General's Office, in cases of felony, can appeal against the orders releasing the accused person issued by the investigating judge. In this regard, provisions made by Articles 121-123 of this Law are applicable.

Article 183: If on the basis of the Procurator's appeal the detention order is issued by the President of the Provincial Court, no one else then has the right to renew his release order except the Court's President himself.

Article 184: When the investigation is over, the investigating judge transmits the filed records to the Attorney's Office. The Attorney's Office is duty bound to forward his demands, if any, to the investigating judge within three days if the accused is in custody and within ten days if he is free.

The investigating judge is bound to notify the contesting parties concerned of the investigation process and let them express their opinions on the matter.

Article 185: If the investigating judge finds that the event is not punishable by the operative laws or the grounds against the accused person are not sufficient, he orders the dismissal of the case and releases the accused if he is not detained for some otherwise legal reason.

The order so issued shall describe the motives and grounds for so doing. The order shall be notified to the injured party and/or civil action party. If either party is deceased, the matter shall be brought to the notice of his heirs in their domicile.

Article 186: When the investigating judge establishes the crime as a misdemeanor or a petty offense, he refers the accused person to the Primary Court. The Saranwal is then obliged to forward the filed records to the court as soon as possible and to inform the parties concerned for their appearance in the court within the time limits set by Article 109 of this Law.

Article 187: If, on the strength of the available evidence, the investigating judge is fully convinced that the accused is guilty of committing a felony and must be committed for trial, he draws up an act of indictment and refers the case to the President of the Provincial Court and makes the Attorney General's Office immediately submit the records filed to the court.

Article 188: The Procurator, the injured party, and/or the civil party of the case have the right to protest the order issued by the investigating judge concerning the dismissal of the case unless the order concerns a charge made against a government official or employee or one of the judicial officers for the commission of a crime in the performance of their functions or as the result thereof. Provisions made by Article 139 of this Law are applicable to questions of the time limits for making the protest and the procedure therefor.

The time limit for the submission of a protest by the Attorney's Office begins with the pronouncement of the protested order.

Article 189: Saranwal may, at any time, examine the records of the case for their information provided that the papers' inspection may not delay the investigation process.

Article 190: Saranwals, as well as other contesting parties, have the right to present their defences and demands to the investigation judge forthwith. The investigating judge shall make a decision on the matter within three days giving the grounds and motives for the decision thereon.

BOOK TWO: THE COURTS

PART ONE: COMPETENCY

Chapter 1: Competency of the Criminal Courts with Respect to Criminal Cases

Article 191: It is within the competency of the Primary Court to adjudicate in all litigation lawfully recognized as Jonnahu and Qabahat (i.e., roughly representing misdemeanor and petty offences correspondingly).

Article 192: The Court of Felony passes decisions on the criminal cases that have been legally classified as felony.

Article 193: A court of competent jurisdiction for adjudication of a crime is the court in whose jurisdiction the crime has been committed, or wherein the accused resides or the accused has been arrested therein.

Article 194: With respect to attempted crimes, any place wherein an attempt has been made, shall be considered as the scene of the crime.

As to continual crimes, the place where the act continues is considered the criminal scene, and in regard to habitual and continuous crimes the place where one of the criminal acts has been accomplished are admitted as venue or the territory where a crime occurred.

Article 195: When a crime has been committed outside the territory of Afghanistan which the Afghan laws are applicable thereon, and the accused has no permanent place of residence in Afghanistan nor he is arrested in Afghanistan, his case, then, if felony, shall be forwarded to the Court of Felony of Kabul; and, if it is a misdemeanor, shall be adjudicated by the Kabul's Primary Court.

Chapter 2: Competency of the Criminal Courts in Adjudicating Civil Actions attached to Criminal Cases

Article 196: Civil claims for indemnity resulting from a criminal action, regardless of their values, can simultaneously be brought before the Criminal Court for due consideration.

Article 197: Unless expressly excepted by the law, the criminal court is authorized to adjudicate in all litigation related to the criminal case lying within its competency.

Article 198: If the just adjudication of a criminal case depends upon the outcome of another criminal act, consideration of the first case, then, is suspended until the second case is already prosecuted.

Article 199: When adjudication of a criminal act depends on the establishment of some personal condition or state (e.g., simultaneous prosecution of an adultery charge and the claim for marriage connected therewith -- Translator), the Criminal Court may suspend the criminal proceedings and let the accused, the injured party and/or the plaintiff take the claim with the organs authorized therefor.

Postponement of the trial does not preclude the conduction of urgent investigations and taking of urgent measures.

Article 200: If the allotted time for taking the claim is expired and, as yet, it is not forwarded to the authoritative organs, the Criminal Court may annul the suspension order and begin to prosecute the criminal case postponed hitherto. Nevertheless, the Criminal Court is empowered to prolong the suspension order once again, if so is deemed proper.

Article 201: In adjudicating civil actions attached to the criminal cases, the Criminal Courts follow the rules of procedure as well as the means of proof provided by the special laws therefor.

Chapter 3: Competence Conflicts

Article 202: If the case is originated by the commission of one or more crimes which from the viewpoint of investigation or prosecution belong to two different judicial organs lawfully competent for adjudicating such cases, but who have issued final decisions on their being authorized or non-authorized to consider the matter, the conflict then shall be referred to the Appellate Collegium for cases of misdemeanors which is situated in the Provincial Court's jurisdiction.

Article 203: If respecting the question of competency the final decision in terms of having authorization or non-authorization is drawn by two judicial bodies belonging to two Provincial Courts or two Courts of Felony, the matter shall be forwarded to the Supreme Court forthwith.

Article 204: A motion for determining the court of competent jurisdiction can be made by any of the involved parties giving reasons and grounds in the petition forwarded therefor.

Article 205: The court after having received the request thereof, orders the case to be filed with its secretariate. The parties concerned have been required to examine the papers of the case and to give their opinions in writing within ten days from the date of its filing with the court's secretariate. Filing of the case with the secretariate stays the trial process unless the court orders otherwise.

Article 206: The Supreme Court or the Provincial Court, after examining the papers filed therewith, signifies the court of competent jurisdiction for the trial of the case. Likewise, the court decides on matters of procedure and orders already considered and issued by other courts in regard to the question of jurisdiction.

Article 207: If the motion for change of venue or petition for determining a court of competent jurisdiction is not approved by the authoritative court, the petitioner, if it is not the Attorney General's Office, shall be fined for a sum not exceeding five hundred Afghanis.

PART TWO: COURTS OF JONNAHA AND QABAHAT (I.E. COURTS OF MISDEMEANOR AND PETTY OFFENSES)

Chapter 1: Notify the Contesting Parties

Article 208: The Attorney General's Office, as well as the plaintiff, may bring a case, in accordance with the provision made by Article 9 of this Law, before the Courts of Misdemeanor and Petty Offense for consideration thereby obligating the accused to appear in the court. Likewise, the case may also be referred to the Courts of Misdemeanor and Petty Offenses by the investigating judge or the Provincial Court.

If the accused has been present in the court while the charge is being made against him by the Attorney General's Office and agreed to the trial, the process shall count for his obligation to appear in the court thereof.

Article 209: Before holding the court session, one day in cases of petty offenses and three days in cases of misdemeanor, notice is given in advance to the contesting parties to appear in the court at the specified time. The time allotted for giving beforehand notice does not include the time spent in travel.

The notice shall be given by a motion made by the Attorney General's Office as well as the plaintiff.

In witnessed crimes, the accused can be obligated to appear without giving an advance notice. Nonetheless, if he appears in the court and asks for a time to prepare his defense, the court may grant him a term deemed proper therefor.

Article 210: The summons so issued shall contain the name of the accused as well as articles of the law providing for the punishment of the crime committed, and shall be delivered to him personally or leaving a copy of it at his dwelling house. When the quest for finding the accused's residence proves fruitless, then the summons shall be delivered to the administrative organ of the place considered as the accused's last place of residence in Afghanistan, unless it is proved otherwise.

Article 211: Summons shall be served upon the prisoners through the jail director or the deputy thereof and upon soldiers and officers of the armed forces as well as the gendarmerie through their respective organizations.

Article 212: As soon as the contesting parties have been obligated to appear in the court, they have the right to examine and inspect the records of the case.

Chapter 2: Appearance of the Contesting Parties

Article 213: A person accused of committing a misdemeanor punishable by deprivation of liberty has to attend the court in person. In other instances of misdemeanor and petty offenses the accused person has the right to appoint a defense counsel who may represent him in the court. However, the court is empowered to order the accused to be personally present at the trial.

Notwithstanding the absence of the accused, his defense counsel or one of his relatives or kinsmen can attend the court and present his excuse for absence. In case his excuse is sanctioned, the court may appoint a time for the presence of the accused. Saranwali - the Attorney General's Office is bound to inform the accused person of the allotted time.

Article 214: When a party to whom a copy of the summons is personally delivered fails to appear in the court at the appointed time without having any legal excuse for his absence, nor assigns a defense counsel representing him thereat, the court may then prosecute the case in his absence. Proceedings so directed shall be considered as the "trial legally held in the presence of the accused."

Notwithstanding the summons being served upon the accused himself, the court may reissue a summons thereby warning the accused that in case of his failure to attend the next session allotted for adjudicating his case, the court may pass a sentence thereupon, and the trial shall be considered as legally conducted in his presence.

Article 215: If the accused fails to appear in the court despite the delivery of a summons to him personally or being warned, the court is bound to conduct the trial in a manner as if the accused was present.

Article 216: After the adjournment of the session the court at anytime can issue a warrant for the presence of the accused in a session appointed for the consideration of his case.

Article 217: The trial shall be renewed, if after the consideration of litigation but prior to the termination of the session, the accused appears at the court.

Chapter 3: Adjudication of Cases and the Procedures Involved in Conducting a Criminal Trial

Article 218: Trials are held openly in the courts. However, on the consideration of public order or the conservation of public decency, the courts may hold closed trials in part or in general. Likewise, the courts may prohibit the attendance of certain persons in a session.

Article 219: An Attorney for the government shall be present at the sessions held by Criminal Courts. And the courts are bound to listen to his opinions and consider the demands made by him on behalf of the state.

Article 220: The accused attends a court session under security guards. In the course of trial it is not permissible to expell the accused person from the session, unless his presence proves disturbing to the session order. On such an occasion, the procedural process can be continued until the accused returns at an opportune session. The court is bound to inform the accused of the measures taken in his absence.

Article 221: The trial begins by loudly addressing the contesting parties as well as the witnesses by their names.

The accused shall be questioned as to his name, surname, age, occupation, place of birth, and his residence. Then the charges legally attributed to him in the referral order, summons or indictment shall be read to him. And the Savcusul (Attorney for the Government or Procurator), the injured party and/or the plaintiff may forward their suits against him. Thereafter, the accused is questioned as to whether he admits the charges made against him.

If the accused admits the commission of the crime, the court may base its findings on the confession made by him without referring to the witnesses' testimony on the case.

The witnesses are questioned by the prosecutor, the injured party and/or the plaintiff as well as the accused person and the defendant (i.e., the person responsible for damage arising out of a crime) respectively. The Procurator, and the injured party and/or the plaintiff may once again question the witnesses to clarify the matters mentioned in their first testimonies.

Article 223: Having heard the inculpatory witnesses, the rebutting witnesses shall be heard as well. The rebutting witnesses may be questioned by the accused, the defendant, the attorney for the government, as well as the plaintiff, respectively and lastly by the civil action party. The accused person and the defendant may, for the second turn, question the witnesses to clarify the matters mentioned in their first testimonies.

Either of the contesting parties can, for the second turn, question the witnesses to testify on unclear circumstances mentioned in their first testimonies or ask for testifying new witnesses for the same cause.

Article 223: In every stage of trial the court can for the exposure of truth direct questions to the witnesses or let the contesting parties do so. The court is bound to prevent addressing irrelevant or illegitimate questions to the witnesses of a case. Likewise, the court is bound to prohibit the making of any ironical, figurative, or clear-cut statements which may confuse or frighten the witness.

The court may reject a petition for further testifying witnesses on circumstances which the court considers sufficiently illuminated.

Article 224: To compulsorily interrogate an accused is not permissible. Nonetheless, if in the course of trial, a situation arises which necessitates due explanation on the part of the accused, the court may draw his attention to the matter and let him give required explanations.

If the accused refuses to answer or his statements made in the session contradict those already made in the stage of evidence collection or during the investigation, the court, then, orders his first statements to be read thereat.

Article 225: Having heard the inculpatory and rebutting evidences given by witnesses, the Procurator, the accused, as well as the contesting parties, may enter into conversation with one another. In any occasion, the final opportunity shall be given to the accused once again.

If the accused or his defense counsel, converses irrelevantly or repeats the same object, the court may then stop him from doing so.

Completion of the foregoing procedures terminates the adjudication process thereby enabling the court to issue a judgment after proper conversation and due consideration thereon.

Article 226: The court proceedings shall be recorded and be signed on each page by the Court President and its secretary no later than the following day. The recordings shall consist of the session date, its openness or closedness, as well as the names of judges, secretary, the participating Samanwal, the contesting parties and their defense counsels, the witnesses' testimonies, and the statements made by the contesting parties. It shall indicate the documents read and other measures taken during the trial.

The recordings, as well, are comprised of the pleadings and requests made in the course of adjudication and the decisions made in respect to extra-issues other than the original charge, text of the orders issued and other pertinent questions.

Chapter 4: Witnesses and Other Means of Proof

Article 227: At the insistance of either contestant, a witness shall be subpoened by the court clerk at least 24 hours before the session -- allowing time necessary for travel as well. In the advent of a witnessed crime, a witness can be summoned at any moment even by a verbal order issued by a judicial officer or a security police.

A witness can, at the insistance of a contesting party, attend the court session without being given a prior notice.

The court, at its own discretion, in the course of trial may call anyone whose testimony is considered necessary. The court is also authorized to subpoena the witness or order him to appear at the coming session.

For the exposure of the truth of the case the court may hear anyone who voluntarily testifies on the circumstances under consideration.

Article 228: The witnesses are called aloud by their names. Having said, "Yes," they enter into a room especially designed for them. The witnesses alternatively leave the room through a window for giving evidence to the court. Having been interrogated by the court, the witness shall remain in the courtroom til the end of trial unless he is allowed to leave.

If deemed necessary, one witness can be made to stand aside while interrogating the other as well as confronting them with one another.

Article 229: If the subpoened witness has refused to appear in the court, after hearing the statement made by the public prosecutor (i.e., the Saranwal) he may be punished by a fine not exceeding one hundred Afghanis in cases of petty offenses (i.e., Jonnaha) and one thousand afghanis in cases of misdemeanor (or Qabahat.)

If the court thinks that his testimony is material to the disclosure of crime, he may subpoena him for the second turn and adjourn the session or issue a warrant of arrest against the witness.

Article 230: If the witness, on his own will or as the result of the second subpoena, attends the court presenting some reasonable excuse, the court may, after hearing the Attorney's explanation, exempt him from the forfeiture.

Whenever a witness who is summoned for the second time fails to appear in the court session, he can be liable to a fine not exceeding twice the sum mentioned in the foregoing article. And the court may, as well, issue a summons or a warrant to have him attend the same or another session which is meant for adjudicating the case.

Article 231: If the witness has failed to attend the court by the time of passing judgment on the case, he has the right to duly protest the court order subjecting him to a fine.

Article 232: If the witness presents a reasonable excuse for being unable to attend the hearing, the court, after notifying the public prosecutor and the contestants, may order that his testimony be taken by disposition. On such an occasion, the contesting parties or the defense counsels thereof, can attend the disposition at the witnesses' residence and place questions of their own.

Article 233: Had the court moved to take a testimony by disposition and yet discovered that the witness had offered false excuse, it may, upon hearing the Saranwal's statements, punish the witness to an imprisonment not exceeding three months or a fine not exceeding six thousand Afghanis.

Article 234: Witnesses who have completed fourteen years of age are duty bound to swear, before giving evidence, in Allah's name to tell the truth and be honest in their testimony.

If the witness has used the term "Ash-ha-do"* knowing that the term itself implies taking oath, he is not required to swear in that terms. However, it is permissible for information gathering to hear the testimony of a witness under fourteen years of age without making him take the oath of truthfulness.

*Ash-ha-do is an Arabic term used in the literature of the Islamic Law as "I testify in the name of God."

Article 235: If in events not permitted by the law, a witness avoids taking an oath or refuses to answer questions, he shall be subjected in cases of petty offences to an imprisonment not exceeding one week or a fine of up to one hundred Afghanis, and in cases of misdemeanor liable to deprivation of liberty not exceeding three months or a fine of six thousand Afghanis.

The witness may partially or wholly be exempted from the said punishment if he refrains from his refusal prior to the termination of the criminal trial.

Article 236: To challenge a witness is not permissible on the grounds provided for the "Abstension and Challenge of a Judge."

Article 237: Either the spouse (a husband or wife) possesses the right not to give evidence against each other, even though their marital relation be already cut off.

The accused's ancestors and descendants and their relatives of second degree, can avoid testifying against one another provided that the charge legally attributed to the accused is not committed against the witness himself, or his relatives and kinsmen nor have they reported the criminal offense or that no other inculpatory evidence has been adduced against the accused.

Article 238: Criminal courts shall apply regulations prescribed by Civil Procedure on the instances of a witness refusing to give evidence or his exemption therefrom.

Article 239: The court may hear the testimony given by the civil action party on matters not included in his civil claim.

Article 240: The court may order the reading of testimony given by a witness during the preliminary investigation, the recordings made in the period of evidence gathering, and expert examination on the condition that it is difficult to hear the witness himself or that the accused himself or his defense counsel agrees to having read the testimony therewith.

Article 241: Had the witness failed to remember some incidents contained in his prior testimony, the court is allowed to read that part of his testimony or statement given or made during the evidence collection process.

The foregoing procedure is applicable to instances where the witness contradicts his given testimony at the court session or the statements made before trial.

Article 242: The court may, at its own discretion, order for adducing any evidence deemed necessary for establishing the truth of the case.

Article 243: The court may, at its own discretion or a motion made by a contestant, writ the assignment of one or more experts to a case.

Article 244: The court can, at its own discretion or a motion made by a contesting party, order the giving of some further explanations on their findings already presented to the court or during the preliminary investigation.

Article 245: Having found it difficult to examine an evidence adduced, the court may assign one of its member judges for further investigation.

Chapter 8: Civil Action

Article 246: Anyone who has suffered moral, physical or material injury as a result of the crime has the right to request the court adjudicating the criminal part of the action to consider his claim in every stage of trial; yet before the adjudication is terminated in accordance with the provisions made by Article 225 of this Law. However, the civil action party is not allowed to take his claim to the Appellate Court if he has already failed to take it to the Primary Court adjudicating the criminal suit.

The civil action is processed by notifying the accused with a summons or the motion made at the trial session wherein the accused is present. In the absence of the accused, the proceedings shall be delayed and the claimant obligated to give notice to the accused person.

Had the civil party been admitted to the investigation as the plaintiff, then the writ of referral judgment includes the civil action as well.

If the civil party's participation produces delay in the conduct of criminal proceedings, the court may continue adjudication of the criminal case without the inclusion of civil action element and provide the plaintiff with the opportunity to take his claim to the civil court after the criminal element of the case is adjudicated.

Article 247: If the injured party is lacking the competence to take his claim to the court as well as the guardians to represent them therein, the court considering the criminal case may on the basis of a motion by Sarnawul appoint a curator for the prosecution of his civil action. Such an injured party may not be subjected to the payments of courts expenses.

Article 248: The civil action shall be taken against the accused himself if he has reached the age of legal responsibility, and against his civil defendants in other instances. If the accused be lacking a legal representative, the court is duty bound to appoint him a curator.

Likewise, the civil action can be brought against civil defendants, i.e., persons responsible by law for damage arising out of a crime committed by the accused.

Saranwali, even in the absence of an accused, may suit his civil defendants for imposition of the court expenses. Application of this Article never allows the possibility for the injured party to bring his civil action before the criminal court nor the inclusions of persons other than those already charged with civil action as well as the civil defendants therewith.

Article 249: A civil defendant may on his own will participate in a trial at every stage of the criminal prosecution yet before the adjudication is ended according to Article 245 of this Law. However, Saranwali, as well as the civil action party, can disagree to his participation.

Article 250: The civil party is bound to pay the court taxes as well as the advance payment of court expenses and the expenses incurring in summoning witnesses and experts' fees determined by Saranwali or the court.

Article 251: The accused person, civil defendant and Saranwali each has the right to oppose the participation of the civil party in the session if his claim is inadmissible by law.

Article 252: The decision made by Saranwali (i.e., the Public Prosecutor's Office), and the investigating judge does not prohibit the injured party from bringing his civil action before the Criminal Court or the Civil Court. The court's decision on admitting the civil action does not annul the procedures completed in his absence. The decisions made by Saranwali or the investigating judge in respect to admitting the civil action are not binding on the court which is adjudicating the criminal case.

Article 253: Civil action terminates in accordance with the provisions made by civil procedures for the time limit set for dropping a civil case.

Dropping of a criminal case renders termination of a civil action attached therewith.

Article 254: At every stage of trial the injured party can withdraw his civil action. He is obliged to pay the expenses incurred before his withdrawal. The accused reserves the right to ask for indemnity if it has a legal ground. Such a waiver of the action in no way effects the criminal prosecution.

Article 255: Had the summons been personally submitted to the civil claimant but he refused to appear in the court in person or by sending his defense counsel thereat, his not appearing at the court shall be considered as a waiver and withdrawal therefrom.

Article 256: the injured party quits his claim before the criminal court in the foregoing manner, he reserves the right to bring his case to the Civil Court provided that he has not expressly quit his right for civil action.

Article 257: The injured party's waiver causes the exclusion of a civil defendant if the latter participated as a result of the motion by the first.

Article 258: If a person who has suffered from a crime has taken his claim for indemnity with the Civil Court, after the inception of prosecution by a Criminal Court, he can request the Criminal Court to take measures to insure that his claim will be met, provided that he withdraws from the Civil Court.

Article 259: Had the civil action been taken to the Civil Court, its consideration then shall be postponed until the termination of the criminal trial which began its prosecution before or during the civil prosecution. Nevertheless, if the criminal prosecution is adjourned as a result of the insanity of the accused, adjudication of the civil action shall not be delayed therewith.

Article 260: Provisions made by this law are applicable to the adjudication of civil actions by Criminal Courts.

Article 261: The accused person may, by law, request the Criminal Court for indemnity or compensating the damages arising out of the civil action which was brought against him by the injured party and/or the plaintiff.

Chapter 6: Document Forgery as a Sub-Case

Article 262: In every stage of trial, Saranwali as well as the contesting parties can place a case of forgery against any document with the court.

Article 263: The forgery case is prosecuted on the grounds of a motion made by a contestant during the preliminary investigation or the court proceedings and recorded therein. Likewise, the forgery case can be initiated by a written request placed in the records. For the initiation of the case of forgery it is essential to designate the document deemed forged as well as the grounds for the case.

Article 264: If the organ adjudicating the case finds it proper to conduct an investigation on the sub-case of forgery, it may then dispatch the documents to Saranwali. Had the consideration of the main case depended upon the outcome of the document deemed forged, the said organ may delay the trial process until the forgery case is handled in the legal terms.

Article 265: In case the criminal prosecution has been delayed and forgery claim is rebutted, it is necessary then to fine the forgery contestant for a sum not exceeding two thousand and five hundred Afghanis.

Article 266: The court which writs the forgery of all or part of the official documents may, as well, order the annulment or correction of them as deemed proper. The process shall be recorded and marked in a note.

Chapter 7: Maintenance of Order in a Court Session

Article 267: The presiding judge is responsible for maintaining order and disposition in the session. Anyone disturbing the order shall be excluded from the court room. If the said person fails to obey the court order, it may immediately sentence him for 48 hours imprisonment or a fine of up to three hundred Afghanis therefor. This sentence shall instantly be executed and is not subject to appeal.

If the order is disturbed by a court employee the court may reprimand him during the session in accordance with the disciplinary measures provided for the Judiciary members and employees.

The court, however, may annul its order prior to the termination of the session.

Article 268: If someone commits a misdemeanor or petty offense in the session, the court may prosecute the accused in the same session and pass a judgment on to him after hearing the Saranwal and the accused thereat.

Prosecution of the crime in this instance is not subject to the provisions made by Articles 2 and 3 of this Law.

In case a felony is committed at the trial, the presiding judge orders the accused to be delivered to Saranwali. The issuance of this order does not disrupt the execution of Article 8 of this Law.

The presiding judge, in any event, shall make recordings of the incidents and, if found necessary, shall issue a warrant of arrest against the accused.

Article 269: If a defense counsel, in the performance of his duty or as a result thereof, performs an act which is deemed either disturbing the order or punishable by law, then the presiding judge shall arrange the recordings thereto. If the action is found of disciplinary nature, the defense counsel shall be referred to the court President for reprimanding and to Saranwali for interrogation in the otherwise charges. In both instances, the court President as well as the court members shall not participate in the trial of the crime committed at the session.

Article 270: Adjudication of the crimes committed at the time of trial but not prosecuted at the same session, shall take place according to the ordinary provisions made by the law.

Chapter 8: Court Findings (Sentences)

Article 271: Except as otherwise expressly provided by the law, the courts are not exclusively bound to base their findings on the evidence gathered in the preliminary investigation or the records of evidence collection.

Article 272: In respect of petty offences, circumstances recorded by the respective officials shall be considered as evidence unless their negation has been proved.

Article 273: The court is at full liberty to pass a sentence if it is fully convinced of the sufficiency of the evidence that has been examined at the trial. However the court cannot base its findings on the evidence not examined thereat.

Article 274: The sentence shall openly be passed even though the trial is closedly held. The process of open issuance of the sentence shall be registered by the presiding judge as well as the clerk thereto.

The court may take measures for ensuring the accused's presence in a session allotted for pronouncement of the sentence.

The measures may as well consist of the issuance of the warrant of arrest, if the case is of a nature which requires the accused's detension.

Article 275: A verdict of not guilty is brought in those cases in which the fact of the crime is not established or the deed is not considered punishable by the law. In this event, the accused is released immediately unless detained in some otherwise cases.

The court brings in a verdict of guilty when the guilt of the accused in the commission of the crime has been proved at the trial.

Article 276: Whenever the court finds that the case is of the felony type, it decides on its being non-competent for adjudicating the case and returns it to the Procurator's Office (i.e., Saranwali).

Article 277: The accused shall not be punished for offenses not embodied in his summons or the referral order; nor shall a person be punished against whom no indictment is issued.

Article 278: The court can alter the legal quality of a crime in its decision. It can also make alterations in the indictment by way of increasing the aggravating circumstances which have been proven in the preliminary investigation or at the trial yet not contained in his summons or the referral judgment therefor.

The court may make corrections and eliminate mistakes that appear in the phrasing (or wording) of the indictment, the referral judgment or a subpoena. The court is duty bound to inform the accused of the corrections therein.

And upon accused's motion, the court grants him a time allowance for presenting his defense vis-a-vis the change of the quality of the crime or the alteration of the charge thereof.

Article 279: Any sentence passed on a criminal case, in addition to the observation made by the last paragraph of this Law's Article 246 shall include decisions on civil action as well as on the pleadings for indemnity by the accused.

In the event deciding on the compensation claim delays the criminal proceedings, the court may then decide on the criminal case only. The plead for indemnity may be presented to the civil court, without the imposition of any tax therefor.

Article 280: The findings of the court must be legal and motivated. A verdict of guilty shall contain the offense punishable by law, its circumstances and the text of the applicable law thereon.

Article 281: The court is bound to consider motions made by the contesting parties and to give grounds for the issuing of due orders.

Article 282: The sentence and the grounds therefor shall be recorded within ten days from its issuance. It shall be sealed by the presiding judge and signed by both the presiding judge as well as the court secretary. Had the presiding judge failed to seal and sign the sentence, then one of the judges who has participated in the passage of the judgment shall seal and sign it. And if the judgment be written by the judge of a Primary Court who, due to some excuses, did not manage to sign it, the Provincial Court's President may sign the original copy of the said sentence himself of may assign another judge for doing so. If the motives for drawing the sentence have not been written by the Primary judge himself, the sentence must then be nullified for the lack of legal grounds.

In the absence of strong reasons, it shall not be allowed to put off signing the judgment drawn longer than the allotted ten days. However, a verdict which is not sealed and signed within thirty days from its issuance, shall be annuled unless being a verdict of not guilty.

The court secretariat is bound to provide the interested parties with notes certifying that the court order has not been sealed and signed within the allotted time.

Article 283: Where the court has passed a sentence on a minor, which its suppression is viewed detrimental to his person in toto, on the basis of a request made by the Attorney General (or Loai Saranwal) the court at any time can review the sentence. In this event, the revision process may only concern the minor's case.

Article 284: Saranwal shall ask the same court for reviewing a sentence which is drawn against a person mistakenly viewed over 15 by the court. Execution of the sentence shall be postponed in this instance, but it is permissible to take precautionary measures therefor.

Saranwal may likewise demand revision of a sentence condemning a person over fifteen years of age by a penalty specified for the minors.

Chapter 9: Court Expenses

Article 285: The court may subject the convicted person to pay a part or the whole of the court expenses incurred therein.

Article 286: It is permissible to obligate the convicted person whose appeal has been left unsatisfied for the payment of a part or the total of the court expenses incurred therein.

Article 287: The Supreme Court may subject an accused to the partial or total payment of court expenses whenever his protest is not accepted or left unsatisfied.

Article 288: In cases of joint offenses or collective crimes the convicted persons may equally be subjected to the payment of court expenses, provided that the court has not made an otherwise ruling nor they be subjected to pay on the installment basis under specific terms.

Article 289: The amount to be paid by the convicted shall be determined in the sentence unless he is subjected to pay the total of court expenses. In the event of not mentioning the expenses to have been paid by the convicted person, he cannot, then, be obligated for the payment thereof.

Article 290: The civil action claimant -- the injured party and/or the plaintiff -- may, as well, be obligated to pay the court expenses to the government. Rules contained in the law on judicial taxes regulate the determination and collection of the said expenses.

Article 291: Where a verdict of guilty is brought in, the accused then shall also be subject to pay the expenses incurred in by the civil action party. And the court is authorized to eliminate those expenses made by the civil party which, in the court's view, have unreasonably been spent thereat. However, if the civil party's action is rejected by the court intoto, he shall then be subjected to pay the expenses incurred in by the court. In case his claim is wholly or partially met, the court hence may not oblige him for the payment of its expenses.

Article 292: The same rules which are applicable to the civil action party in respect of court expenses, remain applicable to the case of civil defendants -- or persons responsible by law for damage arising out of a crime.

Article 293: Wherever the accused has been subjected to the payment of a part or all of the expenses of a criminal case, together with him the civil defendant shall be obliged to the payment of the ordered expenses as well. The ordered expenses shall be collected in sureties or on the installment basis.

Chapter 10: Abstension and Challenge of a Judge

Article 294: A judge cannot participate in the issuance of a judgment against the accused person if the crime was committed against him, or he has performed the duties of a judicial officer, or of the Saranwali, the defense counsel or a contestant thereof, or he has given witness or functioned as an expert in providing some technical advice.

A judge who has conducted investigation of the case is not allowed to participate in the adjudication. A judge who has ordered the sentence protested, shall not participate in the appellate consideration thereon.

Article 295: The contesting parties have the right to challenge judges in instances provided in the foregoing Article as well as in cases prescribed by Civil Procedure Act.

Article 296: In case the Primary Judge is challenged by a contestant, the Provincial Court of competent jurisdiction is asked to consider the matter. The Provincial Court may, as well, handle a challenge made against one of its members.

If a judge, in cases other than those provided for challenging a judge, finds it improper to adjudicate the case, he may then inform the President of the Prbvincial Court of his abstension.

Article 297: A petition for challenging a judge shall be filed in the court which is considering the case. And the rules on civil as well as Commercial Procedures shall be applied thereon.

A motion to challenge an investigating judge or a judge of the Primary Court may be filed in the respective Provincial Court.

In the event of the investigating judge, the primary judge or a member of the Provincial Judge agreeing to the challenge petition, or they themselves making an appropriate abstension, and the petition or motion being approved by the President of the Provincial Court or by the Provincial Court itself, in case of a challenge made against one of its members, the challenged judge then avoids partaking in the adjudication process. And in otherwise cases, the petition for challenge shall be considered in accordance with the rules of law.

Chapter 11: The Annulment Instances

Article 298: Violation of the basic procedures provided by law renders annulment of the decision thereof.

Article 299: A court is duty bound to annul a sentence in the instances where it violates the law relating to the organization and function of a court, its competency in respect of the adjudication of certain type of crimes, or the legal issues related to the public order therefor.

Article 300: The accused person loses his right to ask for the annulment in cases other than those stated in the foregoing Article, if he or his defense counsel has not protested the procedures relating to evidence collection or preliminary investigation or the investigation guided by a judge made for the discovery of a misdemeanor or felony in the accused's presence or the defense counsel therefor.

Article 301: The accused may not refer to the annulment of the summons if he personally or his defense counsel attended the court session. However, he can make a prior motion for the correction of the summons, or prior to the inception of the court's session request a time allowance for preparing his defense. And the court approves of the requests made therewith.

Article 302: A judge may, at his own discretion, correct any part of the procedures that he realizes are subject to the annulment orders.

Article 303: Proving the annulment of some procedure renders the total nullification of the legal conclusions and measures that directly resulted from the said procedural phenomena. The nullified measures shall be renewed as soon as possible.

Article 304: If some material mistake appears in the decision made by the investigating judge or the President of the Provincial Court which does not constitute an annulment; the organ issuing the stated order or decision may, at its own initiative or by a motion from the contestant, correct the error. Correction measures may be taken after hearing the statements made by the contesting parties and the process recorded on the margin of the issued order.

The above measures can, as well, be taken for correcting the accused's name and his title or surname.

Chapter 12: The Insane Accused or Non Compos Mentis

Article 305: Based on a motion made by Soronwali the investigating judge or the Primary Court may, for establishing the mental state of an accused, order his examination by an official organ for one or several occasions. Likewise,

a court which is considering the criminal case, after hearing the statements by the Saranwal and the accused's defense counsel, if he has any, may order his examination by the experts. The term allotted for mental examination shall not exceed forty five days intoto. If the accused is not under detension, he can be examined anywhere appropriate for this purpose.

Article 306: If it is established that, after the commission of the crime, the accused is affected by a mental affliction that deprives him of the possibility of defending himself, his prosecution shall be delayed until his recovery.

In cases of felony and the misdemeanors punishable by imprisonment, the investigating judge, Primary Judge or the President of a Provincial Court which is considering the case are authorized to order medical authorities for his treatment until he recovers from the illness.

Article 307: It is unpermissible to stay the criminal proceedings prior to taking measures necessary therefor.

Article 308: The time spent in medical examination or treatment of the accused according to Articles 305 and 306 of this Law shall be reduced from the term specified in his sentence.

Article 309: If a verdict of not guilty is brought in, but the court being motivated by the accused's insanity, the court in cases of felony or a misdemeanor punishable by deprivation of liberty may order the treatment of the insane accused in a medical institution or may release him if the related authorities advise so.

PART THREE: COURTS OF FELONIES

Chapter 1: Organization of the Felony Courts and their Session Terms

Article 310: Under the jurisdiction of each Provincial Court one or more Felony Courts shall be established. Each Felony Court consists of three judges who are members of the respective Provincial Court.

Article 311: The Provincial Court Presidium appoints Felony justices in the first month of each year on the recommendation of its President and from amongst its member justices.

Article 312: On the basis of a proposal made by the Provincial Court's President, the Chief Justice may assign a Primary Judge as an acting member of a Felony Court for one or more terms of service.

Article 313: The Felony Court may hold its sessions in the jurisdiction of a Primary Court, having a jurisdiction equivalent to that of the Primary Court. Upon necessity, and on the basis of a proposal made by provincial courts president and approved by the Chief Justice, the Felony Court can hold sessions in some other places as well.

Article 314: Unless otherwise ordered by the Chief Justice, the felony courts hold monthly sessions.

Article 315: The opening date of every session of the Felonies Courts shall be determined by the Chief Justice on the basis of a proposal made by the President of a Provincial Court, at least one month prior to the session and shall be published in the Official Gazette in due course.

Article 316: Cases reached for consideration shall be placed on the courts agenda according to the date of their arrival. The Felony Court continues its session until the agenda has been terminated. Urgent cases shall be adjudicated in accordance with the rules especially provided therefor.

Article 317: The cases shall be referred to Felony Courts on the basis of the referral judgment drawn by the President of the respective Provincial Court.

Chapter 3: Procedures Relating to the Adjudication of a Felony by the Respective Court

Article 318: The Felony Court's President appoints the session allotted for the adjudication of each case, after its being placed on the agenda. He may also examine the courts agenda thereby distributing the files among the court members as well as issuing orders for the advance notification of the accused, other contestants and the witnesses thereof.

Article 319: A notice shall be served upon the accused, other contestants and the witnesses to attend the court at least eight days before the session is held.

Article 320: Unless as otherwise expressed by law, all rules relating to adjudicating misdemeanors and petty offenses are applicable in the Felony Courts.

Article 321: The Felony Court is authorized by law to issue an order of imprisonment not exceeding six months or a fine not exceeding ten thousand Afghanis against a witness who refuses to attend the court without having a legal excuse, and also the witness who refuses to take on oath or answer the court's questions. However, the court reserves the right to issue a warrant of arrest for the attendance of the witness in pursuance of the provision made by Article 229 of this Law.

Article 322: Any contestant can ask for the issuance of a summons on a witness whose testimony be material to the case provided that he pays in advance to the Court's secretariate for the witnesses' round trip.

Any other contestant, however, may protest the hearings of a witness whose testimony is not relevant to the case.

Article 323: If the conditions call for delaying the criminal prosecution, the adjourned session shall be held after eight days in the on-going session or during the next term.

Article 324: Only the defense lawyers who represent the accused before the Supreme Court, the Courts of Appeal and the Provincial Courts are allowed to defend the accused in a Court of Felony.

Article 325: The defense counsel is duty bound to present the accused in person or by sending a substitute therefor unless he has a sanctioned excuse. In the advent of his failure, the lawyer may be liable to a fine not exceeding five thousand Afghanis. This provision does not preclude the possibility of reprimanding the defense-lawyer. And the court may exempt him from the forfeiture if it is appropriate.

Article 326: A defense counsel who lawfully is assigned to represent a prior accused, cannot ask the government for fees. The court is at liberty in the assessment of fees, and its decision is not subject to protest.

Article 327: As ascertained in the referral judgment yet prior to the consideration of the case, the Felony Court finds the crime as a misdemeanor, it may writ its non-competency and dispatch the case to the Primary Court. Where the matter is known after its consideration at the session, the Court adjudicates the case thereat.

Article 328: Had the Felony Court found that in the referred case the correlation thought between a misdemeanor and the felony was unrealistic, it may then separate them and send the former to the Primary Court for adjudication.

Article 329: Without unanimity reached, a Felony Court cannot issue a death sentence.

Chapter 3: Procedures involved in "Trial in Absentio" of a Felon

Article 330: If an accused be committed for trial in the felony court by the Provincial Court's referral order, and he, notwithstanding the summons being personally submitted to him, fails to attend the specified session, he is legally considered as present, and the Court can try him in absentio. The Court, likewise, bears the authority to postpone the criminal prosecution and reissue a summons or an arrest order obligating him for the second time to attend an allotted session.

Article 331: When the accused resides outside the territory of Afghanistan, his summons shall be mailed to his residence, if it is known, a month prior to the session allotted for the consideration of his case as well as accounting for the distance and time involved therein. If the accused fails to attend the court at the designated time and it is proven that the referral order and the summons have been delivered to him in person, he shall legally then be considered as present and the court may proceed with his trial in absentio.

Article 332: Observing the order provided for by the last paragraph of Article 213 of this Law, no one is authorized to represent or deputize an accused unless by order of the law.

Article 333: At the court's session the referral order is firstly read out and later the documents proving the accused's notification of the incident.

The Saranwal and the plaintiff may enter into conversation, if they have anything to state; then, upon necessity, the witnesses are heard, and lastly the court is in a position to adjudicate the case properly.

Article 334: Anyone convicted of his legal presence (i.e., trial in absentio), is forbidden from possessing and disposing of his property as well as deprived of the capacity to prosecute a case in his own name. Likewise, his any possessing measure of obligating contracts are void by the orders of the law.

The provincial court in whose jurisdiction the convicted person's property is situated, based on a motion made by the Saranwali or another interested organ may assign a person to supervise his property.

The court may oblige the person who is supervising the convicted person's property to give a bond with sufficient sureties in a reasonable sum. This person remains accountable for supervising the convicted person's property to the Provincial Court. The convicted person's established dues are paid from his property by law.

Article 335: The property supervising person is bound to provide the accounts of his supervision term at the end of his work on the instances that the case is reconsidered after the accused attended the court or his death - be it real or legal - is established in accordance with the rules of law relating to Personal Circumstances.

Article 336: A sentence drawn in trial in absentio shall be executed inasmuch as it is possible.

Article 337: Orders impending bonds with surety shall be executed from the date of their issuance. The civil action contestant may be obligated to giving bonds with sufficient sureties unless as otherwise expressed by law or being exempted by the court. The bond terminates after five years of its issuance.

Article 338: A sentence which is drawn in the accused's trial in absentio is not subject to the lapse of time, i.e., prescription, in contrast to the punishment determined which becomes final by prescription. And the trial shall be renewed upon the accused person's attendance at the court.

Article 339: Had the person convicted in absentio been arrested or appeared in the court prior to the termination of the assigned punishment, the already issued sentence becomes invalidated and the case to be adjudicated anew by the court.

When the former sentence imposed some fines already executed, the court may order the partial or complete reimbursement therefor.

When the person convicted by trial in absentio is dead, the forfeiture sentence shall be renewed in the presence of his heirs.

Article 340: An accused's failure to attend the court does not delay the passing of judgment on a criminal case in respect of other accused persons.

Article 341: If an accused of misdemeanor whose case is handed over to the felony court has failed to appear at the session, his trial in absentio remains subject to the rules relating to the adjudication of misdemeanor by a court of competent jurisdiction.

BOOK THREE: THE RIGHT TO APPEAL AGAINST AND PROTEST A SENTENCE

PART ONE: TO APPEAL AGAINST A SENTENCE

Article 342: The accused person as well as the Saranwali can by law appeal against a sentence adopted by the Primary Court on cases of misdemeanor. To appeal against the Primary Court's judgment on petty offenses are permitted in the following conditions:

(a) If the appellant be convicted for a punishment other than fine or court expenses;

(b) Or the appealling Saranwal had demanded the accused's liability to a punishment other than the fine, but the court has granted him a verdict of acquittal or that the court has passed a writ other than that demanded by Saranwali.

Excepting the foregoing two instances, neither the accused person nor the Saranwal has the right to appeal against the Primary Court's sentence, unless the protested sentence violates the law, or is based on an error in the execution or interpretation of the law or there appears some annullment in the sentence drawn or the procedures thereof which has affected the sentence.

Article 343: A civil defendant who has participated in trial according to Article 349 of this Law, can appeal, on behalf of the accused, a sentence which brings a verdict of guilty thereon.

Article 344: An appeal is permitted by law in respect to the crimes which inseparably are connected with one another, though the appellant is interested in some of these crimes.

Article 345: An appeal is allowed to be made against writs issued in terms of non-competency. As to rulings of competency, an appeal is permitted only if the ordering court lacks the lawful jurisdiction thereon.

Article 346: Observing the provision made by Article 345 of this Law it is not permitted to appeal rulings made in respect to preparatory and attendance measures and the orders pertaining to handling the essential affairs apriori. Whenever the sentence drawn on the subject is appealed, the said rulings and orders shall automatically be appealed thereat.

Article 347: A minor accused's appeal is not taken against a sentence subjecting him to disciplinary measures or the orders committing him to his parents or guardians.

Article 348: The civil action claimant, the civil defendant or the accused can appeal against the judgment drawn on the civil action in cases of misdemeanor and petty offenses on the condition that the compensation asked for, exceeds the sum within the final competence of the Primary Court.

Article 349: An appeal may be taken within ten days after pronouncement of judgment or order appealed from by filing a notice of appeal with the secretary of the court issuing the judgment.

The Attorney General (or Loai-Saranwal) can appeal against a court's judgment within thirty days from its pronouncement. He can, as well, file the notice of appeal with the secretariat of a court which is competent for considering the appeal.

Article 350: In respect to an accused convicted by trial in absentio, the time limit for making an appeal starts with the date the convicted person is informed of the court's decision in his absence.

Article 351: Whenever a contestant files a notice of appeal with the respective court within the ten days allotted for appeal, the time allowance shall be extended for five days more for his adverse party -- from the date the ten days are over.

Article 352: The appeal notice shall be filed with the Provincial Court in whose jurisdiction the original court lies. The Appellate Court's secretariate may assign the session for consideration of the appeal. The appellant shall be granted a time allowance of not less than three days.

The Saranwal may notify other contestants to attend the court at a designated time.

Article 353: The contesting parties' attendance at the court which is considering the appeal is governed by the rules embodied in Articles 213 to the end of Article 213 of this Law.

Article 354: The Saranwal is duty bound to transfer an imprisoned accused to a jail next to the Provincial Court. In this case, the appellate notice shall be considered urgently.

Article 355: A member of the collegium for appeals shall provide a report on the matter that is inclusive of the following points:

(a) Summary of the case;

(b) Inculpatory and rebutting evidence;

(c) Other issues considered in trial;

(d) Related measures taken thus far.

The report shall be signed by its writer and read out at the session. Having heard the report, the court listens to the statements made by the appellant and examines the evidences he adduces. Then other parties are given the opportunity to give their opinions and explanations and lastly the accused is granted the chance for explaining his own views. Thereafter, the reporter or another member of the collegium may express his view and after a thorough examination of the case records the appellate judgment shall be drawn thereon.

Article 356: Witnesses who have given evidence at the original court shall testify once again at the Appellate Court itself or before a judge assigned therefor. The said court may also adopt any measure necessary for completing the investigation records.

The Appellate Court is further authorized to issue any order seemed useful to the completion of investigation papers as well as the witness hearings.

No witness can be subpoened unless by an order issued by the court.

Article 357: Had the Appellate Court realized that some annulments exist in the sentence passed on by the original court or the measures adopted thereof, it may then correct the annulments existing in the procedures fulfilled, and issue a judgment on the case itself.

Article 358: But if the original court's order, other than a judgment passed on the object of the case, is issued in terms of its being non-competent for considering the case or a sub-issue staying the criminal proceedings; the appellate court, after having annuled the orders, may send back the case to the original court for adjudicating the criminal case per se.

Article 359: Had the court considering the appeal found that the criminal incident was a felony, it rules out its competency thereby sending the case records to Sarrawali for the adoption of necessary measures.

Article 360: If the accused is an appellant who is sentenced to deprivation of liberty calling for a lawfully immediate execution thereof, but who failed to refer to the respective organs for execution of the sentence prior to the court's session, his appeal may be left unsatisfied and not taken thereat.

Article 361: Had a sentence of fine and/or compensation been momentarily executed before its annulment, the fine and/or compensation shall be returned.

PART TWO: TABLING A PROTEST BEFORE THE SUPREME COURT

Article 362: The convicted person, the Sarrawali, the injured party and also the civil defendants have the right to protest final sentences drawn in cases of felony and misdemeanor in the Supreme Court on the following occasions:

(a) If the protested sentence is founded on an error made in the interpretation or application of the law or the infringement thereof;

(b) If some annulment appears in the case;

(c) If some annulment contained in the procedures has affected the content of sentence;

(d) If the accused be condemned to death.

When a death sentence does not come under the jurisdiction of the Supreme Court by observing the foregoing paragraphs, the Sarrawal is duty bound to take the case before the Supreme Court by law.

The injured party and the civil defendant may protest that part of a sentence which concerns the civil action.

Article 363: The Sarrawali, the civil party and also the civil defendants have the right to protest a sentence of trial in absentio passed on by the felony court in their specific spheres of concern in the Supreme Court.

Article 364: Court's orders which are issued before the passage of a sentence on the case itself are not subject to protest in the Supreme Court unless they result in delaying the criminal prosecution.

Article 365: A minor accused cannot protest in the Supreme Court orders subjecting him to disciplinary measures or committing him to his parents, another guardian or a trustworthy person.

Article 366: The protest shall be filed with the secretary of the court issuing the sentence. The protest shall be filed within forty days after entry of the judgment or the order protested.

In respect to trial in absentia, the time allowed for making protests begins with the date the convicted person is informed of the matter. In filing a protest, the reasons for doing so shall be provided within the same time-limit specified for submitting protests.

Article 367: When the protest is filed by the Procuratorate or Saranwali, the grounds for protest shall, at least, be signed by the procurator or the Saranwal himself.

Article 368: A protest cannot be defended on the grounds which have not been adduced in the Supreme Court within the term specified by Article 367 of this Law. Nonetheless, the Supreme Court may, on its own conviction, reduce a sentence if it is discovered that the sentence is based on an error made in the application or interpretation of the law, or the transgression thereof; or that the adjudicating court was not established in accordance with the law, or lacked the competency to prosecute the case; or that after the adoption of the protested sentence a law which is applicable to the case has come into force.

Article 369: In examining a protest, the court bases its conviction on a report prepared by a member justice. The Supreme Court may, as well, upon necessity, hear the statements made by the Saranwal, the adverse parties and also their defense counsels.

Article 370: The court rejects a protest and/or the reasons therefor if they have not been submitted within the period designated by law.

If a protest which is based on the grounds provided by the first paragraph of Article 351 of this Law is accepted by the court, it may then correct the error and issue a new sentence in accordance with the law. In case the protest is based on reasons prescribed in the second, third and also the fourth paragraph of the said Article, the court then annuls the sentence and dispatches the case back to the adjudicating court for consideration by a session whose majority members are not the judges already participating in the trial of the case under discussion. The Supreme Court, however, may upon necessity dispatch the case to another court.

If the annulled sentence is drawn by an Appellate Court, or a Felony Court, on a misdemeanor committed at the trial, the case shall be referred to the court of competent jurisdiction and adjudicated according to the ordinary rules of procedure assigned by law.

Article 371: It is not permissible to annul a sentence containing an error on the grounds for judgment or in its reference to a legal text if the penalty is ascertained the same as that provided for the crime by law. However, the Supreme Court may correct the errors.

Article 372: If the protest is not tabled by the Attorney General's Department, the court then annuls that part of a sentence which concerns the protesting party. Yet in case the protest concerns other accuseds as well, the court may examine the case in full in respect of all convicted persons including those who have not protested the sentence.

Article 373: When the sentence is annulled on the basis of a protest in the Supreme Court, by an adverse party other than Saranwal, this annulment does not affect his protest thereon.

Article 374: When the sentence of a court, to which the case was referred for a renewed trial, is prosecuted for the second time, the Supreme Court may adjudicate the case subject thereafter. Rules specified for prosecuting the crime shall be applied thereon by law.

Article 375: The adjudicating court is not permitted to contradict the Supreme Court orders in case its sentence on accepting a legal defense, yet delaying the trial process, was protested thereof and the Supreme Court ordered its renewed trial.

Likewise, the adjudicating court is not authorized to contradict decisions adopted by the general sessions of the Criminal Collegiums of the Supreme Court.

Article 376: When the protest is rejected in respect of its object, the protesting party is not then allowed to put forward protests on other grounds.

Article 377: A person sentenced to deprivation of liberty who fails to attend the related organs for executing the sentence is not permitted to make protest in the Supreme Court. The Court may bail him out if he met the conditions outlined and forwarded a grounded protest.

Article 378: In accordance with the rules embodied in this part, the Attorney General's Office (i.e., Saranwali) is duty bound to protest in writing in the Supreme Court a death sentence which is drawn in the accused's presence, within the time limit set forth in Article 376 of this Law. And the court may issue its order in pursuance to the provisions made by the second paragraph of Article 368 and also by the second and third paragraphs of Article 370 of this Law.

PART THREE: THE REVIEW OF COURT SENTENCES

Article 379: The review of court sentences by way of revision is permitted in cases of felony and misdemeanor under the following terms:

(a) If the person for whose murder the accused is convicted is found alive.

(b) If a person is convicted of a crime for whose commission someone else is also convicted before, and the two sentences contradict each other in the sense that proves the acquittal of one.

(c) If the witnesses or the experts have lawfully been punished for giving false testimony or the forgery sub-issue be proven in the later trial. In both instances, it is essential that either the testimony or the forged document affected the sentence under discussion.

(d) When a judgment drawn by a civil court upon which the criminal sentence is grounded has been annulled.

(e) When certain circumstances which are newly disclosed or emerged or some documents put forward to the court which were not known during the trial of the case prove the acquittal of the convicted person.

Article 380: The review by way of extraordinary means of a court sentence that is already in force in the first four instances stated by the foregoing Article is permitted only in the case of a protest by the Losi-Saranwal, the convicted person or his legal representative and in case of his death by a protest made by the latter spouse or his relatives. If the protesting party is not the Saranwal he shall be required to prepare a petition for the review of the court sentence to the Attorney General's Office. The petition shall include the sentence protested as well as the grounds for doing so.

The review petition, be it initiated by the Saranwal himself or others, shall be forwarded to the Supreme Court by the Attorney General with a report wherein he gives his opinion on the matter as well as the investigation conducted attached therewith. The Saranwali is duty bound to forward the review petition within three months after its initiation thereof.

Article 381: Only the Losi-Saranwal has the authority to petition for reviewing a sentence on the instance provided by the fifth section of the foregoing Article. The demand can be made on his own initiative or on the motion made by the interested party. If the Attorney General decides to protest the sentence and demand its revision, he prepares a review petition and submits it along with the investigation conducted on the matter to a committee combined of a Supreme Court Justice, and also two Appellate Judges who have been assigned by the Court's Presidium for consideration of the case. In his review petition, the Attorney General explains the incident as well as the grounds for his motivation. The committee, after a thorough study of the records and the completion of necessary investigation, makes a decision thereon. And in the event of approving the petition, it shall be referred to the Supreme Court.

The decision on the approval or disapproval of the review petition made by the Attorney General or the said committee is not subject to protest of any sort.

Article 382: Saranwali is duty bound to inform the contesting parties at least three days before the Supreme Court holds a session for consideration of the review petition.

Article 383: The Supreme Court shall make a decision in the matter after hearing the opinions expressed by the Loai Saranwal, and the contesting parties as well as the outcome of the investigation conducted by the court itself or some other organs.

In the event the court approves the review petition, it annuls the sentence and acquits the convicted person if his innocence is obvious; if not, the case shall be dispatched to the adjudicating court to be reconsidered by other judges. However, the Supreme Court may itself consider the case if it wants to.

In the event that the convicted person's death or the dropping of the criminal case as a result of the prescription of the statutory time-limit makes impossible review of the sentence, the Supreme Court then annuls that part of a sentence or the subsequent ruling which bears an error as far as the legality is concerned.

Article 384: When the convicted person is dead and the review petition is not made by the spouse or relatives of the deceased, the Supreme Court may itself appoint a person to defend the convicted and consider the case in his presence. Upon necessity, the court annuls that part of the sentence which proves detrimental to the deceased's prestige.

Article 385: Filing a review petition does not stay the execution of the protested sentence unless the accused is sentenced to death.

Article 386: Any acquitting order that has been issued as a result of the review petition shall be published in the Official Gazette as well as in one other paper proposed by the interested person in the government's account.

Article 387: Had the protested sentence been annulled, the order in respect to compensation shall as well be annulled and the paid amount shall be reimbursed. This provision will be observed vis-a-vis the rules concerning the loss of right as a result of the termination of the statutory time-limit therewith.

Article 388: Whenever a revision petition is dismissed, to renew the petition on the grounds formerly used is not admitted thereafter.

Article 389: Orders issued by the Supreme Court, while considering the review petition and the case therewith, remain subject to protest by all legal means.

PART FOUR: VALUE OF THE FINAL SENTENCES

Article 390: A criminal case brought against the accused is terminated

with the passing of a final sentence or a final verdict of acquittal thereon. When a verdict is brought in, no revision is permitted unless processed in accordance with the rules of the law.

Article 391: After the passage of a final sentence, it is not allowed to reconsider the sentence as a consequence of newly discovered circumstances or changed legal quality of the crime.

Article 392: For a Civil Court which is considering a case not then decided in the final terms, a sentence issued by the Criminal Court on a crime in terms of the presence of a corpus delicti, legal qualification of the crime, and also the attribution of a charge to the accused -- be it a verdict of guilty or not guilty -- bears the value of an object judged upon. In this instance, a verdict of acquittal includes a judgment based on the dismissal of a charge or the insufficiency of the inculpatory evidence; but if it is based on the assumption that the act does not constitute a crime, the sentence issued does not accrue the value of the object judged upon it.

Article 393: For Criminal Courts the orders issued by Civil Courts in civil cases do not have the value of an object decided upon when they concern the absence or presence of a corpus delicti, or the attribution of a charge to an accused.

Article 394: Civil judgments drawn on personal circumstances by Civil Courts bear the value of an object decided upon for the criminal courts in the adjudication of criminal cases.

BOOK FOUR: EXECUTION OF COURT SENTENCES

PART ONE: OBLIGATORY SENTENCE, RULING OR ORDER

Article 395: No one may be punished except by the order of a competent court and in accordance with the law.

Article 396: Unless as otherwise expressly provided by law, the orders rendered by Criminal Courts which are not final judgments shall not be executed.

Article 397: Supervision over the legality of the execution of a sentence is effected by the Attorney General's Office.

Article 398: Execution of the court order rendered on civil action shall be effected by the claimant's request.

Article 399: Sarandwali is duty bound to adopt measures for the execution of criminal sentences which come into force.

Article 400: Sentences inflicting fines and court expenses are immediately executed, despite their being appealed. Likewise, sentences imposing deprivation of liberty in cases of robbery and attempted robbery, and also sentences on persons who have previously committed a crime or on the persons who have no permanent place of residence in Afghanistan, are immediately executed. Furthermore, court sentences imposing imprisonment in otherwise instances are immediately executed as well, unless the accused bails by giving a bond in order to attend the Appellate Court and pleads therein his obedience for the execution of the court order rendered thereafter. The amount to be paid for his bail is determined in the original sentence to deprivation of liberty by the court.

Had the accused been already detained, the court may then rule the provisionary execution of the sentence.

Article 401: Whenever a sentence of imprisonment comes into force according to Article 400, other penalties meant for deprivation of liberty which have been ordered in the same sentence shall be executed too.

Article 402: A sentence of committing the accused to a reformatory (reform school) or other place as well as his submission to a person other than his parents or guardians shall be executed even though it be appealed.

Article 403: The accused shall immediately be released if a verdict of acquittal is brought in; or the sentence imposes a penalty other than imprisonment; or the court has ordered to stay the execution of the sentence; or the accused, while being in custody, has served his term of imprisonment.

Article 404: Other than the circumstances prescribed in the foregoing articles of this Chapter, the execution of an original sentence shall be stayed during the time of filing an appeal pursuant to the provisions made by Article 349, as well as during the period of Appellate consideration.

Article 405: The order issued on civil action may be executed in part or in total, as the court decides, although the sentence drawn is appealed against.

PART TWO: EXECUTION OF DEATH SENTENCE

A sentence of death may not be passed except by unanimous approval of the members of the respective Collegium of the Cassation Court.

Article 406: Whenever, in pursuance of the provisions made by this Law, a death sentence becomes final, the Chief Justice presents

the case records to the King within one week from the time the sentence is passed. Should the King not remit or pardon the sentence, he shall sign the sentence, and it will be executed.

Article 407: Under the direction of the Justice Minister, the Saranwal may order the convicted person to be placed in prison until the time of his execution.

Article 408: Relatives of the person convicted to death shall be permitted to visit him until one day prior to his execution. The prison administration is bound to notify his relatives of the matter.

Article 409: A person sentenced to death shall be accommodated with facilities if he is required to perform his religious duties.

Article 410: On the basis of a written demand by the Procurator asking for the fulfillment of measures provided by Article 407 of this Law, the death sentence shall be executed inside the prison or some otherwise hidden place.

Article 411: The death sentence shall be executed in the presence of a member of the Procuratorate, the officer in charge of the prison and also the prison physician or some other physician who shall be designated by the Saranwali.

The convicted person's defense counsel and the private party may be allowed to attend the execution of the death penalty. Text of the death sentence and the charge motivating the passing of such a sentence shall be read out at the execution scene for the persons present thereat.

Should the convicted want to make any statement the member of Saranwali shall write it and place it in the records.

When the execution is over, the Saranwal makes a recording of the incident and gets the physician's opinion on the convicted person's death and the time it occurred.

Article 412: Executing a death sentence is not permitted on holidays.

Article 413: Execution of a death sentence on a woman who is pregnant at the time the sentence comes into force shall be postponed until two months after she gives birth to her child.

Article 414: Should the convicted have no relatives to ask for his corpse, his corpse shall be burried at government expense and in accordance with the provisions of the Shari-aat of Islam. The corpse shall be buried without holding funeral ceremony.

PART THREE: EXECUTION OF SENTENCES OF DEPRIVATION OF LIBERTY

Article 415: Sentences of deprivation of liberty shall be executed on the basis of an order issued by the Attorney General's Office, under the direction of the Minister of Justice.

Article 416: A person who is sentenced to an imprisonment not exceeding three months can, in lieu of serving his sentence, ask for labor without deprivation of liberty out of the jail in accordance with Article 455 of this Law and the succeeding ones, on the condition that the law does not prohibit him to such a request.

Article 417: The imprisonment term includes the day on which the sentence was executed. The convicted person shall be released on the day following termination of his sentence term at a time specified for the release of prisoners.

Article 418: Should the accused be imprisoned for 24 hours, his term of sentence ends on the second day of his arrest at the time specified for the release of prisoners.

Article 419: Execution of the sentence of deprivation of liberty begins on the day of an arrest made pursuant to an obligatory order. The time spent in custody and under arrest is computed in serving the sentence term.

Article 420: Should a detained accused be acquitted of a charge rendering his detention, the time spent in custody may be counted in sentence terms imposed on him as a result of a crime committed in the custody or a crime which is investigated at the time of his being placed in custody.

Article 421: Should the accused be sentenced to deprivation of liberty for the commission of several crimes the time spent in custody shall be subtracted from the total punishment.

Article 422: When the person convicted to deprivation of liberty is a woman who is in her sixth month of pregnancy or more, the execution of her sentence may be stayed for two months after bearing a child. And until the passage of the allotted time, she will be treated as a detained person.

Article 423: It is permitted to stay the execution of a sentence of deprivation of liberty on a sick person whose life will be jeopardized by the execution of the sentence or the disease per se.

Article 424: It is permissible to stay the execution of a sentence of deprivation of liberty on a person who becomes Non Compos Mentis until his recovery. And the Saranwal may order his transfer to a medical center for the treatment of mental disturbances. On this occasion, the time spent in medical examination and treatment shall be subtracted from the sentence term.

Article 425: When a husband and his wife have been sentenced to deprivation of liberty for a term of not exceeding one year, though for different charges, it is permitted to stay the execution of their sentences if they have not previously committed crimes and provided that they are supporting a minor who is not over fifteen years of age and they have a permanent place of residence in Afghanistan.

Article 426: Sarunwali can, in the instance of staying the execution of sentence, ask the convicted to give bail not to evade the service of sentence in case the reason calling for the stay of his sentence is no longer present. The sum to be put in bail is determined in the stay order.

Sarunwali can as well put certain other conditions and restrictions on the accused in order to prevent his evasion.

Article 427: It is not permitted to release a prisoner during the term of his sentence except in cases provided by the operative laws.

Article 428: It is not permissible to release the convicted juveniles who by the order of the Procurator are sent to a reform school or some other place, without obtaining the opinion of the reformatory or the otherwise colony.

Article 429: Persons who have not completed seventeen years of age serve their terms of sentences of deprivation of liberty in special and separate colonies from those of other convicted persons.

PART FOUR: CONDITIONAL RELEASE

Article 430: If a person sentenced to deprivation of liberty by a final judgment has served three-quarters of the sentence and by exemplary good behavior proves that he is reformed, it is permitted to order his conditional release unless his release be detrimental to public security.

The convicted person, however, shall spend no less than nine months in the jail. And if he is sentenced to life imprisonment, his conditional release is not permitted unless he has served fifteen years of imprisonment.

Article 431: Should the person be sentenced for several convictions committed before his imprisonment, the term for conditional release shall be counted on the basis of the aggregate penalty. But if the convicted person commits a crime during his service of the sentence, that term of conditional release shall be counted from the addition of the unserved part of the sentence and the sentence on his later charge.

Article 432: In the application of the rules providing for conditional release, the time spent in the custody shall be counted as served part of the sentence inforce. Remitting a sentence by amnesty or pardon shall not be considered part of the period required for granting the conditional release.

Article 433: Conditional release is not applicable to persons who have failed to pay the fines or court expenses ordered by the court of original instance provided that the convicted person is financially capable to pay them.

Article 434: Conditional release is applied on the basis of a proposal made by the General Director of the Prisons of the Ministry of Interior and its approval by the Minister of Justice.

Article 435: The Minister of Justice shall determine conditions to be observed by the conditionally released person. Likewise, on his order, the Minister of Justice shall impose certain obligations such as restricted residence, not engaging in certain activity or a guarantee for good behavior on the convicted as well.

Article 436: The prisoner shall be committed to the respective organ for applying the conditional release order as well as giving him a certificate which includes name of the sentence, its term, the date of its expiration and the time conditional release is applicable. The conditions and obligations established shall be recorded as well thereby warning the convicted person that in case of his failure to observe the imposed conditions and obligations, or a deed of misbehavior during the period for which he has been conditionally released, he shall be returned to the prison and his conditional release shall be annulled in accordance with the provisions made by the next Article of this Law.

Article 437: Whenever the person conditionally released fails to observe the conditions and obligations imposed thereon, he shall be returned to the prison to serve the unserved part of his sentence thereafter.

The annulment order shall be issued by the Minister of Justice on a proposal made by the Attorney General's Office. The proposal so made shall describe the grounds for the measure.

Article 438: Deeming proper to annul the conditional release order, Sarunwali, at its own discretion or requested by a pertinent body, may issue an order to arrest and imprison the conditionally released person until the decision is made by the Minister of Justice. The person so arrested shall not be imprisoned longer than fifteen days unless permitted by the Loai-Sarunwai, i.e., the Attorney General. When the conditional release order is annulled, the time which the accused has spent in the prison shall be deducted from the obligatory term of his sentence.

Article 439: Should not the conditional release be annulled until the end of a sentence, it shall be final thereafter. In cases of life imprisonment, the order becomes final after the lapse of three years. However, if a person who has been conditionally released before completing his sentence commits a felony or a similar misdemeanor during the period for which he has been conditionally released and be convicted thereon, it is permissible to annul his conditional release on the occasion that three years have not passed from the second sentence.

Article 440: It is permitted to apply conditional release for the second time, if the required legal conditions are present. In this instance, the remaining unserved part of the sentence shall be regarded as the total term of the sentence.

If it is a sentence of life imprisonment, it is not allowed to apply the rule providing for conditional release before the lapse of three years.

Article 441: Saranwali is bound to consider complaints relating to conditional release as well as to adopt necessary measures for their elimination.

PART FIVE: EXECUTION OF COURT SENTENCES OF INDEMNITY AND FINES

Article 442: Having clarified the amount to be paid in fine to the State, reimbursement, compensation and the court expenses, the Saranwali is bound to inform the convicted person prior to the execution of the sentence of the sum total, unless the sum is ascertained in the sentence.

Article 443: The amount payable to the government shall be recovered in accordance with the rules on civil procedure or the administrative means used in the collection of government dues.

Article 444: Should the accused fail to pay the amount payable to the government, Saranwali shall then order his detension as specified in Article 442 and the succeeding Articles of this Law.

Article 445: Should not the accused's property suffice for the payment of fine, refundable expenses, indemnity and court expenses sentenced together, his recovered property shall be distributed on the following basis among the deserving parties:

(a) Expenses payable to the government;

(b) Sums payable to the civil party (civil action)

(c) The amount of fine as well as the amount in terms of indemnity and compensation.

Article 446: Should an accused who is detained be sentenced only to fine, fifty Afghanis shall be allowed for each day he spent in custody.

On the occasion that the sentence imposes fine and imprisonment together and the time spent in detension exceeds that of imprisonment, the amount specified in the above paragraph shall be allowed for the excessive days of his detension.

Article 447: The Primary Judge, on the accused's motion and with the consent of Saranwali, may in exceptional cases grant the accused some time allowance for the payment of the sums imposed - such as for paying the government dues - or may ascertain the sum to be paid on an installment basis provided that the whole term of allowance or installment may not exceed nine months.

Orders in terms of rejecting or accepting such a motion are not subject to appeal.

When the accused delays in paying the money at due times, the court may annul the installment plan under law.

PART SIX: DETENSION FOR EXECUTION OF A SENTENCE

Article 448: It is permissible to detain a criminal for the recovery of monetary exactions inflicted by the court in his case. Fifty Afghanis shall be allowed for each day spent in custody.

The term of detension in cases of petty offenses may not exceed seven days for the recovery of the fine and another seven days for the collection of trial expenses, the amount to be refunded and the compensation therewith.

The term of detension in cases of misdemeanor and felonies may not exceed three months for the recovery of the fine and another three months for the collection of trial expenses, the amount refundable and the compensation therewith.

Article 449: A sentence shall not be executed by detaining a convicted person who is not over fifteen years of age at the time of the commission of the crime, or who has been sentenced to imprisonment with the stay of its execution.

Article 450: Provisions made by Articles 421 and 424 of this Law are applicable to the execution of a sentence by detension.

Article 451: Execution of several sentences which are all petty offences, or misdemeanors or felonies shall take place on the basis of the total amounts of the monetary exactions inflicted by the sentences. On such occasions, the detension term may not exceed twice the maximum period specified in misdemeanor and felony or twenty days in petty offenses. In regard to different crimes, the maximum penalty allotted for each crime shall be considered. And in any case, the detension period shall not exceed six months for the recovery of fine, and another six months for the collection of expenses, the refundable sums as well as the idemnity therewith.

Article 452: Should the sentence be on different crimes, the money paid or recovered from the convicted person's property shall be deducted first from the monetary exactions inflicted by the sentence on felony, then from the sentence on misdemeanor and lastly from the sentence on petty offences.

Article 453: Execution of a sentence by means of detension shall be effected by the Attorney General's Office under the direction of the Minister of Justice.

Article 454: The detension period shall be terminated when the recoverable sum, after the deduction of the money paid or collected from his belongings, equals the period spent in custody.

Article 155: The convicted person can be exempted from the payment of the monetary exaction sentenced only if he spends a day in lieu of fifty Afs, in custody.

Should the misdemeanor judge find out that a convicted person living within his jurisdiction, notwithstanding his financial capability, delays in payment, the judge may then order the execution of the sentence on him by way of detension. The detension term shall not exceed that of three months on this occasion.

Article 456: The convicted person may, at any time but prior to the issuance of the detension order, ask the Saranwali to have his monetary sanction commuted to manual or industrial labor that can be performed by him.

Article 457: The convicted person shall perform the labor specified in the foregoing Article without any wage for a state organization equivalent to the term applicable by rules of executing a sentence by detension thereon.

Article 458: The minister of the respective ministry shall assign the pertinent body to determine the kind of work to be performed as provided by Article 456 of this Law.

Article 459: It is not permitted to put the convicted person at the work specified in Article 456 outside the town or the Woleswali where he lives.

Article 460: The convicted person who is put to work in accordance with Article 456 but fails to attend the work place without having an audible excuse, or who disappears at the work time or does not accomplish his allotted daily work, shall be put in custody for executing the sentence by means of detension. The time spent in working shall be allowed for.

Article 461: Likewise, the sentence shall be executed by means of detension on a convicted person who prefers labor to detension if no productive work at which to put him is available.

Article 462: From the sums payable to the state such as indemnity fines and the amount to be repaid, fifty Afghanis is deducted for each work day.

PART SEVEN: PROBLEMS OF EXECUTION

Article 463: A primary court of competent jurisdiction at the execution scene shall consider any problem raised as a consequence of executing the sentence on the convicted person.

Article 464: Saranwali is duty bound to bring the dispute to the court immediately as well as to obligate the interested parties to attend the court session allocated for consideration of the matter.

The court may, after hearing the statements of Saranwal and the interested parties, decide thereon. In this regard, the court order is final. The court is authorized to conduct some further investigation and stay the execution of the sentence until the question is considered.

The Attorney General's Office can also, upon necessity, stay the execution of the sentence provisionarily before taking the problem to the court.

Article 465: Should the convicted person's identity (or personality) be disputed, the matter shall be decided in pursuance to the two foregoing Articles.

Article 466: Should the convicted person's property, upon which the sentence is being executed, be disputed by a non-convicted person, the conflict shall be handled by a civil court of competent jurisdiction and in accordance with the rules on civil procedure.

PART EIGHT: TERMINATION OF A SENTENCE DUE TO THE DEATH OF A CONVICTED PERSON

Article 467: A sentence is remitted if the convicted person dies after its passing thereon.

Article 468: Termination of a sentence on the convicted person's death does not prevent the execution of fines, indemnity, trial expenses and also the amount to be repaid to the state from his estate.

PART NINE: EXPUNGING A CRIMINAL RECORD

Article 469: It is permitted to expunge the records of a person convicted of felony or misdemeanor.

Article 470: The Felony Court may, on the basis of a motion of the convicted person, order expunging of his criminal records.

Article 471: Following conditions shall be observed in expunging the records of one's conviction:

(1) The sentence to be served in full, or releases from the sentence by amnesty or pardon.

(2) To have not committed a fresh crime after the lapse of six years after serving his sentence of felony or three years after serving him sentence of misdemeanor. Should he have a previous conviction, the said terms shall be doubled therefor.

Article 472: Should the convicted person be, after serving his sentence, subjected to police supervision, the term provided for expunging his criminal records starts with the end of the said supervision.

Article 473: Should the convicted person be conditionally released, the time limit set for expunging a criminal conviction begins when the sentence is over, or whenever the conditional release order becomes final.

Article 474: The court may grant a request to expunge the record of his conviction if the convicted person has paid in full the fine, the refundable dues, compensation and also the trial expenses.

The court may refrain from the condition of paying the monetary exactions if it is proved that the convicted is unable to pay them out. On the occasion that the civil party as well as the party deserving the indemnity or compensation and expenses are not found, the sum shall provisionarily be entrusted under rules on civil procedure. It is permitted to ask for the reimbursement of the sum so deposited if the deserving party did not make a demand therefor within five years.

Should the convicted person be sentenced on the basis of a bond, he shall be subjected to the payment of those dues which are lawfully bound to it.

Article 475: Should several sentences be passed on a person requesting the expunging of his criminal records, his convictions shall not be expunged from the records unless he meets the conditions specified in the foregoing Articles for every sentence. And the time limit shall be considered from the date of his last sentence.

Article 476: The request for expunging a criminal record shall be submitted to the Attorney General's Office in the form of a petition. The petition shall contain necessary explanations of the petitioners identity, the date the sentence has legal force and the places he lived in after passing the sentence.

Article 477: The Attorney General's Office shall conduct an investigation on the petition made for expunging the record of conviction for ensuring the convicted person's residence places after the passing of the sentence thereon, as well as for obtaining information on his behavior, means of living and also for gathering other pertinent information.

Saranwali shall, together with the investigation records, present the petition for rehabilitation to the court within three months, thereby explaining his opinion and the reasons therefor. The following documents shall be attached to the petition as well:

(1) A copy of the sentence passed on the convicted person.

(2) His past report.

(3) A report on his behavior during his imprisonment.

Article 478: Petitions for expunging criminal records shall be considered by a court of competent jurisdiction. The court is at liberty to hear the statements made by the procurator and the petitioner and to accommodate the information needed thereof.

The petitioner shall be notified at least eight days prior to the court session allocated for the consideration of the petition.

The court order so issued can only be reviewed by the Supreme Court in the existence of an error made in the application or interpretation of the law.

Article 479: The court may grant the request of expunging a person's record of conviction if it is proved that he has reformed and the two conditions specified in Article 474 are present.

Article 480: Saranwali is bound to send a copy of the court order on expunging a criminal record to the court issuing the sentence for registering on its margin the new order. And also, Saranwali orders registering the matter in the background files.

Article 481: Expunging the criminal record of a convicted person is permitted only for one time.

Article 482: Whenever a request for expunging the records of one's conviction is rejected on moral grounds, it shall not be renewed for two more years.

Article 483: The court may annul its order of expunging the convicted person's records of criminality if it finds that there are some sentences on the petitioner which were not known to the court, or the petitioner, after the issuance of rehabilitation order, is sentenced for a crime committed previously. The annulment order shall be issued by a court which writ the expunging of the criminal records on the basis of a demand made by the Attorney General's Office.

Article 484: A person is deemed not to have been convicted if he does not commit a new crime, a felony or a misdemeanor, after serving his sentence in the following periods:

(1) Twelve years after the commission of a felony or a misdemeanor of the ensuing categories:

(a) Robbery or the concealment of robbed things;

(b) Fraudulent and criminal breach of trust;

(c) Counterfeit;

(d) Attempt to commit the above crimes, or the crimes relating to the destruction of agricultural products, farm, trees or the crimes relating to the destruction of cattle.

(2) After the lapse of eight years or by amnesty of a person convicted for a misdemeanor other than those stated in the foregoing paragraph. Should the sentence passed on the convicted person recognize him as having some previous convictions, the periods assigned for rehabilitation shall be doubled.

Article 485: Should the sentenced person have several convictions, his criminal records shall not be expunged unless he meets the conditions set forth in the foregoing Articles for each conviction. And the time limit shall be considered from the date of his last conviction.

Article 486: The issuance of an order of expunging one's records of conviction repeals the verdict of guilty in the future thereby eliminates all of the consequences of the verdict such as the deprivation of legal personality, deprivation of civil rights and so on.

Article 487: The order of expunging a criminal record is not detrimental to the rights and compensation obtained by others as a result of the verdict of guilty already brought in.

GENERAL PROVISIONS

FIRST SECTION: PROVISIONS ON THE LOSS OF CRIMINAL RECORDS:

Article 488: Provisions made by Articles of this Section are applicable on the instances if the original sentence is lost before its being executed, or if prior to drawing a judgment the records of preliminary investigation are lost in part or in full.

Article 489: The duplicate found of the original sentence shall be considered as its substitute.

Should the duplicate be in the possession of an organ or a person, Sarranwali may ask the court issuing the sentence to the person or the organ to reissue a new duplicate. And the person from whom it was obtained shall be accommodated with another duplicate of the sentence without tax.

Article 490: Missing the original copy of the sentence does not call for a renewed trial provided that it has gone through the stages of legal protests before.

Article 491: Whenever the case is under the consideration of the Supreme Court and it be impossible to recover the tax due a duplicate of the sentence, the Supreme Court may then order the renewal of the trial.

Article 492: Should the records of preliminary investigation be lost in part or in full prior to the making of a judgment, that

part of the investigation shall be conducted anew which concerns the lost records. If the case is under the consideration of the court, the investigation then shall be conducted by the court itself.

Article 493: Whenever the records of the preliminary investigation of a case which is under the consideration by the Supreme Court are lost in part or in whole, and not the court sentence, no part of the procedure can be renewed unless ordered by the Supreme Court.

SECTION TWO: TIME CALCULATION

Article 494: Times mentioned in this Law shall be calculated in accordance with the Islamic Calendar of Hajo Shamsi (i.e., the solar calendar started with the date of the Islamic Prophet's departure from Mecca to Medini in 622 A.C.), as usual in Afghanistan.

SECTION THREE: THE TERMS "JANYAT," "JONNAHA," AND "QABAHAT" (ROUGHLY CORRESPONDING TO FELONY, MISDEMEANOR AND PETTY OFFENSES.)

Article 495: The terms of "Janayat," "Jonnaha," and "Qabahat," as used in respect to offenses covered by the "Penal Act on Offenses by or Relating to Public Servants and the Offenses committed against the Public Security and Benefit," have been defined by Articles 18, 19, 20 and 23 of that law. For purposes of this Law the said terms apply to the following meanings:

(a) The crimes which according to the Hanafit Jurisprudence of the Shariat of Islam are punishable by Qa-i-Sas (the established right of the heirs of a person murdered to kill the murderer by a court order), or punishable by Hadd (i.e., certain punishments already assigned by the Quran for certain crimes), or Qa-i-Sas in person or Di-yat in person (e.g., indemnity imposed on civil defendants in the instances of a murder by a minor), or punishable to capital punishment by Taazir*, are called Janayat (or felonies).

* Taazir implies punishments other than Qa-i-Sas, and Hadd which have not been determined by the Quran for certain criminal deeds but are used at the discretion of the court. It ranges from the least, such as reproachment of the offender, to the issuance of death penalty. In using Taazir, the judge is guided by his conscience within the general frame of the Islamic principles of justice and law.

(b) Other deeds which according to the Hanifi doctrine are considered as offense are called Jonnaha, or misdemeanor, unless the Surmawal asks for a punishment not exceeding one month of imprisonment, in which case the deed shall be considered as a petty offense, or Qabahat.

FOURTH SECTION: A MOMENTARY PROVISION CONCERNING THE SUPREME COURT'S JURISDICTION AND FUNCTIONS

Article 496: In accordance with the provisions made by Article 127 of the Constitution, Article 100 of the Decree Law on Organization and Functions of the Judiciary and the Royal Decree No. 1020 on 1381 dated 6/8/43, the functions entrusted to the Supreme Court by this Law shall be performed by the Collegiums of the Cassation Court until the former court is established.

FIFTH SECTION: MOMENTARY PROVISION AS TO REGULATING THE ATTORNEY GENERAL'S OFFICE AND THE POLICE FUNCTIONS

Article 497: During the Interim Period, functions of criminal pursuit and investigation of the crimes which have been entrusted to Saranwali - or the Attorney General's Office - by this Law shall, in accordance with the provisions made by the Decree Law regulating the Attorney General's Affairs, be performed together with the police.

SIXTH SECTION: MINISTERIAL DECREES

Article 498: The Ministry of Justice is duty bound to issue decrees needed for the execution of this Law.

SEVENTH SECTION: LAWS REPUGNANT TO THIS LAW

Article 499: Whenever the provisions made by this Law are repugnant to the provisions made by other laws, then the provisions of this law shall be enforced.

EIGHTH SECTION: THE TIME THIS LAW COMES INTO FORCE

Article 500: This law becomes operative after its publication in the Official Gazette.

THE END