

CHAPTER 5 - Appeals And Petitions

Facilities to prisoners for filing appeals

Rule 90

The Superintendent shall inform every convicted prisoner, on first admission to prison, of the period within which an appeal from the order under which he has been committed to prison may be filed. If the prisoner desires to appeal, every facility shall be given to him for the purpose. A request for appeal, made within the period allowed, shall be attended to forthwith

Limitation for appeals

Rule 91

- (i) The periods allowed for appealing are as follows:
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| (a) | Appeal from the decision of a Magistrate to the District Magistrate | 30 days |
| (b) | Appeal to the Sessions Judge | 30 days |
| (c) | Appeal to High Court against a sentence of death | 07 days |
| (d) | Appeal to the High Court in all other cases | 60 days |
| (e) | Petition for special leave to appeal to Supreme Court | 30 days |
- (ii) The presentation of a petition of appeal by a convicted prisoner to the Superintendent shall, for the purpose of the Limitation Act, 1908, be equivalent to presentation to the Court. (*Vide* section 420 of the Code of Criminal Procedure).
- (iii) The Superintendent shall not withhold the appeal of any convicted prisoner, even though it be apparently barred by limitation.

Interview for the purpose of appealing

Rule 92

Every convicted prisoner shall be allowed reasonable opportunity of interviewing his relatives, friends and legal advisors for the purpose of preparing his appeal.

Every such interview shall be allowed within sight, but out hearing of the prison official supervising the interview.

If a relative or agent of the convicted prisoner undertakes to submit an appeal on his behalf, the arrangement must be authorised by a power of attorney to which the convicted prisoner shall affix his signature or thumb-impression. This shall be attested by the Superintendent, or in his absence by the Deputy Superintendent.

Prohibition against writing appeals without permission

Rule 93

No prisoner or officer of the prison shall prepare, write out, or submit any appeal or petition on behalf of any prisoner, without the previous permission in writing of the Superintendent

Procedure in the case of prisoners without friends, relatives or counsel

Rule 94

- (i) If a convicted prisoner without a friend, relative or counsel to act for him, elects to appeal, the Superintendent shall apply to the Court concerned for a copy of the judgment or order against which the appeal is to be filed. If several persons are sentenced in the same case, only one copy of judgment shall suffice for all the prisoners electing to appeal from the same prison.
- (ii) On receipt of the copy of the judgment or order, a prisoner if literate shall be allowed to write his own appeal. If the prisoner is not able to write, the Superintendent shall cause his appeal to be written for him by another prisoner or a prison official strictly in accordance with the dictation of the appellant.
- (iii) An appeal preferred by a prisoner from the prison should, before dispatch, be read over to him in the presence of the Superintendent. If the prisoner approves of the appeal, he shall affix his signature or thumb impression on it. The Superintendent shall sign the document and cause the official seal of the prison to be stamped on it.
- (iv) The Superintendent shall forward the appeal, with a copy of the judgment or order appealed against, direct to the appellate court as required by section 420 of the Code of Criminal Procedure.

The appellate court will itself requisition the records from the Record Room.

- (v) If after the receipt of the copy of the judgment or order, a relative, friend or agent of the prisoner undertakes to file the appeal on his behalf and the prisoner is willing, a copy of the judgment shall be delivered to him and a proper receipt obtained for it.
- (vi) The provisions of this rule shall also apply, *mutatis mutandis*, to petitions for revision or clemency and the like.

Note (1) In case other than summons cases convicted prisoners are entitled under section 371 (1). Criminal Procedure Code, to a copy of the judgment free of cost. In summons cases no court fees are payable on the copy of the judgment. Government have further approved the principle that if a person convicted in a summons case is in prison, he or his agent shall be allowed a copy of the judgment free of copying fee.

Note (2) If a prisoner's appeal fails and he desires to prefer an application for revision, he is not entitled to a free copy of Judgment and must obtain it at his Own cost.

Note (3) Copy of judgment of the High Court will be supplied free of cost to a prisoner under sentence of death if he wishes to file a petition for special leave to appeal to the Supreme Court.

When an appeal is not desired

Rule 95

If any prisoner states that he does not wish to appeal, the fact shall be recorded on his history ticket and initialed by the Superintendent. The date on which a convict decides to appeal or not to appeal should also be recorded. Subsequent entries relating to the appeal and its result shall also be recorded thereon.

Prisoners not to be transferred pending appeal

Rule 96

With the exception of such class of prisoners for whom transfer orders are from time to time issued, prisoners who have not completed the period allowed for appeal without appealing or until the decision of their appeals should not ordinarily be transferred to another prison. If any such prisoner is transferred, it is the duty of the transferring prison to apply for a copy of the judgment, and forward it promptly to the prison where the prisoner has been transferred.

Appeals of prisoners transferred

Rule 97

When any communication relating to the appeal of a prisoner who has been transferred, is received, it shall be forwarded without delay by registered post to the Superintendent of the prison in which the prisoner is confined after noting the same in the admission register of the prison from which the prisoner has been transferred.

Reminder enquiring the result of the appeal

Rule 98

If the result of an appeal to the District Magistrate or Session Judge is not communicated within one month, or in the case of an appeal to the High Court, within three month's of the date on which the appeal was submitted, the Superintendent shall send a reminder to the Court concerned and repeat the enquiry at reasonable intervals until it is communicated. The result of appeal shall, when received, be communicated to the prisoner concerned and entered in his history and admission register. The letter conveying the result of appeal should be filed with the prisoner's warrant.

Procedure when a court directs retrial of a prisoner

Rule 99

If an Appellate Court directs that a prisoner be retried and a warrant for his release on bail or for his custody pending trial is not received at the same time, the prisoner shall, unless he has to undergo a sentence on another warrant, be removed to the under-trial prisoner's ward, and the Superintendent shall apply to the Court for a warrant for his custody pending trial.

Petition from prisoners sentenced by court martial

Rule 100

No appeal lies from a sentence passed by a court martial, but a person convicted by a court martial under the Pakistan Air Force, Navy or Army Act, has a right to submit one petition only against the finding or sentence for disposal by the highest authority to whom he is authorized to apply. His legal right to submit a petition and the authority, to which a petition shall be addressed, are explained to every accused at the time of promulgation of the sentence. The petition should be forwarded to the officer commanding of the unit to which the prisoner belonged who will forward the same alongwith the record of the proceedings to the highest authority. Appeals or petitions addressed to the President of Pakistan or to any Civil authority will be forwarded to the Adjutant-General, General Headquarters, Rawalpindi, Director of Personnel, Naval Head-quarter, Karachi or Director of Personnel, Air Force Headquarter, Peshawar as the case may be, for disposal.

Petition for clemency

Rule 101

Every prisoner shall be at liberty to submit a petition to Government for clemency, and shall, if he desires be accorded reasonable facilities for preparing and submitting such a petition. Except in the case of petition against the execution of sentences of death, all such petitions must be accompanied by

copies of the judgment of the Court of conviction and of any Superior Court, which may have, dealt with the case on appeal or revision. These will be supplied by the petitioners themselves:

Note (1) Once a petition for clemency has been rejected no second or subsequent petition shall be forwarded to the Provincial Government for consideration unless there are fresh grounds, which the Superintendent shall himself certify quoting the previous references.

Note (2) While forwarding the petition for clemency of a prisoner his mercy petition role on the prescribed form alongwith a report by the Medical Officer on the present state of health of the prisoner shall also be sent. Any outstanding achievement gained by a prisoner such as in education or industry etc., shall also be brought to the notice of the Government.

Note (3) All petitions for clemency shall ordinarily, be addressed to the Governor of the Province and shall be routed through the Inspector General of Prisons.

Appeals and petitions to Supreme Court

Rule 102

- (i) Appeals can only be preferred to the Supreme Court of Pakistan in pursuance of special leave to appeal granted by the Court upon a petition in that behalf presented by or on behalf of the intending appellant
- (ii) All petitions and applications for special leave to appeal shall ordinarily be lodged in the Supreme Court within 30 days from the date of the judgment or order against which appeal is to be filed; provided that the Supreme Court may for sufficient cause, extend the time. For this purpose an application for condonation of delay setting forth cogent reasons shall have to be filed alongwith the petition of appeal.
- (iii) The petitioner, if he is in prison, may either direct his relatives to file a petition for special leave to appeal in the Supreme Court, through a properly constituted attorney enrolled in that court or present his petition for special leave to appeal and the following documents to the Superintendent who shall, after obtaining signature or thumb-impression of the petitioner thereon, forward the same to the Registrar, Supreme Court of Pakistan for disposal:
 - (a) A certified copy of the judgment of the High Court appealed against;
 - (b) A certified copy of the judgment, of the Lower Court in case of an appeal from a conviction by the High Court reversing an order of acquittal passed by the Lower Court; and
 - (c) An application for condonation of delay if petition for special leave to appeal is preferred after the prescribed time.

Note An English translation of the petition should also be forwarded if it is written in any other language.

- (iv) No Court fee is to be affixed to any of the documents filed in the Supreme Court
- (v) The decision of the Supreme Court will be communicated to the Superintendent of the prison, in which the petitioner is confined.

Petition for special leave to appeal to Supreme Court by or on behalf of condemned prisoner. Execution to be postponed:

Rule 103

- (i) In accordance with the Supreme Court Rules 1956, the petition for special leave to appeal should ordinarily be lodged in the Supreme Court within thirty days from the date of the judgment or order sought to be appealed from. The execution of all condemned prisoners shall remain postponed from the date of the High Courts judgment pending final orders from the Government.
- (ii) If intimation is received from or on behalf of the condemned prisoner that it is intended to apply to the Supreme Court within thirty days of the date on which the Superintendent of the prison has informed him of the confirmation of his Sentence by the High Court for special leave to appeal, proof must be furnished to the Provincial Government that the appeal has been filed in the Supreme Court. The Superintendent of the prison shall also communicate the case to the Registrar of the Supreme Court and shall request him to confirm that an appeal has actually been filed on behalf of the prisoner. If appeal has been filed through the prison, the Superintendent shall inform the Provincial Government of this fact.

Petition for mercy from or on behalf of condemned prisoner

Rule 104

- (i) Immediately on receipt of intimation of the dismissal by the Supreme Court of his appeal or application for special leave to appeal or of the breaking down of his application for special leave to appeal, in case the condemned prisoner has made no previous petitions for mercy, the Superintendent shall inform the condemned prisoner concerned that if he desires to submit a petition for mercy it should be submitted in writing within seven days of the date of such intimation.
- (ii) If a condemned prisoner submits a petition within the period of seven days prescribed by Sub-Rule (i) the Superintendent of the prison shall forthwith dispatch it to the Home Secretary to the Provincial Government, together with a covering letter reporting the date fixed for the execution by the Sessions Judge, and shall certify that the execution has been stayed pending the receipt of the orders of the Provincial Government on the petition. If no reply is received within thirty days from the date of the dispatch of the petition, the Superintendent shall remind the Home Secretary to the Provincial Government, drawing attention to the fact, but he shall in no case carry out the execution before the receipt of the Provincial Government's reply. If after consideration the Provincial Government rejects the petition, it shall be forwarded to the Secretary to the Government of Pakistan, Ministry of Home Affairs, Home Division. In case, however, the Provincial Government decides to commute the sentence, the petition to the President shall be withheld and intimation of this fact shall be sent to the petitioner and to the Superintendent of the prison where the prisoner is confined.
- (iii) If the condemned prisoner submits a petition after the period prescribed by Sub-Rule (i) above the Superintendent of the prison shall at once forward it to the Provincial Government stating that, pending a reply the sentence will not be carried out. If such petition is, however, received by the Superintendent till evening on the day preceding that fixed for the execution, he shall at once forward it to the Provincial Government and at the same time telegraph the substance of it, giving the date of execution and stating that the sentence will not be carried out pending the receipt of the orders of Government.
- (iv) If the condemned prisoner submits a petition after the period prescribed, it will be within the discretion of the Provincial Government to consider the petition and to postpone execution and also to withhold or not to withhold the petition addressed to the President whether the Provincial Government consider, the petition addressed to it or not. In the following

circumstances, however, the Provincial Government, whether it considers the petition or not, shall forward the petition to the Secretary to the Government of Pakistan, Home Affairs Division, and shall simultaneously postpone execution pending the receipt of the orders of the President;

- (1) Where the sentence of death was passed by an appellate court on an appeal against the prisoner's acquittal, or on an application for enhancement of sentence preferred by the Provincial Government, or as a result of an enhancement of sentence by the appellate court on its own motion; or
 - (2) Where the circumstances of the case are such which in the opinion of the Provincial Government render it desirable that the President should have an opportunity of considering it. Such cases would include those of a political character and cases in which for any special reason considerable public interest has been aroused.
- (v) The Provincial Government shall withhold a petition submitted by a condemned prisoner when a petition containing a similar prayer has already been submitted to the President. The petitioner shall be informed of the fact of withholding the petition and of the reason thereof.
 - (vi) While forwarding a petition for mercy to the President from a prisoner under sentence of death, the Provincial Government shall forward with it the records of the case and its observations and comments on the grounds urged for commutation, and if it had previously rejected a petition addressed to itself and a brief statement of the reasons thereof.
 - (vii) The Provincial Government shall transmit petitions for mercy alongwith the records of the case, to the Secretary to the Government of the Pakistan, Home Affairs Division, as expeditiously as possible, and upon receipt of the President's orders shall immediately send an acknowledgement in the same manner as is used for communicating the orders. If the petition is rejected, orders will be communicated by a duly registered express letter and receipt thereof shall be acknowledged by express letter. Orders commuting death sentences shall be communicated by telegram in all cases and the receipt thereof shall also be acknowledged by telegram.
 - (viii) Petitions for mercy submitted on behalf of a prisoner under sentence of death by his relative or friend shall be dealt with in the manner provided by these rules for dealing with a petition from the prisoner himself. A petitioner on behalf of a condemned prisoner shall be informed of the orders passed in the case. If the petition is signed by more than one person it will be sufficient to inform the first signatory. The prisoner shall also be informed of the fact of the petition having been submitted on his behalf and of the orders passed thereon.
 - (ix) In the event of its coming to knowledge of the Superintendent at any time before the execution of the sentence that altogether exceptional circumstances have arisen which plainly demand a reconsideration of the sentence, he is at liberty, anything in the foregoing rules notwithstanding, to report the circumstances by telegraph to the Provincial Government and ask for its orders and to defer execution till they are received.
 - (x) The Superintendent shall at once repeat back to the Home Secretary to the Provincial Government all telegrams communicating orders to him regarding petitions for mercy, by way of acknowledgement of their receipts
 - (xi) When acknowledging the orders of the Government and the intimation that the petition has been forwarded for the orders of the President of Pakistan, the Superintendent shall certify that the execution remain stayed pending the orders of the President of Pakistan.

- (xii) On receipt of intimation about the rejection, by the President, of a petition submitted by or on behalf of a condemned prisoner or a prisoner undergoing sentence of imprisonment, the Provincial Government shall inform the Superintendent of the Prison concerned about it. The Superintendent shall make an entry in the relevant register accordingly.
- (xiii) If, after the rejection of the petition by the President, orders are received from the Provincial Government regarding the commutation of the death sentence of a condemned prisoner or the release of a prisoner before the due date of release, without any indication as to the approval of the President having been obtained in this behalf the Superintendent shall at once send to the Government a telegram pointing out that the petition of the prisoner had already been rejected by the President and enquiring whether the prior approval of the President has been obtained by the Provincial Government to the commutation of the death sentence / release of the prisoner. A copy of the telegram will be endorsed by him to the Ministry of the Interior.
- (xiv) If the reply from the Provincial Government is in the affirmative, the orders of that Government shall be implemented forthwith and intimation in this regard sent to the Provincial Government as well as to the Ministry of the Interior.

Fixing of date of execution

Rule 105

- (i) On receipt of the final orders of the government to carry out the execution, the Superintendent Jail shall request the Trial Court concerned to fix a date for the execution of the sentence of death, in accordance with paragraph 39 of chapter 24-B of the High Court rules and orders; Vol.-III.
- (ii) The date so fixed shall be intimated to the Provincial / The Federal Government through the fastest means of communications
- (iii) The Superintendent of jail shall make arrangements for the summoning of relatives and friends of the condemned prisoner for the last interview, making of will, if any, and such like other purposes.

Superintendent to visit his office on the morning of execution

Rule 106

On the morning of any execution, the Superintendent shall, before proceeding to the cell of the condemned prisoner, enter his office and assure himself that there is no communication awaiting him connected with the execution

Instruction regarding submission of mercy petitions of condemned prisoners

Rule 107

The following instructions are laid down for the preparation and submission of mercy petition of condemned prisoners by the Superintendent of the prison: —

- (i) Each and every mercy petition submitted by a condemned prisoner shall simultaneously be addressed to the President of Pakistan, Islamabad and the Governor of the Province and should be in duplicate.
- (ii) If the petition is submitted in Urdu or any other language it shall be accompanied by a carefully prepared translation in English in duplicate, which to ensure its accuracy should be examined by the Superintendent. The documents shall be attested by the Superintendent.

- (iii) The mercy petition roll, in duplicate, shall also accompany the petition.
- (iv) In case where the condemned prisoner takes plea of young or old age, unsound mind or ill-health, two copies of the Medical report by the Medical Officer of the prison shall also be submitted, stating therein the correct age, ailment, infirmity, etc., as the case may be.
- (v) If in the opinion of the Superintendent and the Medical Officer the prisoner was, below 18 years of age on the date of occurrence of the crime or above 60 years on the date of submission of the mercy petition, a copy of the birth certificate or particulars of birth viz., date of birth of the prisoner and the name of the union council or committee and the District where the entry of birth was recorded may be obtained from the relatives of the prisoner and forwarded to Government.
- (vi) All correspondence pertaining to condemned prisoner shall always be made in pink coloured envelopes inscribed "Death case Immediate" standardised for use in all prisons.

Procedure of opening dak relating to condemned prisoners in prison

Rule 108

There must be in each prison an official designated by name who will be responsible for receiving and opening all communications received in the prison at all times of the day and night, from Government or elsewhere in general and in respect of condemned prisoners in particular. All such communications shall immediately be brought to the notice of the Superintendent or in his absence, the Deputy Superintendent.

All letters to be signed by the Superintendent or Deputy Superintendent

Rule 109

All letters acknowledging the receipt of letters of Government in death cases must be signed by the Superintendent or the Deputy Superintendent of the prison.

Orders to be communicated by telegraph

Rule 110

Orders of the Governor rejecting the petitions for mercy from condemned prisoners will be communicated by an express letter and should be promptly acknowledged by the Superintendent by post. The orders of the President declining to interfere and ordering the carrying out of the execution will be conveyed by Government by telegram and will be repeated back to Government by wire by the Superintendent. The orders of commutation of death sentence and the postponement of execution will also be communicated by telegraph and should be acknowledged, by the Superintendent, by telegram.

Procedure when acknowledging orders of Government

Rule 111

When acknowledging any orders of Government postponing the execution, the Superintendent shall state in his acknowledging letter that the execution has been postponed pending further orders of the Government.