



Case Law Update

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**1) Muhammad Safdar V. Presiding Officer
Accountability Court No. IV, Karachi and
Others**

2020 P Cr. L J 683 [Sindh]

**Present: Ahmed Ali M. Shaikh, C.J. and Omar
Sial, J**

Role and Duties of Investigation Officer.

The Honorable Court held that;

“Investigation officer was to procure and produce all evidence required by a court to reach a fair and just decision, irrespective of whether it supported prosecution or defense with object of conducting an honest investigation which could guarantee a fair trial and conceiving a fair trial.

---Unfortunately, in many cases, the investigating officer of a case loses sight of his primary duty as outlined in the aforementioned Rule. It appears that the focus of the investigating officer is to only successfully establish a case against a person nominated as an accused in a criminal case, and in this desire and exuberance of his, material which is collected by him during investigation of a case and which material would, establish the innocence of the accused or at the very least help in his defence, is discarded from consideration. Such a practice has become even more common in organizations in which the investigator and the prosecutor, though wearing separate hats, work and act under the same umbrella, with a common object of convicting a nominated accused. The very important difference, in the respective roles of the prosecution and the investigation is therefore often blurred to the detriment of the accused. It is then left to the accused to himself procure and produce such evidence which is in support of his defence. This, in many cases is not possible for the accused to do. In any event, it is also not the duty of an accused to procure such evidence but that of the investigating officer because as Rule 25.2(3) provides "It is the duty of an investigating officer to find out the truth of the matter under investigation". This role of the investigating officer to do a

fair, neutral and comprehensive investigation upon a reported offence, and not confine and "commit himself prematurely to any view of the facts for or against any person".

**2) Mst. Rahila V. National Accountability
Bureau Through Chairman NAB and 2 Others**

P L D 2019 Sindh 96

**Present: Ahmed Ali M. Shaikh, C.J and
Mohammad Karim Khan Agha, J**

*Procedure to determine whether a person is of
unsound mind or not.*

Honorable Court held that;

“Court has to precisely determine whether a person is of unsound mind although it appears that despite importance of medical reports it is a question of law for Judge to decide.

---Whilst it seems that no hard and fast rule can be set down which defines unsoundness of mind and that each case will depend on its own particular facts and circumstances, the medical opinion of an expert medical board and the extent of that illness taking the various definitions/tests into account we are of the view that from a Pakistani legal perspective being of unsound mind would in most cases be a permanent medically recognized mental condition/impairment which was not self induced and which was so severe/disabling that the person having such illness was incapable of knowing the nature of the act or that what he was doing is either wrong or contrary to law”.

**3) Syed Muhammad Iqbal Kazmi V.
Government of Pakistan and Others**

P L D 2019 Sindh 399

**Present: Ahmed Ali M. Shaikh, C.J.,and Omer
Sial, J.**

Appointment of a Judge of the High Court as a Judge of the Supreme Court--Such appointment was a fresh appointment and not a promotion.

The Honorable Court held that;

“Besides, he also conceded that the learned Judge of this Court who is nominated for appointment as a Judge of Honourable Supreme Court is eligible and fulfills the requisite conditions as envisaged in the Constitution of 1973. Moreover, the Honourable Apex Court has also observed that the appointment of a Judge of the High Court as a Judge of the Supreme Court is a fresh appointment and not a promotion”.

4) Salik Aziz V. Muhammad Emad and Others

2020 Y L R 147 [Sindh]

Present: Ahmed Ali M. Shaikh, C.J. and Omar Sial, J.

Legal heirs of accused cannot be subjected to substantive sentence, being contrary to basic tenets of criminal jurisprudence.

The Honorable Court held that;

“However, in the event of death of accused respondent, in our opinion, proceedings cannot be continued against his legal heirs for enhancement of substantive sentence. For any offence committed by an accused, his legal heirs cannot be subjected to substantive sentence being contrary to basic tenets of criminal jurisprudence. Even otherwise, Section 440 of the Code provides that no party has any right to be heard either personally or by pleader of any Court when exercising its powers of revision; provided that the Court may if it thinks fit when exercising such powers, hear any party either personally or by pleader and that nothing in that section shall be deemed to affect subsection (2) to Section 439 Cr.P.C. In view of the specific

provision in the Code there can be no doubt that in revision applications there is no right created for the parties but the Court for ends of justice may hear parties concerned or those interested in the matter or even any other person if it is deemed that he would be assisting the Court in coming to a just and correct decision. In this regard, one should not also forget the well-known principle that justice should not only be done but it must be seen that the people should feel that justice is being done. Therefore, in our view, the sole question as to the enhancement of sentence awarded to the respondents raised in the Revision Application, just to meet the needs of justice, can be looked into after the death of the applicant/complainant and matter can be pursued on behalf of deceased applicant by her legal heirs, petitioner herein”.

5) Nadeem Ahmad V. Jawwad Zaki Alias Ali and Others

2019 P Cr. L J 1736

Present: Ahmed Ali M. Shaikh, C.J. and Omar Sial, J.

Sentence in cases of conviction of several offences in one trial.

The Honorable Court held that;

“Extenuating circumstances were not pleaded to show that charitable view could not be taken in favour of the applicant and that the sentences should run consecutively. Courts generally took charitable view in the matter of sentences affecting deprivation of life or liberty of a person and exercise enabling power under Ss. 35 & 397, Cr.P.C., respectively to order concurrent running of sentence in one trial and so also consolidate earlier sentence while handing down sentence of imprisonment in subsequent trial.

---In the aforementioned case, Rahib Ali had impugned an order of the High Court, whereby his application under section 397 read with section 561-A, Cr.P.C. seeking an order to compute two conviction sentences awarded in two different set of proceedings by two different courts to run

concurrently, was declined on the ground, inter alia, that in one set of proceedings Supreme Court while enhancing the sentence from 14 years to life had not ordered that the sentence in both the cases to run concurrently, therefore, it is not open for the High Court to order concurrent running of sentences in two different set of proceedings”.

6) Messrs Pakistan Services Limited Karachi V. The Commissioner of Income Tax, Companies-II, Karachi

2020 P T D 439 [Sindh High Court]

Present: Mr. Justice Irfan Saadat Khan and Fahim Ahmed Siddiqui, JJ

Any unpaid trading liability could only be added after expiry of the three years of the income year, in which it was first allowed. Honorable Court held that;

“Perusal of the record clearly reveals that the unpaid trading liability pertained to the income year 1982-1983, which is assessment year 1983-84. The term “income year” has been defined under subsection (26) of Section 2 of the Repealed Ordinance as per which income year means the financial year next preceding the assessment year. Meaning thereby that for income year 1982-83 the assessment year would be 1983-84. As per the provisions of Section 25(c) of the Repealed Ordinance, if the trading liability has not been paid within three years of the expiration of the income year in which it was allowed such liability would be deemed to be the assessment of the assessee. This clearly connotes that the income year in which it was firstly allowed was 1982-83 i.e. assessment year

1983-84. The first income year would be 1983-84, which is assessment year 1984-85. The second income year would be 1984-85, which is assessment year 1985-86 and the third income year would be 1985-86, which is assessment year 1986-87. The third income year would end on 30.6.1986 and the addition could only be made under the provisions of Section 25(c) of the Repealed Ordinance on 1.7.1986, which would be income year 1986-87 i.e. assessment year 1987-88 and not the assessment year 1986-87. Hence, in our view, the default, if any, in discharge of the unpaid trading liability would only take place after the expiry of the income year ending on 30.6.1986 i.e. on 1.7.1987, which is assessment year 1987-88 and not 1986-87 as opined by the ITO and affirmed by ITAT”.

7) Adam Sugar Mills V/S Respondent Sindh High Court, Karachi

2020 P Cr. L J 354 [Sindh]

Present: Irfan Saadat Khan and Mrs. Kausar Sultana Hussain, JJ

“Matters pertaining to NAB neither can be considered to be cases of civil nature nor can be dealt with by civil court”

The Honourable Court held that “Perusal of section 9 of the C.P.C. reproduced above clearly reveals that the said section empowers a civil Court to deal with civil suits unless barred. There is no cavil to the proposition that NAB is a special law. It has been mentioned under section 9 of the C.P.C. that the civil Courts shall have jurisdiction to deal with cases of civil nature except which are

expressly and impliedly barred. Here a question would arise whether action with regard to the embargo imposed on transfer of the properties by the NAB Authorities could be considered to be an civil nature? The obvious answer to this question would be in negative. The matters concerning NAB are always considered to be criminal in nature and have to be dealt with in accordance with NAB laws. Hence, it could safely be presumed that the matters concerning NAB neither could be considered to be cases of civil nature nor could be dealt with by Civil Courts. Since a Civil Court is required to decide the matters concerning civil disputes until and unless the said jurisdiction is taken away by implied or expressed legislation.”

8) Haji Abdul Razzak (Deceased) Through Legal Heirs V. Faysal Bank Limited

2020 CLD 238 [Sindh]

Present: Irfan Saadat Khan and Mrs. Kausar Sultana Hussain, JJ

“Adjudication under S. 16 of the Financial Institutions (Recovery of Finances) Ordinance, 2001” to be filed by financial institution.

Question before Court was whether an application under S. 16 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 could be filed by customer / borrower. The Honourable Court held that:

“since the suit has been filed by the present appellant against the respondent under section 9 of the F.I.O., 2001 hence for all practical purposes since this is a banking matter provisions of F.I.O., 2001 would apply and the matter has to be proceeded in view of the provisions contained in the F.I.O., 2001 and when it is an admitted position that the application under section 16 could only be filed by a financial institution and not by the borrower hence we see no justification

to enter into this controversy and reject the contention of the learned counsel that if there is no bar then general law would prevail, whereas in the instant matter there is a bar that the matters pertaining to financial institutions are to be proceeded as per F.I.O., 2001 to provide speedy measures for deciding the matter between the bank and its customer”

9) Messrs Pfizer Laboratories Ltd. V. The Commissioner of Income Tax, Cos-II, Karachi

2019 PTD 2288 [Sindh High Court]

Present: Irfan Saadat Khan and Faheem Ahmed Siddiqui, JJ

Question before Court was whether additions made to income of taxpayer, which was a pharmaceutical company, under S. 79 of the Income Tax Ordinance, 1979 on basis of its import of raw materials from its parent company, were in accordance with law; Arm’s length transaction and transfer pricing discussed. It is held that:

“An Arm's length transaction means the transaction entered between the parties based on equal footing. The Assessing Officer (A.O) made the additions by invoking Section 79 of the Ordinance about transfer pricing but had he made some exercise with regard to arm's length dealing of the parent company of the assessee with other sister concerns of neighboring countries as to about at which price these raw materials were sold by the parent company to these sister concerns, then the position would have been totally different. However, it is noted that the A.O. who simply compared the raw material imported by assessee from its parent company with that of the raw material imported by other pharmaceutical company (majority of which are local companies) with the raw material imported by them either from China or India. In our view, this would not justify the additions made under

section 79 of the Income Tax Ordinance as for invoking the said provision of law onus lies upon the department to prove arm's length transaction and to establish that the course of business was so arranged between the two companies that profits have been transferred by the subsidiary company by way of adopting the method of transfer pricing to its parent company.

In our view simply analyzing the difference in the imported price of the raw material by an internationally reputed company from its parent company with that of raw material imported by a local pharmaceutical company either from China or India would not justify the said addition. It is a common knowledge that the drugs of internationally reputed pharmaceutical companies are research based products, whereas the drugs available locally commonly known as "Meetoo" of that drug, which is not a research based product and could these two products be compared with each other. The answer to this question definitely would be in negative. Hence simply by observing that some other companies have imported a particular raw material duly approved by drug authorities, in our view, is not sufficient to establish transfer pricing or to justify the invoking of the provisions of Section 79 of the repealed Ordinance, as there are a number of other factors also which have to be kept in view”

10) Province of Sindh V. Messrs Pakrock Corporation (Pvt.) Ltd

2020 PLD Sindh 136

Present: Irfan Saadat Khan and Faheem Ahmed Siddiqui, JJ

‘Appeal against purported void order’

The Honourable Court observed that:

“A party cannot take refuge for not challenging the order on the ground that it is a void order. It is incumbent upon a party claiming the order to be void to establish invalidity of the said order and also to prove that the order is without jurisdiction”

‘Delay in filing lis by the Government department/functionary’

It is well-settled that the government functionaries are equal before the Courts. No preferential treatment can be shown to the Government/or its agencies. A stock explanation of administrative delays is normally pleaded in the condonation applications. Such explanation does not constitute a sufficient cause or a reasonable ground to be attached any weight or credibility. The honourable Court held that:

“We are conscious that on declining relief either to the Government or public litigant in view of the provision of limitation, serious, injustice is caused to either of the party before the Court but we cannot help it in view of the existing law. However, concerning the cases belonging to the Government/autonomous bodies, at least one thing can be done that if case is decided against it on the question of limitation, the direction must be passed to the high-ups of the department so he/they may initiate departmental action against those officers who are directly or indirectly responsible for causing delay in instituting the cases beyond period of limitation and even in absence of such directions, it would be duty of such Officer to take action accordingly because if such unscrupulous persons are not proceeded against, they will have no fear of causing huge losses to the Government/autonomous functionaries at the cost of public exchequer because ultimately it is the public at large who suffers, being ultimate beneficiaries of the Government property”

11) Sultan Ahmed V. Province of Sindh Through Secretary Revenue, Karachi and 4 Others.

2019 P T D 741 [Sindh High Court]

Present: Aqeel Ahmed Abbasi and Zulfiqar Ahmed Khan, JJ

Time from which registered document operates.

Honorable Court held as under;

“Registered document operates from time when it was presented and executed before concerned Sub-Registrar after completing all codal formalities and payments of required duties, taxes and fees etc., and not from date of registration of document--That a registered document shall operate from the time, day, when it was written and signed and it will create right, title and interest in favour of the transferee from the date of execution and not from the date of registration.

12) Young’s (Private) Limited and Others V. Province of Sindh and Others

2019 P T D 389 [Sindh High Court]

Present: Aqeel Ahmed Abbasi and Nazar Akbar, JJ

Principal of Interpretation of Fiscal statutes are different from principal of interpretation of non-taxing statutes

Honorable Court held as under;

“Principles of interpretation of taxing statutes are different from principles of interpretation of non-taxing statutes. If in a taxing statute a charge or burden is created, principle of restrictive interpretation is attracted. Tax can be levied by clear and unambiguous legislation and in case of any doubt or ambiguity in matter of levy of tax, the

same is to be resolved against revenue. and in favour of subject/taxpayer, upon whom burden of such tax is created through such enactment”.

Legislative competence of the Provincial Legislature in respect of Fiscal Statutes & imposing sales tax on services.

Honorable Court held as under;

“we may now examine the provisions relating to legislative competence of the Provincial Legislature in respect of Fiscal Statutes. Distribution of legislative power has been defined under Article 141 of the Constitution, according to which, the Parliament, subject to the Constitution, has the authority to make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof. Under Article 142 of the Constitution, it has been provided that the subject matter of Federal and Provincial laws, are distinct and separate. In terms of Article 142(a), both the Parliament has the exclusive power to make laws with respect to any matter in the Federal Legislative List, however, in terms of Article 142(b), both the Parliament and the Provincial Assembly have powers to make laws with respect to criminal law, criminal procedure and evidence. Similarly, in terms of Article 142(c), subject to paragraph (b) a Provincial Assembly shall, and the Parliament shall not, have power to make laws with respect of any matter not enumerated in the Federal Legislative List, whereas, in terms of Article 142(d), Parliament shall have the exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province. ---The scope of legislative competence of Provinces appears to have been defined in the amended sub-article (c) of Article 142 of the Constitution through Eighteenth Amendment, whereby, it has been provided that a Provincial Assembly shall, and Parliament shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List. To summarize the effect

of amendment in Article 142 of the Constitution through Eighteenth Amendment, we may observe that the legislative competence of Provinces is no more restricted to, or dependent upon, any Legislative List as it was, restricted to and dependent upon forty-seven (47) entries as incorporated in the Concurrent Legislative List to the Fourth Schedule of the Constitution prior to Eighteenth Amendment. This change brought in the Constitution of Islamic Republic of Pakistan, 1973 through Eighteenth Amendment, relating to legislative competence of Provinces, particularly, in respect of matters pertaining to **Fiscal Statutes**, requires a careful examination and scrutiny of all such taxing statutes, which create a charge or burden upon citizens of the Pakistan, **for the reason that principles of interpretation of taxing statutes are different from the principles of interpretation of non-taxing statutes, as in the case of a taxing statutes, wherein, a charge or burden is created, principle of restrictive interpretation is attracted.**

Service, taxable Services & liability of pay tax on taxable service.

Honorable Court held as under;

“From perusal of hereinabove definitions of the term service as given in the aforesaid Dictionaries, it can be safely concluded the term service refers and relates to performance of an act by any person for the benefit of another person either for consideration or otherwise, whereas, in terms of Section 2(79) service has been defined to mean anything which is not goods and shall include but not limited to the services listed in the First Schedule of the Act. On examination of various Tariff Headings and the relevant description thereto, as detailed in the First Schedule and the Second Schedule to the Sindh Sales Tax on Services Act, 2011, it appears that number of various acts performed by a person in the course of an economic activity have been mentioned in both the Schedules to mean and include various taxable services provided or rendered by a registered person in the course of an economic activity, Perusal of the provisions of

Section 8 of the Sindh Sales Tax on Services Act, 2011, which defines the chargeability and scope of tax, shows that a charge of tax has been created on the value of a taxable service provided by a registered person or a class of a registered person at the rate specified in the Schedule to the Sindh Sales Tax on Services Act, 2011, whereas, in terms of Section 9 of the Sindh Sales Tax on Services Act, 2011, liability to pay tax has been fixed on the registered person, according to which, where a service is taxable by virtue of subsection (1) of section 3, the liability to pay the tax shall be on the registered person providing the service, and in case, where service is taxable by virtue of subsection (2) of Section 3, the liability to pay the tax shall be on the person receiving the service.

Renting of immovable property by landlord to tenant for consideration (rent) did not involve any element of service or taxable service or economic activity.

Honorable Court held as under;

“Mere renting of immovable property by a landlord to a tenant for consideration (rent), does not involve any element of service, or taxable service or economic activity, as defined under the Sindh Sales Tax on Services Act, 2011, therefore, the intention of the respondents as chargeable to tax under Sindh Sales Tax on Services Act, 2011, have been issued without lawful authority. It is hereby declared that mere letting out of an immovable property by the landlord to a tenant on rent for consideration does not involve any element of providing any taxable services, therefore, the amount of rent received by the landlord from the tenant cannot be subjected to tax, while invoking the provisions of Section 2(72C) read with Tariff Heading 9806.3000 of First Schedule and Part-B of the Second Schedule to the Sindh Sales Tax on Services Act, 2011”.

13) **13) Aaam Log Ittehad and another V. The Election Commission of Pakistan and others.**

Constitutional Petition No. D – 444 of 2019
[SHC Citation: 2020- SHC-KHI - 145321]
<http://192.168.16.41:8056/caselaw/view-file/MTQ1MzlxY2Ztcy1kYzgz>

Present: Mr. Justice Aqeel Ahmed Abbasi and Mr. Justice Zulfiqar Ahmed Khan, JJ.

Whether a Judge of the Supreme Court or of a High Court can hold any office of profit in the service of Pakistan, not being a judicial or quasi-judicial office?

Honorable Court held as under;

“Article 207 of the Constitution of Islamic Republic of Pakistan, 1973, which provides that **“a person who has held office as a Judge of the Supreme Court or of a High Court shall not hold any office of profit in the service of Pakistan, not being a judicial or quasi-judicial office or the office of Chief Election Commissioner or of Chairman or member of a law commission or of Chairman or member of the Council of Islamic Ideology, before the expiration of two years after he has ceased to hold that office”**.”

;

“---Nature of the office of Election Commission of Pakistan as to whether the office of Election Commission of Pakistan is a judicial and/or quasi-judicial office, or its Members perform the supervisory or Administrative functions only. While hearing complaints and deciding election disputes, the Election Commission of Pakistan exercises various powers under the Qanun-e-Shahadat Act and other relevant laws for the purposes of determining the rights and liabilities of the voters and the candidates participating in the election after providing opportunity of being heard. Most of the functions performed by the Election Commission of Pakistan have the characteristic of administrative functions judicially performed. Such functions can more precisely be termed as quasi-judicial functions, which are in fact the combination

of both judicial and administrative functions. The expression ‘quasi-judicial’ in view of hereinabove legal definitions and the judicial pronouncements can be termed to be one which stands midway a judicial and an administrative function. The test whether an authority is quasi-judicial is: (i) that the body of persons must have legal authority; (ii) authority must be given to determine the rights of the subjects or citizens; and (iii) such a body should have the duty to act judicially. The concept of a quasi-judicial act implies that the act is not wholly judicial, it describes only a duty cast on the executive body or authority to conform to the norms of judicial procedure in performing some acts in the exercise of its executive power. If a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are no two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially. The distinction between a quasi-judicial and an administration or executive act was dealt with at length. After considering the authorities on the point, it was held that a quasi-judicial act requires that a decision is to be given not arbitrarily or in the mere discretion of an authority of in the mere discretion of an authority, but according to the facts and circumstances of the case, as determined upon an inquiry held by the authority after giving an opportunity to the party to be affected of being heard and whenever necessary weight the evidence in support of his contentions, whenever the authority is bound to make a decision in the way, acts judicially or quasi-judicially. Where there are two or more parties contesting each other’s claim and the statutory authority is required to adjudicate the rival claims between the parties, such a statutory authority can be held to the quasi-judicial and the decision rendered by it as a quasi-judicial order. Thus, where there is a lis between the two contesting parties and the statutory authority is required to decide such a dispute, in absence of any other attributes of a quasi-judicial authority, such a statutory authority is a quasi-judicial authority.

- 14) **1. Muhammad Ayaz Khan and others**
2. Ashfaq Muhammad Awan and another
Vs.
The Federation of Pakistan and others

Constitutional Petition No. D – 1019 of 2019

Constitutional Petition No. D – 1046 of 2019

[SHC Citation: 2020- SHC-KHI - 145529]

<http://192.168.16.41:8056/caselaw/view-file/MTQ1NTI5Y2Ztcy1kYzgz>

Deduction of income tax on the Judicial Allowance and Special Judicial Allowance from the salaries at source under Section 149 of the Income Tax Ordinance, 2001, by Accountant General Sindh is illegal, as both these allowances are exempted from levy of income tax under Section 39 Part I to the Second Schedule to the Income Tax Ordinance, 2001.

Honorable Court held as under;

“---We are of the considered opinion that amount of judicial allowance and special judicial allowance paid to the Members of establishment of Sindh High Court as well as to the Members of the establishment of sub-ordinate judiciary of Province of Sindh falls within the exclusion in terms of clause (c) of sub section (2) of Section 12 of the Income Tax Ordinance, 2001, therefore, not part of their taxable salary income, hence, not chargeable to Tax or deduction under Section 149 of the Income Tax Ordinance, 2001.

Taxable Income, Salary, Total Income & Special allowances.

Honorable Court held as under;

“---The term taxable income has been defined under Section 9 of the Income Tax Ordinance, 2001, according to which, the taxable income of a person for a tax year shall be the total income [under clause (a) of section 10] of the person for the year reduced (but no below zero) by the total of any deductible allowances under Part IX of this Chapter of the person for the year, whereas, the term total income has been defined under Section 10 of the Income Tax Ordinance, 2001, according to which, the total income of a person for a tax year shall be the sum of the (a) person's income under all heads of income for the year; and (b) person's income exempt

from tax under any of the provisions of this Ordinance. The terms heads of income under Section 11 of the Income Tax Ordinance, 2001 has been defined, according to which, for the purposes of the imposition of tax and the computation of total income, all income shall be classified under the following heads, namely, (a) Salary; (b) Income from Property; (c) Income from Business; (d) Capital Gains; and Income from other Sources. Section 12 of the Income Tax Ordinance, 2001 defines the term salary. Whereas, for the purposes of the subject controversy agitated through instant petitions, we have to examine the provisions of sub-section (1) and sub-section (c) of sub-section (2) of Section 12 of the Income Tax Ordinance, 2001, in order to appreciate the chargeability of income of a person falling under the head Salary. According to sub-section (1) of Section 12, any amount of salary received by an employee in a tax year, other than salary that is exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head —Salary. In other words, whatever amount received by an employee from any employment as detailed in Section 12 is chargeable to tax, unless it is exempted from tax under the Ordinance 2001. However, it is pertinent to note that under Section 12 of the Income Tax Ordinance, 2001, the legislature, while bringing various type of amounts including pay, wages and other remuneration etc. provided to an employee, within the definition of the term salary, under sub-section (c) of sub-section (2) of Section 12 of the Income Tax Ordinance, 2001, any allowance solely expended in the performance of the employee's duties of employment, has been excluded from the purview of definition of salary. In other words, whatever amount of remuneration, pay, wages, bonus, commission, fee, gratuity and allowances as detailed in Section 12 of the Income Tax Ordinance, 2001 by an employee are treated as part of Salary chargeable to tax, unless exempted from payment of tax as per Second Schedule to the Income Tax Ordinance, 2001”.

**15) Adam Sugar Mills V. Respondent Sindh
High Court, Karachi**

C.P. No.D-2188 of 2012

<http://202.61.43.34:8056/caselaw/view-file/NzMyNjRjZm1zLWRjODM=>

**Present: Syed Hasan Azhar Rizvi and
Muhammad Shafi Siddiqui, JJ**

Despite payment of outstanding dues in terms of the Award petitioner cannot be termed as defaulter and ousting him from tender was in violation of Article 18 and 25 of Constitution of Islamic Republic of Pakistan. The Honourable Court observed that:

“We are inclined to observe that under the facts and circumstances of the case the petitioner on payment of outstanding dues in terms of the Award on 06.06.2012 cannot be termed as a defaulter and hence cannot be ousted to participate in the subject tender process. The act of ousting the petitioner to participate in the tender lack authority and jurisdiction and violative of Article 18 and 25 of Constitution of Islamic Republic of Pakistan and hence such acts and decisions are amenable to writ jurisdiction and the petitioner has rightly challenged arbitrary and unjustified decision through this constitutional petition”.

Open competitive biddings in fair and transparent manner.

“We may observe that the Trading Corporation of Pakistan being a public functionary/procuring agency was obliged to procure such service by means of open competitive biddings in fair and transparent manner and the discretion that these public authorities may enjoy, cannot be exercised in an arbitrary and capricious manner. It has been established that the open competitive

bidding is invariably the best method for ensuring the transparent and unobjectionable process”.

**16) Muhammad Rafiq Sia V. Province of Sindh
Through Secretary Local Government, Karachi**

2016 CLC 170 [Sindh]

**Present: Syed Hasan Azhar Rizvi and Shah
Nawaz Tariq, JJ**

‘Unfettered exploitation of ground water by the petitioner having no permission or license’ Constitutional Petition not maintainable the Honourable Court observed that:

“Needless to mention here that no civilized society shall permit the unfettered exploitation of its natural resources by any one particularly in respect of the water which is a necessity of the life. Ground water is a national wealth and belongs to entire society. It is a Nectar, sustaining life on earth and without water, the earth would be a desert, we find ourselves in agreement with Principle 2 of Stockholm Declaration, 1972 that the natural resources of the earth, including the air, water, land, flora and fauna especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. At this stage, we may quote a Kashmiri's saying translated in English which is written in bold letters at the entrance gate of a section relating to environment, in Disneyland Orlando, Florida, USA which says "We have not inherited this land from our forefathers, we owe it to our children." The future

needs of our children are of prime importance and the Courts of law while dealing with the equitable relief of injunction should keep the same in view.

--we find no substance in the instant petition because once the process of extracting the water in such a huge quantity is allowed to operate, each day, each hour, and each minute water deposits in the aquifer would diminish rapidly and shall adversely affect the rights of masses to use the underground water according to their genuine needs which shall amount to an irreparable loss to them. The petitioner has no permission or license for operating such hydrant”

17) Hajj Organizers Association of Pakistan Through Authorised V. Federation of Pakistan

P L D 2020 Sindh 42

Present: Muhammad Ali Mazhar and Agha Faisal, JJ

‘Trichotomy of Powers and Judicial review’ Grounds upon which an administrative action is subject to control by judicial review.

Division of powers into three pillars of State, that is Legislature, Executive and Judiciary. When the functions of Executive deviate from its mandate then it is subject to judicial review. Courts interpret the laws. In this regard the Honourable Court observed that”

“One of the seminal principles of the Constitution of Islamic Republic of Pakistan is the concept of trichotomy of powers between the Legislature, Executive and the Judiciary. This principle underpins the rationale that framing of a government policy is to be

undertaken by the Executive which is in a better position to decide on account of its mandate, experience, wisdom and sagacity which are acquired through diverse skills. The judiciary on the other hand, is entrusted with the task of interpreting the law and to play the role of an arbiter in cases of disputes between the individuals inter se and between individual and the State. In contemporary age, there has been a significant growth in the judicial review of administrative actions and the grounds on which the Courts interfere have been expanded. This expansion, however, has taken place in the shadow of competing concerns of 'vigilance' and , 'restraint' and it is faithfulness to these dual concerns of vigilance and restraint which produces the unique supervisory jurisdiction which is the hallmark of judicial review. If the Courts fail to maintain this delicate balance, none else but people's confidence in the judiciary would be the worst victim.

Fundamentally the Judicial review is a court's regimen and command to review the legislative and executive actions to maintain and sustain the rule of law. High Courts by means of writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto control the administrative actions. The court's function, in exercising that power, is to ensure that the public authorities do not act unjustly by overstepping their proper sphere.”

18) Sultan Ahmed Shaikh V. Messrs Sui Southern Gas Company Ltd. Through Managing Director Chief Executive and Others

2020 P L C (C.S.) 138
[Sindh High Court]

Present: Muhammad Ali Mazhar and Agha Faisal, JJ

Filing of civil suit by the employee not covered under the definition of worker or workmen and civil servant.

An employees who are neither covered under the definition of workers or workmen nor they are civil servants nor they can file Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in the High Court due to lack and non-existence of statutory rules of service can file civil suit for satisfaction of their claims, the Honourable Court held that:

“In my view there are two genres of lawsuits encompassing the relationship of master and servant. One scenario leads to the claim of dismissed or terminated employee who approaches to the court of law for reinstatement or in alternate award of damages/compensation against his wrongful dismissal / termination in which proceedings the master may say that he is prepared to pay damages for breach of contract of service but will not accept the services of the servant. The other genre in the same relationship is the case where an employee though in service and performing his duties satisfactorily but he is denied salary/wages and some other benefits payable to him during service. In this distinct and discrete class of cases, I have no reluctance and disinclination to hold that all such employees who are neither covered under the definition of workers or workmen so that they may approach labour courts or NIRC nor they are civil servants to move Services Tribunal nor they can file Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in the High Court due to

lack and non-existence of statutory rules of service so the only remedy is left with them to file civil suit for satisfaction of their claims accrued to them during service including damages for the loss sustained due to non-payment or refusal/denial of such service benefits by the employer without any lawful justification. There may be other point of view that in this particular situation also, the only remedy is to claim damages and not anything more but with all humility and self-efficacy, if an employee is forced to ask damages alone on each and every refusal or denial of service benefit or on each and every cause of action independently in the form of suit for damages solitary under the sacrosanct relationship of master and servant rather than lodging his claim for recovery and or restoration of that particular service benefit denied to him while in service then this would not only sheer violation of Article 10-A of our Constitution where fair trial and due process of law is guaranteed as a fundamental right but there shall also be a complete turmoil and chaos across-the-board in which situation, the employee during service till his superannuation would be continuously litigating only for claim of damages which does not meant for the relationship of master and servant but this is in fact exploitation and seems to be a relationship of master and slave. Laws exist to protect the fundamental human rights of the members of society and to ensure that they do not have to protect rights through their own actions. The function of the court is to do substantial justice and not to knockout or non-suit the party on technicalities. At this juncture I would like

to quote very celebrated phrase that "Law is made for man and not man for the law."

19) Dr. Seema Irfan V. Federation of Pakistan Through Secretary and Others

2019 P T D 1678 [Sindh High Court]

Present: Muhammad Ali Mazhar and Agha Faisal, JJ

'Invoking Constitutional Jurisdiction to stay the operation of show-cause notice'

Mere issuance of show-cause notice cannot be a cause of action. In some case High Court under its Constitutional jurisdiction may take up writs to challenge show-cause notice(s) if it found that such show-cause notice is barred by law or abuse of process of the court or coram non judice. The Honourable Court held that:

"A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice, the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. This Court ought to be careful when it passes an interim order to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition. Abstinance from interference at the stage of issuance of show cause notice in order to relegate the parties to the

proceedings before the concerned authorities is the normal rule.

The whys and wherefores lead us to a finale that neither the show cause notice has been issued without jurisdiction nor it can be considered an abuse of process of law nor it is totally non est. in the eye of law for absolute want of jurisdiction or coram non judice. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved person could approach the High Court. A reasonable reading of show-cause notice does not unearth or establish that it is an empty ceremony nor an impenetrable wall of prejudged opinion in which a fair procedure with reasonable opportunity of defence may not commence or afforded so in our good judgment, the interference at the show cause notice stage should be rare and in an exceptional circumstances but not in a routine manner. However a significant attribute cannot be disregarded that when a show cause notice is issued then obviously a fair chance to contest must also be provided"

20) Sikandar Ali Lashari V. The State

Spl.Anti.Ter.A. 261/2018

[SHC Citation: 2020- SHC-KHI - 144919]

<http://202.61.43.34:8056/caselaw/view-file/MTQ00TE5Y2Ztey1kYzgz>

Present:- Mr. Justice Muhammad Ali Mazhar and Mr. Justice Agha Faisal, JJ

Statement of accused recorded through deceptive means:

The Statement of accused recorded through deception and not through inducement is valid under Article 42 of Qanun-e-Shadat Order 1984. The Honourable Court held that:

“Under Article 37 of Qanun-e-Shahdat Order 1984, it is enlightened that a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against, whereas Article 42 of the Qanune-Shahdat Order 1984 has contrasting and complementary outcome with well-defined analysis that if a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy or in consequence of a deception practiced on the accused person for the purpose of obtaining it. Under the precepts and canons of Article 42 deception is allowed. The statement of accused recorded through deception practice and not through inducement as for recording confession through inducement; it does not give rise to the occasion that the accused should be unaware or unacquainted that his statement is being recorded. No alleged inducement was substantiated except that SSP on the request of accused stated that he will try for compromise which can be viewed in the video statement and said statement is covered under deception practice permissible under Article 42 and not an inducement as provided under Article 37 which niceties are different with different consequences. The deception practice may occur at the stage of detecting process, investigation and interrogation. The goal of an interrogation or criminal interview is to obtain factual information about a crime and the confession of the person responsible for it. Virtually all interrogations involve some deception. A sting operation is also a deceptive operation designed to catch a person committing a crime. Electronic Media also sometimes resort to sting operations to record video and broadcast to expose criminal activities”.

‘CDR data received through Email’ Admissibility in evidence:

The Honourable Court held that:

“Along the lines of Electronic Transactions Ordinance, 2002, the definition of "electronic" includes electrical, digital, magnetic, optical, biometric, electro-chemical, wireless or electromagnetic technology and "electronic document" includes documents, records information communications or transactions in electronic form. Under the dictates and prescription of Section 3 of the same Ordinance it is noticeably connoted out that no document, record, information, communication or transaction shall be denied legal recognition, admissibility, effect, validity proof or enforceability on the ground that it is in electronic form and has not been attested by any witness. At least two letters are already available on record written to Mobilink and Ufone by the SSP Hyderabad for providing CDR of different sim numbers which are already mentioned in the letters and if the data is received through email it does not cast any doubt against its veracity under the provisions of Electronic 2002.

Due to development in science and technology, it is not possible to bring on record physical existence of everything as whole technology is based on satellite operational networks. All documents prepared, produced or generated through modern devices are admissible in evidence. In the wake of above set of circumstances, we are not convinced with the line of argument that since CDR data collected by the I.O from mobile franchise companies was received through e-mail hence its legal recognition or admissibility cannot be recognized or accepted as true”.

Mastermind who schemed the offence to accomplish the aim of satisfying his ego and vengeance will also within preview of ‘abetment’

The Honourable Court Held that:

“Masterminds are characters and eccentrics other than the arrested assassins who played a major role in the murder or some alternate crime, either by ordering the crime or by helping the arrested killers who committed or perpetrated the crime. Mastermind means a person who is responsible for planning and organizing it. In this case it has been unequivocally proved that appellant/accused was the mastermind of entire episode and he is an abettor without any reasonable doubt in terms of Section 107 P.P.C. The accused as a father of a young girl, he might be annoyed or exasperated on knowing the love affair or romantic or passionate attachment of his daughter with deceased but at the same time he was also a District and Session Judge who served the judiciary for a long time so there must be a distinction within a common or an uneducated person and a District and Session Judge sentiments who is considered to be custodian of law to dispense justice in populace but he was in no way expected to take the law in his own hands for evil designs rather than legal recourse. He was conscientiously acquainted and well-versed to the consequences of contravention of law with an ultimate outcome of committing crime but despite knowing the consequences, he became instrumental and mastermind of a murder of young son of his colleague District and Session Judge with no empathy or compassion”

21) Abdul Sattar Dero V. The State

PL D 2019 Sindh 418

Present: Muhammad Ali Mazhar, Salahuddin Panhwar and Zulfiqar Ahmad Khan, JJ

The Short order of acquittal of accused passed earlier cannot subsequently be changed through separate reasons, in this regard the Honorable Court Held that”

“The short order of acquittal passed by both learned members of the divisional bench in the appeal with consensus and unanimity cannot nullify, alter or convert the outcome of short order of acquittal of the appellant into dismissal of appeal through separate reasons whereas the appeal was already allowed without any note of dissent by a member of bench”

22) Abdul Ghani V. Province of Sindh Through Secretary, Board Of Revenue and Others

P L D 2019 Sindh 317

Present: Muhammad Ali Mazhar, J

Claim for negative declaration and Scope of Legal Character

The claim of negative declaration is not barred under the law, the Honourable Court held that:

“The gist of issue No.1, and issue No.2, articulate and countenance that the plaintiffs have not approached or walked up to entreat a declaration of their ownership right or title but they have knocked the door to claim negative declaration that defendants have no rights or interest in the plot. I am sanguine that claim of negative declaration is not barred under the law but in order to reach on just conclusion, the pith and substance of the lawsuit matters”

Legal Character:

“Any man's legal character is generally taken as the same thing as a man's status. Words "right as to any property" are to be understood in a wider sense than "right to property" and words "interested to deny" denotes that defendant is interested in denying right of plaintiff or his legal character. Denial of right constitutes a cause of action to maintain an action under Section 42 of Specific Relief Act, 1877. Relief of declaration is a discretionary relief

that can be granted in the case where substantial injury is established and in absence of denial of right no relief of declaration can be granted”

23) Nizar Noor and Others V. Ameer Ali and Others

2020 C L C 254 [Sindh]

Before: Nadeem Akhtar, J

Willful default in payment of electricity charges, tenant can be ejected on the ground of being defaulter in payment of rent.

Term 'rent' under section 2(i) of Sindh Rented Premises Ordinance, 1979 included "water charges", "electricity" charges and "such other charges that were payable by tenant" but were unpaid.

Honorable Court held that;

“It has never been the case of respondents 1 and 2 that the petitioners were liable to pay the electricity charges and they (respondents 1 and 2) were liable only to reimburse the same to the petitioners, or the electricity bills were to be provided to them by the petitioners for payment. Thus, it is an admitted position that electricity bills were received directly by respondents 1 and 2 and they used to pay electricity charges directly to KESC. This being the position and also as admittedly there was no agreement between the parties regarding payment of electricity charges, such charges were the sole responsibility of respondents 1 and 2 under Clause (i) of Section 2 of the Ordinance. By not paying the said charges within time, which fact was admitted by respondent No.1 in his cross-examination, respondents 1 and 2 had clearly committed default and were/are thus liable to be evicted from the demised premises on such ground.

Once default is committed it cannot be wiped out by subsequent payment

---“Payment of electricity charges by respondents 1 and 2 admittedly after a period of 42 months and after disconnection of electricity due to their default, was of no consequence as it is well-settled that once default is committed it cannot be wiped out by subsequent payment and the penalty incurred by reason of such default cannot be staged off by subsequent payment”.

24) Mst. Noor Afshan V. Muhammad Ghalib and 3 Others

2019 C L C 1787[Sindh]

Before: Nadeem Akhtar, J

Custody of minor, Welfare of minor, Re-marriage of mother, Visitation, Conduct of father, Non-payment of maintenance allowance.

Honorable Court held as under;

“In my humble opinion such ground could not be applied in the present case and the same could have been applied had the subject minor been a girl. Except for the above, no other justifiable reason has been assigned by the learned appellate Court for granting permanent custody of a male minor of tender age to his father / respondent No.1. The observation of the learned Family Court regarding the conduct of respondent No.1 being negligent and mala fide, prima facie, is still apparent in view of his continuous absence at the time of meetings ordered by the learned Family Court, the impounding and blocking of his CNIC by the learned Family Court and issuance of non-bailable warrants against him by the learned Judicial Magistrate. Respondent No.1 has also not complied with the decree of maintenance passed by the learned Family Court in favour of the subject minor. In these circumstances, grant of permanent custody of the minor to respondent No.1 will not be in the interest and welfare of the minor.

However he cannot be deprived of his right of visitation”

25) Gulzar Ahmed V/S Province of Sindh and others

[SHC Citation: 2018- SHC-SUK - 137203]

<http://202.61.43.34:8056/caselaw/view-file/MTM3MjAzY2Ztcy1kYzgz>

Present: Nadeem Akhtar and Muhammad Faisal Kamal Alam JJ

Cutting of trees on the public thoroughfare alongside the boundary of PAF airbase. Plea of national security is qualified defense.

Cutting of Trees (Environment): Green Belt with trees is a 'Public Trust' resource. Environmental Human Rights are in fact fundamental human rights. Plea of National Security is also justiciable. Balance is to be struck between the policies relating to security and civil liberties. State Institutions are subject to the accountability. Judiciary in a Muslim Polity is clothed with greater obligation. The Honourable Court held that:

“The précis of the above is that in the present case, and in all such cases, where a Government (including Defence related Organisations), Authority, Agency and/or any Institution defend(s) their actions on the plea of national security, or seeks to draw a curtain over their actions on the basis of national security, then such a defence must come from a constitutionally valid legislation; otherwise there can be no circumstance where any Government, Authority, and/or A gency, be allowed to justify their actions or violate the law of the land, on the basis of an arbitrary plea of security. Trees in question were illegally cut / felled by the Respondent No.5, only concern council can direct the cutting of dangerous trees under paragraph 55 of Part II-Schedule II of SLGA 2013”

26) ABDUL HAMEED V. PROVINCE OF SINDH through Secretary Home Department and others

2019 P L D 168 Sindh

Present: Nadeem Akhtar and Muhammad Faisal Kamal Alam, JJ.

The Question before Court was whether the extraordinary Constitutional jurisdiction of High Court under Article 199 of the Constitution can be invoked by a person alleging harassment by private individuals or police officials, without availing the remedy provided under the law for such cases/situations, in this regard the Honourable Court held:

“The remedy against police functionaries is available before the Ex-Officio Justice of Peace under Sections 22-A and 22-B Cr.P.C. In case of wrongs and offences committed by other public servants, they can be prosecuted against in respect of the offences provided in Chapter IX of the Pakistan Penal Code, 1860. As far as criminal wrongs, including harassment, committed by private parties are concerned, the aggrieved party is required to approach the SHO concerned who after recording his statement under Section 154 Cr.P.C. is bound to register FIR against the accused if a cognizable offence is made out. If the SHO does not record such statement or after recording statement in relation to a cognizable offence does not register FIR against the accused, the aggrieved party is required to approach the Ex-Officio Justice of Peace concerned under the above sections by filing an application. Needless to say that Article 199 cannot be invoked against a private party under any circumstances. Regarding those cases wherein a direction is sought against the police that false case or FIR should not be registered are concerned, we are of the view that such cases are misconceived and not maintainable as only the Magistrate concerned is competent to

decide whether a case is false or not, and that too only after investigation and examination of the investigation report. It is well-settled that investigation in a criminal case cannot be interfered with by this Court. If any party feels that the allegation / case against him is false or he is aggrieved with the investigation report in respect thereof, he has the remedy under the law to challenge such report before the competent forum. In addition to the above, the remedy of a private complaint under Section 200 Cr.P.C. is not only available, but has also been held to be an effective, practical and adequate remedy by a learned Division Bench of this Court in *Mrs. Ghanwa Bhutto and another v. Government of Sindh and another* PLD 1997 Karachi 119. Thus, Article 199 of the Constitution cannot be invoked directly in any of the above events/situations without first availing and exhausting the remedies provided by law.

The honorable Court directed that “office is directed to entertain only such petitions in which:

- i) the petitioner has already approached Ex-Officio Justice of Peace and his application / complaint has been finally decided by Ex-Officio Justice of Peace, provided certified true copy of the final order is filed with the petition ; and
- ii) FIR has been lodged against the husband in case of free will marriage, provided true copy of the FIR is filed with the petition.”

27) The Fauji Foundation Charitable Trust Versus Federal Land Commission & others

Const. P. No. D-620 of 2014

[SHC Citation: 2020- SHC-HYD - 145282]

<http://202.61.43.34:8056/caselaw/view-file/MTQ1MjgyY2Ztcy1kYzgz>

Present: Mr. Justice Muhammad Shafi Siddiqui and Mr. Justice Muhammad Faisal Kamal Alam JJ

Sub-delegation of power to initiate legal proceedings by authorized person was not in consonance with Order XXIX Rule 1 CPC.

The Honourable Court observed that:

“.....When after deliberation the Members of the Committee of the Administration of the petitioner resolved that the Secretary to act as authorized person, then unless otherwise explained, it does not deemed to have empowered the secretary, to further delegate the powers to a Manager. Hence we are of the view that such delegation of powers through an authority letter is not borne out of the Resolution nor it was the implied authority delegated to the Secretary to further delegate such powers and an approval from committee was inevitable. We do not find it in consonance with Order XXIX Rule 1 CPC.”

Doctrine of Election and Doctrine of Promissory Estoppel

The Court also held that when the party opted one relief from the two available then the doctrine of election and doctrine of estoppel would be applicable in the circumstances. The Honourable Court held that;

“This is where the doctrine of election would come into play and consequently doctrine of promissory estoppel. Petitioner, in its dealing with official respondents opted for one of the options available and once an option was availed, leaving and ruling out other, it/petitioner cannot have a second recourse to have another option under the doctrine of election and consequently based under law of Estoppel. This is waiver of alleged right amongst the available range and once an option is chosen, the other goes out of reach. If petitioner thought it had a right and it bartered the same with other option, estoppel would come into play as by conduct it is evident. This principle of election, for the purpose of the present

controversy, is derived from principle of estoppel.”

28) Masood Ahmed Wassan & others Versus Province of Sindh & others

C.P. No. D-2180 of 2017

[SHC Citation: 2020- SHC-HYD - 145281]

<http://202.61.43.34:8056/caselaw/view-file/MTQ1MjgxY2Ztcy1kYzgz>

Present: Mr. Justice Muhammad Shafi Siddiqui and Mr. Justice Muhammad Faisal Kamal Alam, JJ

Destroying precious agricultural land/ natural gifts given to our Country for a concrete structure rather choosing the option of barren land etc, the Honourable Court observed that:

Apart from this historical perspective, the other view of the matter is that agricultural research plays a pivotal role in Country's economy. Since Pakistan is an agriculture based country, therefore such research is inevitable for the low scale peasants and farmers. Scientific research on the subject plays its role in crop yield and would run parallel against race with domestic/international population. This globe where we are striving for existence has a limited fertile land and we should make the most of it rather than contribute towards destroying such natural gifts given to our Country for a concrete structure, an agriculture land should not be spared as for it a number of options in terms of barren land etc. are available but for agriculture produce the choice is limited.

27. ---- *It is time now that this abusive treatment with fertile/agriculture land should come to an end. The Provincial Government and the Federal Government*

should take immediate steps for legislation to preserve the agricultural land of the Country. The Provincial Government should strive hard to revamp Pakistan's agriculture sector so as to address the hurdles faced by farmers and growers. The legislation should be made that the fertile lands of the Province should not be utilized for any other purpose as only then we would be able to save the fertile land for the maximum productivity of food for our future generation and in case we fail in an attempt to do so, the future of our generation would turn bleak as we are already facing shortage of food in sectors where we were self-sufficient.

29. *We have often seen that for roads, bridges, gas/oil line etc. most precious lands were/are being acquired or intercepted in between to have a shortest distance to minimize the cost of that project, but we do not realize that while doing so we are not only destroying fertile/ agriculture land but so also risking our future. This acquisition is normally based on feasibility report of that particular project but there is no realization that for providing some convenience or low cost project, precious land is being destroyed, which is far more important for our future than the convenience and low cost project. The project may cost less but consequences would be detrimental”l*

ADDITIONAL ASSIGNMENTS

29) Additional Assignments Related to Jail Reforms and Comparative Case Law Research of Qanun-E- Shahdat Order (1984) and Indian Evidence Act (1872)

a) Jail Reforms

Legal Research Cell was assigned the task by the learned Division Bench (Mr.

Justice Salahuddin Panhwar and Mr. Justice Shamsuddin Abbasi) to examine different pending cases primarily related to issues faced by jail inmates and preparation of concise report with recommendation which were submitted before Hon'ble Bench.

b) Comparative Case Law Research Of Qanun-E-Shahdat Order (1984) and Indian Evidence Act (1872).

The Research Cell made an effort to bring important citations and case laws laid down by the Superior Courts of Pakistan and India in the form of a compendium. This will benefit Judges, Advocates and Reserachers. The work was assigned by and completed under the guidance of Hon'ble Mr. Justice Naimatullah Phulpoto,