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High Court of Sindh at Karachi

1. M/s. State Life Insurance Corporation of Pakistan v. The Taxation Officer, Enforcement & Collection Division

http://43.245.130.98:8056/caselaw/view-file/MTUwMjQzY2Ztcy1kYzgz

Mr. Justice Irfan Saadat Khan
Mr. Justice Muhammad Faisal Kamal Alam

"Corporation is a synonym for "company," which refers to a statutory entity that meets the definition of "individual" and has a corporate personality. As a result, companies are subject to Section 80-D of the Ordinance, and the minimum tax requirement applies to them. Corporations are not immune because of the specialisation under section 26 and the 4th Schedule of the Income Tax Ordinance,1979(repealed). (Non-Obstante clause discussed)."

Honourable Court ruled that:-

16.---the record it revealed that since the Corporation has not paid the minimum tax, which they were required to, then after giving opportunity of hearing to the Corporation, the said tax was levied.

17. Perusal of Section 156 of the repealed Ordinance clearly reveals that the said Section talks about rectification of a mistake in respect of the matters which are apparent from the record. The term "apparent" has not been defined in the law but has been interpreted in various judgments, according to which the mistake should be so obvious that it could be seen floating on the surface of the record and may not require any investigation or further evidence. The mistake should be so obvious that it should strike on the face of it and should not be the result of long drawn process of reasoning or where two opinions are possible. Now if the parameters of the present matters are examined, it could be seen that the figure of turnover was worked out by the Department on the basis of the accounts submitted by the Corporation itself. The figure of the turnover is very much available in the statement of accounts submitted along with the return of total income by the Corporation and could not be termed to have been obtained either by calling some additional evidence or making any fishing or roving enquiries or by virtue of long drawn process but was very much furnished by the Corporation itself to the Department.

18.---In the instant matter it could be seen that the figure of turnover of the Corporation from all sources has already been declared by the Corporation to the Department through its returns, meaning thereby that the figure of the turnover was already a matter of record with the Income Tax Department, hence it could not be said that applicability of Section 80-D upon the Corporation was not a mistake floating on the surface as the same did not require any investigation or further evidence. In our view the mistake was so obvious that by taking a simple glance on the records furnished by the Corporation the turnover of the Corporation for the years under discussion could easily be worked out without any long drawn process, investigation and /or enquiry as the figures of the turnover were duly reflected in the accounts of the Corporation disclosed by them. It may be noted that this process, in our view, of imposing Section 80-D on the Corporation does not entail entering into any controversy, investigation into the matter, obtaining additional evidences as it

requires a simple calculation and application of 0.5% tax upon the turnover of the Corporation disclosed by it.

21.---In the instant matter also, as noted above, the aspect of ascertaining the turnover is very much obvious, patent and apparent from the record. We, therefore, under the circumstances, answer the question with regard to applicability of Section 156 of the Ordinance, which is common for the assessment years 1993 – 1994 to 1996 – 1997, in Affirmative---

Non-Obstante Clause

22.--- the applicability of Section 80-D of the repealed Ordinance--- that no doubt both Sections 26 and 80-D starts with non-obstante clause but since Section 80-D was introduced subsequently and is a latter provision hence it would prevail,,,,,, where two special laws contain competing non-obstante clause then the general rule is that the latter in time prevails. It may be noted that in the present case the latter in time provision is 80-D of the repealed Ordinance--- in case of two special laws, the special law which is latter in time would prevail.,,, in case of conflict between two special laws the statute which is latter in time would prevail over the statute prior in time. In the instant matter it is an admitted fact that Section 80-D is a latter provision of the law hence, in our view, would prevail over Section 26 of the repealed Ordinance. It would not be out of place to mention that in the Income Tax Act 1922 (repealed Act) also there was provision dealing with the taxability of Insurance business, which was Section 10(7) read with First Schedule to the Act.

24.---a Corporation is a person falling under Section 2(32) of the Ordinance, hence the provision of Section 80-D is applicable to it being a person---the word "Corporation" though not defined in the Ordinance but is also considered to be a synonym of the "Company" and the word "Company" has also been defined under Section 2(16) of the repealed Ordinance, which would mean a body corporate formed by or under any law for the time being in force; since applicant (State Life Insurance Corporation) is a statutory entity, thus it would also fall within the definition of "person" and has a corporate personality; hence not absolved from the applicability of Section 80-D of the Ordinance. ---

25. We, therefore,---the Corporation is liable to pay tax on its turnover in respect of the incomes falling under its turnover, under the provision of Section 80-D of the repealed Ordinance, and thus answer the questions raised in the instant ITRAs, with regard to applicability of 20 Section 80D of the repealed Ordinance, in all the years under consideration in Affirmative.

2. Aftab Alam v. Province of Sindh and others

http://43.245.130.98:8056/caselaw/view-file/MTUwMzkzY2Ztcy1kYzgz

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

This practice of appointment on an Own Pay Scale basis has no any sanction of law, besides it impinges the self-respect and dignity of the Civil / Public Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Even though in exigencies, the Governments makes

such appointments as a stopgap arrangement, this discretion of nature, if allowed, will offend valuable rights of the meritorious Civil / Public Servants besides blocks promotions of the deserving officers.

His lordship ruled that:-

3. This practice of appointment on an Own Pay Scale basis has always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self-respect and dignity of the Civil / Public Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of nature, if allowed to be vested in the Competent Authority, will offend valuable rights of the meritorious Civil / Public Servants besides blocks promotions of the deserving officers. In this respect the law empowers the Competent Authority to appoint a Civil / Public Servant on acting charge and current charge basis, it provides that if a post is required to be filled through promotion and the most senior Civil / Public Servant eligible for promotion does not possess the specific length of service, the appointment of the eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee /Selection Board. Further that an appointment on an acting charge basis shall be made for vacancies lasting for more than 6 months and vacancies likely to last for less than six months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, an appointment on a current charge basis is purely temporary in nature or a stopgap arrangement, which remains operative for a short duration until a regular appointment is made against the post. It is crystal clear that there is no scope of the appointment of a Civil /Public Servant on an OPS basis except in exigencies appointment on an acting charge basis can be made, subject to conditions contained in the relevant Rules.

4. In our view, posting/transferring a Civil / Public servant on his pay and scale (OPS) is not legally permissible.---

5. The above discussion leads us to an irresistible conclusion that the appointment/posting of Civil / Public Servant on OPS/additional charge basis, is violative of law and public interest as a result thereof the instant petition is disposed of with the direction to the competent authority of respondent-SESSI to comply with the ratio of the decisions passed by the Honorable Supreme Court in the cases of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189] and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411) in its letter and spirit and avoid making the transfer and posting on own pay scale in future, however, subject to conditions as enumerated in the aforesaid judgments of the Hon'ble Supreme Court.

3. Azneem Bilwani v. Fed. of Pakistan and Others

http://43.245.130.98:8056/caselaw/view-file/MTQ5MTA2Y2Ztcy1kYzgz

Mr. Justice Aqeel Ahmed Abbasi
Mrs. Justice Rashida Asad

"Mere non-filing of wealth Statement under Section 116-A, would not attract imposition of penalty under Section 182 of the Income Tax Ordinance, 2001 in an automatic manner,

without establishing willful default or mense rea on the part of the petitioners".

Honourable Court ruled that:-

--- we would now dilate upon another substantial issue relating to merits of imposition of penalty under Section 182(2) of the Income Tax Ordinance, 2001, in the facts and circumstances of these cases. Admittedly, in the case of petitioners, there is no effect either on the income of petitioners, their tax liability or any other financial implications for non-filing of Statement under Section 116A, nor it is a case of concealment of income or non-disclosure of foreign income and assets from all source by the petitioners. The cases of petitioners otherwise, do not attract any proceedings for making assessment or additional assessment in respect of any escaped income or concealed income, which may result in creating any additional tax liability upon the petitioners. If this would have been the case where petitioners would have not disclosed their foreign assets and income in the Wealth Statement filed under Section 116 along with returns of income for the Tax Year 2019, than the burden would have been upon the petitioners to explain the reason for such non-disclosure, and in case of any dis-satisfactory response by the petitioners, proceedings for imposition of penalty under Section 182 of the Income Tax Ordinance, 2001, could have been justified, however, subject to fulfillment of other legal requirements. Therefore, in the above circumstances of the case, mere non-filing of Statement under Section 116A, would not attract imposition of penalty under Section 182 of the Income Tax Ordinance, 2001 in an automatic manner, without establishing wilful default or mense rea on the part of the petitioners. It is settled legal position that unless there is clear intention of the legislature to impose additional liability or burden of tax in the shape of penalty or surcharge in case of any default or non-compliance of legal obligations, the imposition of such penalty should be subject to fulfillment of legal and procedural requirements, whereas, Tax Authorities have to establish willful default and/or mens rea on the part of taxpayer before invoking the penal provisions.".

4. K.E.S.C. Labour Union & Others v. Federation of Pakistan & Others

Const. P. 3775/2012
http://43.245.130.98:8056/caselaw/view-file/MTQ5MDI1Y2Ztcy1kYzgz

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Arshad Hussain Khan

If the Process of privatization of a public asset being violative of the constitutional mandate and contrary to the legal requirement as per privatization commission Ordinance, 2000 read with (modes and Procedure) Rules, 200, then any citizen has locus standi to file a C.P for the scrutiny of said process.

If, there is no specific embargo either under the Constitution of Islamic Republic of Pakistan 1973 then that the National Asset can also be sold/transferred under the Privatization Commission Ordinance, 2000.

The Policy decision of the executive authority can be judicially reviewed to the extent if it is in violation of any law, irrational and unreasonable or otherwise.

Honourable Court ruled that:-

52. ---We are of the opinion that right of electricity is part of right to life, which

includes right to quality of life, hence part of fundamental right of a citizen of Pakistan. To provide electricity to the citizen is the responsibility of a State, whereas, Electricity service is part of the essential services to be provided by the State to its citizens. In view of hereinabove facts, we are of the view that respondents have not been able to point out any *mala fide* on the part of the petitioners, nor this is the case, which could have been dealt with by this Court while exercising jurisdiction in terms of Sections 28, 29 and 30 of the Privatization Commission Ordinance, 2000, therefore, instant petitions are maintainable and the objection raised by the respondents in this regard is hereby overruled.

53. --- reference was made to Article 173(1) of the Constitution of Pakistan, which authorizes the executive authority to sell, mortgage or dispose of the property by Federal or Provincial Government(s).--- has the right to sell, mortgage or dispose of the State's property in accordance with law in a transparent manner. --- However, we would certainly express our concern to the extent that even if, there is no specific embargo either under the Constitution of Islamic Republic of Pakistan 1973 or under the Privatization Commission Ordinance, 2000 read with Privatization (Modes and Procedures) Rules, 2001 putting restriction on the sale/transfer of "National Asset" having strategic position, relatable to exercise of sovereign rights by a State, in such situation, extraordinary caution and due care has to be exercised by the Executive, so that in the garb of privatization of a public asset purportedly in the public interest, while referring to some financial exigency, with an intention to avoid losses to public exchequer and to earn profits, sovereign rights of the State and obligation to provide essential services, and to safeguard the fundamental rights of the citizen, should not in any manner, be diminished or effected.

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59. ---The scrutiny of facts as recorded hereinabove, further reflects that prima-facie, in the process of privatization of KESC, compliance of relevant constitutional Articles and the legal provisions of Privatization Commission Ordinance, 2000, as well as the provisions of Privatization Commission (Modes and Procedures) Rules, 2001, has been substantially made by the official respondents, whereas, nothing has been produced by the petitioners to show that the process of privatization of KESC by the Federal Government was either unconstitutional, illegal or violative of principle of Natural justice.---

61. In view of hereinabove factual legal position, we are of the opinion that --- privatization of KESC was the result of policy making decision by the executive authority, and once the competent authority in the government has taken a decision, which is backed by law, rules and regulations and does not suffer from any malafide, then it would not be in consonance with the well-established norms of judicial review to interfere in policy making decision of the executive authority.

5. Prof. Dr. Muhammad Zahid v. The Chancellor, Federal Urdu University of Arts, Science and Technology & others,

C.P. No.D-5205 of 2020
http://43.245.130.98:8056/caselaw/view-file/MTUxMTUwY2Ztcy1kYzgz

Present Mr. Justice Muhammad Ali Mazhar
Mr. Justice Arshad Hussain Khan

The Search Committee, not the independent enumerators, is mandated by law to scrutinise and evaluate the curriculum vitae/résumés of all applicants for shortlisting and marking/scoring with due diligence and correct application of mind; any deviation from such specified procedure is against the law.

Honorable Court ruled that;

7. What we have deciphered and figure out from the provisions of the Ordinance vis-à-vis the appointment of Vice Chancellor, the rationale or underlying principle of appointing search committee is to make sure the recommendations for the appointment of Vice Chancellor on merits in a transparent and translucent manner so that a profile of most competent and suitable person is vetted, screened or sort through for the recommendations but in the reply to main petition filed by respondents No.1 to 5, 7 and 8, paragraph 10 is quite relevant which for the ease of reference is reproduced as under: "10. ----. "----***It is most respectfully submitted that the names of the candidates were never placed or disclosed to the Members of the Search Committee for short listing and scoring was done by the independent enumerators. Only the Scoring Sheets with the file numbers were discussed by the Search Committee without having names of any of the candidates***. ---."

8. ----. The role and purpose of search committee is quite meaningful and carrying great weight and importance. It is somewhat incomprehensible to glance through the declaration made in aforesaid paragraph that the names of the candidates were never placed or disclosed to the Members of the Search Committee for short-listing and scoring was done by an independent enumerator and only the scoring sheets with the file numbers were discussed by the search committee without having names of any of the candidates. By doing so we feel no hesitation in our mind to hold that search committee was found fail in its duties. The search committee was appointed for recommending the most suitable candidate for appointment as Vice Chancellor which could not outsource their responsibilities and onerous duty to some independent enumerators while a sacred duty was conferred to analyze and scrutinize the credentials and antecedents of all candidates who applied to the post of Vice Chancellor. We do not think that search committee was empowered to adopt a unique idea of outsourcing their task to some independent enumerators which idea is downrightly extraneous and alien to Section 12 of the Ordinance wherein the entire responsibility rests upon the search committee to complete the entire exercise and recommend the names of best suitable candidates for the final selection by the Chancellor. It was their obligation and errand appearing in the law to scrutinize and assess the curriculum vitae/résumé of all candidates for shortlisting and marking/scoring with due diligence and correct application of mind then issue interview letters to the shortlisted candidates.

9.---VC is of a stature and his/her presence commensurate to lead a distinguished academic institution. The stated mission of the University is to contribute to society through the pursuit of education, learning, and research at the highest international levels of excellence. The VC must be of exceptional caliber with academic credibility, clear strategic vision, and outstanding leadership qualities. He/she should have strong management skills and senior level experience gained in a complex institution and the ability to bring them to bear in a democratic, self-governing University. ---. --. In an interesting Article, titled "Why Socrates should be in the Boardroom in Research Universities", published in 2010 by Amanda H. Goodall, Leverhulme Fellow, Warwick Business School, the author points out two contrasting events that happened in 2003 and 2004. It is common knowledge that Cambridge University came into existence in 1209 and almost about 800 years later, a distinguished Anthropologist, by name Alison Richard, was appointed as the 344th President or Vice-Chancellor of Cambridge. She was an acclaimed academician. In contrast to what happened at Cambridge in 2003, Oxford University appointed in 2004, a person by name John Hood, who was not an academic but was only a businessman. He became the first head of Oxford University, ever since the year 1230, to be elected to the Vice-Chancellorship from outside the University's current academic body. The paper authored by Amanda Goodall considered the question as to why Cambridge and Oxford chose such different individuals to lead their ancient and reputed institutions. The central theme of the paper was as to whether there was a relationship between University performance and leadership by an accomplished researcher. Eventually, after analyzing the statistics from about 100 Universities throughout the world, the author came to the conclusion, supported by evidence that Research Universities should be led by top scholars. The conclusions reached by the author could be summarized in the way that the best Universities in the world are led by more established scholars; that scholar-leaders are considered to be more credible leaders in Universities, commanding greater respect from their academic peers; that setting an organisation's academic standards is a significant part of the function of the Vice-Chancellor and hence one should expect the standard bearer to first year that standard; that a leader, who is an established scholar, signals the institution's priorities, internally to its faculties and externally to potential new academic recruits, students, alumni, donors and the media; that since scholarship cannot be viewed as a proxy for either management experience or leadership skills, an expert leader must also have expertise in areas other than scholarship.

10. In the wake of above discussion, this constitution petition is disposed of along with pending application in the following terms:- 1. Outsourcing the task of shortlisting and marking/scoring by Search Committee to the independent enumerators was in violation of basic structure of Section 12 of the Federal Urdu University of Arts, Sciences and Technology, Islamabad Ordinance, 2002 therefore the exercise of shortlisting and marking/scoring conducted by said independent enumerators on directions of search committee is set aside.

2. The Search Committee is directed to conduct selection process de novo by itself and scrutinize and appraise in a fair and transparent manner all curriculum vitae/résumé submitted by the candidates for the appointment to the post of Vice Chancellor pursuant to advertisements published in the newspapers on 16.08.2020 for inviting applications.

6. Abbu Hashim & another Vs. Federation of Pakistan & others

http://43.245.130.98:8056/caselaw/view-file/MTUwOTI1Y2Ztcy1kYzgz

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Arshad Hussain Khan

"NADRA has no powers or authorized by law to block, impound, confiscate or cancel the CNIC of any person as an interim measure save to declared by a court".

Honourable Court ruled that:-

8. Even though, the nitty-gritties of Section 18 explicate the power to cancel, impound or confiscate the card as an eventual punitive action but no powers are integrated or en suite to block the CNIC of any person unless it is finally determined or adjudicated that the card issued to any such person should be cancelled, impounded or confiscated. Before deciding the fate of show cause notices, there is no provision under the NADRA Ordinance to block CNIC. Any such action beyond the scope of law makes a person neither here nor there being as in this case. Due to blocking of CNICs the petitioner No.1 is unable to operate his bank account which is much painful and troublesome. Nothing has been said by NADRA that the petitioners are involved in any offense or their CNIC have been blocked under some court's order or some suspicious amount is said to have been parked in their accounts through unverified source or they are suspected of any money laundering case. Despite showing off all past available record to substantiate the bona fide of the petitioners, NADRA blocked their CNICs and started fishing and roving enquiry through a show cause but the genuineness or authenticity of documents presented by the petitioners have not been questioned with the allegation that the same are forged or manipulated hence not acceptable. At this point in time what is the status of the petitioners? Whether in this transitional or intermediary period they are supposed to have lost or deprived their citizenship of Pakistan and what would be the impending course of action in such case if the card is cancelled, impounded or confiscated? Whether any such person will be deported to somewhere else or he may be allowed to live in Pakistan with the right to apply for citizenship afresh? Nothing was answered by the counsel for the NADRA to this effect when we raised the query to him. In fact the deprivation of citizenship is provided under Section 16 of the Pakistan Citizenship Act, 1951.

---17. We have scanned the law but unable to find out any provisions under which NADRA is authorized or vested with any powers to block CNIC of any person though a separate mechanism is provided under Section 18 where no such powers as an interim measure are available under the law. So far as Section 47 of the NADRA Ordinance 2000 is concerned, this by and large correlated to the removal of difficulties if arises in giving effect to any provision of the NADRA Ordinance which does not mean that any such

notification may be issued for the removal of alleged difficulties in which the directions can be given beyond the spirit and scope of the parent law. It is well settled exposition of law that the rules and regulations if framed cannot travel beyond the scope of parent Act and such type of addition under the law cannot be achieved under the garb or semblance of removal of difficulties clause. All the more so, even this very notification issued by Ministry of Interior have not given any directions for blocking the CNIC but they have provided a mechanism to deal with the blocked CNIC and with the cutoff date for producing the documents without any logic or rationale that how this cutoff date was chosen from the year 1978. The blocking of CNIC is alien to NADRA Ordinance, 2000 as no specific provisions are provided.

18. No doubt under Section 18 of the NADRA Ordinance, 2000 show cause notice may be issued but for that also there must be some reason to believe that the person was not eligible but he obtained the CNIC or his card was forged. Even in the SOP dated 27.04.2017 forwarded by D.G. Operations NADRA to all RHOs (NADRA) the complex cases are those cases which are blocked as confirmed alien/non-national on the basis of agency report which cases are to be dealt with by District Level Committee. In the case in hand nothing was produced by learned counsel for the NADRA that any complaint was received against the petitioners that they were ineligible to obtain the CNIC or there was any agency report against them whereby their cases were treated to be complex cases and referred to the DLC. The purpose of providing procedure for cancellation and confiscation of cards by the legislature does not mean to exercise these powers callously or recklessly but the guiding principle under the law is that there must be some reason to believe and the phrase "reason to believe" should not be based on figment of imagination but substantial and definite information and not on vague allegations.

19. All the documents filed with the petition by the petitioners when confronted to the learned counsel for NADRA, he could not deny the authenticity and genuineness of the documents except relied on Section 18 of the NADRA Ordinance. Nothing addressed to challenge the authenticity or genuineness of the documents those have been filed by the petitioners nor argued that on verification any document was found forged or manipulated. It is also strange as to why the earlier CNICs issued to the petitioners are not taken into consideration when the same department or their predecessors had issued the same and if in the NADRA there was such type of mismanagement and the cards are issued due to connivance of the staff members then what action has been taken so far against such culprits which was also remained unaddressed by the NADRA. The domicile, earlier passports even the Nikahnama of the petitioners are being rejected solely for the reason that these documents were issued after 1978 but there was no rationale or commonsensical logic as to why 1978 cutoff date has been laid down in the Ministry of Interior letter and what is the fate of those persons who were not registered prior to 1978 whether they will be treated alien in this country despite having citizenship. The proper course was to verify these documents from the authorities who issued the same rather than putting the petitioners in the pressure and embarrassing situation to prove their identity

and citizenship in Pakistan after such a long time.

22. The whys and wherefores lead us to a finale that neither NADRA could demonstrate any cogent justification that the documents produced by the petitioners are forged or manipulated nor NADRA could satisfy or expound any rationale as to why these documents are not acceptable to them nor it could be demonstrated by them that there were reasons to believe that the petitioners secured documents including previous NICs and CNICs/passports/domicile on the basis of some fraud or misrepresentation/impersonation, therefore, the blocking of CNIC was unlawful. We also ruminate that both the show cause notices are beyond the bounds and precincts of Section 18 of NADRA Ordinance, 2000 and so also abuse of process of law, consequently, the show cause notices are also quashed. Since the last CNIC of the petitioner No.1 expired on 20.2.2020 and the CNIC of petitioner No.2 expired on 1.2.2020 whereas this petition was filed on 11.3.2020 after expiry of both CNICs, therefore the petitioners may apply for renewal of their CNICs and NADRA is directed to renew their CNICs within fifteen days.

7. Peoples University of Medical & Health Sciences for Women & others v. Pakistan & others

Const. P. 4953/2020 (D.B.) Sindh High Court, Karachi

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Adnan Iqbal Chaudhry

"Though education after the promulgation of the 18th Amendment has become a Provincial subject, therefore, every Province may set its own curriculum and syllabus for Higher Secondary education, however, in any case otherwise, centralized admission test or unified National Medical & Dental College Admission Test (MDCAT) is conducted under the Pakistan Medical Commission, PMC Act, 2020 with the announcement of common syllabus neither would tantamount to violate the legislative competence of the Province and nor would infringe fundamental right of students/candidates. The vires of Sections 4, 18(4), 50(2) of PMC ACT, 2020 examined under Doctrines of "Reading Down, Severability, and Ultra vires".

Honourable Court expounded that: -

Doctrine of Reading Down.

14. We are sanguine that while reading down of a statute two principles had to be kept in view; first that the object of 'reading down' was primarily to save the statute and in doing so the paramount question would be whether in the event of **reading down**, could the statute remain functional; second, would the legislature have enacted the law, if that issue had been brought to its notice which was being agitated before the court.---

The **doctrine of reading down** or of recasting the statute can be applied in limited situations. It is essentially used for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible, one rendering it constitutional and the other making it constitutional the former should be preferred. The doctrine can never be called into play where the statute requires extensive additions and deletions. The Doctrine of Reading Down is therefore an internal aid to construe the word or phrase in a

statute to give reasonable meaning but not to detract, distort or emasculate the language so as to give the supposed purpose to avoid unconstitutionality. Thus, the object of reading down is to keep the operation of the statute within the purpose of the Act and constitutionally valid--

--The legislature enacts and the Judges interpret. The rules of interpretation come into play only where clarity or precision in the provisions of the statute are found missing. It is the duty of the court to endeavour as far as possible to construe a statute in such a manner that the construction results in invalidity rather than its invalidity and gives effect to the manifest intention of the Legislature enacting that statute. It is also permissible for the court to "read down" a provision in order to so understand it as not to attempt something beyond the competence of the legislative body which is called the principle of "reading down"---Societies grow and nations progress by strict adherence to rule of law. Judges have nothing to do with shades of public opinion which holders of public office may represent or with passions of the day which sway public opinion. Task of Judges is to tenaciously and fiercely uphold and implement the Constitution and the law--- if a public authority is entrusted, as part of its public law function with the exercise of a discretion, it must take into account all relevant considerations. It must not be influenced by any irrelevant consideration. And its discretion must be exercised reasonable in this sense, that it must not be so unreasonable that no reasonable authority could have reached it---where express statutory power is conferred on a public functionary, it should not be pushed too far, for such conferment implies a restraint in operating that power, so as to exercise it justly and reasonably. Excessive use of lawful power is itself unlawful.

15. We are also conscious and mindful to Section 39 of the PMC Act 2020 in which Division may by notification in the official Gazette make Rules for carrying out the purpose of the Act. According to Clause (viii) of Section 2 of the Act, “Division” means the Division to which business of the Act stands allocated. In all fairness, Section 4 of the PMC Act 2020 ought to be read down to streamline and make available a fair chance of restructuring the appointment procedure for the members of the PMC. We direct the Ministry of National Health Sciences, Regulations and Coordination, Government of Pakistan to frame Rules within 90 days for the appointment of members of the Council so that future appointments may be made in accordance with prescribed procedure in Rules so that after shortlisting of applications invited through advertisements in newspapers and interview by the appointment committee/selection board, the recommendations along with credentials and antecedents of short listed candidates may be placed for the approval of P.M.

16. So far as the challenge to Section 18 of PMC Act, 2020 is concerned---Earlier than PMC Act, 2020, the aptitude test of medical student was being taken under the old PMDC/PMC Regulations, however, under the said regulations, the task was given to “Admitting University” of a Province in a rotary motion to conduct test but the fact remains that the matter was being regulated by PMDC constituted under the Federal piece of legislation and not by any Provincial law---

after Eighteenth Amendment, the Provincial Government is competent to make their own laws but it is a fact that Sindh Government has not made any law to regulate medical profession but for all intents and purposes all affairs were already being regulated under the former PMDC laws and now the law in field--

Doctrine of Ultra Vires

17. The doctrine of ultra vires is the basic doctrine in administrative law. The doctrine envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. To a large extent the courts have developed the subject by extending and refining this principle, which has many ramifications and which in some of its aspects attains a high degree of artificiality ---If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires---The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictive competence or found in violation of fundamental rights,, law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation unless ex facie violative of a Constitutional provision.,,, Where two opinions with regard to the constitutionality of an enactment were possible, the one in favour of the validity of the enactment was to be adopted---Such power should be exercised only when absolutely necessary as injudicious exercise of such power might well result in grave and serious consequences---

Doctrine of Severability

Doctrine of severability permitted a court to sever the unconstitutional portion of a partially unconstitutional statute in order to preserve the operation of any uncontested or valid remainder but if the valid portion was so closely mixed up with the invalid portion that it could not be separated without leaving an incomplete or more or less mixed remainder, the court would declare the entire act void.

18--- in our considerate view, under the Federal Legislative List, the Parliament is competent to make legislation according to entry No.11 in relation to the "legal, medical and other professions" and so far as the Entry No.12 is concerned, we have no doubt that qualifying the MDCAT is also a gateway to the higher education i.e. the medical profession, so such a restrictive or conservative interpretation cannot be anticipated to the rudiments of this entry. In fact this is also a standard formulated under the PMC Act, 2020 by way of MDCAT which is a mandatory qualification for securing admission in medical and dental educational institutions---

19.---we have no hesitation or reluctance to hold that the challenge to legislative competence is misconceived and unsubstantiated. No fundamental right of any student/candidate is infringed if a centralized or unified MDCAT is conducted under the PMC Act, 2020 nor it is a vested right of any student to claim MDCAT to be continued under the old regulations of PMDC/PMC through Admitting University of Province

despite centralized policy. Neither Section 18 is discriminatory nor colourable or beyond the legislative competence of the Parliament nor this infringes fundamental right of any citizen of Pakistan---a vested right is free from contingencies but not in the sense that it is exercisable anywhere and at any moment. There must always be occasions at which and circumstances under which the right may be exercised. Such rights have peculiar characteristics of their own. So far as plea of discrimination, it always involves an element of unfairness and bias. The factum of bias could not be substantiated without any convincing evidence. A Court of Law cannot exercise unfettered or unrestricted powers to administer equity not based on justiciable foundation but it must be satisfied before exercising its power that some illegal wrong has been inflicted or is about to be inflicted.

24. ---Pakistan Medical Commission was restrained from holding the MDCAT on 15-11-2020 with the directions to appoint within 15 days National Medical & Dental Academic Board and the National Medical Authority to review and formulate the examination structure and standards for the MDCAT and announce common syllabus for conducting MDCAT---We were also astounded on paying a visit to the announcement of syllabus clarifications which was in fact classifying MDCAT a unique type of examination in which the applicants/students were to be handed over an objection form in the examination hall to fill in if any question is considered to be out of F.Sc. syllabus. Such type of one and only innovative idea was highly dangerous and tantamount to ruin the future of innocent stakeholders which is nothing but to have caused bewilderment, misunderstanding and distress in their mind to first read the question paper and after going through the audit exercise they must fill in objection form pointing out different questions considered to be out of syllabus and then start the main paper for attempting the questions which are considered to be within the syllabus. Further there was no mechanism to deal with as to how a particular person shall be informed by the Commission about the fate of his objection whether the objection raised by him was sustained or rejected and if sustained, how many questions have been excluded from marking in his particular case. There was also likelihood of grave misunderstanding and confusion and the possibility could not have been ruled out if the Commission was allowed to act according to syllabus clarifications which could have created multiplicity of litigation throughout the country and open the floodgate in different jurisdiction, therefore, this was also crucial to restrain MDCAT on the last given date to save the innocent students from such type of serious questionable lapses on account of non-making of proper syllabus due to unavailability or absenteeism of Academic Board.

8. Muhammad Aquib Rajpar & others v. Returning Officer/Provincial Election Commissioner (Sindh) and others.

http://43.245.130.98:8056/caselaw/view-file/MTQ5OTA2Y2Ztcy1kYzgz

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Amjad Ali Sahito

"Whether Transfer of the vote from another province to Sindh, precludes candidature to the Senate as a consequence thereof?"

Honorable Court held that:-

---We have also gone through the objections available on record which were filed before the Returning Officer in which the petitioners only raised the plea with regard to the transfer of vote from Punjab to Sindh and no other objection was raised but in the writ petition we have found that the petitioners have raised some other grounds which were neither taken before the Returning Officer nor before the learned Senate Appellate Tribunal, Sindh which cannot be considered at this stage. The petitioners also want us to declare that the respondent No.2 is not Sadiq and Ameen for which the counsel for the respondent No.2 rightly relied on the case of *Raja Pervaiz Ashraf supra* in which the learned Full Bench of the Lahore High Court has already dilated upon the issue and held that it is settled law that neither the Returning Officer nor the Election Tribunal has the power to issue any declaration by itself in a summary jurisdiction under the provisions of Representation of the People Act, 1976, unless there is a declaration issued by a court of law placed before them, in which event they can invoke the provisions of Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973.

---If the petitioners had any objections with regard to the transfer of vote, a detailed procedure is already provided under Sections 31 and 37 of the Elections Act, 2017 and the definition of „electoral area" is provided in clause (xvi) of Section 2 of the Elections Act, 2017. The petitioners admit that they did not file any objections to the transfer of vote but they simply placed the justification that it was not in their knowledge that respondent No.2 got her vote transferred from Punjab to Sindh.

---It is well settled exposition of law that in the constitutional jurisdiction factual controversy cannot be decided and the entire focus must be on the question of law if any violated by the courts below. We repeatedly asked the learned counsel for the petitioners that they must demonstrate some violation of law if any committed by the courts below but they could not justify except that the vote has been transferred from Punjab to Sindh but they could not satisfy this court that under the law there was any bar.

9. Anjum Badar V/S Province of Sindh and 2 others (Constitutional Petition No. D – 6241 of 2016 and 14 other listed constitutional Petition)

http://43.245.130.98:8056/caselaw/view-file/MTUwNzI3Y2Ztcy1kYzgz

Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

"Mandatory requirement of initial appointments to the posts of BS 16 to 22 only through the competitive process of selection by the Sindh Public Service Commission must be respected and treated as the command of the Constitution".

Honorable Court Hold That:-

The Civil Servants Act 1973 and the Sindh Public Service Commission Act 1989 were enacted by the Provincial Assembly of Sindh under the powers conferred upon it by Article 240(b) of the Constitution of Pakistan, and the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 and the Sindh Public Service Commission (Function) Rules 1990 were framed by the Government of Sindh under the the above referred statutes, thus these Rules are to be deemed to have

been made under the powers conferred by Article 240(b); and due to this reason the mandatory requirement of initial appointments to the posts of BS 16 to 22 only through the competitive process of selection by the Sindh Public Service Commission must be respected and treated as the command of the Constitution.
The Government of Sindh and or the Competent Authority cannot bypass this mandatory requirement and substitute it with a parallel mechanism to appoint a person in BS 16 to 22 against the language of the above Rules of 1974.

Since Petitioners want their posts to be regularised by changing their status from that of contractual employees two civil servants, they shall have to go through the same mandatory competitive process of selection that is required/ prescribed for the appointment of a Civil Servant.

In fact, it would be discriminatory against the serving civil servants if contractual employees are granted the status of a civil servant without having gone through the mandatory competitive process prescribed for the selection and appointment of a civil servant. Therefore, regularization / appointment in BS 16 to 22 without the mandatory competitive process of selection by the Sindh Public Service Commission, being clearly against the command of the Constitution and direction of the Honourable Supreme Court, cannot be ordered by this Court.

If the statute, or any part thereof of, under which relief is sought is ultra vires the Constitution or is against the law laid down by the Honourable Supreme Court, this Court, while declining the relief, would be fully justified and competent to look into the vires of such statute and to declare it ultra vires.

Section 3 of The Sindh (Regularisation of Ad Hoc and Contract Employees) Act 2013 to the extent of regularization/ appointment in BS 16, 17 and 18 without the mandatory competitive process of selection by the Sindh Public Service Commission being ultra vires the Constitution, cannot be applied or enforced.

Legislative Competence- it is not enough to make a valid law as the law must also pass the test at the Touchstone of constitutionality to be enforceable, failing which it becomes invalid and an enforceable.

Past and Closed Transaction- only applicable, for instance, if an employee who had given an out of turn promotion pursuant to a law found to be Ultra vires the Fundamental rights, who now stands retired and or died; but if an illegal benefit was accrued or conferred under a statute, whether repealed / omitted or continuing, and its benefits continue to flow in favour of beneficiaries of such an unconstitutional Act which is declared Ultra vires, the benefits so conferred would have to be reversed irrespective of the fact that the conferring Act was still on the statute book or not.

10. Javed Iqbal v. Federation of Pakistan and 02 others

http://43.245.130.98:8056/caselaw/view-file/MTQ4ODE0Y2Ztcy1kYzgz

Mr. Justice Nadeem Akhtar,
Mr. Justice Adnan-ul-Karim Memon

"When the contract of contractual employees extended from time to time in public owned

Organization, whether this confer vested rights on the employees to be absorbed/regularized or permanently appointed in service?

Honourable Court held that:-

"13. In view of the above, the respondent-CAA was well within its rights to dispense with the service of its employees after the expiry of their contract under the law. The General Clauses Act, 1897, also empowers the competent authority to appoint or remove anyone appointed in the exercise of that power. In fact, in view of the legal position discussed above, the services of such contractual employees stood automatically dispensed upon expiration of the contract or any extension made therein. 14. Having discussed the legal aspect of the case. The case of the petitioners falls within the principle of Master and Servant. It is well established law that a contractual employee has no fundamental / acquired vested right to remain in the contractual post or to seek an extension and/or regularization of the contractual service. It is also a settled law that Courts ordinarily refrain from interfering in the policy-making domain of the Executives unless it is proven that it has infringed the fundamental rights of the citizens of Pakistan, which is not the case at hand."

11. Anis Haroon & others v. Federation of Pakistan and The Secretary, Ministry of Foreign Affairs

http://43.245.130.98:8056/caselaw/view-file/MTQ4ODE2Y2Ztcy1kYzgz

Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

Whether the post of Permanent Representative of Pakistan to the United Nations is to be filled amongst the career foreign service officers or eminent personalities from business, media, law, and other areas on a contract basis?

Whether the Prime Minister of Pakistan is the competent authority under Rule 15(1)(g)(h) of the Rules of Business, 1973 or the Federal Cabinet under Article 90 of the Constitution of Pakistan to make such appointment ?

Honourable Court held that:-

"12. In view of the foregoing factual as well as the legal position of the case, since, this is a policy decision and under the Foreign Policy, this Court has no jurisdiction to examine the policy decision of the Government of Pakistan for the simple reason that the power to prescribe or modify the criteria for issuing the letter of appointment against the post of Permanent Representative of Pakistan to the United Nations, New York, vests in the Federal Government according to Article 90 of the Constitution of Pakistan. The said Article vests exclusive power in the Executive to not only recognizes the aforesaid position etc., based on the security of the country under the Acts / Ordinances and Rules framed thereunder but also the Cabinet / Competent Authority is well within its right to prescribe criteria under Article 90 of the Constitution of Pakistan. Responsibility of fixing criteria of

recognizing the appointment of Permanent Representative of Pakistan to any foreign Government primarily is the responsibility of the Executive Branch of the State subject to the law. It is also settled law that Courts ordinarily refrain from interfering in the foreign policy-making domain of the Executive---**"**

12. Al- Ghazi Tractors limited v. Government of Sindh & 03 others

http://43.245.130.98:8056/caselaw/view-file/MTQ2NjYwY2Ztcy1kYzgz

Mr. Justice Muhammad Shafi Siddiqui.
Mr. Justice Adnan -ul-Karim Memon.

"Whether the Sindh Human Rights commission is empowered under section 4 of the Sindh Protection of Human Rights Act, 2011 (Act, 2011) to entertain service related issues and direct the re-instatement of the private respondents"?

Honourable Court held that:-

10. To appreciate the contentions of the parties, it would be necessary for us to examine the scheme of the Act, 2011. Section 4 provides powers and functions of the Commission, whereas Section 13 provides a bar of jurisdiction of other Courts. Prima facie, the Commission is empowered to take cognizance of violation of human rights or abatement thereof and negligence in the prevention of such violation by a public servant as provided in proviso (ii) to (v). Primarily, the private respondents approached the Sindh Human Rights commission (SHRC) in June 2020 regarding resignations under duress by the petitioner-company, which was, later on, inquired and separate notices were issued to the petitioner-company, however, the Commission could not be satisfied for the reply submitted by the petitioner-company and a detailed order dated 13.10.2020 was passed with the following findings: "*13. In view of the above, the Commission US/4(i)(ii) Sindh Protection of Human Rights Act, 2011, hereby recommends that: Both the petitioner's resignation was obtained illegally under duress and there is violation of laws as per para 12 herein above, shall be reinstated to their original cadres and compensated financially for the time they stayed away from their jobs due to lawful act of the respondent. Strict disciplinary action may be taken against the officers responsible for duress and harassment against the employees of Al-Ghazi Tractors Limited (AGTL).*"

11. Prima facie, it appears from the recommendations made by the learned Chairperson, Sindh Human Rights commission (SHRC) dated 13.10.2020, a service-related matter has been dealt with which ought to have been adjudicated by the learned Bench of NIRC under the Industrial Relations Act, 2012. Generally speaking, the statutes confer powers, functions, and duties on different statutory authorities. These are distinct concepts of administrative law, which have been developed by the Courts over a long period and have different jurisprudential connotations and consequences; and, in this scenario of the matter, the question would be whether the powers conferred under Section 4 of the Act, 2011 are administrative powers and/or quasi-judicial powers to be exercised by the Chairperson of the Sindh Human Rights Commission. On the aforesaid proposition, we seek guidance from the decision of the Honorable Supreme Court in the case of Dr. ZAHID JAVED Versus Dr.

TAHIR RIAZ CHAUDHARY and others (PLD 2016 Supreme Court 637). The Honorable Supreme Court interpreted the word Quasi, which is defined as if, as though, as it were, in a manner, in a certain sense or degree, seeming, seemingly, analogous to and it may mean resemblance. The quasi-judicial power is a duty conferred by words or by implication on an officer to look into facts and to act on them in the exercise of discretion, and it lies in the judgment and discretion of an officer other than a judicial officer. A quasi-judicial power is one imposed on an officer or an authority involving the exercise of discretion, judicial in its nature, in connection with, and as incidental to, the administration of matters assigned or entrusted to such officer or authority. A quasi-judicial act is usually not one of a judicial tribunal, but of a public authority or officer, which is presumably the product or result of the investigation, consideration, and human judgment, based on evidentiary facts of some sort in a matter within the discretionary power of such authority or officer. A quasi-judicial power is not necessarily judicial, but one in the discharge of which there is an element of judgment and discretion; more specifically, a power conferred or imposed on an officer or an authority involving the exercise of discretion, and as incidental to the administration of matters assigned or entrusted to such officer or authority.

12. On the statutory plane as discussed supra, the office of the Chairperson SHRC, essentially serves as a statutory check on the Government to curb instances of as discussed supra. Prima facie, the very functions of the Chairperson SHRC are not judicial, since the Chairperson SHRC simply makes recommendations as provided under Section 4(ii) of the Act 2011, which is very different from the orders passed by the judicial officer under the hierarchy of Courts of law. Besides, there is no power of enforcement of the Chairperson SHRC's recommendations.

13. Having discussed the aforesaid proposition, we have noticed that there is no denial of the fact that petitioner-company is a Trans-Provincial Establishment and the present matter needs to be looked into by the learned National Industrial Relation Commission (NIRC) for the settlement of such industrial dispute; and, on the question of jurisdiction as to whether the grievance petition of the private respondents, in that case, be taken cognizance by the Labour Court of the Province or by one single forum like NIRC, which has been established and constituted under the provision of section 53 of the Act X [Industrial Relation Act, the "IRA" 2012]. The phrase, "trans-provincial" has been defined in clause (xxxiv) of section 2 of Act X of 2012, which means, "any establishment, group of establishments, the industry having its branches in more than one Provinces." To elaborate further on the subject, we have seen that under the provision of section 53, the NIRC has been constituted by the Federal Government but its functions and jurisdiction have been explained and elaborated in the provision of section 54 of the IRA, 2012. According to clause (e), the NIRC has the powers and jurisdiction to deal with the cases of unfair labor practices specified in sections 31 and 32 of the Act on the part of employers, workers, trade unions, either of them or persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under

section 33 of subsection (9) of section 33 or in such other way as may be prescribed and to take, in such manner as may be prescribed by regulations under section 66, measures calculated to prevent an employer or workman from committing an unfair labor practice. In addition to the above powers and jurisdiction, the NIRC has been conferred upon additional powers under the provision of section 57 of the Act (ibid), which includes the powers to punish for contempt of court and may award simple imprisonment which may extend to six months or with fine, which may extend to Rs.50,000 or with both. In the same provision, vide clause (2)(b), the Commission has been empowered to withdraw from a Labor Court of a Province any applications, proceedings or appeals relating to unfair labor practice, which fall within its jurisdiction; and (c) grant such relief as it may deem fit including an interim injunction. A proviso has been added to the above provision, to the following effect:-- "Provided that no Court, including Labor Court, shall take any action or entertain any application or proceedings in respect of a case of unfair labor practice", which is being dealt with by the learned Commission.

14. After combined reading of the scheme of labor laws, two parallel forums have been created. In our view, NIRC has jurisdiction to deal with industrial disputes and unfair labor practice and other allied matters either attributable to the employer or the workers/workmen, It is not the nature of the dispute, particularly, unfair labor practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. To be more clear on the point we have no hesitation to hold that once it is established through any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive and of overriding and overlaying effects over the Provincial Labour Court for resolving industrial dispute including unfair labor practice, etc. related to the employer, having its establishment or branches or industrial units in more than one Province and re-course has to be made by the aggrieved party to the NIRC and not to the Sindh Human Rights Commission under the Act, 2011. Therefore, it is held that the provision of Act X of 2012 (the IRA 2012) has an overriding effect on the Act, 2011 and all Provincial Labour Laws.

15. In the light of the above facts and circumstances of the case, this petition to the extent of the impugned order dated 13.10.2020 passed by the Chairperson, Sindh Human Rights Commission, Government of Sindh, whereby it extended jurisdiction to Labour Court/NIRC is allowed in the following terms: i. Application filed in Sindh Human Rights Commission is adopted to be filed before the Single Bench of NIRC and no question of limitation would arise. ii. Insofar as Single Bench of NIRC may proceed with the application which may be filed under the law within a reasonable time. 16. This petition stands disposed of in the above terms along with the pending applications.

13. Asad Ali v. Province of Sindh & 04 others

http://43.245.130.98:8056/caselaw/view-file/MTQ2NjYwY2Ztcy1kYzgz

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan -ul-Karim Memon

"Whether the recommendation made by Sindh Public Service Commission for appointment requires interference under article 199 by High court in view of the settled law that the advice of the commission shall ordinarily be accepted by the department; and if the advice of the commission is not acceptable, the case shall be submitted to the government for orders as provided under section 7(1)(3) of Sindh Public Service Commission (Function) Rules, 1990 "?

Honourable Court held that:-

3. We are not satisfied with the assertion of learned counsel for the petitioner on the aforesaid question for the simple reason that the only recommendation of private respondent No.5 has been made by SPSC and no appointment order has so far been issued in his favour by the respondent department; and, it is for the respondent-department to look into the matter if the private respondent lacks the qualification for the subject post. Prima facie, this is a premature stage to deliberate upon the recommendation of SPSC.

4. In the light of facts and law discussed above, the recommendation made by SPSC in favour of private respondent, at this stage, does not require interference by this Court in Constitutional Jurisdiction. However, if the petitioner feels aggrieved by the aforesaid recommendation, he has the remedy under the regulations of SPSC to file an appeal against such recommendation before the competent authority. It is well-settled law that the advice of the Commission shall ordinarily be accepted by the department; and, if the advice of the Commission is not acceptable the case shall be submitted to the Government for orders as provided under Section 7 (1)(3) of Sindh Public Service Commission (Functions) Rules, 1990.

5. The above discussions lead us to an irresistible conclusion that the instant petition being pre-mature is dismissed in limine along with the pending application(s) with no orders as to cost. However, the petitioner is at liberty to avail the remedy as provided to him under the law, if his cause subsists, after issuance of appointment order in favour of respondent No.5 by the respondent department.

14. Irfan Mukhtar Bhutto v. Federation of Pakistan & 3 others

http://43.245.130.98:8056/caselaw/view-file/MTQ2NjYwY2Ztcy1kYzgz

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan -ul-Karim Memon.

"Whether the case of any Civil servant for promotion to higher rank can be deferred on the ground of pending disciplinary or departmental or NAB or criminal proceedings against him"?

Honourable Court held that:-

7. In our view, the DSB /DPC is bound under the law to clear any Civil servant for promotion in a higher rank, however, if the Disciplinary or departmental/NAB proceedings are pending against the civil servant; and/or against whom prima-facie evidence of misconduct is available, he/she

could not be considered for promotion, during the pendency of departmental/ NAB/criminal proceedings. However, his deferment shall be subject to the outcome of the departmental/NAB/criminal proceedings pending against him. This view is fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Mst. Ifat Nazir vs. Government of Punjab and others, 2009 SCMR 703.

8. In view of the facts and circumstances of the case and for the reasons alluded as above, we are not inclined to continue with any further on the captioned petition, in terms of new development in the matter vide notification dated 16.02.2021; and, in presence of such adverse findings against the petitioner, no promotion could be ordered to take place, till penalty remains in the field.

9. This petition is accordingly dismissed along with the pending application(s), leaving the petitioner to avail and exhaust the departmental remedy against the notification dated 16.02.2021, before the proper forum under law.

15. Safeer @ Ali Dino versus The State & Irfan Ali V. The State

http://43.245.130.98:8056/caselaw/view-file/MTQ2NjYwY2Ztcy1kYzgz

Mr. Justice Naimatullah Phulpoto

"where an accused is alleged to have used an arm in the commission of an offence triable by Court of Sessions, his trial under the Sindh Arms Act, 2013 must be held jointly by Sessions Judge/Additional Sessions Judge trying 11 Cr. Appeals No.S-148 & 149 of 2019 the main case, to avoid possibility of conflicting judgments by different trials by same or different Courts on the point of possession of Arms by the accused i.e. one given by Sessions Judge/Additional Sessions Judge trying the main case and the other by same or other Court by recording and appreciating evidence separately."?

Honourable Court held that:-

24. To avoid cropping up of such a situation, Government of Sindh has taken the steps and The Sindh Arms Act, 2013 has been enacted. In case, Sessions Judge/Additional Sessions Judge try both cases (main case as well as case under the Sindh Arms Act, 2013) separately, a number of legal complications will arise, mainly evidence of one case cannot be read in another case. The prosecution deserves protection of law so as to prosecute the case with least inconvenience and without unnecessary hardship; equality before law without equal protection is a travesty; scales must be held strictly in balance. The provisions of Sections 233 and 239 of the Criminal Procedure Code, 1898 vest a discretion in the Court to try offences of the kinds indicated therein jointly. Even under the provisions of Anti-Terrorism Act, 1997, learned Judge, Anti-Terrorism Court while trying any offence under Anti-Terrorism Act, may also try other offence which an accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial, if the offence is connected/offshoot with such other offence. Under Section 21-M of Anti Terrorism Act, 1997 main offence and offence under the provisions of Sindh Arms Act, 2013 committed in the course of same transaction are jointly tried. Joint trial by same Court would not cause any prejudice to the accused. The Sindh Arms Act, 2013 has been

promulgated, which is triable by Court of Sessions under Section 35 ibid.

25. I am tempted to point out that where an accused is alleged to have used an arm in the commission of an offence triable by Court of Sessions, his trial under the Sindh Arms Act, 2013 must be held jointly by Sessions Judge/Additional Sessions Judge trying 11 Cr. Appeals No.S-148 & 149 of 2019 the main case, to avoid possibility of conflicting judgments by different trials by same or different Courts on the point of possession of Arms by the accused i.e. one given by Sessions Judge/Additional Sessions Judge trying the main case and the other by same or other Court by recording and appreciating evidence separately.

16. Suresh Kumar v. Province of Sindh & others

http://43.245.130.98:8056/caselaw/view-file/MTQ2NjYwY2Ztcy1kYzgz

Mr. Justice Aftab Ahmed Gorar
Mr.Justice Muhammad Faisal Kamal Alam

"(a) Formulating a policy is the exclusive domain of executive, but at the same time, when such policy violates any statutory provision or does not fulfill any condition mentioned in the statute and more so adversely affect a person's right to do lawful business and trade (as guaranteed by Article 18 of the Constitution), then such executive actions and policies can become subject matter of a Constitution Petitions of the nature.

(b) Doctrine of proportionality: Whether punishment should correspond to offence or not"?

Honourable Court held that:-

11. Although we agree with the contention of the legal team of Respondents, that formulating a policy is the exclusive domain of executive, but at the same time, when such policy violates any statutory provision or does not fulfill any condition mentioned in the statute and more so adversely affect a person's right to do lawful business and trade (as guaranteed by Article 18 of the Constitution), then such executive actions and policies can become subject matter of a Constitution Petitions of the nature. By virtue of the impugned Policy, Respondents are not releasing Government wheat to Petitioners by misinterpreting Clause (xii), that Petitioners are involved in plea bargain, which is contrary to record. Consequently, this action adversely affects the business activities of Petitioners and they have been treated differently from other Flour Mills operating in the Province, hence, Clause (xii) of the impugned Wheat Policy as interpreted by Respondents cannot be validated and held to be not applicable to the Petitioners. If the Petitioners / Flour Mills would have entered into plea bargain with NAB themselves, then Clause (xii) might have become applicable, but subject to other legal implications.

12. Adverting to the reported decisions cited by legal team of Respondents. Both cited decisions relate to Hajj Policy and Scheme issued by the Federal Government from time to time. Crux of the rule laid down in these decisions is that ordinarily under Article 199 of the Constitution, High Court cannot interfere in the policy matters of the Executive, except if it is violative of law or is product of *mala fide*; whereas, the *mala fide* is

also explained, *inter alia*, that unless an unrebutable material is on record with regard to a specific plea of *mala fide* and not a vague one, the decision or action complained of, cannot be annulled or declared illegal.

13. There is another aspect of the present case. It is a cardinal principle of jurisprudence that punishment should correspond to the offense. This is called **'doctrine of proportionality'.** This principle has been evolved through judicial pronouncements and opinions of jurists, the crux of which is that punishment must fit the crime. When on the record there is no evidence that Petitioners / Flour Mills have entered into plea bargain with NAB, then Clause (xii) cannot be stretched to include Petitioners / Flour Mills, and such an action of Respondents is hit by this doctrine of proportionality also and is unreasonable and discriminatory.

14. Respondents must act in the light of directions mentioned in the foregoing paragraphs and consequently, all Petitions are accepted only to the extent, that the Clause (xii) of the Wheat Policy is not applicable to the present Petitioners / Flour Mills and they are entitled to get their respective share / quota of wheat in accordance with the present Wheat Policy 2020-21 like other Flour Mills established and operating in the Province of Sindh.

17. Adeel Zahoor Malik & Another v. Abdul Sattar Shaikh & Another

http://43.245.130.98:8056/caselaw/view-file/MTUwMjkxY2Ztcy1kYzgz

Mr. Justice Salahuddin Panhwar

"Repossession of a suit property and handing it over its physical, peaceful, and vacant possession to plaintiff; without filling of an execution, under direction of decreeing court of law by the official Assignee is a lawful dispossession. Such a repossession was a lawful act, undeniably carried out under lawful jurisdiction, and therefore did not constitute an offence under the Illegal Dispossession Act 2005".

Honourable Court ruled that:-

5. The peculiar facts of the instant case make me to reiterate that the 'Act', being special one, shall have application only where the ingredient (s) thereof are, prima facie, satisfied / existing. Every case of „dispossession" shall not necessarily fall within ambit of the „Act" but only cases of „illegal dispossession" shall fall within ambit of the Act. Needless to add that every „dispossession" is not 'illegal' because where the „dispossession of one is under a legal course/action or lawful order, the same shall always qualify the term 'lawful dispossession' which (lawful act) shall not be liable for penal action. Any other view shall cause failure of 'law and legal course, meant to have a wrongful possession removed/dispossessed', by resort to available lawful remedies which, even, includes the one, permitted under this very 'Act', which, one while raising such plea in every case of 'dispossession' must keep in mind.

The above irresistible conclusion does find support from the provision of Section 3 of the Act which reads as:-

> 3. Prevention of illegal possession of property, etc.(1) No one shall enter into or upon any property to dispossess , grab, control or occupy it without having any

lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property.

6. Prima facie, the provision is aimed to prevent "illegal possession" and shall be available only against those who enter into or upon any property to dispossess, grab, control or occupy the same without having any lawful authority. The emphasis over phrase "without having any lawful authority" shall have to be given due regard. I would conclude that possession / having a lawful authority for entering into or upon a property shall always be a sufficient 'defence' to hold such complaint as "incompetent".

8. There can be no denial to the fact that "learned Official Assignee was directed by a competent court of law for taking re-possession of subject matter". The legality of competence of the Civil Court in issuing such directions cannot be discussed by this Court while exercising "Criminal Jurisdiction" but what can safely be said is that such action of 're-possession' was, undeniably, under a lawful authority hence no offence within meaning of Illegal Dispossession Act 2005.

18. Abdul Rehman son of Deen Muhammad Zahri Baloch v. The State, through Mr. Ali Tahir, Special Counsel for Pakistan Coastguards

http://43.245.130.98:8056/caselaw/view-file/MTQ5NTA4Y2Ztcy1kYzgz

Mr. Justice Nazar Akbar
Mr. Justice Zulfiqar Ahmad Khan

"Pakistan Coast Guards have no powers to prosecute a person guilty of offences under the CNS Act".

Honorable court after details discussion held as under:-

---The legitimacy of the action taken by the Pakistan Coast Guards (PCG) on the basis of S.R.O. 787(I)/2004. The Control of Narcotics Substance (CNS) Act is a special law enacted by the Parliament pursuant to Article 3 of the UN Drug Convention, 1988 ratified by Pakistan on 25.10.1997 and Section 76 of the CNS Act clearly declares that, "The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force". The said notification itself is limited to the functions prescribed under Sections 21, 22 and 23 of 24 the CNS Act. Section 21 of the CNS Act does not confer powers of inquiry and investigation on PCG or for that matter on any other agency mentioned in the said notification namely, Customs Department, Frontier Corps, Pakistan Rangers (Sind), Pakistan Rangers (Punjab), Pakistan Coast Guards and Maritime Security Agency. The agencies mentioned in the notification bearing SRO No.787(I)/2004 are bound to respect the non-obstinate clause in Section 76 of the CNS Act and should not act in derogation to the expressed provision of the CNS Ac—notwithstanding anything contained in the law under which the said agencies are constituted. Therefore, in presence of non-obstinate clause in the CNS Act, anything done or purportedly to have been done by the PCG in the name of the powers already available to them under the Pakistan Coast Guard Act 1973 while performing functions under Section 21(1) of the CNS Act was in

excess of the powers under the said notification. Even otherwise, the heading of provision of Section 21 of the CNS Act is "power of entry, search, seizure and arrest without warrant" and the heading of Section 27 of the CNS Act reads ―disposal of persons arrested and article seized under Section 20 or 21 of the CNS Act. Section 27 of the CNS Act suggests how to deal with the person and article once arrested and seized by any Government agency under Section 21(1) of the CNS Act the Cr.P.C by invoking the provision of Section 25 of the CNS Act.

--- In our humble view whenever policing powers are conferred on any agency constituted under a special law, such power can be exercised by the concerned agency only in relation to the functions assigned to them under the said special law. One special law cannot be merged into another special law by any notification for any purpose whatsoever, particularly when one of the two enactments carrying an overriding effect on any other law for the time being in force.

---- In view of the limited powers conferred on Pakistan Coast Guards under the Notification bearing SRO No.787(1)/2004 as discussed above, the Investigation conducted and challan submitted by an officer of Pakistan Coast Guards before a Special Court constituted under Section 45 of the CNS Act was illegal, void and contrary to the requirements of the CNS Act.

--- Like CIA personnel, the PCG personnel also seems to have been wittingly or unwittingly guilty of exercising powers of investigating the offence under Section 6, 7 and 8 of the CNS Act and submitting challans before a Special Court constituted under the CNS Act without any express provision of the CNS Act authorizing them to perform these functions under the CNS Act. Therefore, in view of above cited judgment while we hold that Pakistan Coast Guards have no powers to prosecute a person guilty of offences under the CNS Act, the office is directed to send copy of this Judgment to all the Special Courts established in Sindh under Section 45 of the CNS Act for trial of cases under CNS Act with direction to strictly follow the provisions of the CNS Act in the light of our findings from para-17 onwards.

19. Aijaz Hussain Jakhrani & Others v. National Accountability Bureau through its Chairman

http://43.245.130.98:8056/caselaw/view-file/MTUwMzk5Y2Ztcy1kYzgz

Mr. Justice Nazar Akbar
Mr. Muhammad Faisal Kamal Alam

"The National Accountability Buru (NAB) authorities had given accused a call-up notice prior to filing the first Reference, but in the subsequent(second) Reference, the NAB authorities did not give any call-up notice to the accused, which is contrary not only to NAB but also to the concept of natural justice. Intervenor's applicability in the NAB case and ResJudicata are discussed."

Mr. Justice Nazar Akbar ruled that:-

12.---, learned Special Prosecutor NAB has raised novel objection of a kind of resjudicata on the petition No.D-1528/2020 filed by Aijaz Hussain Jakhrani for grant of pre-arrest bail in the said Reference. His main objection is that the petitioner in an earlier petition 7 No.D-6040/2019 against the NAB authorities has also sought bail in Reference No.23/2020 and therefore he cannot repeat the same prayer in

subsequent petition. He has contended that CP No.D6040/2019 has been dismissed by order dated 19.12.2020 by the Hon'ble High Court at Principal Seat Karachi and the instant petition is second petition for bail before arrest in the same Reference. ---. Therefore we have examined the prayer of CP No.D-6040/2019 which negates the contention of the learned counsel for the NAB.

13. It is clear from the prayer clause that in CP No.D-6040/ 2019 the petitioner has not at all prayed for bail in Interim Reference No.23/2020 which was approved by Chairman NAB on 13.11.2020. In fact the petitioner came to know about Interim Reference No.23/2020 during proceedings of CP No.D-6040/2019 at Karachi when he received a notice issued on 09.12.2020 by the Accountability Court for appearance of the petitioner in court on 17.12.2020. The petitioner instantly filed the present petition on 15.12.2020 before this court within the jurisdiction of NAB, Sukkur and obtained pre-arrest bail on the same day even before the date of hearing of CP No.D-6040/2019 in the High Court of Sindh at Karachi. --- Therefore the contention of counsel for the NAB that the earlier petition No.D-6040/2019 was also about Interim Reference No.23/2020 is contrary to the record. In these circumstances any observation by the Division Bench of High Court at Karachi in C.P.No.D-6040/2019 on Interim Reference No.23/2020 cannot have any bearing on the instant petition since the petitioner has not challenged Interim Reference No.23/2020 in the said petition nor the said petition was amended to include any relief against the Interim Reference No.23/2020. The interim order of bail before arrest passed by this court in the instant constitutional petition on 15.12.2020 cannot be considered as vacated by any order passed on 17.12.2020 or 19.12.2020 in any proceedings out of the jurisdiction of Sindh High Court Sukkur Bench.

14. Besides the above, the NAB authorities in their comments have not denied the factual position that the petitioner is already facing Reference No.02/2020 in which prior to filing said Reference the NAB authorities have issued him a call-up notice but in Reference No.23/2020 the NAB authorities have not issued any call-up notice to the petitioner contrary not only to the practice of NAB but also against the principle of natural justice. ---

15.---malafide on the part of respondent is also born out from the facts that before filing any Reference the respondent on 03.07.2019 got the name of petitioner placed in the Exit Control List on the ground of some inquiry has been initiated by the NAB against the petitioner. Then the respondents on 14.01.2020 filed first Interim Reference No.02/2020 against the 10 petitioner. As soon as the petitioner obtained pre-arrest bail in Reference No.2/2020, the respondent started another enquiry at the back of the petitioner and without any show cause notice or call-up notice to enquire from him anything about the said inquiry and investigation which ultimately culminated on 13.11.2020 in Interim Reference No.23/2020. The petitioner was not even interrogated by the Investigating Officer during the investigation prior to finalization of Reference No.23/2020.

Intervener in Bail

----today an attempt has been made to interfere in the proceedings of this

constitutional petition by Mr.Zain Soomro, Advocate as at the start of the proceeding he came forward with an application in his hand on behalf of complainant to become Intervenor in the instant petitions. However, to a question that under which provision of NAB laws or under any other law a complainant who set the prosecution in motion through State can be impleaded as an independent party. He had no answer and even otherwise this is against the High Court Rules to entertain an application during the court proceeding. In this back ground the conduct of NAB authorities that entire inquiry and investigation culminating in Interim Reference No.23/2020 were without call-up notice and/or without providing an opportunity of hearing to the petitioner can only be termed as an attempt to politically victimize the petitioner through the NAB. Unfortunately in the recent years the NAB has developed a reputation of an institution for political engineering in this 11 country and this belief of common man in gaining strength every day.

Mr. Muhammad Faisal Kamal Alam Wrote Additional / Dissenting Note

Honourable Court ruled that:-

---I do not agree with the conclusion drawn in the case of Petitioner Aijaz Hussain Jakhrani (in C. P. No. D-1528 of 2020). Record shows that vide Order dated 17-12-2020 passed in C. P. No. D-6040 of 2019, the learned Division Bench of this Court at the Principal Seat, while refusing relief to the said Petitioner (Aijaz Hussain Jakhrani), did not extend him concession of bail in Reference No. 23 of 2020. Subsequently, a Review was preferred by the said Petitioner, which was also dismissed vide Order dated 15-01-2021. Although certain facts are undisputed with regard to pendency of this Constitution Petition filed by the said Petitioner, that is, present C. P. No. D-1528 of 2020 sub judice at the relevant time at Sukkur Bench and C. P. No. D-6040 of 2019 sub judice at the Principal Seat, but it is clearly mentioned in the Order of 15-01-2021 passed by the learned Division Bench at the Principal Seat on the Review application of said Petitioner, that factum of pendency of other Petition before the Sukkur Bench for same relief was not brought before the Bench hearing C. P. No. D-6040 of 2019. Once the concession of pre-arrest bail in the same Reference No. 23 of 2020 has been declined by another learned Division Bench of this Court, then, this Bench cannot grant the identical relief in the same Reference No. 23 of 2020, unless some new grounds have been agitated by the present Petitioner. In my considered view, the present C. P. No. D-1528 of 2020 is to be dismissed wherein the same relief of pre-arrest bail is sought, which has already been decided by another learned Division Bench of this Court as discussed in the preceding paragraphs. Consequently, this C. P. No. D-1528 of 2020 is dismissed and the interim bail granted earlier is recalled.

(In view of the above dissenting Note, Office should place the above Order before the learned Senior Judge at Sukkur Bench)

20. Muhammad Sohail son of Jahan Shah Sherullah son of Abdul Malik v. The State

http://43.245.130.98:8056/caselaw/view-file/MTQ5NzY5Y2Ztcy1kYzgz

Mr. Justice Nazar Akbar
Mr. Justice Zulfiqar Ahmad Khan

"When the occurrence of a cognizable offence in another police station jurisdiction is reported, the fact shall be recorded in the daily diary and information shall be sent to the office in charge of the police station in the jurisdiction of which the offence was committed."

Honorable Court held as under:-

---In any case according to the Police Rules, 1934, once the police of District East, Karachi has received any information of offence in the jurisdiction of District West, the police of District East were required to take action only in accordance with the provision of Section 166 Cr.P.C r/w Rule 25.3 and 25.4 of the Police Rules, 1934. Rule 25.3 and 25.4 of Police Rule are reproduced below:- 25.3. When the occurrence of a cognizable offence in another police station jurisdiction is reported, the fact shall be recorded in the daily diary and information shall be sent to the office in charge of the police station in the jurisdiction of which the offence was committed. Meanwhile all possible lawful measures shall be taken to secure the arrest of the offender and the detection of the offence. 25.4. (1) If a police officer after registering a case and commencing an investigation discovers that the offence was committed in the jurisdiction of another police station he shall at once send information to the officer incharge of such police station. (2) Upon receipt of information such officer shall proceed without delay to the place where the investigation is being held and undertake the investigation.

21. Shahimah Sayeed v. Base Commander and three others,Suit No.436 of 1993

http://43.245.130.98:8056/caselaw/view-file/MTQ5OTkwY2Ztcy1kYzgz

Mr. Justice Muhammad Faisal Kamal Alam

Even if an agreement deed is not a Stamp Paper or a registered document, executed by Mukhtiarkar on behalf of the government, has exemption under section 90 of the Registration Act,1908. Such document has no fatal defect to deprive the right or interest in the land, moreover property can be transferred on the basis of such a document. However, it should be noted that the above provision cannot be used to circumvent taxes and duties levied on a document, as well as its registration.

Honourable Court ruled that:-

22.---This argument is misconceived in nature, because, the above Agreement Deed is an official document, as Mukhtiarkar acted on behalf of Defendants No.3 and 4 and the authenticity of the above Document has been accepted and admitted by both Defendants No.2 and 4 in their respective Written Statements, therefore, no adverse inference can be drawn with regard to the same. This Agreement Deed is covered by Article 129 (e) of the Evidence Law, that Official acts have been regularly performed. In addition to this, it is argued by the learned counsel for Plaintiff that this document Agreement Deed is covered under Section 90 of the Registration Act and does not require a compulsorily registration. In this regard, he has cited case law of Indian jurisdiction---.

Partly I agree with the above discussion, only to the extent that the non-registration of said Agreement Deed---.in the given circumstances cannot be a fatal defect and will not deprive the Plaintiff of her right and interest in the Suit Land. But, it is clarified that generally the above provision cannot be invoked to evade

taxes and duties leviable on a document so also its registration.

34. The evidence led in the present lis concludes that at present 5915.10 acres of land is under occupation of Defendant-PAF for which it has approached the Defendant No.4-Sindh Government for transferring the same either free of charge or on lease (against nominal charges). This particular defense of Defendant No.1 about 2.27 acres of land, which is part of the suit land, that the same will be used by the Defendant No.1 for deployment of missiles, appears to be naïve. It does not appeal to common sense that a small area of 2.27 acres of land will be utilized to defend a huge area of 5915.10 acres (of PAF Base Masroor). Undoubtedly, defence and security interest of a country is the foremost priority, particularly, considering the geostrategic location of our Country; but at the same time, the ownership rights, which are guaranteed as fundamental rights in the Constitution, cannot be sacrificed merely on a vague plea of National Security. In a constitutional dispensation, ownership / proprietary rights of a genuine owner, cannot be sacrificed at the altar of some vague plea of security issue. The authorities or the officials, taking the ground of national security in defense for their actions, have to make out a tangible case. A balance is to be struck in such cases, between the material aspect of National Security and fundamental rights of a citizen.

22. Selected Articles

1. **https://courtingthelaw.com/2021/01/30/commentary/law-of-enforced-disappearances-in-pakistan-discrepancies-and-comparison-with-international-law/**

Law of Enforced Disappearances in Pakistan: Discrepancies and Comparison with International Law

by **Mr. Ahrar Jawaid**

This article aims to highlight the obscurities in the law of enforced disappearances in Pakistan along with the statutory ambiguity in the regulation of affairs by the Commission of Inquiry on Enforced Disappearances (CIED). In the prologue, a distinction will be drawn between the various types of disappearances including abduction, kidnapping and forced disappearance. Following that, the broadness of the definition of "enforced disappearance" given by the CIED will be juxtaposed with the definition laid down in the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)

2. **S B L R 2021 Article 1**

An Experience with traditional Pakistani wedding With Special reference to "NIKAHNAMA"

by **Mr. Zeeshan Manzoor Shaikh**
(Additional Registrar Research) High Court of Sindh at Karachi.

3. **MANUPATRA**
https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4

SC: A Power-of-Attorney Holder Can Depose before the Courts in Civil and Criminal Cases. The evidentiary value of the deposition is dependent on the facts and circumstances

by **Mr. Jayanth Balakrishna**

Until the Supreme Court settled the law, various High Courts had passed conflicting

judgments regarding the validity of permitting a power-of-attorney (POA) holder to depose on behalf of his or her party principal. The Supreme Court has drawn a distinction between a POA holder deposing for acts done by him or her under the authority of the POA, and personal knowledge of facts known to the party-principal for whom the instrument holder may not be entitled to depose. Nevertheless, the Apex Court and the High Courts have carved out exceptions, by permitting a POA holder to depose on behalf of his or her partyprincipal, leaving the opposing lawyer to cull out the evidentiary value of the testimony provided by a POA holder claiming to have personal knowledge of facts pertaining to the principal.

4. MANUPATRA

https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4

Impact of Oecd and Un model Treaties on Elimination of double taxation

by **K.Anjana Devi & P.Shanmuga Dev.**

Double taxation is often an unintended consequence of tax legislation. It is generally seen as a negative element of a tax system, and tax authorities attempt to avoid it whenever possible. Double taxation is a tax principle referring to income taxes paid twice on the same source of income. In addition to resolving problems of double taxation, tax treaties cover a broad range of topics of interest to a taxing jurisdiction.

5. Academia

https://www.academia.edu/43743141/Usury_Interest_Suicide_and_The_Law

Usury (Interest), Suicide, and the Law

by **Mr. Asghar Ali Mahar** (Team member of Legal Research cell High Court of Sindh Karachi)

This article exposes the evils of Usury which prevails in our society under the guise of his fickle nomenclature. Usury, Interest, Riba all are the name of the same menace which has been condemned forbidden by all religions in each epoch. It was legalized in the West, and now their societies are more victims of its evils and miseries, with a 16% suicide rate as a result of it.