



# MONTHLY CASE LAW UPDATE

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## CONSTITUTION

- 1) Sarosh Haider vs. Muhammad Javed Chundrigar  
(PLD 2014 S.C.338)

*Anwar Zaheer Jamali, Khilji Arif Hussain and Gulzar Ahmed, JJ.*

Unchallenged long Standing seniority position creates vested right in favour of the person who so enjoyed -- Such right could not have been upset as principle of locus poenitentiae would come into application and competent authority would have no power to recede.

Where the competent authority does any act or passes any order, which is adverse to any person and he being in full knowledge of the same, such act and order remains in the field and operates fully until it is challenged through a proceeding within prescribed limitation period. Such an order will not be void ab initio but merely be a voidable which can be corrected if proceedings against it is brought within prescribed limit of limitation.

- 2) Ghulam Abbas vs. Federation of Pakistan etc.  
(2014 SCMR 849)

*Sarmad Jalal Osmany and Ejaz Afzal Khan, JJ.*

## TRIAL OF ARMY PERSONAL ---JURISDICTION OF HIGH COURT

Accused was an army personal who was convicted and sentenced by Field General Court Martial for committing sodomy. High Court declined to interfere in conviction awarded to accused by Field General Court Martial.

Held: Any action or order of any authority relating to Armed Forces of Pakistan, which was either corum non judice, mala fide, or without jurisdiction, the same could be challenged before High Court and bar contained under Art. 199(3) of the Constitution would cease to operate.

3) Haider Mukhtar vs. Government of Punjab

(PLD 2014 Lahore 214)

*Umar Ata Bandial, C J, Ijaz ul Ahsan and Muhammad Khalid Mehmood Khan, JJ.*

**Constitution of Pakistan---Arts. 184(1) & 199**

Constitutional petitions under Art.199 of the Constitution in respect of a dispute between Provincial Government, and Federal Government, pending before the Supreme Court in its original jurisdiction under Art.184(1) of the Constitution. Question before the High Court was whether third parties affected by such a dispute could maintain constitutional petitions under Art.199 of the Constitution for relief before the High Court. It was held, that a private party could not invoke the constitutional jurisdiction of High Court for adjudication of a matter that involved a dispute under Art.184 (1) of the Constitution. High Court declined to hear and adjudicate upon controversies raised by the petitioners on the ground that High Court lacked jurisdiction owing to the pendency of constitutional petitions filed by provincial Government under Art.184(1) before the Supreme Court.

4) Pakistan Peoples Party vs. Government of Punjab etc.

(PLD 2014 Lahore 330)

*Umar Ata Bandial C.J. and Muhammad Farrukh Irfan Khan, J.*

**JURISDICTION OF ELECTION TRIBUNALS**

Dispute relating to delimitation of constituencies was not amenable to the jurisdiction of an Election Tribunal.

**IMPORTANT FEATURES OF ART. 140A (1) OF THE CONSTITUTION**

- (i) It visualizes provincial law to establish a local government system;

- (ii) Such provincial law must devolve "political, administrative and financial responsibility and authority" to the local governments;

- (iii) These local governments must be run by elected representatives.

**CRIMINAL LAWS**

5) Muhammad Nawaz vs. The State

(PLD 2014 S.C. 383)

*Iftikhar Muhammad Chaudhry, C.J. Gulzar Ahmed and Sh. Azmat Saeed, JJ.*

S. 345 Cr.P.C. and S.7 Anti-Terrorism Act (XXVII of 1997)

Murder of police official while on duty without personal enmity---Such murder amounted to create terror and insecurity in the vicinity and would fall under S.7 of Anti-Terrorism Act, 1997. Compromise between convict and legal heirs of deceased. Death sentence under S.7 of Anti-Terrorism Act, 1997 had its own implications and was not compoundable under Ss.354(5) & (7), Cr.P.C. Muhammad Rawab v. State 2005 SCMR 1170 rel.

6) Muhammad Shakeel vs. The State

(PLD 2014 S.C. 458)

*Mian Saqib Nisar and Asif Saeed Khan Khosa, JJ.*

**BAIL APPLICATION-FORMAT**

Supreme Court provided with shorter format for deciding a bail application that was to be adopted by all courts below. The august Court observed that in future, unless the necessities of the case warranted otherwise, the prescribed format for deciding an application for bail may be adopted by all the courts below.

7) *Salamat Ali alias Chaama vs. The State and another*

(2014 SCMR 743)

*Jawwad S. Khawaja, Gulzar Ahmed and Muhammad Ather Saeed, JJ.*

STATUTORY DELAY--BAIL

Bail sought on ground of statutory delay in conclusion of trial. Progress of the case obstructed by counsel for accused and accused condoning attitude of his counsel by retaining him.

Bail petition was dismissed in circumstances and Supreme Court directed that a copy of present order should be sent to the Punjab Bar Council for disciplinary proceedings against the counsel in question, and another copy should be sent to the concerned Chief Justice of the High Court.

**ELECTION LAWS**

8) *Arshad Mehmood vs. Commissioner /Delimitation Authority, Gujranawala*

(PLD 2014 Lahore 221)

*Syed Mansoor Ali Shah, Muhammad Farrukh Irfan Khan and Atr Mahmood, JJ.*

"Reading down" a provision of a statute---  
Meaning and principles.

Arts. 3, 4 & 9

Right to liberty under the Constitution included political liberty which carried political rights like right to participation in political life of a nation, right to self-determination, autonomy, civil rights, sovereignty and self-government.

Art. 14---Right to dignity---Scope---Human dignity included the right to demand a political democratic structure of governance where rule of law was supreme and no one was above the law. Political system, which was not chosen by the people was repressive, autocratic and

tyrannical besides being antithetical to self-respect, freedom and human dignity.

Process of delimitation had to ensure that the voting equality was not disturbed and the vote of one citizen must in no manner be less than the vote of another citizen. Other than population parity, geographical compactness, the homogeneity of interest of the community also had to be factored in (during the process of delimitation of constituencies).

Other equally important aim of delimitation was to divide the geographic areas into territorial constituencies so fairly that no party or candidate may legitimately have a grievance that there had been 'gerrymandering' of constituencies in favour of or against the interests of any particular party or candidate.

Delimitation must be a neutral exercise, conducted by a neutral body. Any partisan political intervention and drawing up of political constituencies under the dictates of the political party in power was bound to lead to gerrymandering and unjust political windfall, tarnishing the sanctity of elections and crippling the faith of an ordinary man in the system of democracy.

**Punjab Local Government Act (XVIII of 2013)---**

By virtue of Ss.8, 9 & 10 of Punjab Local Government Act, 2013 delimitation of constituencies, which was also a part of the electoral process, had been entrusted in the partisan hands of the ruling government, which was unconstitutional. Role of the Election Commission had been restricted to the conduct of elections, abridging the overarching and all-embracing role of Election Commission to organize, conduct and make arrangements for holding elections in violation of Art.218(3) of the Constitution. Sections 8, 9 & 10 of the Punjab Local Government Act, 2013 and Rules 3 to 8 of the Punjab Local Governments (Delimitation) Rules, 2013 were inconsistent with Art. 218(3) read with Art.222(b) of the Constitution as they abridged and took away the constitutional role and obligation of Election Commission besides offending Arts.3, 4, 9, 14, 17, 19 & 25 of the Constitution and as a consequence were declared to be unconstitutional and, were struck down.

9) MUHAMMAD ADNAN vs. R.O, PP-136, NAROWAL etc.

(2014 CLC 1076)

*Abdus Sattar Asghar and Muhammad Anwaarul Haq, JJ.*

Disqualification from being elected member of an Assembly

Costs of election petition being a personal financial obligation of a petitioner did not fall within the ambit of "Government dues" or "public exchequer".

### EXIT CONTROL LIST

10) United Bank Ltd. vs. Federation of Pakistan

(2014 SCMR 856)

*Nasir-ul-Mulk, Ijaz Ahmed Chaudhry and Muhammad Ather Saeed, JJ.*

When claim by a commercial Bank against Director of a company was yet to be adjudicated, such claim could not be a ground to place the name of Director on the Exit Control List to deprive him from his fundamental right of travel abroad or restrict his right of free movement.

### FAMILY LAWS

11) Shahbaz Aftab Khan vs. Judge Family Court

(2014 CLC 1168)

*Muhammad Farrukh Irfan Khan, J.*

Conditional order for visitation of minor subject to submission of surety bond. Right of father to see his children could not be curtailed by imposing condition of submission of sureties every time he had to meet his own children.

If an order was passed by any court or tribunal in violation of law and without authority the same could be questioned by an aggrieved person by invoking constitutional jurisdiction of High Court.

### INHERITANCE

11) Gohar Khanum vs. Jamila Jan

(2014 SCMR 801)

*Jawwad S. Khawaja and Ejaz Afzal Khan, JJ.*

If the mutation was erroneously made in favour of the brother to the exclusion of sisters, such mutation would not create title in favour of the brother in accordance with Sharia law of inheritance and the suit filed by sister was not time barred in circumstances.

### INSURANCE ORDINANCE

12) Naseem Begum vs. State Life Insurance Corporation of Pakistan

(2014 SCMR 655)

*Jawwad S. Khawaja, Iqbal Hameedur Rahman and Mushir Alam, JJ.*

Insurance Ordinance (XXXIX of 2000)

Contention was that S.115 of the Insurance Ordinance, 2000 despite its clear wording to the contrary, would also extend to insurance policies issued before the date of the commencement of the Insurance Ordinance, 2000, and consequently, Insurance Tribunal set up under the Insurance Ordinance, 2000 would have jurisdiction to adjudicate upon such matters. It was held, that the contention was not only misconceived but was also frivolous as it flew in the face of express wording of the provisions of S.115 of the Insurance Ordinance, 2000.

### PUNJAB PRE-EMPTION ACT

13) Raja vs. Tanveer Riaz

(PLD 2014 S.C. 466)

*Mian Saqib Nisar & Ejaz Afzal Khan, JJ.*

Day on which court directs the pre-emptor to make the deposit of zar-e-some had to be excluded from the time period of thirty (30) days; however by exclusion of such day the period of 30 days, as mandated by S.24 of Punjab Pre-emption Act, 1991 should not exceed.

14) Daud Shah vs. Waris Shah

(2014 SCMR 852)

*Nasir-ul-Mulk, Amir Hani Muslim and Muhammad Ather Saeed, JJ.*

Date of issuance of notice of Talb-i-Ishhad not mentioned in the plaint. Copies of notices of Talb-i-Ishhad along with postal and acknowledgment receipts annexed with the plaint. Omission to mention date notice of Talb-i-Ishhad in the plaint would stand cured by annexing the copies of notices of Talb-i-Ishhad along with postal/acknowledgement receipts--- Material facts given in the notices of Talb-i-Ishhad formed part of the plaint.

## SERVICES LAWS

15) Pakistan Telecommunication Company Ltd. vs. Member NIRC

(2014 SCMR 535)

*Anwar Zaheer Jamali, Sarmad Jalal Osmany and Dost Muhammad Khan, JJ.*

Status of employer or group of employers determined as to whether a Provincial Labour Court or National Industrial Relations Commission (NIRC) would have jurisdiction, and not the nature of the dispute. Once it was established through any means that the employer or group of employers had an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive in nature and of over-riding and super imposing effect over the Provincial Labour Court for resolving industrial dispute including unfair labour practice, etc. When employer had its establishment or branches or industrial units in more than one Province, then recourse had to be made by the aggrieved party to the NIRC and not the Provincial Labour Court.

Inconsistency between Federal and Provincial law.

Under provisions of Art. 143 of the Constitution, laws enacted by Parliament had been given over-riding and superimposing effect over laws enacted by a Provincial Assembly of any of the Provinces, and in case of any clash or repugnancy between the two, the laws enacted by the Parliament prevailed. On the touchstone of Art. 143 of the Constitution, an Act of Parliament had been placed on a higher pedestal and any Provincial law enacted by a Provincial Assembly shall give way to the Federal law enacted by Parliament, if the former was inconsistent or repugnant to the latter.

16) Orya Maqbool Abbasi vs. Federation of Pakistan

(2014 SCMR 817)

*Iftikhar Muhammad Chaudhry, C.J., Ijaz Ahmed Chaudhry and Sh. Azmat Saeed, JJ.*

Policy of promotion (revised in 2007) enjoys the force of law, therefore, has to be adhered to strictly. It was observed that it would be great achievement, if it is added in the Policy to hold an inquiry of the civil servant while sending his case for promotion and also examine his family assets at the time when he joined the service including lifestyle, expenses on children education, expenses on children marriage, foreign tours as well as to ascertain the political affiliation of such a candidate to make the bureaucracy free from political affiliation.

Held further: The Central Selection Board, being semi judicial forum, has been authorised to examine the cases of the officers justly and fairly.

*Research is to see what everybody else has seen, and to think what nobody else has thought.*

Albert Szent-Gyorgyi

17) Federation of Pakistan vs. Sultan Ahmad Shams

(2014 SCMR 570)

*Iftikhar Muhammad Chaudhry, C.J., Gulzar Ahmed and Sh. Azmat Saeed, JJ.*

Pensioners have been classified as a separate group/class from the one, who are in service, the question of discrimination or violation of Art. 25 of the Constitution does not arise as the two groups are not to be dealt with in the same manner.

18) S. Masood Abbas Rizvi vs. Federation of Pakistan

(2014 SCMR 799)

*Amir Hani Muslim, Ijaz Ahmed Chaudhry and Gulzar Ahmed, JJ.*

Deputationist did not have any vested right to remain on the post for ever or for a stipulated period. Deputationist could be ordered to be repatriated to the parent department at any time without assigning any reason. Parent department of Deputationist was not obliged in law, to assign any reasons for his repatriation.

## **SALES TAX ACT**

19) Khyber Pakhtunkhwa Text Book Board, Peshawar vs. Deputy Commissioner IR (E&C)

(PLJ 2014 T.C. (Pesh.) 79)

*Present: Nisar Hussain Khan and Rooh-ul-Amin Khan, JJ.*

Constitutional petition--Scope of sales tax "Supply of books", and "printing services"—Distinction

Exemption available to textbooks did not extend to printing services. Taxpayer was Textbook Board engaged in the publishing and supply of textbooks.

Any exemption provided to printers under garb of Sixth Schedule to the Act, 1990 would be a sort of amendment in the Act, and the

Textbook Board was not vested with power to extend exemption to a third person, that was printing service providers--textbook board, if had printed textbooks on its own, then it might claim the exemption provided by the Sales Tax Act, 1990.

## **QANUN-E-SHAHADAT ORDER**

20) Jehanzeb, etc. vs. Muhammad Israr, etc.

(PLJ 2014 Peshawar 92)

*Mazhar Alam Khan Miankhel, J.*

Age of document alone would not amount to a proof about correctness of contents of such document nor would dispense with formal proof --- if the genuineness of a document is susceptible to suspicion, Court can refuse to raise presumption and can ask for the proof of its contents.

## **PROBATION OF OFFENDER ORDINANCE**

21) Ghulam Dastagir vs. The State

(PLD 2014 Balochistan 100)

*Qazi Faez Isa, C.J.*

Community service order is intended to be constructive and positive and benefits both the offender and the community --- State saves expenses of keeping the offender incarcerated and also helps in preventing overcrowding of prisons --- Offender's family unit is not disrupted, he may retain his employment and if he is studying he may continue to do so --- Sentence of community service is less damaging to self-esteem and the offender does not risk exposure to undesirable elements in jail --- Offender makes a contribution to the community and is likely to derive an increased sense of personal achievement and pays back to society for his wrongdoing and works towards developing a sense of social responsibility.