

Proposed Legislation/Bills

- **Code of Civil Procedure (Amendment) Act 2016** This Public Bill seeks to amend section 91, 92 and 104 of the Civil Procedure Code 1908. The '*Statement of Objects*' provides: Under section 91 and 92, in cases of public nuisance and charities, the Advocate General or two or more persons with prior written consent of the Advocate General, can maintain a suit for appropriate relief. This Bill seeks to dispense with the consent of Advocate General and permits direct filing of Suit by leave of Court. Further, an order refusing leave to institute suit is now made appealable vide amendment in section 104 CPC.
- **Islamabad High Court (Amendment) Act 2016** This Public Bill seeks to amend section 4 of the Islamabad High Court Act 2010 by omitting the proviso thereto. Statement of Objects provides: Workload of the Court has increased. It is therefore proposed that proviso to section 4 be omitted. The Civil Judge First Class shall now enjoy unlimited pecuniary jurisdiction in regard to suits.
- **Civil Courts (Amendment) Act 2016** This Public Bill seeks to amend section 18 of the West Pakistan Civil Courts Ordinance 1962. Statement of Objects provides: The bill seeks to amend, to the extent of Islamabad Capital Territory, pecuniary jurisdiction of District and Additional District Judge with respect to an appeal from any order or decree passed by a civil judge. The Appellate pecuniary jurisdiction of District/Additional District Judge is now unlimited.
- **Illegal Dispossession (Amendment) Act 2016** This Public Bill seeks to amend section 3 and 5 and insert a new section 8A to the Illegal Dispossession Act 2005. Statement of Objects provides: Sub-section (1) of section 3 of the Act does not cover the act to dispossess forcibly and wrongfully any owner or occupier of any property. Further section 5 does not cover local inquiry if deemed by the Court to be necessarily held. Further, right of appeal against order of Court made under sub-section (1) of section 3 is not

provided. This Bill seeks to supply the said omissions.

Recent Legislation

- **Islamabad Capital Territory (Tax on Services) (Amendment) Act 2016** Islamabad Capital Territory (Tax on Services) Ordinance 2001 has been amended vide Finance Act 2016. It is provided that certain provisions of Sales Tax Act 1990 shall apply mutatis mutandis to the services provided under the Ordinance. Further, service tax is imposed on "*Valuation services; competency and eligibility testing services excluding education testing services provided or rendered under a bilateral or multilateral agreement signed by the Government of Pakistan*".
- **Fiscal Responsibility and Debt Limitation (Amendment) Act, 2016** Through Finance Act, 2016, important changes have been brought out in Fiscal Responsibility and Debt Limitation Act 2005. The object of the Act is to make provision for the reduction of Federal fiscal deficit and ratio of public debt (Federal and Provincial) to gross domestic product to a prudent level by effective debt management
- **Constitution twenty-Second (Amendment) Act 2016:** The amendments made in Article 81 and Part VIII of the Constitution through Finance Act 2016 are manifestly ultra vires of the Constitution. See case law under Article 73 (2) of the Constitution.
- **Federal Ombudsman Institutional Reforms Act 2013** Federal Ombudsman's tenure is now fixed at 4 years and he can only be removed from office in the like manner as a judge of superior judiciary. Power is conferred on the FO to grant temporary injunctions and take coercive action for implementation of his orders/decisions/directions. FO can now punish any person for contempt. Vides section 17, vast administrative and independent financial powers have been conferred on the FO. It is respectfully submitted that corresponding changes must be

introduced in the offices of other statutory ombudsmen.

Recent Case Law

- **2015 SCMR 945** Honorable Supreme Court disapproved of unnecessary remand of case to the lower court as it went against the Constitutional guarantee of 'speedy and expeditious' justice. Where issues were framed and evidence had been led by the parties, High Court had all the material before it to decide the case without remanding it for decision to the trial court.
- **2015 SCMR 1550** A civil trial ends when the parties conclude their evidence. No provision is made in Order XX of CPC for hearing of oral arguments. The judge must render judgment within 30 days of the conclusion of evidence of the parties and should not unnecessarily prolong the suit by indefinitely adjourning the case for hearing of oral arguments.
- **2015 SCMR 1739** Article 2A of the Constitution which embodies the Objective Resolution, cannot be used to strike down statutes. Article 2A and Principles of Policy can however be employed for appreciation of Fundamental Rights in their proper context.
- **2015 SCMR 1449** Chief Minister though Chief Executive of the Province is not entitled to have its orders and directions implemented if they are inconsistent with or in breach of the law of the realm, or any rules or regulations framed thereunder. All executive orders affecting rights and obligations of a citizen must be backed by the authority of law.
- **2015 SCMR 1739** A statute or other legal instrument not ex-facie discriminatory but capable of being so administered will not be struck down at the instance of a party unless the party demonstrates that it has been administered discriminately.
- **2015 SCMR 338** Under Article 10-A of the Constitution a party is entitled to a notice and hearing before any adverse step is taken against it, except in the cases where public interest demands that notice be dispensed with or where issuance of notice and hearing shall cause more injustice than justice.

- **2015 SCMR 1708** Leave granting/refusing order by the Supreme Court is not 'law enunciated by it.

Legal News

- **First E-Court in Pakistan** started functioning in Rawalpindi, Punjab in June. Statements of as many as five witnesses were recorded via skype by the Accountability Court in one day. More such Courts are in offing.
- **Appointment of new CJ for Lahore High Court** Syed Mansoor Ali Shah has recently been appointed as Chief Justice Lahore High Court after elevation of the former Chief Justice, Ejaz ul Ahsan to the Supreme Court. Mr. Shah is the 45th Chief Justice of the LHC.
- **Administrative Reforms by new CJ LHC** In order to curb the rising trend of misbehavior in courts, restore a working relationship between the bar and the bench and establish effective monitoring against untoward incidents in courts, the chief justice constituted a 'disciplinary committee'. Expressing concern over the protection of women judges' rights in lower courts and hostile environment they faced at the hands of lawyers and others, the chief justice for the first time in the high court's history constituted a Judicial Officers (female) Supervisory Committee to look into the issues relating to women judicial officers. Chief Justice Shah also appointed for the first time a woman judicial officer as the new director general (DG) of Punjab Judicial Academy.
- **The Securities and Exchange Commission of Pakistan (SECP) notified the draft Valuers Registration and Governance Regulations 2016**, and has also placed the same on its website to obtain public opinion within 30 days. The draft regulations are aimed at the regulation and supervision of the work of professional valuers. The regulations provide for the registration mechanism of professional valuers in the form of company, on five specialised valuation panels, for which the prescribed eligibility and fit-and-proper criteria has been defined. Registration of valuers on Panel-1 is for Land and Building; Panel-2 for plant and machinery, and infrastructural construction; Panel-3 for current assets, inventories,

commodities; Panel-4 for securities, intangible assets, financial assets, financial liabilities; and Panel-5 for Information Systems and Infrastructure Assets including hardware and software. The valuer shall employ highly qualified professionals in its senior management, including graduate engineers in relevant disciplines; chartered accountants, cost and management accountants, chartered financial analysts, lawyers and master's degree holders with prescribe experience.

■ **Protest over marital reforms in India--Shamim Ara vs State of UP [AIR 2002 SC 3551]**

Presently India is undergoing a renewed wave of protests by muslim husbands against the law laid down in Shamim Ara case by the Indian Supreme Court. The case lays down that talaq sent over email or text message or through a notice or through the Qazi, etc is not valid. The judgement also laid down procedure for a Muslim husband to divorce his wife: Talaq has to be pronounced before witnesses. The talaq has to be pronounced over three sittings over a period of three months. These months are to allow the couple to reflect on their relationship and not come to a hasty conclusion. During this period, the woman is entitled to her right to residence and maintenance from the husband. In case there is cohabitation during this time, the Talaq would be null and void. While pronouncing talaq, the husband should be in his senses i.e. he should not be drunk or should not be in an angry mental state, as during that time he is more likely to lose his sense of right and wrong. While pronouncing talaq the woman should not be in menstruating or pregnant. Before pronouncing talaq, the husband must fulfill his obligations towards his wife, such as return her *mehr* and belongings, pay her maintenance for the *iddat* period (three months) and provide her a lump sum amount for her future needs that is commensurate to the standard of living she enjoyed in her husband's home. In case the husband fails to comply with his economic obligations, the wife can file for reliefs under the Muslim Women (Protection of Rights on Divorce) Act 1986(MWA).

Author



Shehzad Haider
Senior Associate

T: +92 423 7324148
E: info@absco.pk

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Similarly, it has not been designed to provide legal or other advice.

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Ahmer Bilal Soofi & Co. is a partnership concern registered in Pakistan under the Partnership Act 1932 having its registered office at 9-Fane Road, Lahore, Pakistan.

T: +92 42 37356554
T: +92 42 37324148
F: +92 42 37246393

E: info@absco.pk