

## Proposed Legislation

### ■ **Prohibition of Smoking and Protection of Non-smokers Health (Amendment) Act, 2016**

This Private Member Bill further seeks to amend the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance 2002 and further to implement the obligations undertaken by Pakistan under WHO Framework Convention on Tobacco Control.

**Constitutional Point:** In so far as implementation of a Treaty Obligation is concerned, it is implemented by legislation as our Constitution follows the doctrine of Dualism. An interesting question arises: where the power of legislation regarding a subject rests *exclusively* under the provisions of Article 142 (c) of the Constitution [*Provincial Assembly shall, and Majis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List*] within the competence of the Province (e.g. treaty obligations in respect of *local government*), how the Treaty would be implemented?

In India, Article 253 provides a complete answer to this conundrum:

**"Legislation for giving effect to international agreements.—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."**

However, in the Constitution of Pakistan, there is no such provision. In any case, if the Parliament makes any law within the exclusive competence of the Provincial Assembly, it will be ultra vires of the Constitution and the Courts would strike down such federal Law. The decent way for the Government to proceed is to make an appropriate constitutional amendment.

■ **Arbitration and Conciliation Act 2015** This Private Member Bill seeks to replace the Arbitration Act 1940. The statement of objects provides that negotiation, mediation or arbitration, are today the preferred modes of dispute resolution in the corporate world. Multi-national companies, in the Third World are wary of jurisdictions where ADR has not been made part of the justice system. That is why governments across the globe are making suitable amendments in the rules of the game. The Arbitration Act, 1940, has become obsolete in the wake of national and international developments. Pakistan is also a signatory to such international conventions which obligates adoption of model law for arbitration. (However, after 18<sup>th</sup> Amendment, Arbitration is now a Provincial Subject. Arbitration Act 1940 would continue to apply as before until a province legislate for itself.)

■ **Prohibition of Corporal Punishment Act 2016** This Private Member Bill provides that it is function of the state to protect the inviolable dignity of children as human rights. Corporal or physical punishment is common and rampant in our schools and is also found in "care institutions". It is used as a form of showing control, intimidation and authority. For children, life is never easy or fair, therefore, within the institutional framework of the classroom, corporal punishment must be banned and replaced with constructive and communicative approach. Similarly, in child care institutions corporal punishment can become a form of abuse.

■ **Supreme Court (Number of Judges) Amendment) Act 2016** This Bill proposes to amend the Supreme Court (Number of Judges) Act 1997 by including female judges from all provinces of Pakistan to the extent of one-third of the total strength of the Supreme Court.

## Recent Legislation

■ **The Infra-structure Development Authority of the Punjab Act, 2016** This law establishes the Authority to provides for planning, designing, construction and maintenance of infrastructure in the Punjab in line with the best international

practices to cope with the futuristic development needs; and, for the purpose, hiring of international and local consultants and contractors for execution, management, operation and maintenance thereof; and, for other purposes.

- **Punjab Safe Cities Authority Act, 2016** The law establishes Punjab Safe Cities Authority for purposes of construction, development and maintenance of a city-wide integrated command, control and communications (IC3) system in the major cities of the Punjab in order to ensure safety and security of the people, and for other purposes.
- **The Punjab Social Protection Authority Act, 2015** Establishes the Punjab Social Protection Authority to provide a comprehensive, efficient, effective and inclusive social protection system to the poor and vulnerable in the Punjab; and to deal with ancillary matters
- **The Punjab Higher Education Commission Act 2014** In the interest of improvement and promotion of higher education, research and development, and for ancillary matters; establishes the Punjab Higher Education Commission.

## Recent Case Law

- **2015 SCMR 1142** Chance Witness—In legal parlance a person who claims to be present at the crime or incident spot however in the circumstances of the case or in the ordinary course of events or business his presence is highly unlikely. Testimony of chance witness is unreliable in absence of strong credible justification of the presence on the spot.
- **2015 SCMR 28** –Factors to be considered while awarding Compensation—Land-owner was entitled to compensation and not just to market value. Factors, such as loss or injury occasioned by severing of acquired land from other property of the land-owner, loss or injury by change of residence or place of business and loss of profits were also relevant. Delay in the completion of the acquisition proceedings also had to be considered.
- **2015 SCMR 172** Under National Accountability Ordinance 1999, a guarantor of finance/loan from a financial institution is liable to be prosecuted as an accused.

- **2015 SCMR 1575** A *contract of Investment/partnership* does not amount to an *entrustment of property* so as to attract the provisions of section 405 of the Pakistan Penal Code.
- **2015 SCMR 1575** NAB Ordinance section 9—twenty or thirty persons do not come within the scope of *'members of public at large'* so as to justify intervention of NAB.
- **2015 SCMR 1575** Provisions of NAB Ordinance are not meant for dealing with cases of civil nature arising out of contracts. Persons aggrieved of disputes having civil nature to resort to civil courts.
- **2015 SCMR 1044---** Art 79 Qanoon-e-Shahadat—proof of document—For proof of a document, production of two attesting witnesses is a minimum. A scribe cannot replace an attesting witness and where only one attesting witness and scribe were produced, the document cannot be held to have been proved.

## Legal News

- **Opening Up of Foreign Law Firms in India** Bar Council of India (BCI) has recently published Draft Rules which are expected to open the Indian legal market for foreign law firms. The Society of Indian Law Firms (SILF) which has been consistently decrying the taking of this step has softened and signaled his assent to such development given that
  1. A level playing field' for Indian law firms and lawyers is preserved. This would include allowing Indian firms to advertise and promote their services
  2. The SILF also wants reciprocity agreements to be signed with different governments, to enable Indian lawyers to practice law abroad.
  3. All foreign lawyers and firms have to register with the BCI

One of the primary reasons for the Indian government to push legal bodies to accept foreign law firms and lawyers was the need to boost India's ranking in the World Bank's Ease of Doing Business list. India ranks 130 out of 189 countries.

- **Change in Privatization Process:** It is decided that earlier mode of privatization, i.e. offering qualified assets to strategic investors would be dropped and instead the mode of capitalization and securitization of the Government Companies would be adopted. This would clear the most formidable snag in the way to privatization—the protest of the employees. The Government would retain the management and shareholding in its hands. The first company to be privatized would be FESCO.
- **Proposal for New Benches of LHC turned Down** The Lahore High Court Full Court has turned down the long-lasting demand of lawyers for setting up regional benches at five districts after having lengthy deliberations for three days. According to a press release issued by LHC, the Full Court, comprising Chief Justice and all the judges met for three days (July 15 to 17) to deliberate on the question of establishing additional benches in five division of Punjab. After extensive deliberation the full court ruled that the demand for establishing of new additional benches of Lahore High Court cannot be acceded to. Punjab governor had written a letter to the LHC on March 18, 2013 and the LHC CJ has conveyed the full court decision to the governor.
- **Inauguration of Information Centre by Chief Justice LHC** Lahore High Court Chief Justice Syed Mansoor Ali Shah on Saturday inaugurated Public Information Centre and Video Court on the premises of the sessions court. The chief justice also inaugurated E-Record Room and Conference Room. The LHC registrar briefed the CJ on new establishments at the sessions court. A large number of lawyers and judges attended the ceremony.
- **Question of Jurisdiction of Benches of LHC to be decided** Lahore High Court Chief Justice Syed Mansoor Ali Shah has constituted a seven-member larger bench to decide a question relating to jurisdiction of its principal seat and three regional benches at Rawalpindi, Multan and Bahawalpur. The chief justice would head the larger bench that is going to start its hearing on July 26. Justice Shah had decided to form a larger bench on the matter during the hearing of a case transfer application filed by Bahawalpur High Court Bar Association. The chief justice has appointed Supreme Court Bar Association President and two former presidents of the bar as

amicus curies. The presidents of High Court Bar Association Lahore (principal seat) and its benches at Rawalpindi, Multan and Bahawalpur have also been asked to assist the bench.

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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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