

Proposed Legislation/Bills

- **The Prevention of Malpractices in Academia Act 2016** It is observed that notwithstanding the strenuous efforts made by the Higher Education Commission, the tendency and practice of plagiarism continues unmitigated in academia. The Bill recommends appointment of special bodies within and without the higher educational institutions to curb such practices and bring the offender to swift and effective punishment.
- **Pakistan Minorities Rights Commission Act 2016** It seeks for establishment of a Minority Rights Commission. Statement of Objects and Reasons states that in order to provide a platform to look into various grievances of the minority communities and to monitor and suggest the mechanism for accelerating pace of socio-economic development of minority communities and for the promotion and protection of the identity of minorities at Federal level, the setting up of Pakistan Minority Rights Commission is very much essential. The promotion and protection of rights of minorities require particular attention to be paid to issues such as the recognition of minorities existence, efforts to guarantee their rights to non-discrimination and equality, the promotion of their education, nationally and locally, the promotion of their participation in all aspects of public life, inclusion of their concern in development and poverty-reduction processes, disparities in social indicators such as employment, health and housing, the situation of women and the children belonging to minorities.
- **Criminal Laws (Amendment) Act 2016** .This Bill aims to amend section 241-A of the Criminal Procedure Code 1898. The amendment proposed is *"In all cases instituted upon police report except those tried summarily or punishable with fine or imprisonment not exceeding six months, copy of the First Information Report and copies of statements of all witnesses recorded under Section 161 and 164, report of police officer under section 173, the inspection note recorded by an investigation officer on his first visit to the place of occurrence and the note*

recorded by him on recoveries made, if any, shall be supplied free of cost to the accused not less than seven days before the commencement of the trial". The proviso to sub-section (2) shall be omitted".

- **Minorities Protection Act 2016** The Statement of Objects and Reasons states that the Government of Pakistan is obligated to fulfill its commitments under international human rights conventions including the Universal Declaration of Human Rights. The Constitution of Islamic Republic of Pakistan 1973 provides and protects the right of all persons to choose and practice their own religion and the freedom of choice of marriage. Forced conversion is an abhorrent & violent offence. It is an issue that has become prevalent across Pakistan and must be eliminated. It is necessary to criminalize forced conversions and provide for protection those who are victims of this abhorrent practice. The Bill aims to meet above said objectives.

Recent Legislation

- **THE PUNJAB CIVILIAN VICTIMS OF TERRORISM (RELIEF AND REHABILITATION) ACT 2016** provides for timely recognition and assistance for civilian victims of acts of terrorism; recognizing the right of civilian victims to receive state assistance for relief, healthcare and rehabilitation; arranging for adequate funds for such assistance; establishing an effective mechanism to track, investigate and analyze harm to civilians in acts of terrorism.
- **KPK THE ESTABLISHMENT OF CIVIL MOBILE COURTS ACT, 2015** Section 3 of the Act establishes itinerant courts to travel to Tehsil Council or Town Council or Neighbourhood Council or Village Council or Police Station or any other place specified by the High Court and provide justice (section 4 jurisdiction) at the door. This is reminiscent of the itinerant justices of the English Kings that travelled through the counties to provide justice as King's Courts post Norman Conquest in eleventh century CE. Their jurisdiction was separate from the Lord's or Earl's

jurisdiction and they were sent basically to check the Lord's or Earl's influence in their sphere and assert the paramountcy of the King.

- **KPK PROHIBITION OF EMPLOYMENT OF CHILDREN AND ADOLESCENTS IN HAZARDOUS WORK ACT 2015** No child (defined as below 12) shall be employed or permitted to work in any establishment. Provided that a child not below the age of 12 years may be engaged in the light work, alongside his family member, for a maximum of two hours per day mainly for the purpose of acquiring skills, in a private undertaking, or in any school established, assisted or recognized by Government for such purpose. No adolescent (defined as above 14 but below 18) shall be employed or permitted to work in any hazardous work included in the Schedule.
- **THE DEFENCE HOUSING AUTHORITY QUETTA ACT 2015** The Preamble provides that Defence Housing Authority Quetta *“belonging to everyone, will provide quality, well organized and secure living/working to everyone from Balochistan irrespective of colour, caste and creed; will also serve for carrying out schemes and projects of land development inter alia for the welfare of the bereaved families of martyrs, war injured, disabled and other persons of the defence forces to boost their morale, to provide financial security in recognition of their selfless services for the defence of the nation and to provide for ancillary matters.; Affording ample opportunities for the people of Balochistan to generate significant economic activity and contribute in the overall peace endeavors of the government at national level in general and provincial level in particular.”*

Recent Case Law

- **PLD 2016 SC 712** CPC does not contain any express provision for dismissal for a revision petition for non-prosecution. Similarly no provision is made by CPC for preferring an application for the restoration of an application for revision dismissed for non-prosecution. The Court however has power under section 151 CPC to dismiss a revision petition for non-prosecution and entertain under the same section an application for restoration of the dismissed revision petition. Provisions of section 5 and Article 181 of the Limitation Act are attracted to

the making of the Restoration Application. However, when the Court has taken cognizance of a matter suo moto under its power of revision, the petition cannot be dismissed for non-prosecution and must be decided on merits by a conscious application of mind.

- **PLD 2016 SC 692** Regulation of Commercial Free Speech—Art 19 of the Constitution--Excessive advertisement breaks during the broadcast of programs---Lack of continuity in programming and reduction of quality of viewing experience---Pakistan Electronic Media Regulatory Authority ("PEMRA") inserted a clause in license agreements of broadcasters that restricted the maximum period of an advertisement break during prime time, and also enforced R.15(3) of Pakistan Electronic Media Regulatory Authority Rules, 2009 which set a minimum time duration between two successive advertisement breaks-- Satellite TV channels challenged vires of Rule 15(3) and also clause inserted by PEMRA in their licences for infringing their rights to business. Held, Even (non-commercial) core free speech, which propagated social, political or economic ideas, promoted literature or human thought, was subject to reasonable restrictions contemplated under Article 19 of the Constitution. Advertisements/commercial speech (on Satellite TV channels) where the object and purpose was restricted to mere promotion of sales of goods and services, or stimulation of purchase thereof, and where the acquisition of the article to be sold constituted the only inducement to its viewer, the same did not receive the same protection as social or political speeches and was subject to higher degree of regulations than non-commercial speech. The contention that such regulatory practices violate rights under Art 18 of the Constitution, rejected
- **PLD 2016 SC 676** Petition for leave to appeal filed by department of Federal Government---Delay of 19 days in filing such petition---Condonation of delay not allowed---Plea on behalf of Federal Government that delay in filing the petition was neither wilful nor deliberate; that the competent authority/ Secretary of the Department had retired and the post remained vacant till when the present Secretary took over the charge and issued the direction to file the present petition after examining the relevant record---Validity---Application for condonation of delay did not provide any reasonable ground

justifying the delay to be condoned---Working of the Federal Government neither stopped, nor should stop, upon the retirement of a Secretary of a Government department---If at all the successor had not been appointed the petition could have been filed by the person holding charge of the office---In any event, since the post of the Secretary had been filled after about a month there was more than sufficient time for the Government to approach the Supreme Court---Present case therefore was not a case wherein it would be appropriate to exercise discretion to condone the delay---Consequently, the application seeking to condone the delay in filing the petition was dismissed

- **PLD 2016 SC 676** Federal Government Notification No.F.1-11/2012/ DFSC-11/Fertilizer dated 3-11-2015---Fertilizer manufacturers/importers ---Subsidy provided through a notification---Non-intelligible criteria in the notification having no rational nexus to the very object of the subsidy scheme---Company manufactured a certain fertilizer by using locally mined rock containing phosphate---Government issued a notification whereby subsidy was provided to companies producing/importing fertilizer which was made by using 'imported rock', phosphorous content of which was not less than 18%---It was contended that stipulation in the notification that fertilizer had to be manufactured by using imported rock did not stand to reason and this was done simply to exclude those manufacturers of fertilizer who were utilizing local rock; and that by utilizing locally mined phosphorous rock the company was producing fertilizer the phosphate content whereof was 18 per cent. therefore, it was also entitled to the subsidy provided to other manufacturers---Legality---Litmus test for qualifying for the subsidy through the impugned notification was the 18% phosphorous content in the fertilizers and not whether a manufacturer of fertilizer used an imported rock or a domestic rock---Classification made between fertilizer made from imported rock and fertilizer made from domestic rock did not constitute intelligible differentia having rational nexus to the very object of the subsidy scheme---Criteria (for providing subsidy) that could be quantified should be quantified and it must be objective and reasonable---.Classification made between fertilizer made from imported rock and fertilizer made from domestic rock did not constitute intelligible differentia having rational nexus to the

very object of the subsidy scheme announced by the Government. Notification set aside.

- **2016 CLD 1726** Suit by Bank must be filed by by a duly authorized person through Power of Attorney annexed with the Plaint. However, when the Plaint is filed by the Branch Manager, no power of attorney is required as the Branch Manager is authorized to file a suit of recovery for the Bank vide provisions of section 9 of the FIO.
- **2016 CLD 1283** Petitioners were aggrieved that a change (increase) in share capital had been brought in the Company by the respondent shareholders through an MOU without giving prior notice to the Petitioners as per provisions of section 86 of the .CO 1984. Held, no special form of notice was contemplated by section 86. MOU was entered after discussion with one of the Petitioners which amounted to substantial compliance with the provisions of section 86 CO 1984.
- **2016 CLD 1097** Authorities were not empowered under S. 16 of Pakistan Environmental Protection Act, 1997, and Regulation 20(3) of Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000, to seal property---Sealing of property/premises of appellant by authorities was beyond the scope of Pakistan Environmental Protection Act, 1997, and Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000---Action of sealing property of appellant by authorities was violative of principle of audi alteram partem as no notice was given by authorities to appellant---Principles of natural justice had to be observed in all proceedings whether judicial or administrative, if proceedings were to result in consequences affecting person or property or other right of parties concerned---Such rule was applied even though there was no positive words in the statute or legal document whereby power was vested to take such proceedings and in such cases such requirement was to be implied into it as the minimum requirement of fairness---High Court set aside the order of sealing of factory of appellant by authorities-

Legal News

- **LHC CJ address to Third Asian Judges Symposium on Law, Policy, and Climate**

Change Lahore High Court Chief Justice Syed Mansoor Ali Shah has stressed the need to meet the global climate change challenges and highlighted that Pakistan is among the most vulnerable countries facing climate risks. He mainly emphasised that climate change would have significant impacts on human migration. He said that there was an urgent need to address the threats that climate-related migration posed to human security and well-being. He expressed these views while addressing the Third Asian Judges Symposium on Law, Policy, and Climate Change which was hosted by Asian Development Bank (ADB) jointly with the Supreme Court of the Philippines and the United Nations Environment Programme (UNEP) in Manila.

- **Case of Orange Line Project Lahore goes to the Supreme Court** Supreme Court on 26th instant the Supreme Court admitted a petition of the government of Punjab on the Orange Line project in Lahore. Lahore High Court (LHC) in a landmark judgment in August had restrained the construction of Orange Line train project within 200 feet distance of the historical sites in Lahore. The apex court has ordered constitution of a five judges larger bench to hear the case. The court, however, rejected the government plea for suspending the Lahore High Court verdict on the project. The bench observed that the court will review the facts and legal aspects of the case. A larger bench will start hearing of the case from October 10.
- **Age Limit Policy for LL.B. Program struck down** The Lahore High Court on 26 September struck down the age limit policy of the Punjab University for admission to LLB programme and constituted special committees for scrutiny of law colleges in the province. A full bench headed by Chief Justice Syed Mansoor Ali Shah passed the order on petitions challenging five-year LLB programme and 24 years age limit fixed by the Punjab University (PU) for studying law in the light of Pakistan Bar Council's suggestions. The bench observed that the PU's age limit policy was in violation of fundamental rights enshrined in the Constitution. The bench formed special committees for the whole province, comprising representatives of Pakistan Bar Council, Punjab Bar Council, universities/colleges and respective DCOs/DPOs for scrutiny of law colleges and academies. The bench directed the committees

to submit their reports regarding their respective districts by Oct 24.

- **Acting CJ of LHC takes oath** Lahore High Court senior judge Justice Shahid Hameed Dar Monday took oath as an acting chief justice of the Lahore High Court. Justice Muhammad Yawar Ali administered the oath to Justice Shahid Hameed Dar at a ceremony. Chief Justice Syed Mansoor Ali Shah had left for Philippine on a week-long official visit to participate in "Third Asian Judges Environmental Conference."
- **LHC completes its 150 years** Full court of the Lahore High Court will review arrangements of 150th year of the Lahore High Court's establishment's celebrations. Chief Justice Syed Mansoor Ali Shah will head the full court. All the judges of the LHC will discuss policy and plan how 150th year of the LHC should be celebrated
- **Judicial System must be brought to IT** Chief Justice Lahore High Court Justice Mansoor Ali Shah has said that judicial system could be brought on the fast track with the help of Information Technology. He said that justice system could not be processed speedily without placing IT system in practice and it is imperative that judicial officers and judges should make themselves fully conversant with IT knowledge in order to monitor and expedite the hearing of cases. Justice Masnoor stated this while addressing an Exhibition and Seminar on use of Information Technology in the Justice Sector organised by Law & Justice Commission of Pakistan. Referring to the traditional procedure of case management, Chief Justice LHC pointed out the hindrances in decisions of under trial cases and said that it is very difficult to keep the entire record of 1.3 million cases in Punjab and one and half lakh cases in Lahore High Court only. Similarly, he said that monitoring of the cases of 24 hundred judicial officers and 60 judges of High Court with present system in place is not possible...

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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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