

Proposed Legislation

- **Benami Transactions (Prohibition) Bill 2016** A Benami transaction in relation to a property held by or transferred to a person may be described as a transaction wherein consideration of the property held by or transferred to another person is provided by the equitable owner and not by the legal owner of the property. An exhaustive definition of a benami transaction is provided in the Bill. The Bill provides for the prohibition of making benami transactions, provides for punishment of the offender and confiscation of benami property. The purposes envisaged to be served by this legislation are amply described in the Statement of Objects and Reasons appearing at the end of the Bill. This, if becomes law, would be an important legislation and affect provisions of Chapter 9 of the Trust Act, Transfer of Property Act and Contract Act.
- **Legal Liability Partnership Bill 2016** This Bill seeks to introduce a new form of business entity esp for professionals such as lawyers, doctors, engineers etc. An LLP shall be an incorporated entity under the regulative control of the SECP and enjoy benefits of a company under Companies Ordinance such as distinct personality from Partners of the concern and limited liability of the partners for the business of the LLP. The LLP would be taxed as a Partnership.
- **The Prevention of Electronic Crimes Bill 2016:** This having been passed by both Houses of Parliament has yet to be assented to by the President who is, under Constitution, a constituent of Parliament (Article 50). Though practically it does not make a difference as the President will ultimately be obliged to give his assent.

Recent Legislation

- Since the installment of the last month no recent law of considerable significance has appeared; it will be of some interest to mention an old law, viz. **The Law Reports Act 1875**

3. Authority given only to authorized reports. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided on or after the said day by any High Court, other than a report published under the authority of a Provincial Government.

5. Certification by the courts, etc.—A court or tribunal deciding a matter shall at the end of the judgment or order, as the case may be, certify in the form specified in the Schedule that it is based upon or enunciates a principle of law or decides a question of law which is of first impression or distinguishes, over-rules, reverses or explains a previous decision.

Explanation. For the purpose of this Act, the expression “court or tribunal” includes the Federal Shariat Court, a Service Tribunal, the Income Tax Appellate Tribunal and the National Industrial Relations Commission.

6. Restriction on the publication of judgments and orders: No judgment or order of a court tribunal shall be published or printed in a Law Report] by any publisher, printer or any other person, unless it is approved for reporting by a court or tribunal or is certified under section 5.

7. Penalty.(1) Whoever contravenes the provisions of section 6 shall be punished with fine which may extend to one lac rupees or in default of payment of fine with simple imprisonment for a term which may extend to six months.

(2) All copies of a publication in respect of which a person is convicted under sub-section (1) shall stand forfeited to the Provincial Government.

Recent Case Law

- **PLD 2016 SC 581** There are three grounds to declare a legislative or executive act as ultra vires of Constitution:
 - i. If violative of any fundamental right
 - ii. If violative of the principles of independence of judiciary
 - iii. If violative of the principles of separation of judiciary from executive

My Note: The grounds given by the judgment are not exhaustive. As a matter of fact any legislative or executive act that is violative of any provision of the Constitution or any Constitutional principle

is ultra vires. There is another ground of Basic Structure. Every judgment should be read in the context of its peculiar facts.

- **PLD 2016 SC 581** Section 22 (A) (6) and 25 of the Criminal Procedure Code are not ultra vires of the Constitution. The powers exercised by the Justice of Peace under said provisions are not executive in nature but quasi-judicial; therefore application before Justice of peace attracts the same parameters as are attracted when entreating a writ before the High Court.
- **2015 SCMR 1739:** Validity of an executive or legislative act cannot be impeached on the Principles of Policy which are non-justiciable according to the provisions of the Constitution.
- **2015 SCMR 1739** Scope and scheme of Article 137 and 140 A of the Constitution. Local and provincial governments have separate sphere of jurisdiction under the Constitutional scheme and they should act in harmony while exercising their jurisdiction and not in the spirit of trumping each other.
- **2015 SCMR 1799** If the same phrase appears in different provisions of a statute, as a rule it must be given the same meaning throughout.
- **2015 SCMR 595** Decision of a statutory functionary on the direction by a superior officer is nullity.
- **2016 SCMR 931** Interpretation of statutes—reading down—Purpose of reading down a provision is to save it in a situation when it purports to be in violation of a Constitutional provision. The statutory provision is read in a general manner and toned down in its application and given restrictive meaning to save it from invalidity.

Legal News

- **LHC launches Mobile Application** Lahore High Court (LHC) has become the first institution of its kind in Pakistan to launch an application that allows the people to access important details about cases using their mobile phones. The app called Lahore High Court was launched by Chief Justice Mansoor Ali Shah. It has been formulated to facilitate lawyers and the people by

providing information such as case details, judgment and names of judges among other details. The LHC app was developed by the Punjab IT Board.

- **Construction of Mass Transit Train banned by LHC** Lahore High Court on Friday banned construction of the country's first rapid mass transit system within 200 feet (61 metres) of historic buildings in Lahore. A two-member bench issued the order comprising of 83 pages. The installations include 11 places including General Post Office, Shalimar Garden, Supreme Court Lahore Registry, Chauburji, Saint Andrews Church, mausoleum of Baba Mouj Darya and Aiwan-e-Auqaf. The freshly released non-objection certificates of Punjab government in regard to protection of historically significant buildings were annulled by the court. The court stated that the government did not consult authorities concerned over issuance of the NOCs. The court has ordered the government to set up an international level committee headed by Director General Archeology to put together fresh recommendations.
- **ADR center to be established in Lahore** The Lahore High Court Chief Justice Syed Mansoor Ali Shah chaired a meeting with the delegation of Pakistan Mediation Association (PMA). Talking to the delegation, Hon'ble Chief Justice said that LHC was actively pursuing for ADR centre in Lahore and with the positive co-operation of all the stakeholders it would be established soon. The PMA delegation said the association would assist in drafting the rules and providing master training to the mediators in PJA. The Punjab Judicial Academy will play role as a hub for the training of the mediators.
- **Dedicated Cell Numbers for Judges and Court Staff in Punjab** Judges and select staff of the provincial judiciary will have dedicated mobile numbers for free communication. Lahore High Court has engaged Warid Telecom to issue dedicated mobile numbers to judges and officers from 0321-1020001 onward. In this regard, the LHC registrar has issued a circular to high court officers and all district and sessions judges of the province, inviting them to avail this facility. LHC spokesperson Arif Javed Dar told that officers using these numbers would not be allowed to switch their phones off because this facility was meant to ensure uninterrupted communication among them.

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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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