

## Proposed Legislation

**The Commission of Inquiry Bill 2016** The Statement of Objects and Reasons states that the existing law relating to appointment of Commissions of Inquiry and empowering them for the purpose is the Pakistan Commissions of Inquiry Act, 1956. The Act has been invoked for setting up fact-finding Commissions on a number of important national issues in the past. However on some matters the need has been perceived for a Commission with greater powers than those that can be conferred under the Act. It is, therefore, considered desirable that a new law be enacted enabling the Government to confer additional powers on a Commission of Inquiry where the nature of the issue is being inquired into so requires. Accordingly the Commission of Inquiry Bill 2016 has been prepared to achieve the aforesaid object.

## Recent Legislation

**The Balochistan Introduction Of Mother Languages As Compulsory Additional Subject At Primary Level Act 2014:** Preamble states that whereas, the Constitution of Islamic Republic of Pakistan, 1973 under Article 251 (3) permits the Provincial Assembly to formulate law prescribing measures for teaching promotion and use of a provincial language in addition to the national language; and whereas, it is expedient to regulate the introduction of mother language as compulsory additional subject for teaching at primary level in Balochistan in the manner hereinafter appearing. *Mother language* is defined as 'balochi, bravi, Pashto, sindhi, Persian, Punjabi and siraiki or any other language notified by government. Sections 3 and 4 provide that without prejudice to the status of National language, Mother languages shall be used as compulsory additional subject in educational institutions at primary level and the Government shall provide textbooks for primary level in the prescribed Mother languages in each District.

- **The Balochistan Sound Systems (Regulation) Act, 2015:** Preamble states the object of enactment as for purposes of preventing public nuisance and the *voicing of utterances of a controversial nature* likely to cause public disorder; to regulate, control and prohibit the use of certain sound systems in the interest of environment, public order, decency and the prevention of incitement to terrorism or the commission of any offence in Balochistan, and to deal with the matters connected therewith or incidental thereto
- **The Khyber Pakhtunkhwa Prevention Of Conflict Of Interest Act, 2016:** Preamble describes the objects of the enactment as to establish clear conflict of interest and related post-employment principles for public office holders, to prevent and minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflict in the public interest should they arise, to establish an independent Commission with the mandate to determine the measures necessary to avoid conflict of interest and to determine whether a contravention of this Act has occurred, to encourage experienced and competent persons to seek and accept public office and to facilitate interchange between the private and public sector and not to deny equal opportunities to relatives of public office holder, as the relatives cannot be barred from legal business activities and for matters connected therewith and ancillary thereto

## Recent Case Law

- **2014 CLD 1378 (SC):** Promissory Note—whether attestation u/s Art 17 (2) (a) QSO required; held, the validity of a pronote cannot be challenged on the ground that it does not fulfill the requirements of Art 17 (2) (a) of the QSO. Negotiable Instruments Act 1881 is a special enactment and pronote executed under provisions of NIA, 1881 is valid independently of the provisions of Art 17 QSO.

- **2014 CLD 1378 (SC)** Section 35 and 36 of the Stamp Act 1899 An insufficiently stamped pronote—neither invalid nor void. If admitted in evidence and marked as an exhibit without objection by other party, it will not later be subject to objection and excluded as an inadmissible piece of evidence
- **2014 CLD 824 (SC)** Objections to arbitration award not filed in the Court or where filed were time barred—duty of the Court—Court does not act as a ministerial officer but act judicially while making award the Rule of Court. In absence of objections, it was required to have acted in a judicial manner and applied its conscious mind before making award the Rule of the Court.
- **2014 CLD 824 (SC)** Interpretation of Statutes—General Provisions and Special Provisions in a Statute—General provision in a statute cannot operate to control a specific (special) provision in the Statute
- **2014 PLC (Lab) 10 (SC)**  
Contract between company and contractor for supply of labour---Whether status of employees supplied by contractor, would be that of employee of company---Test.---The employees of the contractor shall not be the employees of the company, if (a) they are under the control and management of the contractor, and not that of the company; (b) they are not on the pay-roll of the company and the management of the company is not even aware of the number of the workers employed by the contractor or about the terms and conditions of their appointment or service; and (c) the contractor has the power of hiring and firing the employees, and assigns works to them and the company has no concern with it
- **2015 SCMR 795** It cannot be ignored altogether that a repository of executive, **judicial** or quasi judicial power is required to act in accordance with law. For the very condition for the conferment of such power is that it has to act in accordance with law. If and when it would go wrong in law it would go outside its jurisdiction. An order thus passed would be non est. Such order cannot be protected simply because the repository of such power, has the power to pass such order
- **PLD 2016 Quetta 56** The judgments of the superior Courts to the extent, it decide a question

of law or based upon principle of law or enunciated/interpret law, statutory rule etc. are not only binding on all subordinate Courts and Tribunals, but are also binding on all public and statutory functionaries etc.; such judgments hold good and should be applied by all such public and statutory functionaries to all persons or class of person affected by such law, rule etc. without forcing or driving such person to obtain reaffirmation of the legal position already declared by the superior Courts in earlier round of litigation, to which such person/s was not a party.

## Legal News

- **New President SCBAP for 2016-17 Elected** Mr. Rasheed A Rizvi SASC has been elected as president of the Supreme Court Bar Association for the year 2016-17. Mr Rizvi had been president of Sindh High Court Bar Association four times and is a sitting member of the Pakistan Bar Council. He is a former judge of the Sindh High Court .
- **Exercise of Powers of Plea Bargain under NABO 1999 suspended** The Supreme Court on Monday restrained, till further order of the court in this regard, the National Accountability Bureau (NAB) chairman from exercising the authority under Section 25(a) of National Accountability Ordinance, 1999, wherein the authority allows the accused to enter into voluntary return of funds (plea bargain).
- **Case of schizophrenia before Supreme Court** Pakistan's top court recently ruled that schizophrenia did not fall within the legal definition of mental disorders, clearing the way for the execution, as soon as next week, of a mentally ill man convicted of murder. Government doctors in 2012 certified Imdad Ali, 50, as being a paranoid schizophrenic, after he was convicted and sentenced to death for the 2001 murder of a cleric. His lawyers say Ali is unfit to be executed as he is unable to understand his crime and punishment, and that doing so would violate Pakistan's obligations under a United Nations treaty, the International Covenant on Civil and Political Rights. However SC ruled that schizophrenia is "not a permanent mental disorder". Thereafter black warrants for the execution of the convict were issued by jail authorities. There was a great uproar by civil

society on the manner with which this sensitive issue was dealt by the apex Court. The order has now been recalled and is under review.

▪ **150 Years of LHC—Celebrations Inaugurated**

Lahore High Court Chief Justice Syed Mansoor Ali Shah inaugurated 150th celebrations of Lahore High Court along with former chief justices. The purpose of celebrating 150th anniversary, the CJ said, is that they want to make people aware that the judiciary is active to protect their rights and that positive reforms are being introduced in the system. Former chief justices, sitting judges of the LHC and lower judiciary, provincial and federal law officers, and other court staff were present on the occasion. The ceremony was held at the Judges' Lawn where Syed Mansoor Ali Shah and former CJs hoisted flag to launch the celebrations.

▪ **IHC moved against Desecration of Hindu Temple**

Islamabad High Court has been moved against the desecration of a Hindu temple in Islamabad's Said Pur village. The petitioner in this case had claimed that the local authorities are not forbidding the visitors to remove their shoes while entering the temple, which is desecration of the Hindu sacred place. The petitioner Adil Gill had maintained in his petition that he is a Hindu citizen of Pakistan and that his religious sentiments were hurt by the desecration asserting that the Constitution of Pakistan guarantees equal rights to all citizens regardless of their religion and sect. The temple in Saidpur Village currently serves as a tourist site, while over 850 Hindus living in the city have been barred from performing religious rituals here. The temple is located inside a Haveli which now serves as a Picture Gallery. When the visitors come in the said gallery they also visit the temple; all the visitors enter the temple wearing their shoes. They take pictures and make noise inside the temple which is desecration of the temple.

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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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