

Proposed Legislation/Bills

- **National Counter Terrorism Authority (Amendment) Bill 2016:** Statement of Objects and Reasons States: *Ever since the National Counter Terrorism Authority (NACTA) Act was passed the Board of Governors has not met even once. The Board of Governors headed by the Prime Minister is comprised of about twenty-five members. The Board of Governors is a policy making and review body. It should meet whenever it is necessary for it and at least once a year. The existing provision that Board of Governors must meet every quarter is unrealistic and this is one reason that it has not met even once during the past over one year. The Executive Committee which is the implementing body should be required to meet at regular intervals. In the existing law there is no mention of how often the Executive Committee should meet. This has left a lacunae in the law. The existing amendment seeks to remove the lacunae, binds the Executive Committee to meet at any time as and when necessary and at least once in each quarter of a year. Also the Board of Governors has been mandated to meet as and when required and at least once in a year.*
- **Contempt of Court (Amendment) Bill 2016:** Statement of Objects and Reasons States *It is an acknowledged principle that the dignity of a judge and courts must rest more on the conduct of honorable judges, the soundness and speaking nature of their verdicts rather than resort to the contempt of court law. Dignity of courts that rests merely on resort to contempt law is said to be resting on fragile foundations. To emphasize the point regarding the authority and dignity of a court and to partially address this issue the amendment in section 3 of the Contempt of Court Ordinance, 2003 is proposed. For upholding the same principle the Bill seeks to retain the punishment of imprisonment and fine or both in case of criminal and judicial contempt but seeks to delete the punishment of six months imprisonment in case of civil contempt while retaining the provision of fine.*
- **Prohibition of Corporal Punishment Bill 2016:** Statement of Objects and Reasons States *It is function of the State to protect the inviolable dignity of children. 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. These are the reasons for which this Bill seeks to eliminate corporal punishment.*
- **Premarital Blood Screening (Family Laws Amendment) Bill 2016:** Consanguineous marriages have become a greater risk to our society as children born out of these suffer from several congenital problems. Particularly, it happens in the case of children born out of union involving first cousins. Through such close relative marriages, a person who carries a defect in any of the genes associated with some form of disease and marries a person from the same kindred who also shares the defect. The child inherits two copies of this faulty gene and becomes victim of an inherited disease. Such inherited disabilities range from blindness, cerebral palsy, mental disorders, thalassemia, physical deformities and hearing and speech impairments etc. In Pakistan 77% of babies born with birth defects belong to parents who were in consanguineous marriages and such children have low rate of survival. This Bill intends to curb inherited blood disorders and birth defects by making a Medical Certificate and premarital Blood Screening Tests mandatory before entering into contract of marriage for building a healthy and progressive Pakistani nation.

Recent Legislation

- **Securities And Exchange Commission Of Pakistan (Amendment) Act 2016:**

Salient amendments are

- i. **New definitions added:** “administered legislation”; ‘clearing house’; ‘court’; ‘document’; ‘financial services’; ‘financial services market’; ‘regulated activity’; ‘regulated person’; ‘schedule’; ‘self-regulatory organization’; ‘specified’; ‘subordinate legislation’; ‘systemic risk’.
- ii. **Amendment of section 3:** *The Commission shall be administratively, financially and functionally independent and the Federal Government shall use its best efforts to promote, enhance and maintain independence of the Commission*
- iii. **Section 6-A inserted:** *At any time when position of the Chairman is vacant or the Chairman is unable to perform his functions due to any cause, the Federal Government shall appoint senior most Commissioner of the Commission to be the Acting Chairman of the Commission until appointment of the Chairman on a regular basis*
- iv. **Section 28-A inserted:** *For the purpose of ascertaining whether a person who is, or at any time has been, a regulated person is complying with or has complied with any provision or requirement of this Act or any administered legislation, or the terms and conditions of license or registration, the Commission may from time to time inspect any record or document relating to any regulated activity.*
- v. **Section 29 substituted**
- vi. **Sections 31-A and 32-B inserted.**
- vii. **Section 34 amended**
- viii. **Insertions of new Parts:** IX-A, IX-B and IX-C added.
- ix. **Sections 37 and 38 substituted.**
- x. **Section 38-A added.**
- xi. **Sections 41-A and 41-B inserted.**
- xii. **Section 42 substituted.**
- xiii. **Sections 42-B, 42-C, 42-D and 42-E added.**
- xiv. **New Schedule added.**

2016 SCMR 1931 S. 3---Illegal possession of property---Complaint under Illegal Dispossession Act, 2005---Offenders that could be prosecuted under the Illegal Dispossession Act, 2005 could not be restricted to only those who possessed the credentials and antecedents of 'land grabbers' or 'Qabza Group'---Provisions of S. 3 of the Illegal Dispossession Act, 2005 clearly demonstrated that whosoever committed the act of illegal dispossession, as described in the said Act against a lawful owner or a lawful occupier, he could be prosecuted under its provisions without any restriction. [Muhammad Akram v. Muhammad Yousaf (2009 SCMR 1066), Mumtaz Hussain v. Dr. Nasir Khan (2010 SCMR 1254) and Shahabuddin v. The State (PLD 2010 SC 725) held to be good law]---[Bashir Ahmad v. Additional Sessions Judge (PLD 2010 SC 661) and Habibullah v. Abdul Manan (2012 SCMR 1533) declared to be not good law].

2016 SCMR 1931 S.3---Illegal possession of property---Complaint under Illegal Dispossession Act, 2005---Maintainability---Civil litigation with regard to illegal dispossession from immoveable property pending in court between the parties---Irrespective of any such civil litigation that may be pending, where an offence, as described in the Illegal Dispossession Act, 2005, had been committed, the proceedings/complaint under the said Act could be initiated as the same would be maintainable in law. [Findings in Zahoor Ahmed v. The State (PLD 2007 Lahore 231) and Bashir Ahmad v. Additional Sessions Judge (PLD 2010 SC 661) were held to be not sustainable in law].

- **2016 SCMR 2084 QSO Art 164**—CCTV footage—Evidentiary value—Mere producing of CCTV footage as a piece of evidence was not sufficient. In order to prove its contents, the person who prepared it must be examined.
- **PLD 2016 SC 961** A Petition against order made by High Court in its administrative capacity is maintainable. Asif Saeed v Registrar LHC (PLD 1999 L 350) and Muhammad Iqbal and Others v LHC through Registrar (2010 SCMR 632) held to be per incurium and not good law.
- **PLD 2016 L 857** This is an interesting judgment. The Petitioner is a Pakistan citizen female which seeks that her foreign-national husband be

granted citizenship of Pakistan. Section 10 (2) of the Citizenship Act grants such right only to a male citizen of Pakistan to have her foreign national wife registered as citizen of Pakistan.

The Court refers to **PLD 2008 FSC 1** wherein section 10 (2) was held to be unislamic on the basis of (Islamic) gender equality and the Government was directed to amend it suitably. The aforesaid decision however could not become operative as it was pending decision due to Appeal made there-against in the SC. The Court however, proceeds with the case in hand and directs government to grant citizenship certificate to the husband of Petitioner on the basis of Art 25 of the Constitution.

Interesting points about the case are:

- i. The issue of validity of section 10 (2) (though from a different perspective and jurisdiction) was pending in SC, yet the Court proceeds to decide it on the basis of Art 25 of the Constitution and International Covenants which have no force of law in Pakistan.
- ii. Without declaring section 10 (2) as unconstitutional under Art 25 of the Constitution, the relief sought for is granted which could not be granted under any provision of the Citizenship Act. Section 10 (2) being in field, the decision is per incurium rather contemptuous of the law of the land because passed contrarily in the face thereof.

Legal News

- **Report filed in the Supreme Court in OLMTP case:** The Honourable Supreme Court of Pakistan during its hearing on 13 October 2016 in the case of Orange Line Metro Train Project had ordered appellants and respondents to submit three names of consultants who could reverify the credibility of M/s NESPAK reports dated July 2015 & February 2016. In compliance of the Supreme Court order, appellants & respondents submitted three names of consultants. Out of these six consultants, Supreme Court selected M/s TYPASA-Asian Consulting Engineers (Pvt.) Ltd. JV and Professor Robin Coningham, Department of Archaeology in its order on 14 October 2016 for

reverification of credibility of NESPAK report dated July 2015 and February 2016. Both the experts submitted their reports to the Chief Secretary, Punjab which were later submitted to Supreme Court of Pakistan. TYPASA have evaluated the NESPAK reports and after detailed deliberations concluded that *“the approach adopted by NESPAK is conservative in giving vibration velocities higher than actual. The NESPAK reports rightly conclude that the levels obtained by calculation will be within the permissible limits and there will be no adverse effect on any of these sites. It is concluded that the reports of NESPAK are comprehensive and complete with reference to the subject and the results are correct/within acceptable limits.”*

- **Bill against forced conversions rejected:** The Committee on Human Rights and Law of National Assembly of Pakistan rejects a bill about protection of rights of minorities in a formal meeting which was under discussion after receiving from House. The said bill with title of Protection on Minority Rights was private bill presented by Hindu Member of Nation Assembly from MQM Mr. Sanjay Perwani who by himself is member of this committee. The private bill was presented to implement judgment which was passed in 2014 by Supreme Court of Pakistan after the bombing of All Saints Church in 2013 in Peshawar. The similar bill was passed by Sindh Assembly on forced conversion of religious minorities which is under protest by Muslim religious parties demanding repeal on terming it un-Islamic.
- **Petition filed for the Protection of Fundamental Rights of Transgenders:** Lahore High Court (LHC) Chief Justice Syed Mansoor Ali Shah issued notice on a petition seeking protection of fundamental rights of transgender people including enrolment in upcoming census and national identity cards with mentioning of the gender. The court also expressed its concern when the petitioner’s counsel pointed out that graveyards’ authorities did not provide space to bury a transgender and nobody was willing to perform the burial rites of transgender people. The court observed that the matter was of public importance, and the state should do its best to secure rights of transgender community in light of apex court judgements. The court directed the respondents to submit their replies by December 19. The chief justice sought reply from the federal government till December 7.

- **Judges Nominated by LHC for trial under anti-cybercrimes laws:** According to a letter written by the LHC Registrar to Federal Ministry of Law & Justice, the Lahore High Court Chief Justice has nominated two judges to try Cyber crime cases registered under Prevention of Electronic Crimes Act, 2016. The LHC Registrar wrote that Chief Justice is pleased to nominate Additional Sessions Judge-II Lahore and Civil Judge-I, Class-I/Magistrate Section 30, Lahore to try the offences of District Lahore, Kasur, Okara, Sheikhpura, Gujranwala, Gujrat, Sialkot, Narowal, Mandi Bahauddin, Hafizabad, Jhang, Faisalabad, Toba Tek Singh, Dera Ghazi Khan, Muzaffargarh, Rajanpur, Layyah, Multan, Vehari, Sahiwal, Khanewal, Pakpattan, Lodhran, Bahawalpur, Bahawalnagar, Rahimyar Khan, Sargodha, Khushab, Mianwali and Bhakkar of Punjab province registered under the Prevention of Electronic Crimes Act, 2016.
- **Petition filed in IHC challenging acquisition of Land for construction of Housing Society for the members of SCBAP:** The Islamabad High Court has directed the deputy commissioner and the land acquisition collector to submit a reply in connection with a petition challenging notifications dealing with the acquisition of land for a housing society for lawyers which would violate the city's zoning rules. Justice Aamer Farooq issued notices to the deputy commissioner and the land acquisition collector to submit a reply after petitioners challenging the notifications have stated that the land in question is agricultural and falls in Zone 4 of Islamabad. The counsel for the residents and holders of Mouza Tama and Morihyan, Islamabad, had challenged notifications issued by the capital's administration issued on October 10, 2016 and April 29, 2015. The notifications said that 1,148 acres were likely to be acquired from both the areas for the development of housing accommodations for federal government employees and members of the Supreme Court Bar Association.
- **SHC stays the operation of Governments Orders for deportation of Turkish Schools Staff:** The Sindh High Court yesterday suspended orders to deport staff of Pak-Turk schools. The court also suspended orders of the Interior Ministry which had refused to extend visa requests of the Turkish staff. The court has sought reply from Deputy Attorney General and

Interior Ministry on December 13. Students and teachers of Pak-Turk school have staged protests in several cities against deportation of its Turkish staff from Pakistan. Turkish staff at the school had been ordered by the interior ministry to leave Pakistan. In July this year, Turkish Ambassador to Pakistan Sadik Babur Girgin at a media briefing on the failed coup attempt in Turkey called on all friendly countries to prevent activities of Gulen's group and "close down institutions run by Fethullah Gülen controlled Trust. Fethullah Gülen, a US-based religious leader was accused of masterminding the recent coup attempt in Turkey.

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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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