

**DELIBERATE MISAPPLICATION OF LAW/MISUSE OF POWER  
REMEDIES AVAILABLE UNDER THE LAW:**

**BY**

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To implement law certain powers are delegated to the hierarchy or machinery provided under that law. It is the law which empowers or authorises a person, therefore, he is bound to act in accordance with law. An authority which is being given power to function for the implementation of law called a statutory functionary. It may be police, custom, Sales tax or Income tax authority etc., etc.

The Constitution of Pakistan which is the Supreme law of the country and all the laws derive their powers from the Constitution. The law which is inconsistent with the Constitution is an invalid law and of ultra vires of the Constitution and liable to be struck down.

Article 4 of the Constitution says that "to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen wherever he may be and or every other person for the time being within Pakistan, no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law". The Constitution of Pakistan which is the Supreme law of Land says that no body will be dealt against the law, therefore, every statutory functionary is bound to deal with an individual in accordance with law and in any case he is not authorised to act against the law, misapply of law or misuse the power.

Following remedies are available to an aggrieved person under the law against illegal act of a statutory functionary:-

- I) Constitutional Petition under Article 199 of the Constitution.
- II) Civil Suit for declaration or injunction or claiming damages.
- III) Criminal proceedings.
- IV) Petition for disciplinary action.
- V) Complaint to ombudsman.

Before moving on to discuss the aforementioned remedies in detail I would like to refer the norms of good conduct and the duties of an Advocate:-

- 1- An advocate being officer of the Court is duty bound to assist the Court to the best of his ability for dispensation of complete justice.
- 2- It is the duty of an advocate to maintain towards the Courts a respectable attitude. At the same time whenever there is proper ground for complaint against a judicial officer, it is an obligation of an advocate to ventilate such grievance and seek redress thereof legally.
- 3- An advocate should not render his service or advice involving disloyalty to the law and disrespect to the judiciary.
- 4- It is duty of every advocate to uphold the dignity and high standing of his profession as well as his own dignity.
- 5- An advocate shall not represent conflicting interests.
- 6- An advocate should not acquire an interest adverse to his client.
- 7- Junior and younger members should always be respectful to seniors and older members who also are expected to be courteous and helpful to their juniors and younger brethren at the Bar.
- 8- An advocate should not as a general rule carry on any other profession or business for gain.

### **CONSTITUTIONAL PETITION UNDER ART.199 OF THE CONSTITUTION:**

The conditions precedent for issuance of writ are as under:-

- (i) High Court is satisfied that no other adequate remedy is provided by law.
- (ii) The petitioner is genuinely an aggrieved person.
- (iii) The grievance is against the public functionary.

The following types of writ may be issued by the High Court under Art.199.

- (a) To refrain a public functionary from doing anything he is not permitted by law to do.
- (b) To do anything he is required by law to do.
- (c) Declaring that an act done or proceeding taken within its Territorial jurisdiction has been done or taken without lawful authority and is of legal effect.
- (d) Directing that a person in custody within the territorial jurisdiction of the High Court be brought before it so as to satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner.
- (e) Requiring a person holding or purporting to hold a public office to show under what authority of law he claims to hold that office.
- (f) Make an order giving such directions as may be appropriate for the enforcement of any of the fundamental rights conferred by Chapter 1 of Part II.

### **CONSTITUTIONAL PETITION IS COMPETENT:**

Regardless alternate adequate remedy is available under law but such remedy is not.

- (i) Prompt, speedy and equally efficacious.
- (ii) Some injustice has been caused to aggrieved person.
- (iii) Violation of rights guaranteed by the Constitution, discrimination or violation of principles of natural justice.
- (iv) Act of the public functionary is:-
  - (a) Mala fides, arbitrary, capricious/unfair, unjust.
  - (b) Without jurisdiction/Excess of jurisdiction.
  - (c) Ultra vires/corum non-judice.
  - (d) Misapplication of law or abuse of power.
- (v) Proceedings based on no evidence or proceedings suffer from grave and material irregularities.
- (vi) Proceedings would be a futile exercise if the case is allowed to be proceeded with before the authority concerned.
- (vii) Proceedings/trial would be abuse of power, process of court as it would expose a party to unnecessary harassment.
- (viii) Interpretation of law is required.
- (ix) Act of legislature/executive is against the scheme of the constitution.
- (x) Against the principle of natural justice, aggrieved person has been condemned unheard and that the principle of audi altrem partem has been violated.
- (xi) Aggrieved person is not being treated in accordance with law which is the inalienable right as provided by Art. 4(1) of the constitution.
- (xii) Action is detrimental to the life, liberty, body, reputation or property of the aggrieved person.
- (xiii) Aggrieved person is being prevented from doing a lawful thing or he is being compelled to do unlawful thing.

Availability/Non-availability of adequate remedy is no longer a rule whereunder High Court regulates its procedure or imposes restriction on the exercise of power under Article 199 but a positive pre-condition about which,

before the exercise of power under Art.199 a satisfaction is to be reached to such effect. There may be an alternate remedy but such remedy is not adequate, meaning thereby equally efficacious or readily available.

**(1999) PTD 534**

It is also conceivable that where an order is entirely without jurisdiction, colourful exercise of power or involves flagrant injustice, no remedy under a subordinate legislation can be adequate.

Likewise under clause (2) of Art. 199, no remedy, irrespective of its efficacy or adequacy, under subordinate legislation, can take away the jurisdiction of High Court for the enforcement of any of the fundamental rights.

In such matter the rule that no amount of consent can confer jurisdiction where it does not subsist would apply and the availability or absence of an alternate remedy would be immaterial.

It is in such cases, even a mere notice can give rise to invocation of constitutional jurisdiction.

Though High Court may decline to exercise its constitutional jurisdiction in case its finds that under relevant law machinery for getting redress has been provided but at the same time if High Court finds that action of government functionaries concerned is without jurisdiction and contrary to law, High Court may entertain a writ despite the availability of alternate remedy.

Question to be considered in case of availability of alternate remedy under law is whether such remedy is adequate, equally efficacious, speedier and capable of providing the relief claimed by the aggrieved person.

It is now well established that it is rule of practice and not a rule of law for High Court to entertain a writ petition despite the fact that another remedy is available. The question to be considered in all such cases is whether the remedy available under the law is adequate, efficacious, speedier and shall provide the aggrieved person the very relief which has been claimed in writ petition.

**Violation of fundamental rights:**

Writ petition is maintainable when any of the fundamental rights guaranteed by the constitution, 1973 is infringed by an act of the public functionary.

As per Article 8 any law, or any custom or usage having the force of law inconsistent with or in derogation of fundamental rights given in Chapter 1 of Part

II of the Constitution is of no legal value and liable to be struck down by the High Courts.

### **Fundamental Rights:**

- Article 9 - No person shall be deprived of life or liberty save in accordance with law.
- Article 10 - Safeguards as to arrest and detention right to consult and be defended by a legal practitioner of his choice.
- Article 11 - Slavery, forced labour, child labour etc. are prohibited.
- Article 12 - Protection against retrospective punishment.
- Article 13 - Protection against double punishment and self-incrimination.
- Article 14 - Dignity of movement, etc.
- Article 15 - Freedom of movement, etc.
- Article 16 - Freedom of assembly.
- Article 17 - Freedom of association.
- Article 18 - Freedom of trade, business or profession.
- Article 19 - Freedom of speech, etc.
- Article 20 - Freedom to propagate religion etc.
- Article 21 - Safeguard against taxation for purpose of any particular religion.
- Article 22 - Safeguard as to educational institutions in respect of religion, etc.
- Article 23/- Provision/protection as to property.  
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- Article 25 - Equality of citizens.
- Article 26 - Non-discrimination in respect of access to public places.
- Article 27 - No discrimination in services.
- Article 28 - Preservation of language, script and culture.

### **Some injustice has been caused:**

If some injustice of glaring nature has been caused to an aggrieved person by an act or omission of the public functionary, the High Court may issue writ to remove the injustice caused or to redress the grievance of the person. In appropriate cases the High Court accepted the writ petition with punitive action against the responsible officers and awarded special costs in favour of aggrieved person.

If any action detrimental to the life, liberty, body, reputation or property of any person is taken, except in accordance with law, shall amount to injustice of very serious nature and such action shall require interference of the High Court for issuance of appropriate writ.

**Without jurisdiction / Excess of jurisdiction / ultra vires/corum non-judice / misapplication of law / abuse of power / mela fides / arbitrary / capricious / unfair / unjust :**

To issue writ under Article 199 of the Constitution is purely a discretionary relief of the High Court, but it is no longer a matter of discretion if any order of the public functionary is without jurisdiction/excess of jurisdiction.

To issue writ of prohibition so as to refrain an official from doing anything he is not permitted by law to do is the requirement of the Constitution. High court is the creation of the Constitution and therefore, it is bound by the Constitution to issue writ where the public functionary has acted without jurisdiction or in excess of jurisdiction.

Any order passed or action taken by the public functionary amounts to without jurisdiction or in excess of jurisdiction when the order passed or action taken by a public functionary not permitted by law to do so.

High Court is also within its Constitutional jurisdiction to take judicial review of the act of the public functionary which is based on mela fides, arbitrariness and is unjust and unfair on the face of it regardless of the fact that the order is passed by the competent authority.

**Proceedings based on no evidence**

High Court under Article 199 of the constitution is competent to interfere in the proceedings pending before subordinate courts, tribunals, authorities, quasi judicial forums which are based on no evidence and may quash such proceedings. The purpose behind is that of saving the parties from unnecessary litigations of no results.

Proceedings based on no evidence if it is allowed to continue not only waste the precious time of the courts but amount harassment being caused by the judiciary. Such proceedings also amount to abuse of process of law and court.

To quash such proceedings also comes within the inherent powers of the High Court. In proceedings of Criminal nature, the High court may exercise its power u/s 561/A of Cr.P.C and in proceedings of Civil nature S. 151 of C.P.C empowers the High court to interfere and quash the proceedings in order to prevent the abuse of process of court and to save the parties from unnecessary litigations.

**Alternate Remedy Available—Writ petition competent:**

----Art.199---Constitutional jurisdiction---Scope.

Remedy under Article 199 of the Constitution, as envisaged in the opening words of clause (1) of that Article is available only where the High Court is satisfied that no other adequate remedy is provided by law,.....” It is no longer a rule whereunder a high Court regulates its procedure or a case of self-imposed restriction on the exercise of jurisdiction under Article 199 of the Constitution but a positive pre-condition about which, before the exercise of doubt, possible that even though there may be an alternative remedy such remedy is not adequate, meaning thereby equally efficacious or readily available. It is also conceivable that where an order is entirely without jurisdiction, colourable or involves flagrant injustice no remedy under a subordinate legislation can be adequate. Likewise, under clause (2) of Article 199 no remedy, irrespective of its efficacy or adequacy, under subordinate legislation can take away the jurisdiction of a High Court for the enforcement of any of the Fundamental Rights. In such matters the rule that no amount of consent can confer jurisdiction where it does not subsist would apply and the availability or absence of an alternative remedy would be immaterial. It is in such cases that even a mere notice can give rise to invocation of the constitutional jurisdiction. [p. 3] B.

**(1990) PTD 1 (H.C) (D.B)**

----S.65---Constitution of Pakistan (1973), Art.199---Constitutional jurisdiction---High Court can quash notice issued under S.65 or the order of Income-tax Officer notwithstanding the existence of an alternate remedy where the impugned notice or order was without lawful authority, partial, unjust and mala fide. [p. 878] A.

**(1990) PTD 874 (H.C) (D.B)**

----Art.199—Writ—Alternate remedy—Show-cause notice having been issued without there being any sufficient reasons or legal authority, exercise of jurisdiction under Art. 199 of Constitution, held, could not be declines—Avoidability of alternate remedy in every case, held further, no ground to refuse relief, when remedy not efficacious, for it in spite of showing cause any additional amount were assessed same could have been recovered by Income-tax Officer through coercive process on petitioner’s failure to pay same—Income-tax Ordinance (XXXI of 1979), S. 65. [p. 365] C.

**(1982) PTD 361 (H.C) (D.B)**

----Art.199---Writ---Alternate remedy available to petitioner---Question to be considered in such case is whether such remedy adequate efficacious, speedier and capable of providing petitioner with relief claimed.

It is also now well established that it is a rule of practice and not of law for High Court to entertain a petition despite the fact that another remedy was available. The question to be considered in all such cases is whether the remedy available under the law is adequate, efficacious, speedier and shall provide a petitioner with the relief claimed ? [p. 499] E.

----Art.199 read with Income-tax Act (XI of 1922), S. 66—Writ—Petition remaining pending in Court for a long time (seven years)—Alternate remedy of filing reference already barred by time—Held, throwing out petition after seven years on objection of alternate remedy would be against cause of justice.[p.499]F.

**(1979) PTD 488 (H.C) (D.B)**

----Art.199---Constitutional jurisdiction, exercise of---Essentials---Alternate adequate remedy available but not availed---Effect---Exercise of Constitutional jurisdiction and issue of writ of mandamus, prohibition or certiorari was conditioned upon non-availability of other adequate remedy in law---Generally therefore, litigant must first avail of alternate remedy available in law and could directly invoke jurisdiction under Art.199 of the Constitution only if it was shown that remedy, even if provided, was not adequate or efficacious---Efficacy and adequacy of other remedy, however, would depend upon facts and circumstances of each case and what might be efficacious and adequate in given circumstances might not be so in other circumstances---Where resolution of some question of law was required to be made, direct approach to High Court was permissible---In such cases party need not be compelled to avail of other remedies, for under the Constitution, interpretation of law was the responsibility of superior judiciary. [p. 460] A.

**(1997) PLD 456 (S.C) (S.B)**

----Art.199---Constitutional jurisdiction of High Court---Scope---Invocation of Constitutional jurisdiction of High Court under Art.199 of the Constitution where the remedy of statutory appeal is available and such remedy is effective and adequate---Principles---Considerations which weigh with High Court in regulating its Constitutional jurisdictions stated.

The remedy of appeal even if available before a Tribunal of limited jurisdiction is not effective in ousting the Constitutional jurisdiction of the superior Courts. The invocation of Constitutional jurisdiction under Article 199 is not allowed in cases where the remedy of statutory appeal is available and is not allowed in cases where the remedy of statutory appeal is available and such remedy is effective and adequate. Even otherwise, if the right of appeal provided by statute is inadequate or is available under such conditions which has effect of denying the right of appeal, the Constitutional jurisdiction is allowed to be invoked to afford relief to an aggrieved person in order to do justice. It is subject to these considerations that the discretionary extraordinary Constitutional jurisdiction is regulated by the High Court. [p. 681] F.

**(1996) PLD 672 (S.C) (D.B)**

----Art.199---Constitutional jurisdiction, exercise of---Non-availing of alternate remedy---Effect---Where action taken by Authority absolutely lacked competency and jurisdiction, non-availing of alternate remedy by petitioners would have no

effect---Action taken by respondents against petitioners was declared to be without lawful authority and of no legal effect. [p. 205]C.

**(1992) PLD 199 (S.C)(D.B)**

----Art.199---Constitutional jurisdiction of High Court---Alternate adequate remedy available, competency of Constitutional petition---Where a statute creates rights and also provides a machinery for enforcement of those rights, the party complaining of the breach of statute must first avail himself of the remedy provided by the statute for such breach before he approaches the High Court by means of a Constitutional petition---Constitutional jurisdiction cannot be treated as a substitute for an appeal---High Court, ordinarily will not entertain a writ petition when any other appropriate remedy is available which, however, is to be decided with reference to the facts and circumstances of each case. [p. 311]C.

----Art.199---Constitutional jurisdiction of High Court---Other remedy available---Rule that the High Court will not entertain a Constitutional petition when other appropriate remedy is yet available, is not a rule of law barring jurisdiction but a rule by which the Court regulates its jurisdiction---Exception to said general rule is a case where an order is attacked on the ground that it was wholly without authority. [p. 312]D.

**(1992) PLD 305 (S.C)(S.B)**

----Art.199---Constitutional jurisdiction, exercise of---Matter for interference in Constitutional jurisdiction although lay in discretion, yet discretion like all other judicial powers was regulated by sound reason. [p. 324]C.

**(1992) PLD 322 (S.C)(S.B)**

----Art.199---Punjab Local Council (Taxation) Rules, 1990, Rr.14 & 15---Constitutional jurisdiction---Competency to invoke---Objection that alternate remedy of appeal/revision being available and having not been availed, Constitutional petition was not competent---Such objection was misconceived, for dispute whether tax had been imposed in accordance with law, could not be raised in appeal/revision---Remedy was not available where there was a challenge to imposition of tax by local council itself---Constitutional petition was competent in circumstances. [p. 329]B.

**(1992) PLD 324 (S.C)(S.B)**

**Violation of Fundamental Rights:**

----Art.199---Constitutional petition---Fiscal matter---Imposition of tax---Legality---Constitutional jurisdiction---Scope---Illegal imposition of tax could be challenged by invoking provisions of Art.199 of the Constitution---Burden would, however, be on petitioner to prove that imposition of such tax was illegal and that same could not have been imposed---Provisions of Ar.199 of the Constitution contain no bar that fiscal matter could not be challenged---Fiscal statutes and regulations, instructions, notifications, bye-laws made thereunder, and policies formulated for the effective implementation of such provisions are all subject to judicial scrutiny if same are found violative of rights guaranteed under the Constitution and based on discrimination or in contravention of principles of natural justice. [p. 220] A.

(1996) PTD 214 (H.C) (D.B)

----Art.25 & 77, Fourth Sched., Federal Legislative List, Part I, Entry 47---Equality before law---Taxation---Legislature is competent to classify persons or properties into different categories subject to different rates of tax---If the same class of property similarly situated is subject to an incidence of taxation, which results in inequality amongst holders of the same kind of property, it is liable to be struck down on account of infringement of the fundamental right to equality.

----Fourth Sched., Legislative List, Part I, Entry 47, Arts. 77, 8 & 25---Taxation---Legislature has the prerogative to decide the questions of quantum of tax, the conditions subject to which it is levied, the manner in which it is sought to be recovered---If, however, a taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of the tax or that is confiscatory, the Court may strike down the impugned statute as un-Constitutional.

(1997) PTD 1555 (S.C) (F.B)

----Art.25 & 199---Equality before law---Discrimination between various business concerns---Effect---Petitioners (Flour Mills) were constructed after due approval by Provincial Government for purposes of grinding of wheat into flour and cleaning etc.---Completion certificates were issued to petitioners (Flour Mills)---Petitioners applied for wheat quota to Authorities but they were not supplied any quota despite repeated demands---Quota was issued to all such Mills except petitioners Flour Mills---Provincial Government instead issued out of turn quota to those Flour Mills which were not included in approved list---Such action of Authorities was absolutely discriminatory in nature whereby petitioners were made to run into loss of millions---Article 25 of the Constitution guarantees full equality before law to all citizens of country---Numerous business concerns were involved in similar business and production but petitioners were prevented from carrying on their business while other rival concerns were facilitated to go into production and to remain into production---Such discrimination was seriously

offending Art.2 of the Constitution---Authorities were directed to release wheat quota to petitioners. [p. 8] A.

**(1997) PLD 5 (S.C) (D.B)**

---Arts.4 & 25---Fundamental rights---Right of “access to justice to all” is an inviolable right enshrined in the Constitution of Pakistan which is equally found in the doctrine of due process of law---Right of access to justice includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial Court or Tribunal---Without having an independent Judiciary, the Fundamental Rights enshrined in the Constitution will be meaningless and will have no efficacy or beneficial value to the public at large. [p. 423] YY.

**(1996) PLD 324 (S.C) (F.B)**

---Art.25---Application of Art.25---Principles---Any law made or action taken in violation of principles contained in Art. 25 is liable to be struck down.

Following are the principles for application of equality clause of the Constitution—

- (i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
- (iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;
- (iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
- (v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- (vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;
- (vii) that in order to make a classification reasonable it should be based---

- (a) on an intelligible differentia which distinguished persons or things that are grouped together from those who have been left out;
- (b) that the differentia must have rational nexus to the object sought to be achieved by such classification. [p. 358] I.

**(1993) PLD 341 (S.C) (D.B)**

**Without Jurisdiction/Excess of Jurisdiction/  
ultra vires/corum/non judice/void order :**

----Art.199---Constitutional jurisdiction of High Court---Scope---When any Authority guided and governed by law exceeds jurisdiction and interferes in any person's right by passing a void order, High Court in the exercise of extraordinary jurisdiction can determine the rights of such party against a void order and Constitutional jurisdiction is available to such party. [p. 2017] B.

**PTD 2012 (H.C) (S.B)**

----S.134---Constitution of Pakistan (1973), Art.199---Appeal before Appellate Tribunal---Assessment order and demand notice had been issued to the assessee by Assessing Authority---Assessee's appeal before Appellate Tribunal was pending---Constitutional petition under Art.199 of the Constitution before High Court---Maintainability---Application by assessee to restrain the Assessing Authority from collecting tax pending hearing and disposal of the Constitutional petition---Assessee had contended that issuance of demand notice and assessment order under S.134 of the Ordinance was in fact a demand because the Assessing Authority had demanded payment of assessed amount plus surcharge---Assessee further contended that since he had challenged the vires of the relevant provision of Income Tax Ordinance, 1979, it was only High Court, which in its Constitutional jurisdiction could strike down a law on the ground of its being ultra vires---Held, while it was true that where alternative remedy was provided by a statute those remedies should first be resorted to before seeking relief under art.199 of the Constitution, in cases where action was alleged to be made mala fide or was obviously without jurisdiction or where vires of legislation was in question, the petition under Art.199 of the constitution would be maintainable.

In the present case the assessee filed an application to restrain the Assessing Authority from collecting the demand pending hearing and disposal of the petition. [p. 583] A.

**(1994) PTD 581 (H.C) (D.B)**

----Art.199---Constitutional jurisdiction can be exercised in appropriate cases, involving fiscal rights and on the allegation of misapplication of law or abuse of power stepped in to examine whether or not public functionary

concerned acted in accordance with the powers conferred on him by the statute.  
[pp. 6, 7] B & C.

**(1992) PTD 1 (S.C) (D.B)**

---S.3(4)---Constitution of Pakistan (1973), Art.199---Sales-tax levied on assessee was based on no evidence and proceedings for recovery of same suffered from grave and material irregularities inasmuch as several orders and directions by Authorities for taking weights of products were repeatedly ignored---Proceedings for assessment of tax were thus, without lawful authority and same could not be sustained being illegal and without jurisdiction. [p. 562] D & E.

**(1991) PTD 551 (H.C) (D.B)**

---Art.199---Constitutional jurisdiction of High Court---Scope---High Court does not lightly deprive the hierarchy of Tribunals, their jurisdiction under the relevant special statute, unless it is shown that the impugned action is patently without jurisdiction or is coram non-judice or mala fide and that it would be a futile exercise if the case is allowed to be proceeded with before the tribunal concerned and would expose a party to unnecessary harassment. [p. 392] B.

**(1991) PTD 387 (H.C) (D.B)**

---S.44---Writ jurisdiction of High Court---Nature and scope---Order of Prime Minister which was clearly against law could not be enforced by High Court in its writ jurisdiction which was equitable in nature and could not be exercised to implement illegal order even if that be of the Prime Minister. [p. 3217] K.

**(1998) PTD 3200 (S.C) (D.B)**

---Art.199—Income-tax Ordinance (XXXI of 1979), Ss. 57 & 59—C.B.R. Circular No.8 of 1978—C.B.R. Circular No.14 of 1978—C.B.R. Circular No. 1 of 1978—Self-assessment Scheme (1983-94)—Constitutional jurisdiction—High Court would decline to exercise its jurisdiction in case it finds that under relevant law machinery for getting redress has been provided for but at the same time if High Court finds that action of Government functionaries concerned is without jurisdiction and contrary to law, High Court may entertain a writ.

High Court will decline to exercise its constitutional writ jurisdiction in case it finds that under the relevant law the machinery for getting redress has been provided for but at the same time if it finds that the action of Government functionaries concerned is without jurisdiction and contrary to the law, the High Court may entertain a writ. [p. 556] A.

**(1985) PTD 549 (H.C) (D.B)**

----Arts.18 & 199---Freedom of trade, business or profession---Constitutional petition---No one could be made to pay more than what was due from him and any system

which would encourage or condone the extraction of money, not permissible by law, would need to be corrected. [p. 422] A.

s.18 & 199---Freedom of trade, business or profession---Constitutional petition---No one could be made to pay more than what was due from him and any system which would encourage or condone the extraction of money, not permissible by law, would need to be corrected. [p. 422] A.

**(1998) PLD 416 (S.C) (D.B)**

---Art.199---Constitutional jurisdiction of High Court---Extent---High Court in exercise of its Constitutional jurisdiction has prerogative to make an order in respect of any act done or proceedings taken by public functionaries and is vested with discretion to make any order it deems fit in relation thereto---Constitutional requirement is that High Court must satisfy itself as regards validity or otherwise such acts and proceedings challenged before the Court. [p. 222] H.

**(1995) PLD 205 (S.C) (F.B)**

---Art.199---Constitutional jurisdiction of High Court under Art.199---Scope---Order which has been passed with jurisdiction cannot be interfered in extraordinary jurisdiction of High Court, under Art.199 of the Constitution, unless it is shown that the order is arbitrary, fanciful or patently unjust. [p. 484] B.

**(1995) PLD 481 (S.C) (D.B)**

---Art.199---Constitutional jurisdiction of High Court---Scope---Constitutional jurisdiction of High Court for reviewing acts, actions or proceedings which suffer from defect of jurisdiction or are coram non judice or mala fide (be it malice in fact or in law) remains available even where the decision of Authority or Tribunal is clothed with finality by law. [p. 680] C.

**(1996) PLD 672 (S.C) (D.B)**

---Art.199---Constitutional jurisdiction, exercise of---When a Tribunal makes an error of law in deciding a matter it goes outside its jurisdiction and its finding shown to be erroneous on a point of law can be quashed under Constitutional jurisdiction on the ground of being in excess of jurisdiction. [p. 36] D.

**(1995) PLD 30 (S.C) (S.B)**

---Art.199(3)---Constitutional jurisdiction of High Court---Constitutional bar---Extent---Bar contained in Art.199(3) of the Constitution on the powers of High Court is not absolute in nature---Such bar is not applicable to the cases namely where the impugned action is mala fide or without jurisdiction or coram non judice. [p. 652] E.

**(1996) PLD 632 (S.C) (D.B)**

----Art.199---Constitutional jurisdiction, exercise of---Where assumption of jurisdiction was based upon misreading of provisions of law, it would always be a valid ground for interference in Constitutional jurisdiction. [p. 345]E.

**(1992) PLD 339 (S.C)(D.B)**

----Art.199---Civil Procedure Code (V of 1908), O.XVIII, Rr. 2 & 3---Constitutional jurisdiction, exercise of---Where order passed by Court suffered from jurisdictional defect and discretion had been exercised arbitrarily without application of judicial mind to the facts and circumstances of the case, such order was declared to have been passed without lawful authority and of no legal effect and thus, was quashed---Trial Court was directed to proceed to record remaining affirmative evidence of plaintiffs and thereafter call upon defendant to produce evidence in rebuttal. [p. 97]F.

**(1992) PLD 92 (S.C)(S.B)**

----Art.199---Constitutional petition, maintainability---Dispute as to allotment of plot by Development Authority---Where the question was not only of the restoration of the respondent's allotment but was also of the legality and validity of the appellant's allotment and Government or for that matter the Chief Minister of the Province had no power to either annul the respondent's allotment or order to make the allotment to the appellant and question also involved the statutory duty of the Development Authority, Constitutional petition before the High Court, held, was maintainable. [p. 118]A.

**(1992) PLD 113 (S.C)(D.B)**

----Art.199---Cases liable to interference---Cases of errors of law, lack of jurisdiction, decision given in breach of rules of natural justice as also cases of findings based on "no evidence" are some of the examples where interference can legitimately be made by High Court. [p. 147] C.

----Art.199---Expression "without lawful authority and of no legal effect" are expressions of art and refer to jurisdictional defects as distinguished from a mere leniency in or inadequacy of sentence awarded by a Criminal Court. [p. 147] E.

**(1994) PLD 144 (S.C) (D.B)**

----Art.199---Constitutional jurisdiction---When impugned action was totally without jurisdiction, availability of an alternative remedy was not a ground for refusing relief. [p. 575] A.

**(1994) PLD 574 (S.C) (S.B)****Interpretation of Law:**

----Art.199---Income Tax Ordinance (XXXI of 1979), Second Schedule, cl. 122---Constitutional petition---Maintainability---Where the case involved interpretation of the provisions of a statute, Court would be liberal in considering the Constitutional petition and not shut out the remedy on technical grounds. [p. 366] C & D.

**(1991) PTD 359 (H.C) (D.B)**

----Art.199---Constitutional jurisdiction, exercise of---Essentials---Alternate adequate remedy available but not availed---Effect---Exercise of Constitutional jurisdiction and issue of writ of mandamus, prohibition or certiorari was conditioned upon non-availability of other adequate remedy in law---Generally therefore, litigant must first avail of alternate remedy available in law and could directly invoke jurisdiction under Art.199 of the Constitution only if it was shown that remedy, even if provided, was not adequate or efficacious---Efficacy and adequacy of other remedy, however, would depend upon facts and circumstances of each case and what might be efficacious and adequate in given circumstances might not be so in other circumstances---Where resolution of some question of law was required to be made, direct approach to High Court was permissible---In such cases party need not be compelled to avail of other remedies, for under the Constitution, interpretation of law was the responsibility of superior judiciary. [p. 460] A.

**(1997) PLD 456 (S.C) (S.B)**

----Art.199---West Pakistan Land Revenue Rules, 1968, R.19 (2) (b)---Error of law apparent on the face of the record---Constitutional jurisdiction, exercise of---Provincial Board of Revenue at the apex of the Revenue hierarchy was charged with the statutory duty of interpreting the laws, applying the same to individual cases coming up before it and laying down the law for the subordinates in the hierarchy to follow---Any error on the part of Board of Revenue in understanding the law, in applying it or in laying down the law can and must be corrected in the Constitutional jurisdiction, for if it is left uncorrected, it will result in subverting the rule of law. [pp. 538, 539] A, B & C.

**(1991) PLD 531 (S.C)(D.B)**

#### **Mala fides/Arbitrary/Capricious/Unfair/Unjust:**

----Art.199---Constitutional jurisdiction---Constitutional corrective jurisdiction in form of writ is oppressed into service by superior courts to nullify capricious/arbitrary mala fide actions/order of Government functionaries. [p. 484] E.

**(1985) PTD 465 (H.C) (D.B)**

----Art.199—Writ jurisdiction —Statutory functionary acting mala fide or in partial, unjust and oppressive manner High Court in exercise of its writ jurisdiction, as held by Supreme Court, empowered to grant relief to aggrieved party. [p. 367] D.

**(1982) PTD 361 (H.C) (D.B)**

----Art.199 read with Sales Tax Act (III of 1951), Ss. 6 & 7—Tax itself not leviable under judicial determination made earlier, action of Inspector in issuing letter telling petitioners that articles manufactured by them cannot be

allowed free of sales tax, held, amounts to harassment on part of Inspector which can be removed by Court in exercise of its Constitutional jurisdiction. [p. 361] C.

**(1982) PTD 359 (H.C) (S.B)**

----Art.199---Constitutional jurisdiction---Scope---Grant of license---If the action of State functionary concerned is prompted with malice/mala fides, Court may interfere with the same. [p. 364] A.

**(1997) PLD 342 (S.C) (D.B)**

----Art.199---Pakistan (Administration of Evacuee Property) Act (XII of 1957), S.25(2)(I)---Jurisdiction under Art.199 of the Constitution---Scope---Factors to be considered by Court---While exercising jurisdiction under Art.199 of the Constitution, High Court was not obliged to set aside every illegal order, challenged before it, in case it was found that as result of such exercise, grave injustice would be caused or another illegal order passed at earlier stage would be revived. [p. 720] D.

**(1997) PLD 716 (S.C) (S.B)**

----Art.199(3)---Constitutional jurisdiction of High Court---Constitutional bar---Extent---Bar contained in Art.199(3) of the Constitution on the powers of High Court is not absolute in nature---Such bar is not applicable to the cases namely where the impugned action is mala fide or without jurisdiction or coram non judice. [p. 652] E.

**(1996) PLD 632 (S.C) (D.B)**

----Art.199---Constitutional jurisdiction---Before a person can be permitted to invoke the discretionary Constitutional jurisdiction of High Court, it must be shown that the order sought to be set aside had occasioned some injustice to him. [p. 320] H.

**(1991) PLD 314 (S.C)(S.B)**

----Art.199---Constitutional jurisdiction---Before a person can be permitted to invoke discretionary Constitutional jurisdiction under Art.199, it must be shown that the order sought to be set aside had occasioned some injustice to the parties---If such order does not work any injustice to any party, rather it causes a manifest illegality, then the extraordinary jurisdiction ought not to be allowed to be invoked. [p. 697]A.

**(1991) PLD 691 (S.C)(D.B)**

----Art.199---Judicial review---Functionaries of the State; statutory bodies, statutory corporations and statutory universities were required to act strictly within the defined spheres of their authorities under the law---In case of transgression of powers, abuse of powers or colourful exercise of powers by such functionaries, the exercise was open to correction in Constitutional jurisdiction of superior judiciary viz. Judicial review. [p. 154] D.

(1993) PLD 141 (S.C) (D.B)

#### Un-constitutional Legislation:

----Art.199---Vires of legislation---Judicial review---Legislation could be struck down only when there was a palpable erosion of Constitutional requirements---Court has to be watchful that the evil which Court had set out to eradicate was not lesser than the mischief, which may emerge as a consequence of the remedy Court determines to administer---Remedy has to be proportionate to the evil addressed. [p. 1973] PP.

(1998) PTD 1804 (Kar) (D.B)

----Art.199---Judicial review---If an organ of State acts against the Constitution it is the bounden duty of the judiciary to nullify that act as no sanctity attaches to the proceedings which are unconstitutional. [p. 85] SS.

----Art.199---Constitutional Jurisdiction of High Court---Scope---Principles---Where it is shown that the impugned actions are unconstitutional or are violative of the fundamental/Constitutional rights, it becomes bounded duty of superior Courts to enforce the Constitution with its full might and majesty and in doing so Court should not hesitate to strike down the impugned actions/orders and to grant consequential relief, flowing therefrom---No expediency or other consideration should be allowed to stand in the way of Court nor can a deviation or contravention of the Constitution be condoned or allowed to be perpetuated.

Although it is true that grant of relief under Article 199 of the Constitution is in the discretion of the Court and may be withheld if the petitioner is guilty of suppression of facts, abuse of process of Court and have filed false and fabricated documents in the Court, but these considerations have no relevance in a case where it is shown that the impugned actions are unconstitutional or are violative of the fundamental/Constitutional rights. Having taken oath to preserve and defend the Constitution it becomes bounden duty of the superior Courts to enforce the Constitution with its full might and majesty and in doing so they should not hesitate to strike down the impugned actions/orders and to grant the consequential relief flowing therefrom. No expediency or other consideration should be allowed to stand in its way nor can a deviation or contravention of the Constitution be condoned or allowed to be perpetuated. If democracy is to flourish, the rule of law must firmly be established by enforcing the Constitution in letter and spirit. [p. 85] TT.

**(1997) PLD 38 (S.C) (D.B)**

----Art.199---Pakistan Standard (Certification Marks) Ordinance (XLVIII of 1961), S. 3(d)---Constitutional jurisdiction, exercise of---Levy and demand of marking fee---No provision of Ordinance XLVIII of 1961 empowered Federal Government to levy and demand marking fee---Levy of such fee through notification being not warranted, notification imposing marking fee was declared to be without lawful authority and of no legal effect. [p. 430]E.

**(1992) PLD 427 (S.C)(D.B)****Condemned unheard/against natural justice:**

----Art.199---Transfer of Property Act (IV of 1882), S.54---Natural justice principles of---Maxim “Audi: alteram partem”---Order passed in violation of the maxim “audi alteram partem” (nobody to be condemned unheard) would be a nullity---Maxim “audi alteram patem”, embodies well-founded principle of law and even if it was not expressly provided in any statute or rule, it has to be read into it so as to act fairly and justly with due regard to the principles of natural justice---Order in question, whereby land sold to petitioner was cancelled in violation of the principles of audi alteram partem was ab initio void and all subsequent actions taken in pursuance thereof would also be void and without any legal basis.---[Natural justice, principles of—Maxim]. [p. 25] A.

**(1995) PLD 22 (S.C) (D.B)**

## **CIVIL SUIT**

Section 162 of Income Tax Ord. says no suit shall be brought in any Civil Court against any order made under this Ordinance, and no prosecution, suit or other proceedings shall be against any person for anything in good faith done or intended to be done under this Ordinance.

This Section has two parts. The first part saves any order made under the Ord. from interference by a Civil Court and the second part gives immunity to a person for anything in good faith done or intended to be done under the Ord. In the first part there is no reference to good faith and intention.

### **FIRST PART**

**GENERALLY** remedy for a person aggrieved by an order is:-

- to file appeal under Income Tax Ord and not a Civil Suit.
- and an Appeal to the High Court against the decision of Tribunal.
- the only remedy open to the tax payer, whether in regard to appeal or against assessment or to claim for refund, are to be found within the four corners of the Income Tax Ord.

### **SCOPE OF CIVIL SUIT**

Section 9 of Civil Procedure Code deals with the jurisdiction of Civil Courts which says the Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Suits may be divided into two classes i.e. (1) those which are of civil nature, and (2) those which are not of civil nature. Civil Court has no jurisdiction to try suits which are not of civil nature. A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of Civil Courts in respect of a particular matter. However, the mere conferment of special jurisdiction on a Tribunal in respect of the said matter does not itself exclude the jurisdiction of Civil Courts. But if the statute gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. Even in such cases, the Civil Court's jurisdiction is not completely ousted. A suit in Civil Court shall always lie to question the order of a Tribunal, even if its order is, expressly or by necessary implication, made final, if the said Tribunal abuses its power or does not act under the law but in violation of its provisions.

Though matters relating to tax are of civil nature and Section 162 of Income Tax Ord. expressly bars Civil Court from taking cognizance even then

Civil Court is competent to interfere in such matters under the following circumstances:-

- against an order which is without jurisdiction or in excess of jurisdiction;
- against an order which is against the principle of natural justice;
- against non-compliance with statutory provision or principles of judicial procedure;
- against an executive action;
- against the abuse of power/authority;
- against an action based on mala fide.

**(1999) 79 Tax 255**

**(1998) PTD 2884**

**(1963) Tax 442**

----Preamble & S. 162---Civil Procedure Code (V of 1908), Ss.9 & 151---Bar of suit in Civil Courts---Income Tax Ordinance, 1979 is a complete Code in itself for imposition of tax and all disputes relating thereto---Jurisdiction of Income-tax Department and its functionaries would extend to findings of facts as to imposition of taxes, provided they would act within four corners of law, but where they would act mala fide or in excess of their jurisdiction or flout fundamental principles of judicial procedures or relevant law, bar of S.162, Income Tax Ordinance, 1979 would not apply and in such circumstances, Civil Court could always interfere---Civil Court despite exclusion of its jurisdiction, would have jurisdiction to examine cases where provisions of Income Tax Ordinance, 1979 had not been complied with or statutory Tribunal had not acted in conformity with fundamental principles of judicial procedure. [p. 1328] K.

**(1999) PTD 1313**

Civil Court being a Court of general jurisdiction is competent to examine validity of an action taken or order passed by an executive authority or special Tribunal or a quasi judicial forum when the action taken or order passed is ultra vires, without jurisdiction or in excess of jurisdiction or corum non judice or based on mala fide intention or in violation of the principle of natural justice in spite of jurisdiction ousting provisions.

**PLD 1997 S.C. 3**

Civil Court being court of plenary jurisdiction could entertain a civil suit challenging any action or order passed by administrative or quasi-judicial functionary which is corum non-judice or without jurisdiction.

**CLC 1998 27**

Provisions barring jurisdiction of Civil Court are only attracted when action impugned in the civil suit is found to be within the four corners of the statute under which jurisdiction of the Civil Court is barred and that the impugned

action does not suffer from taint, mala fides or absence of jurisdiction. Civil Court being court of general jurisdiction has plenary power to resolve all disputes of civil nature unless barred by any law and provisions of special law purporting to take away its jurisdiction. Mala fide order or order without jurisdiction being fraud on law, can never be assumed to have been passed under any particular statute. Plea as to bar of jurisdiction can only sustain if it is shown that impugned order has been passed in bona fide exercise of powers conferred by the statute and not otherwise.

**PLD 1997 Kar. 541  
1994 SCMR 356**

Questions whether Act of Executive or Administrative Officer, or quasi-judicial or of judicial Tribunal is without jurisdiction and illegal are of civil nature and Civil Court is competent to resolve such matters.

**PLD 1965 S.C 671**

Civil Court's jurisdiction with respect to mala fides can not be taken away.

**PLD 1965 S.C 698**

Ordinarily a party in revenue matters should exhaust all his remedies by way of appeal before invoking the aid of the Civil Court. But there are different considerations where the allegation of a party is that the impugned order is a nullity in the eye of law. The Civil Courts have jurisdiction to examine the cases where statutory provisions have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

**PLD 1970 S.C 180**

The jurisdiction of the Civil Court is barred when an order is passed by an authority in strict conformity with the provisions of the statute under which such authority is exercised. Where this is not so, the Civil Court cannot be deprived of its powers of interference. The protection does not cover an order capriciously made or in flagrant breach of the statute giving the protection.

**PLD 1958 S.C 201**

The Civil Court has power to entertain a suit, in which the question is whether the executive authority has acted ultra vires.

**PLD 1947 P.C 537**

If an act is not under the Income Tax Ord. but in violation of the Ord. the same can be questioned in a Civil Court.

**(1963) 50 ITR 87 (S.C.)**

Tax levied in excess of limits laid down in the Constitution is wholly void and a suit will lie for the recovery of tax, the case is one of want of jurisdiction and not of mere irregularity.

(1964) 51 ITR 596  
(1962) 46 ITR 422

Civil Court is competent to issue an injunction restraining income tax authority from making an assessment. Even the service of notice calling for a return of income from a person on whom the proposed assessment would be illegal is a wrongful act which is actionable

(1951) 19 ITR 132 at P.151 (S.C.)

A suit indirectly to set aside an assessment is also barred e.g., a partner in an unregistered firm asking for an injunction to restrain the Income Tax Officer from proceeding against him to collect the Tax due from the firm because he is really not a partner.

(1962) 46 ITR 442  
(1998) PTD 2679

A suit will lie if the Tribunal created by statute abuses its powers or violates the statute even if its order is expressly or by implication made final.

(1963) 50 ITR 187 (S.C.)

Non-compliance with statutory provision or principles of judicial procedure is also not saved u/s 162. Civil Court has jurisdiction to set aside an assessment made without notice and to declare it as null and void. Though an assessment without notice is not ultra vires but the particular act is ultra vires as an abuse of power conferred by an intra vires provision.

(1966) 61 ITR 187 (S.C.)  
(1966) 62 ITR 367 (S.C.)

Civil suit is not banned in respect of incompetent proceedings and an officer cannot take an absurd view of the law and claim bona fide in defense.

(1970) 78 ITR 35 at P.360, 361

Where there is no prayer for setting aside any assessment but the suit was filed only on the basis that the Income Tax authority had no jurisdiction to appropriate the payment made towards Income Tax to excess profit tax, a Civil suit is maintainable.

(1967) 68 ITR 192 at P.199 (S.C.)

## **SECOND PART**

The second part of Section 162 gives personal immunity to officers for anything done by them in good faith or intended to be done under the Ord. They are protected from prosecution, suit or other proceeding. However, the immunity applies in respect of acts authorised by statute and acts done without jurisdiction but in the bona fide belief that they are authorised.

**(1936) 4 ITR 341**

The word "intended" has been used to signify futurity to preclude suit from injunction in respect of proceeding intended to be taken by the Income tax authorities. The term "intended to be done" is not confined to tortuous acts but refers to any act which may be done by an officer in future and include even an assessment proceeding to be completed in future.

Nothing is said to be done in good faith which is done without due care and attention. Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the fact upon which the exercise of the power must rest. It is an honest determination from ascertain facts. The protection is available only for acts done in good faith. An Officer would not be entitled to protection if he does an act for which he has no authority under the statute. But if he does the act under the bona fide belief that he has power to do so, he would be entitled to the protection.

**(1950) 18 ITR 757 (Cal)**

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## **TORTIOUS LIABILITY**

Tortious Liability arises from the breach of duty preliminary fixed by the law. This duty is towards persons generally and it breach is redressable by an action for unliquidated damages.

STATUTORY AUTHORITY is a well-recognised defence in cases of torts where injury caused to the plaintiff is in consequence of an act authorized under a statute. It is now thoroughly well established that no action will lie for doing that which the legislature has authorised, if it be done without negligence, although it does occasion damage to anyone, but an action does lie for doing that which the legislature has authorised, if it be done negligently. It is also undoubtedly a well-settled principle of law that when statutory powers are conferred, they must be exercised with reasonable care, so that if those who exercise them could by reasonable precaution have prevented an injury which has been occasioned, or likely to be occasioned, by their exercise, damage for negligence may be recovered.

Thus despite the fact that the commission of an act or exercise of some power has been authorised or conferred by a statute, those who are responsible for the commission of the act in question or the exercise of power have to act reasonably and without negligence. The legislature may authorise either the doing of a particular thing irrespective of any injury caused to any person or it may simply accord permission for a particular thing to be done. In both these cases, statutory authority will be a good defence if there has been no negligence in doing of the thing. If the thing is done negligently and thereby injury is caused to any person or his property is damaged, action will lies.

If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is : What the tortious act committed by a public servant in discharge of statutory functions which are referable, and ultimately based on the delegation of sovereign powers of the State to such public servant ? If the answer is in the affirmative the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of any delegation, if any, sovereign power, an action for damages would lie.

In actions for tort against public officers, it is no defence that the tort was committed by order of a superior officer. The liability of the individual officer being sued is well recognised but the fact that he is acting under the orders of the superior officer is not sufficient, unless he is able to establish that the act itself is in pursuance of the lawful order under which protection can be claimed; and in the absence of an immunity clause, which is common in all legislation, which empower officers to interfere with the rights of private persons, the mere reliance on the oral order of a superior officer cannot exempt the individual officer from

liability for the illegal acts though they be done in good faith. **A I R 1956 Mad. 1381.**

A suit for damages lies against the Government for torts committed by its servant in connection with a private undertaking or an undertaking not in exercise of sovereign powers. **A I R 1957 M P 43.**

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## **CRIMINAL PROCEEDINGS:**

A complete Chapter has been incorporated under Pakistan Penal Codes. Chapter IX of PPC deals with offences by and relating to public servants. This Chapter deals with two classes of offences, of which one can be committed by public servants alone, and the other comprises offences which relate to public servants though they are not committed by them. The fact that transgression by a public servant may always be punished by dismissal from the public service explains the comparative leniency of some of the punishment provided by this Chapter and the absence of any notice of certain malpractice.

There are also certain other types of the offences committed by Public Servants, not included in Chapter IX but spread over in other parts of the Code such as offences falling under the following heads (a) extortion (S. 383, 388 and 389) (b) Criminal breach of Trust (S. 409) (c) forgery (S. 463, 464, 465, 468 and 477-A) of the Code.

Here we deal only the Sections relevant to the subject.

**"Section 166 - Public servant disobeying law, with intent to cause injury to any person :** Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

A wilful departure or disobedience from the directions of the law with the intention that such disobedience will cause injury to any person is punishable under this section. To prove the offence under this section, there must be a wilful disobedience of an express direction of the law. A mere breach of departmental administrative instructions or rules will not bring a public servant within the purview of this section. For prosecuting a public servant, sanction from appropriate authority is necessary. As such no Court can take cognizance of an offence under this section without obtaining sanction of the appropriate competent authority, since the offence under this section is triable under the provisions of the Pakistan Criminal Law Amendment Act, 1958.

**"Section 167 - Public servant framing an incorrect document with intent to cause injury :** Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or both."

This section deals with framing an incorrect document with intent to cause injury. The gist of the offence consists of an intention to cause injury to any person by a perversion of official duty. This section like the preceding Section 166 is intended to punish acts of official perversity and not those of mere incompetence. Those public servants who from their base or corrupt motives prostitute their office by preparing an incorrect document are punished under this section.

**A I R 1931 Patna 539**  
**A I R 1930 Lah. 92**

**"218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture :** Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both."

Section 218 deals with the intentional preparation of a false record with the object of saving or injuring any person or property. The correctness of records is of the highest importance to the State and to the public. The intention with which the public servant does the acts mentioned in the section is an essential ingredient of the offence punishable under it.

**Ingredients :** This section has three essentials :-

1. The offender must be a public servant charged with the preparation of a record or writing.
2. He must have framed that record or writing incorrectly.
3. He must have done so with intent to cause or knowing it to be likely that he will thereby
  - (a) cause loss or injury to the public or any person, or
  - (b) save any person from legal punishment, or
  - (c) save any property from forfeiture or other charge to which it is legally liable.

**"Section 219 - Public servant in judicial proceeding corruptly making report, etc., contrary to law :** Whoever being a public servant, corruptly

or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

This section deal with corrupt or malicious exercise of the power vested in a public servant for a particular purpose.

**'Maliciously'** : "Malice in its legal sense means a wrongful act, done intentionally, without just cause or excuse". A man acts maliciously when he wilfully and without lawful excuse does that which he knows will injure another person or property. The term 'maliciously' denotes wicked, perverse and incorrigible disposition. It means and implies an intention to do an act which is wrongful, to the detriment of another.

According to Sec. 197 of Cr.P.C. no court shall take cognizance of such offence except with the previous sanction, in case of a person employed in connection with the affairs of the Federation of the President, and in case of a person employed in connection with the affairs of the Province of the Governor of that Province.

Provisions of sanction of the President, the Governor of a Province or any other executive authority as mentioned in section 197, Cr.P.C. and section 6(5), Pakistan Criminal Law Amendment Act, 1958 being repugnant to Injunctions of Islam, Shariat Appellate Bench of Supreme Court in **PLD 1992 SC 72**, directed the President of Pakistan to take steps so that said provisions were suitably amended till 30<sup>th</sup> June, 1992 failing which these provisions of law would cease to have effect.

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## **DISCIPLINARY ACTION**

Govt. Servants (Efficiency and Discipline) Rules 1973 and Govt. Servants conduct Rules, 1964 deal with the matters relating to Efficiency, Discipline and Conduct in respect of Civil Servants of the Federation of Pakistan. The Grounds prescribed by Rules on which a Govt. servant can be penalized on any of the following:-

### **Grounds for penalty**

Where a Government servant, in the opinion of the authority;

- a) is inefficient or has ceased to be efficient; or
- b) is guilty of misconduct; or
- c) is corrupt, or may reasonably be considered corrupt because--
  - (i) he is, or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property disproportionate to his known sources of income; or
  - (ii) he has assumed a style of living beyond his ostensible means; or
  - (iii) he has a persistent reputation of being corrupt; or
- d) is engaged, or is reasonably suspected of being engaged in subversive activities.

**Misconduct** is a generic term and means "to conduct amiss, to mismanage, wrong and improper conduct, bad behavior, unlawful behavior or conduct." It includes malfeasance, misdemeanor, delinquency and offence. The term 'misconduct' does not necessarily imply corruption or criminal intent.

'Misconduct' implies some decree of mens rea on the part of the person concerned or, at any rate, a very grave decree of negligence, or serious failure to carry out instruction.

A transgression of some established and definite rules, violation of definite law, a forbidden act amounts to misconduct.

To do an act not permitted by law to do is also misconduct.

Misapplication of law, abuse of lawful authority, abuse of process/procedure are also examples of misconduct.

Rule 26 of the Government Servants (conduct) Rules, 1964 further says no Government Servant shall indulge in favouritism, victimization and willful abuse of office. Departmental proceedings under Civil servants (E & D)Rules 1973 may be initiated against a person with any of the above mentioned allegations.

Section 4 of Govt. Servants (Efficiency & Discipline) Rules, 1973 provides the following major penalties which may be awarded to a Govt. servant if he found guilty of misconduct.

**3. Grounds for penalty.** Where a Government servant, in the opinion of the authority;

- (a) is inefficient or has ceased to be efficient; or
  - (b) is guilty of misconduct; or
  - (c) is corrupt, or may reasonably be considered corrupt because--
    - (i) he is, or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property is proportionate to his known sources of income; or
    - (ii) he has assumed a style of living beyond his ostensible means; or
    - (iii) he has a persistent reputation of being corrupt; or
  - (d) is engaged, or is reasonably suspected of being engaged in subversive activities.
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## **COMPLAINT TO OMBUDSMAN:**

The office of Wafaqi Mohtasib has been empowered to diagnose, investigate, redress and rectify injustice done to a person through mal-administration which includes.

A decision, process, recommendation, act of omission or commission which--

- (a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or
- (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
- (c) is based on irrelevant grounds; or
- (d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and

neglect inattention, delay, incompetence, inefficiency and inaptitude, in the administration or discharge of duties and responsibilities;

On the basis of all or any of the above-mentioned grounds/allegations a complaint may be filed by an aggrieved person in the office of Mohtasib, who may deal with the petition.

**Jurisdiction, functions and powers of the Mohtasib:** (1) The Mohtasib may on a complaint by any aggrieved person, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees:

**Procedure and evidence :** (1) A complaint shall be made on solemn affirmation or oath and in writing addressed to the Mohtasib by the person aggrieved or, in the case of his death, by his legal representative and may be lodged in person at the office or handed over to the Mohtasib in person or sent by any other means of communication to the office.

Where the Mohtasib proposes to conduct an investigation he shall issue to the principal officer of the Agency concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, a notice calling upon him to meet the allegations contained in the complaint, including rebuttal;

For the purposes of an investigation under this Order the Mohtasib may require any officer or member of the Agency concerned to furnish any

information or to produce any document which in the opinion of the Mohtasib is relevant and helpful in the conduct of the investigation, and there shall be obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation:

In any case where the Mohtasib decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.

If, after having consideration a matter, the Mohtasib is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the authority concerned.

**Recommendations for implementation :** (1) If, after having consideration a matter on his own motion, or on a complaint the Mohtasib is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the Agency concerned--

- (a) to consider the matter further;
- (b) to modify or cancel the decision, process, recommendation, act or omission;
- (c) to explain more fully the act or decision in question;
- (d) to take disciplinary action against any public servant of any Agency under the relevant laws applicable to him;
- (e) to dispose of the matter or case within a specified time;
- (f) to take action on his findings and recommendation to improve the working and efficiency of the Agency within a specified time; or
- (g) to take any other step specified by the Mohtasib.

**Reference by Mohtasib :** Where, during or after an inspection or an investigation, the Mohtasib is satisfied that any person is guilty of an allegations as referred to in clause (1) of Article 9, the Mohtasib may refer the case to the concerned authority for appropriate corrective or disciplinary authority shall inform the Mohtasib within thirty days of the receipt of reference of the action taken. If no information is received within this period, the Mohtasib may bring the matter to the notice of the President for such action as he may deem fit.

**Power to punish for contempt :** (1) The Mohtasib shall have the same powers, mutatis mutandis, as the Supreme Court has to punish any person for its contempt who--

- (a) abuses, interferes with, impedes, imperils, or obstructs the process of the Mohtasib in any way or disobeys any order of the Mohtasib;

- (b) scandalises te Mohtasib or otherwise does anything which tends to bring the Mohtasib, his staff or nominees or any person authorised by the Mohtasib in relation to his office, into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Mohtasib; or
- (d) does nay other thing which, by any other law, constitutes contempt of Court;

**Bar of jurisdiction :** No Court or other authority shall have jurisdiction--

- (1) to question the validity of any action taken or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order; or
  - (2) to grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib
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# **INCOME TAX ORDINANCE**

## **(NO.XXXI), 1979**

**By:**  
**Mohammad Naeem Shah**  
Advocate High Court,  
Lahore.

"Justice is not cloistered virtue ; She must be allowed to suffer the scrutiny and respectful even though out spoken comments of ordinary man."

*Lord Atkin*

*Ambard Vs. Att. -- Gen. Tinidad*

(1936) A.C. 322 (355)

All laws and Rules frame thereunder are derive from some basic Constitutional principles and these have to be in consonance with the Rule of law. The doctrine Rule of law as envisioned by A.V. Disci had predictioned that if sufficient attention to the law of the Constitution is not paid the institutions shall crumbled down from this doctrine of rule of law spring we need for the public authorities to act within the preview of the statute. The public functionaries who hold the positions of assessing officers and Commissioners in appeals and those who man the Income Tax Tribunals a fail to strictly act in accordance with law a great justice is likely to accrue in the Income tax assessees. I do not attribute any access of authority or lack of judicial discretion but I being an Advocate, I do feel that the Income tax laws are changing so rapidly through amendments in the statute, besides, issuance of Circulars and Notifications from time to time that even the Income Tax Practitioner are not abreast all the latest legal scenario and out of this confusion some wrong orders spring, which leads to multiplicity of litigation.

The quasi-judicial authorities conferred on the bearucrates within the ambit of the administrative laws makes them a Judge. Whereas they are the

Officers of the Income Tax Department and in fact act as Judge in their own cause, whereas the maxim of law "*Nemo jus sibi dicere potest (N. no one can establish law for himself)*" clearly forbid the bearucrates engaged in the administrative set up designed to recover the Government revenues can not act as arbitrator between their own arms and the objections of the assessee. It is in this situation that Income Tax Practitioner are required to protect the assessee and establish his Returns for which the latest position in law has to be warned in asleep but due to lack of availability of a comprehensive book on the Income tax laws the Advocates find themselves in a difficult situation.

In the wake of these situations which are often experienced by many Income Tax Practitioners including the author that I have adventure to compile this book with complete uptodate amendments made in the statute and have incorporated the references of reported cases laws through foot notes. Preliminary the sale of a compiling this book is to make it a concise treaties of the Income Tax laws so that it can be a ready-recknor for the Income Tax Practitioners, Advocates and the Assessing Officers and Income Tax Authorities.

I hope this book will may to be a useful companion for the members of the Bar and the Bench.

## **INTRODUCTION:**

Prior to the promulgation of Income Tax Ordinance 1979 there was an Income - Tax, Act. (XI), 1922, which was repealed with a view to consolidate and amend the law, relating to Income - tax and Super tax and it came into true on Ist July, 1979 and it has the Constitutional sanction through Article 270-A. Series of Amendments have been brought about which has changed the very complexion of the Ord. from time to time. Besides, Income Tax there are other associated statutes in field like Wealth Tax Act of 1963 and Rules of the two laws have been framed which provides for the procedure and processes.

This Income Tax Ord. 1979 is a comprehensive statute spread over 167 Sections divided into 14 Chapters. Besides it has 8 schedules.

### **COMPLAINT TO OMBUDSMAN:**

The office of Wafaqi Mohtasib has been empowered to diagnose, investigate, redress and rectify injustice done to a person through mal-administration which includes.

A decision, process, recommendation, act of omission or commission which--

- (a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or
- (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
- (c) is based on irrelevant grounds; or
- (d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and

neglect inattention, delay, incompetence, inefficiency and inaptitude, in the administration or discharge of duties and responsibilities;

On the basis of all or any of the above-mentioned grounds/allegations a complaint may be filed by an aggrieved person in the office of Mohtasib, who may deal with the petition.

**Jurisdiction, functions and powers of the Mohtasib:** (1) The Mohtasib may on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees:

Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matters which--

- (a) are sub-judice before a Court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or
- (b) relate to the external affairs of Pakistan or the relations or dealings of Pakistan with any foreign state or government; or

(c) relate to, or are connected with, the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.

(2) Notwithstanding anything contained in clause (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the Agency in which he is, or has been working in respect of any personal grievance relating to his service therein.

(3) For carrying out the objectives of this Order and, in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

(4) The Mohtasib may set up regional offices as, when and where required.

**Procedure and evidence :** (1) A complaint shall be made on solemn affirmation or oath and in writing addressed to the Mohtasib by the person aggrieved or, in the case of his death, by his legal representative and may be lodged in person at the office or handed over to the Mohtasib in person or sent by any other means of communication to the office.

(2) No anonymous or pseudonymous complaints shall be entertained.

(3) A complaint shall be made not later than three months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Mohtasib may conduct any investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which make it proper for him to do so.

(4) Where the Mohtasib proposes to conduct an investigation he shall issue to the principal officer of the Agency concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, a notice calling upon him to meet the allegations contained in the complaint, including rebuttal;

Provided that the Mohtasib may proceed with the investigation if no response to the notice is received by him from such principal officer or other person within thirty days of the receipt of the notice or within such longer period as may have been allowed by the Mohtasib.

(5) Every investigation shall be conducted in private, but the Mohtasib may adopt such procedure as he considers appropriate for such investigation and he may obtain information from such persons in such manner and make such inquiries as he thinks fit.

(6) A person shall be entitled to appear in person or be represented before the Mohtasib.

(7) The Mohtasib shall, in accordance with the rules made under this Order, pay expenses and allowances to any person who attends or furnishes information for the purposes of any investigation.

(8) The conduct of an investigation shall not affect any action taken by the Agency concerned, or any power or duty of that Agency to take further action with respect to any matter subject to the investigation.

(9) For the purposes of an investigation under this Order the Mohtasib may require any officer or member of the Agency concerned to furnish any information or to produce any document which in the opinion of the Mohtasib is relevant and helpful in the conduct of the investigation, and there shall be obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation:

Provided that the President may, in his discretion, on grounds of its being a State secret, allow claim of privilege with respect to any information or document.

(10) In any case where the Mohtasib decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.

(11) Save as provided in this Order, the Mohtasib shall regulate the procedure for the conduct of business or the exercise of powers under this Order.

If, after having consideration a matter, the Mohtasib is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the authority concerned.

**Recommendations for implementation :** (1) If, after having consideration a matter on his own motion, or on a complaint or on a reference by the President, the Federal Council or the National Assembly, or on a motion by the Supreme Court or a High Court, as the case may be, the Mohtasib is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the Agency concerned--

- (a) to consider the matter further;
- (b) to modify or cancel the decision, process, recommendation, act or omission;
- (c) to explain more fully the act or decision in question;

- (d) to take disciplinary action against any public servant of any Agency under the relevant laws applicable to him;
- (e) to dispose of the matter or case within a specified time;
- (f) to take action on his findings and recommendation to improve the working and efficiency of the Agency within a specified time; or
- (g) to take any other step specified by the Mohtasib.

The following further steps shall be taken for implementation of his recommendation.

If, after conducting an investigation, it appears to the Mohtasib that an injustice has been caused to the person aggrieved in consequence of mal-administration and that the injustice has not been or will not be remedied, he may, if he thinks fit, lay a special report on the case before the President.

If the Agency concerned does not comply with the recommendations of the Mohtasib or does not give reasons to the satisfaction of the Mohtasib for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be dealt with as hereinafter provided.

**Defiance of recommendations :** (1) If there is a "Defiance of Recommendations" by any public servant in any Agency with regard to the implementation of a recommendation given by the Mohtasib, the Mohtasib may refer the matter to the President who may, in his discretion, direct the Agency to implement the recommendation and inform the Mohtasib accordingly.

(2) In each instance of "Defiance of Recommendations" a report by the Mohtasib shall become a part of the personal file or Character Roll of the Public servant primarily responsible for the defiance:

Provided that the public servant concerned had been granted an opportunity to be heard in the matter.

**Reference by Mohtasib :** Where, during or after an inspection or an investigation, the Mohtasib is satisfied that any person is guilty of an allegations as referred to in clause (1) of Article 9, the Mohtasib may refer the case to the concerned authority for appropriate corrective or disciplinary authority shall inform the Mohtasib within thirty days of the receipt of reference of the action taken. If no information is received within this period, the Mohtasib may bring the matter to the notice of the President for such action as he may deem fit.

**Powers of the Mohtasib :** (1) The Mohtasib shall, for the purposes of this Order, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) receiving evidence on affidavits; and
- (d) issuing commission for the examination of witnesses.

If any Agency, public servant or other functionary fails to comply with a direction of the Mohtasib, he may, in addition to taking other actions under this Order, refer the matter to the appropriate authority for taking disciplinary action against the person who disregarded the direction of the Mohtasib.

If the Mohtasib has reason to believe that any public servant or other functionary has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by the Mohtasib.

The staff and the nominees of the Office may be commissioned by the Mohtasib to administer oaths for the purposes of this Order and to attest various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under this order without proof of the signature or seal or official character of such person.

**Power to enter and search any premises :** (1) The Mohtasib, or any member of the staff authorised in this behalf, may, for the purpose of making any inspection or investigation, enter any premises where the Mohtasib or, as the case may be, such member has reason to believe that any article, book of accounts, or any other documents relating to the subject-matter of inspection or investigation may be found, and may--

- (a) search such premises and inspect any article, book of accounts or other documents;
- (b) take extract or copies of such books of accounts and documents;
- (c) impound or seal such articles, books of accounts and documents; and
- (d) make an inventory of such articles, books of accounts and other documents found in such premises.

**Power to punish for contempt :** (1) The Mohtasib shall have the same powers, mutatis mutandis, as the Supreme Court has to punish any person for its contempt who--

- (a) abuses, interferes with, impedes, imperils, or obstructs the process of the Mohtasib in any way or disobeys any order of the Mohtasib;

- (b) scandalises te Mohtasib or otherwise does anything which tends to bring the Mohtasib, his staff or nominees or any person authorised by the Mohtasib in relation to his office, into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Mohtasib; or
- (d) does nay other thing which, by any other law, constitutes contempt of Court;

Provided that fair comments made in good faith and in public interest on the working of the Mohtasib or any of his staff, or on the final report of the Mohtasib after the completion of the investigation shall not constitute contempt of the Mohtasib or his Office.

(2) Any person sentenced under clause (1) may, notwithstanding anything herein contained, within thirty days of the passing of the order, appeal to the Supreme Court.

(3) Nothing in this Article takes away from the power of the President to grant pardon, reprieve or respite and to remit, suspend or commute any sentence passed by any Court Tribunal or other authority.

**Inspection Team :** (1) The Mohtasib may constitute an Inspection Team for the performance of any of the functions of the Mohtasib.

(2) An Inspection Team shall consist of one or more members of the staff and shall be assisted by such other person or persons as the Mohtasib may consider necessary.

(3) An Inspection Team shall exercise such of the powers of the Mohtasib as he may specify by order in writing and every report of the Inspection Team shall first be submitted to the Mohtasib with its recommendations for appropriate action.

**Bar of jurisdiction :** No Court or other authority shall have jurisdiction--

- (3) to question the validity of any action taken or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order; or
- (4) to grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib



It is a matter of great pleasure and honour for me to be here and to address this august house. The topic of the day is "DELIBERATE MISAPPLICATION OF LAW/MISUSE OF POWER. REMEDIES AVAILABLE UNDER THE LAW". This is not a chance that I have selected this topic and prepared a paper. Rather it is the result of that agony which we all are facing and it is on the rise day by day.

A statutory functionary is required to act within the four corners of law as all the legislation is sub-servient to the Constitution. Any deviation from the principles of natural justice, equity, good conscience or the principle of audi altrum partem, any misapplication of law/misuse of power may erode the Constitutional guarantees as envisaged in Chapter 2 of the Constitution.

Unfortunately most of the statutory functionaries have failed to act as quasi-judicial officers as their approach is to extract more, more and more revenue, probably to meet their budget targets which are pre-determined. No reason, logic, law or reference of law prevails upon them.

One could not be left at the mercy of a statutory authority. It is the duty of the Courts and the Bars to ensure that these authorities do not act beyond their powers.

For removal of difficulties being faced by the public and all of us, a careful study of the law is required. In the course of this lecture we shall be concerned with various matters of redress open to an individual when he considers himself to be an aggrieved person in any way by an administrative action.

### **Voluntary winding up**

**Ss. 484/490 – Voluntary winding up (Members) – Ordinary Resolution.**

**RESOLVED** that pursuant to Section 484(1)(a) of the Companies Act, 1956, the purpose for which the company was formed having been fulfilled, the company be wound up voluntarily and that the secretary be instructed to give notice of this resolution by advertisement in the official gazette and also in two newspapers, one in English and one in vernacular language circulating in the district of the registered office of the company within fourteen days from this date.

**RESOLVED** Further that, pursuant to Section 490(1) of the Companies Act, 1956, Mr. ABC of the firm M/s. ABC & Company, the solicitors, be and is hereby appointed as the liquidator for the purpose of such winding up at a remuneration to be fixed by the Board of Directors and that the secretary be instructed to give a notice of such appointment to the Registrar of Companies.