

IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

PRESENT

MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE MUHAMMAD JEHangIR ARSHAD
MR. JUSTICE SHEIKH AHMAD FAROOQ

SHARIAT PETITION NO.24/I OF 1990

Dr. Mahmood-ur-Rehman Faisal, Chairman, Tehrik-e-Inqilab Islam, Faisal Clinic, 374/12/A, Tench Bhata, Rawalpindi. Vs. Government of Pakistan, through Secretary, Ministry of Justice, Law & Parliamentary Affairs, Islamabad etc.

SHARIAT PETITION NO.34/I OF 1990

Ziauddin Ahmad Shaikh, Honorary Social Worker, P.O.Box No.613, Lahore. Vs. Government of Pakistan.

SHARIAT PETITION NO.38/I OF 1990

Shaikh Muhammad Hanif, resident of Aziz Street, Bhimber Road, Gujrat. Vs. Government of Pakistan.

SHARIAT PETITION NO.44/I OF 1990

Allah Ditta son of Fateh Sher, resident of Mohallah Eidgah Junobi, Near Imam Bara, Jaffaria, Bhakkar. Vs. Government of Pakistan.

SHARIAT PETITION NO.45/I OF 1990

Raja Mohammad Afsar Khan of Dandot son of Raja Sattar Mohammad Khan, resident of House No.287, Sector E-7, Islamabad. Vs. Federation of Pakistan, through Secretary, Ministry of Justice & Parliamentary Affairs, Islamabad.

SHARIAT REFERENCE NO.1/I OF 1991

Administrator General Zakat, Central Zakat Administration, (Finance Division), Islamabad through M.A. Beg, Deputy Administrator General Zakat. Vs. Mohammad Arif son of Mohammad Mansabdar Khan, resident of House No.461, Chirah Road, Muslim Town, Rawalpindi etc.

SHARIAT REFERENCE NO.2/I OF 1991

Administrator General Zakat, Central Zakat Administration, (Finance Division), Islamabad through M.A. Beg, Deputy Administrator General Zakat/Additional Secretary. Vs. Farzana Asar daughter of Mohammad Asar Hussain, resident of 2/3-P/PECHS, Karachi, 29 etc.

SHARIAT PETITION NO.1/K OF 1993

Malik Muhammad Usman son of Molvi Shah Muhammad Late, resident of House No. AS/4, Street No.3, Block-B, (Opposite Masjid) National Cement Housing Society, Rashid Minhas Road, Karachi No.47. Vs. Government of Pakistan.

SHARIAT PETITION NO.2/K OF 1993

Malik Muhammad Usman son of Molvi Shah Vs. Government of Pakistan.
Muhammad Late, resident of House No.
AS/4, Street No.3, Block-B, (Opposite
Masjid) National Cement Housing Society,
Rashid Minhas Road, Karachi No.47.

SHARIAT PETITION NO.9/I OF 1994

Dr. Mahmood-ur-Rehman Faisal, Chairman, Vs. Government of Pakistan, through
Tehrik-e-Inqilab Islam, Faisal Clinic, Secretary, Ministry of Law & Justice,
374/12/A, Tench Road, Rawalpindi. Central Secretariat, Islamabad etc.

SHARIAT MISC. NO.14/I OF 1996

Muhammad Jan, Watch-Maker, Toopanwala Vs. The State
Bazar, Dera Ismail Khan.

For the Petitioners	.....	Nemo (In all the petitions)
For Federal Government	.....	Mr. M. Nazir Abbasi, Standing Counsel for Federal Government
For Province of Punjab	.....	Ch. Saleem Murtaza Mughal, Assistant Advocate General, Punjab
For Province of Sindh	.....	Mr. Muhammad Kasim Mirjaat, Addl. Advocate General, Sindh
For Province of Balochistan	.....	Mr. Muhammad Azam Khan, Addl. Advocate General, Balochistan
For Province of K.P.K.	.....	Mr. Aziz-ur-Rehman, Advocate
Amicus Curiae	.....	Barrister Feroz Jamal Shah Kakakhel
For Administrator-General Zakat	.....	Dr. Raja Muhammad Hanif, Deputy Administrator General, Zakat, Islamabad.
Date of Institution	25.06.1990, 08.07.1990, 10.07.1990, 23.07.1990, 26.07.1990, 03.06.1991, 03.06.1991, 09.03.1993, 09.03.1993, 09.03.1994 & 18.02.1996 respectively.
Date of hearing	20.11.2012
Date of decision	20.11.2012 ✓

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JUDGMENT:

JUSTICE SHAHZADO SHAIKH, J.- Initially, the following six Shariat Petitions were filed before this Court wherein the petitioners challenged different provisions of the Zakat and Ushr Ordinance, 1980:-

i) Petitioner Dr. Mehmood-ur-Rehman Faisal has filed Shariat Petition No.24/I/1990 whereby he challenged Sub-section (3) of Section 1 of the Zakat and Ushr Ordinance, 1980 as well as its Provisos because according to him these are against the Injunctions of Islam.

ii) Petitioner Ziauddin Ahmad Shaikh has filed Shariat Petition No.34/I/1990 wherein he has stated that the deduction of Zakat on the amount of interest is *haram*. He prayed that the Zakat and Ushr Ordinance, 1980 may be declared as repugnant to the Injunctions of Islam.

iii) Petitioner Sh. Muhammad Hanif has filed Shariat Petition No.38/I/1990 whereby he has challenged the Zakat and Ushr Ordinance, 1980 by raising the following points:

“i) As per Zakat and Ushr Ordinance 1980, it is stated that on the production of documentary proof by a person that:-

a) he is not a Muslim

b) he is not a citizen of Pakistan;

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c) Zakat has been deducted more than the Zakat to be deducted in the light of the Ordinance;

the deducted Zakat will be refunded.

From the above it is clearly evident that the Zakat "An Important *Rukan* of Islam" will only be implemented over the Pakistani Muslims whereas a foreigner Muslim living in the territory of Pakistan has been exempted from this Ordinance."

ii) Definition of *Sahib-e-Nisab* is not clear in the Ordinance. This Ordinance shows that the *Sahib-e-Nisab* is a person, who pays the Zakat. There must be mentioned the financial position of a person possessing minimum currency and other moveable/immovable property who will be announced/declared as a *Sahib-i-Nisab* for the purpose of Zakat deduction.

iii) As per Ordinance, every Pakistani Muslim is bound to pay the Zakat to the Government @ 2½% of his possessed currency kept in the Banks only. But at the time of the implementation of the said Ordinance, a few anomalies/exemptions are announced by the Government which are as under:-

Anomalies/Discrepancies:

1. The persons belonging to different fiqah such as Fiqah Jafria, Malki, Shafi have been exempted from the Zakat Ordinance. All such persons are required to

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submit an affidavit to the Government in support of their affiliation with the said Fiqah.

2. Zakat is being deducted from the amount kept in the Saving Bank Account and Fixed Deposit whereas all the amounts kept in the Current Bank Account have been exempted which is not understood.
3. Compulsory deduction as G.P.Fund made from the salary of the Government employees on the monthly basis has also not been spared.

In case of Saving Bank Account and G.P.Fund Account, every one is aware of the fact that on one side, the Government gives the interest to all the Account Holders of the above accounts and on the other side, 2½% zakat is deducted. This amalgamation of the interest and Zakat in an Islamic State is very much astonishing and not understood.”

iv) Afzal Javed had filed Shariat Petition No.40/I/990 whereby he challenged the Zakat and Ushr Ordinance,1980 by raising the following points:

- i) The nisab of Zakat Rs.3,000/- is repugnant to the Injunctions of Islam because the cost of 7½ tola gold is Rs.25,000/-;
- ii) Zakat is deducted from the balance on 1st day of Ramzan and not on deposit kept more than one year.
- iii) In some cases Zakat is deducted twice in a year. ✓

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- iv) Zakat is deducted on 1st Ramzan even though the person may be under debt.
- v) Zakat is not deducted on the current account.

v) Petitioner Allah Ditta has filed Shariat Petition No.44/I/1990 wherein he stated that on 06.04.1988 he purchased Khaas Deposit Certificate (K.D.C) and on completion of two years on 06.04.1990 when he approached the concerned bank to receive the profit, he was informed that three times Zakat was deducted on the said certificates during the two years because the month of Ramzan came three times during the said two years.

vi) Petitioner Raja Muhammad Afsar Khan has filed Shariat Petition No.45/I/1990 whereby he challenged certain provisions of the Zakat and Ushr Ordinance, 1980 stating that its following sections and provisions are against the Injunctions of Islam as embodied in the Holy Quran and Sunnah:-

(i) Section 3 (provision)

Provided that no Zakat or Ushr shall be charged or collected on compulsory basis in respect of the assets or the produce of a person who not less than thirty days preceding the Valuation Date in the case of Zakat and at any time before the Valuation Date in the case of Ushr, files with the Deducting Agency, or with the Local

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Committee in the case of Ushr, a declaration or an attested copy thereof, in the prescribed form, sworn by him before a magistrate, an Oath Commissioner, a notary public, or any other person authorized to administer oath, in the presence of two witnesses who identify him, to the effect that he is a Muslim and a follower of one of the recognized fiqhs, which he shall specify in the declaration, and that his faith and the said fiqh do not oblige him to pay the whole or any part of Zakat or Ushr in the manner laid down in this Ordinance.

Provided further that, where for any reason Zakat or Ushr is collected on compulsory basis from such a person and he does not wish to leave it in the Zakat fund as Sadaqah or Khairat in the name of Allah as a manifestation of the unity of the Ummah and claims refund, on the basis of a declaration as aforesaid filed by him within the period specified in the first proviso or within such further period as may be prescribed, the amount so collected shall be refunded to him in the prescribed manner.

Objection

This provision of section 3 may be clarified and made more comprehensive that it should be made obligatory for all the Muslims regardless of any Fiqh or Faith to pay the Zakat, Ushr or Khums according to their own fiqh or faith so that whole of the Muslim (Umah) may be united for this system according to the norms of Quran. ✓

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(ii) Section 13(4)

Zakat shall not be deducted in respect of the maturity value, survival benefit or surrender value of a life insurance policy payable in foreign currency if the premia were paid in foreign currency.

Objection

By mere payment in foreign currency, how comes the remission of Zakat? The Holy Prophet and As-haba had been collecting Zakat from the assets in any kinds or forms.

(iii) Section 18

Zakat shall not be deducted in respect of the assets of a person who is not a citizen of Pakistan.

Objection

Zakat is obligatory upon all the Muslims specially Pakistani Muslims who have dual nationality, should pay Zakat, Ushr or Khums of their assets not only in Pakistan but also in the other countries as well.

(iv) Section 19

Zakat not to be deducted in respect of certain companies etc: Zakat shall not be deducted in respect of the assets of a company, or other association of persons, or body of individuals, if more than fifty percent of the value of its shares is owned by or the beneficial ownership thereof is held in the name of individuals who are not Muslims or ✓

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not citizens of Pakistan: the fact to be established through a solemn affirmation in writing, together with the requisite details, to be given by its Principal Executive in Pakistan.

Objection

This section gives exemption to the shares of Muslim shareholders in a Company in which more than 50% of the value of its shares is owned by or the beneficial ownership thereof is held in the name of individuals who are not Muslims or not citizens of Pakistan.

Wajoob-e-Zakat has reference to the assets hence Zakat upto that extent of Muslim shareholders must be collected.

(v) First Schedule

1.	2.	3.	4.	5.
3.	Fixed Deposit Receipts and Accounts and similar receipts & accounts (excluding encashment / Foreign currency receipts & accounts) and certificates (e.g. Khas, Deposit Certificates) by whatever name described, issued by the banks operating in Pakistan, post offices, National Savings Centres and financial institutions, on which return is receivable by the holder periodically or is received earlier than			The date on which the first return is paid, or the date of redemption / withdrawal whichever be earlier in the zakat year.

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maturity or withdrawal.

- | | |
|---|--|
| 4. Savings/deposit certificate (e.g. Defense Savings certificates, National Deposit Certificates), receipts and accounts by whatever name described, issued or kept by the banks operating in Pakistan, post offices, National Savings Centres, financial institutions, [companies and statutory corporations], on which return is [receivable and] is received, by the holder, only on maturity or encashment. | The date on which the maturity value is paid, or of encashment/withdrawal. |
|---|--|

Objection

The deduction date of the assets in these Columns provides that the Zakat would be deducted on the date on which the first return is paid on date of withdrawal or date of maturity. While in Islam the Zakat becomes payable on the date when one year has passed over the assets.

(vi) Second Schedule of the Ordinance

(S. No.3.4.6.7 & 12)

The second schedule of the Ordinance provides for the assets not subjected to compulsory Zakat deduction but Zakat is payable by every Sahib-e-Nisab.

In Islam no assets are exempted from compulsory deduction of Zakat especially when they belong to Amwal-e-Batena. Hence in the items/assets listed at serial No.3, 4, 6, 7 & 12 (which are Amwal-e-Batena) ✓

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Zakat must be compulsorily deducted otherwise a lot of Zakat money which is the right of the poor would be avoided.

2. On 13.01.1991, these petitions were dismissed by this Court vide judgment dated 13.01.1991 (reported as PLD 1991 FSC 35), with observations that since the Zakat and Ushr Ordinance of 1980, fell within the definition of Muslim Personal Law, therefore, same was outside the jurisdiction of the Federal Shariat Court.

3. The above-mentioned judgment was challenged before the Hon'ble Supreme Court through Shariat Appeal No.1/1991 titled Dr. Mahmood-ur-Rehman Faisal Vs. Government of Pakistan, and the Hon'ble Supreme Court vide its judgment dated 13.06.1993 (reported as PLD 1994 SC 607), remanded the case to this Court for adjudication afresh on merits, with the observations; "mere fact that a codified law or statute law applied to only Muslims population of the country, in our view, would not place it in the category of Muslim Personal Law as envisaged by Article 203-B (c) of the Constitution".

4. Following Petitions were remanded by the Honourable Supreme Court: ✓

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- (1) Shariat Petition No.24/I/1990
- (2) Shariat Petition No.34/I/1990,
- (3) Shariat Petition No.38/I/1990,
- (4) Shariat Petition No.40/I/1990,
- (5) Shariat Petition No.44/I/1990, and
- (6) Shariat Petition No.45/I/1990

5. In the meanwhile, the following Shariat matters were also filed before this Court:-

- 1) Shariat Reference No.1/I/1991
- (2) Shariat Reference No.2/I/1991,
- (3) Shariat Petition No.1/K/1993,
- (4) Shariat Petition No.2/K/1993,
- (5) Shariat Petition No.9/I/1994, and
- (6) Shariat Misc. No.14/I/1996.

The details are as under:-

i) The Administrator General Zakat, Zakat Administration (Finance Division) Islamabad has submitted two references under Section 1, Sub-Section (3A) of Zakat and Ushr Ordinance, 1980 (No.XVIII of 1980) which were registered in this Court as Shariat Reference No.1/I/1991 and Shariat Reference No.2/I/1991 wherein he stated "the respondents Mohammad Arif and Miss Farzana Asar had

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submitted a declaration to the effect that they are Muslims and followers of Fiqh Hanfia and claimed exemption from the compulsory deduction of Zakat on their accounts”.

ii) Petitioner Malik Muhammad Usman has filed two Shariat Petitions i.e. Shariat Petition No.1/K/1993 and Shariat Petition No.2/K/1993.

In Shariat Petition No.1/K/1993 he has challenged Schedule No.2 of the Zakat and Ushr Ordinance, 1980 and prayed that the Schedule No.2 may be included in Schedule No.1 of the Zakat and Ushr Ordinance, 1980 and the deduction/recovery of Zakat may be made compulsory on total assets and the existing Schedule No.2 may be declared against the Quran and Sunnah.

In Shariat Petition No.2/K/1993 he challenged Clause No. 1 (3) of Zakat and Ushr Ordinance, 1980 as repugnant to the Injunctions of Islam.

iii) Petitioner Dr. Mahmood-ur-Rehman Faisal has also filed Shariat Petition No.9/I/1994 whereby he challenged Subsections (viii), (xva), (xxiii a to g) of Section 2, Sections 3(1), 3(5), 8, 24, First Schedule and Second Schedule of the Zakat and Ushr Ordinance,

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1980. He also challenged Rules 6 and 8 of the Zakat (Transfer & Disbursement) Rules, 1980 and Rules (3(4), not correct) 18, 20, 23, 24-A and 25(1)(c) of the Zakat (Deduction and Refund) Rules, 1981.

iv) Muhammad Jan, applicant has submitted Sh. Misc. Application No.14/I/1996 on 09.02.1996 wherein he stated that some days before the month of Ramzan he received a draft of Rs.6,000/- from Saudia, which he deposited in his account and on the next day when he withdrew the amount from his account, he came to know that Zakat was deducted from the said amount, which is against the Shariah and law. He prayed for refund of amount which was deducted by the bank as Zakat.

6. It is pertinent to mention here that out of six Shariat Petitions, which were remanded to this Court by the Hon'ble Shariat Appellate Bench of Supreme Court, one Shariat Petition i.e. Shariat Petition No.40/I/1990 was disposed of as withdrawn vide this Court's Order No.12 dated 18.09.2001. Hence, now there remain the following eleven Shariat matters on the subject-matters for consideration:-

(1) Shariat Petition No.24/I/1990,

(2) Shariat Petition No.34/I/1990,

(3) Shariat Petition No.38/I/1990,

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Sh. Petition No.45/I of 1990
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- (4) Shariat Petition No.44/I/1990,
- (5) Shariat Petition No.45/I/1990
- (6) Shariat Reference No.1/I/1991,
- (7) Shariat Reference No.2/I/1991,
- (8) Shariat Petition No.1/K/1993,
- (9) Shariat Petition No.2/K/1993,
- (10) Shariat Petition No.9/I/1994, and
- (11) Shariat Misc. No.14/I/1996.

This single judgment will dispose of above-mentioned eleven Shariat matters, as the same relate to the Zakat and Ushr Ordinance, 1980.

7. In the Shariat petitions filed by Dr. Mahmood-ur-Rehman and others, the petitioners have raised the following matters:

- (1) The Nisab of Zakat as prescribed by the government, is Rs.3000 which is repugnant to the Islamic Injunctions because the cost of 7½ tolas of gold is Rs.25,000/-.
- (2) Zakat is deducted from the balance amount on 1st day of Ramadan and not on deposits kept for more than one year.
- (3) In some cases Zakat is deducted twice a year.
- (4) Zakat is deducted on 1st Ramadan even though the person may be in debt;

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- (5) Zakat is not deducted from the current account.
- (6) Zakat should be deducted from the value of commercial items and from all kinds of accounts in the bank;
- (7) Exemption given to the followers of recognized Fiqh is against the tenets of Islam and be withdrawn; (In the light of Sindh High Court and Supreme Court judgments, the right of exemption has been granted to the followers of Fiqh Hanafi also;)
- (8) Zakat Ordinance, 1980 is unconstitutional, a product of Martial Law, it should be nullified. The deduction of Zakat is to be made by Sahib-e-Nasab himself.

8. Zakat and Ushr Ordinance was promulgated in 1980. Subsequently, under subsection 3 of Section 1 of the Ordinance, a proviso was inserted to the effect that no Zakat and Ushr was to be charged from a person, who files a declaration in the prescribed manner that he is a Shiah Muslim and follower of Fiqha Jafaria and he was not obliged to pay Zakat and Ushr in the manner laid down in this Ordinance. On the suggestion of the Islamic Ideology Council, similar provision was also added in the said Ordinance by giving same exemption to the followers of other schools of thought like Hanafi. However, it was alleged that exemptions were not being allowed as envisaged.

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Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
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9. Dr. Safdar Mahmood, Administrator General, Zakat, Ministry of Religious Affairs, Zakat, Ushr and Minorities Affairs (Zakat & Ushr Wing), Islamabad submitted written statements/comments on 16.11.1999, which are as under:-

“Zakat and Ushr Ordinance, 1980 was promulgated and enforced in 1980. Sub-section 2 of Section 1 of the said Ordinance provides that it extends to the whole of Pakistan, but as regards payment and recovery of Zakat and Ushr applies only to Muslim Citizens of Pakistan and a Company, or other association of persons, or body of individuals, whether incorporated or not, majority of the shares is owned or the beneficial ownership of which is held by such Citizens.

2. Section 1 3(a) of the Zakat and Ushr Ordinance provides:-

(a) *“no Zakat or Ushr shall be charged or collected on compulsory basis in respect of the assets or the produce of a person who, not less than thirty days preceding the Valuation Date in the case of Zakat and at any time before the Valuation Date in the case of Ushr, files with the Deducting Agency, or with the Local Committee in the case of Ushr, a declaration, or an attested copy thereof, in the prescribed form, sworn by him before a magistrate, an Oath Commissioner, a notary public, or any other person authorized to*

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administer oath, in the presence of two witnesses who identify him, to the effect that he is a Muslim and a follower of one of the recognised fiqhs, which he shall specify in the declaration, and that his faith and the said fiqh do not oblige him to pay the whole or any part of Zakat or Ushr in the manner laid down this Ordinance”.

3. *Currently under this clause exemption is allowed to the followers of only one recognized fiqh who, according to their fiqh are not against the payment and deduction of Zakat. But actually they are not obliged to pay Zakat in the manner laid down in this Ordinance, if they file declaration (CZ-50) in prescribed form and within the prescribed time limit. So the contention of the petitioner is denied that on the basis of self proclaimed ideology, exemption from compulsory deduction of Zakat has been granted.*

4. *The First Schedule of the said Ordinance provides the details of assets liable to compulsory deduction of Zakat in accordance with Quran and Sunnah except those who are not sahib-e-nisab in terms of Islamic Shariah. As such challenging the provisions of Ordinance as repugnant to the Injunctions of Islam is uncalled for.*

5. *That in terms of Section 1(3A) of the Zakat and Ushr Ordinance, 1980 this Honourable Court is the competent and ultimate forum to determine the validity or invalidity of the*

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declaration filed by a person professing to follow any of the recognized fiqh for the purpose of claiming exemption in deduction of Zakat on the basis of faith and fiqh.”

10. The Assistant Secretary (E&L), Office of Administrator Zakat & Ushr, Punjab, Lahore vide No.2329/2007/Zakat/As(E&L) dated 13.06.2007 submitted para-wise comments on behalf of Secretary Zakat & Ushr Punjab, Lahore as under:-

“Provincial Zakat Administration has no concern with granting the exemption to a person who believes that deduction or recoveries effected from him in the manner laid down in Zakat and Ushr Ordinance, 1980 are not according to his beliefs. These exemptions/exceptions are granted by Federal Government.

It is submitted that validity of declaration for exemption from deduction of Zakat is to be determined by the Federal Shariat Court under Section 1(3A) of Zakat and Ushr Ordinance, 1980.

Provincial Zakat Administration is entrusted with duty of Disbursement/Distribution of the Zakat Fund. Recovery and deduction of Zakat is made by the Deducting Agencies as prescribed in 6 column of the First Schedule of Zakat and Ushr Ordinance, 1980.

11. The Staff Officer, Advocate General Punjab, Lahore vide No.4565 AG/SC/FSCB, dated 18.06.2007 submitted para-wise comments on ✓

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Sh. Petition No.34/I of 1990
Sh. Petition No.38/I of 1990
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Sh. Reference No.1/I of 1991
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behalf of the Advocate General Punjab, Lahore, which are reproduced as below:

- “1. That after careful studying of the petitions filed by different citizens of Pakistan before the Federal Shariat Court of Pakistan, it has transpired that no cogent and sound reasons with reference to the law of Islam have been given in the petitions. As per Quran and Sunnah, Zakat is mandatory to be collected from every Muslim who is considered as Sahib-e-Nisab.*
- 2. The sources of Islamic law and Quran, Sunnah, Qias, Ijmah and Ijtihad as more than fourteen and a half centuries have elapsed and with the passage of time the present set up for implementation of the mode of collection of Zakat is quite expedient. The same was also approved in PLD 1999 SC 476.*
- 3. As the Muslim Ummah has been divided into two different sects being followers of different Fiqhas. Main sects are Sunni and Shia and for this reason no illegality or irregularity is found in the present law of collection of Zakat. The deduction of Zakat from the Bank accounts is implemented to all Muslims except Shias and others, who also are not exempted from the payment of Zakat but they are allowed to distribute Zakat according to their own Fiqhas and they are allowed so in order to pay the Zakat in accordance with their own volition. As such the grounds of petitions in this respect are not countenance in the spirit of Islam. Hence, the procedure already adopted by*

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Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
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Government of Pakistan for collection of Zakat is proper and necessary and not to be disturbed being practicable and beneficial for the poor community of Pakistan.”

12. The Federation of Pakistan through Administrator-General Zakat, Ministry of Religious Affairs, Zakat, Ushr and Minorities Affairs, (Zakat and Ushr Wing), Islamabad, the Province of Punjab through Administrator, Zakat and Ushr, Punjab as well as the Advocate-General Punjab have submitted their comments. The Provinces of Sindh, K.P.K and Balochistan have adopted the comments submitted by the Federation of Pakistan.

13. In the replies/comments submitted by the Respondents mentioned in paras 9 to 11, following points have been raised:

- (i) Deduction/recovery of Zakat may be made compulsory on total assets and exemptions on basis of Fiqh are repugnant to the Injunctions of Islam; and
- (ii) Subsections (viii), (xva), (xxiii a to g) of Section 2, Sections 3(1), 3(5), 8, 24, First Schedule and Second Schedule of the Zakat and Ushr Ordinance, 1980, and Rules 6 and 8 of the Zakat (Transfer & Disbursement) Rules, 1980 and Rules 3(4), 18, 20, 23, 24-A and ✓

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Sh. Petition No.38/I of 1990
Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
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25(1)(c) of the Zakat (Deduction and Refund) Rules, 1981, are repugnant to the Injunctions of Islam.

(iii) Deduction of Zakat on the amount of interest is repugnant to the Injunctions of Islam.

(iv) Zakat already deducted is refundable on production of documentary proof by a person that:-

(a) he is not a Muslim;

(b) he is not a citizen of Pakistan, i.e., a foreigner Muslim living in the territory of Pakistan has been exempted,

(c) More Zakat than deductible has been deducted,

(v) Definition of *Sahib-i-Nisab* is not clear in the Ordinance.

This Ordinance simply shows that *Sahib-i-Nisab* is a person, who pays Zakat. But it doesn't mention financial position/possession of minimum currency/moveable/immovable property to declare a *Sahib-i-Nisab* for the purpose of Zakat deduction.

(vi) Zakat is deducted from Saving Bank Account and Fixed Deposits whereas Current Bank Accounts are exempted. ✓

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Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
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- (vii) G.P.Fund of Government employees has not been exempted.
- (viii) Three times Zakat deducted on deposit certificates in two years because the month of Ramzan came three times during the said two years.
- (ix) Zakat is not deducted in respect of the maturity/surrender value payable in foreign currency if the premia were paid in foreign currency.
- (x) Zakat is not deducted in respect of certain companies, etc., if more than fifty percent of its shares are owned/beneficial ownership is held by non-Muslims or foreigners.
- (xi) Zakat deducted on the date on which the first return is paid/date of withdrawal/date of maturity; while Zakat becomes payable on the date when one year has passed over the assets.
- (xii) Only a few days before the month of Ramzan amount deposited in account, but Zakat deducted. ✓

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Sh. Petition No.38/I of 1990
Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
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(xiii) whether Zakat and Ushr Ordinance is a Muslim Personal Law:,

14. We have examined whatever sketchy record/little assistance has been provided by the Federation and imprecise material has been brought on record by the Petitioners. We have also examined carefully the juristic and jurisprudential corpus of law in the light of the Injunctions of the Quran and the Sunnah of the Holy Prophet (Peace be upon him) within jurisdictional ambit of the Constitution and the law laid down by the Federal Shariat Court and the honourable apex Court.

15. It may be pertinent to refer here to some important judgments on the subject, delivered by the Honourable Sindh High Court and the Honourable Supreme Court:

16. In Miss Farzana Asar's case (PLD 1991 Karachi 335), the petitioner had requested to exempt the follower of Fiqh Hanafi also from compulsory deduction of Zakat who files declaration in this regard, as allowed under first proviso to section 3 of section 1 of Zakat and Ushr Ordinance, 1980. The Hon'ble Sindh High Court was pleased to hold:-

"We are, therefore, of the clear view that the respondents had no power or authority to declare

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as invalid or reject the declaration filed by any Hanfi Muslim, if it was in the prescribed form and filed within time. This jurisdiction being exclusively assigned by the Statute to Federal Shariat Court, the respondents' action of treating the petitioner's declaration as invalid and consequently refusing to mark her holdings of N.I.T. as Non-Deduction of Zakat Account is illegal, ultra-vires, of no effect and a clear violation of law. These are the reasons for our short order dated 26-3-1991 which is reproduced for the sake of convenience as under:----

“For reasons to be recorded, we allow this petition to the extent that we declare that no Zakat shall be charged or collected on compulsory basis in respect of assets of a person, who within the prescribed period files with the deducting agency a declaration in the prescribed form and sworn in the prescribed manner to the effect that he is a Muslim and follower of one of the recognized Fihs which he shall specify in the declaration and that his faith and the said Fiqh do not oblige him to pay the whole or any part of Zakat in the manner laid down in Zakat and Ushr ✓

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Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
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Ordinance, 1980 (Ordinance XVIII of 80).

Consequently we also declare that confidential directive dated 21st November / 7th March, 1983 from the Central Zakat and Ushr Administrator, Ministry of Finance, Government of Pakistan to the President National Bank of Pakistan / Trustee of N.I.T. as well as letter of N.I.T. dated 5-9-89 indicating that Muslims following Fiqh-e-Hanfi are not exempt from compulsory deduction of Zakat at Source are illegal, without lawful authority and of no effect. We, therefore, direct the respondents to accept the declaration of the petitioner and treat her holding of N.I.T. Units as non-deduction of Zakat Account."

17. Appeal i.e. Civil Appeal No.426 of 1992 against the said judgment dated 29.04.1991 of the Sindh High Court was preferred before the Hon'ble Supreme Court by the Federation of Pakistan through Secretary, Government of Pakistan, Finance Division, Islamabad, M/s. National Investment Trust & M/s National Bank of Pakistan, which was subsequently dismissed. (PLD 1999 SC 476). ✓

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Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
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18. The points raised by the Petitioners, summarized above, are being examined as under:

Exemptions,

Non-declaration of total financial position of Sahib-e-Nisab,

Exemption of Current Bank Account balances,

Legal Frame:

Subsections (viii), (xva), (xxiii a to g) of Section 2,

Sections 3(1), 3(5), 8, 24,

First Schedule and Second Schedule, Zakat and Ushr Ordinance, 1980,

Rules 6 and 8, Zakat (Transfer & Disbursement) Rules, 1980,

Rules 3(4), 18, 20, 23, 24-A, 25(1)(c), Zakat (Deduction and

Refund) Rules, 1981:

19. The Zakat and Ushr Ordinance, 1980, did not introduce the system of Zakat in its totality. Such a partial system, in its initial stages, had been further truncated, instead of being improved with consensus. Once it was debated as Muslim Personal Law, the exemptions were introduced, on the basis of different schools of interpretation of Fiqh (sects).

20. Furthermore, notwithstanding the above position, it is important to point out that 'exemptions' so allowed, as above, *do not mean that*

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SAHIB-E-Nisab has been exempted from payment of Zakat. Liability and duty for payment of Zakat, as prescribed under the Injunctions of the Holy Quran and the Sunnah of the Prophet (Peace be upon him) remains in force and intact, against the *Sahib-e-Nisab*. But the said exemption has limited implication/application only to the reference and extent of the relevant provisions of the Zakat and Ushr Ordinance, 1980. It, however, remains incumbent upon the *Sahib-e-Nisab* to discharge the liability and duty of payment of due Zakat, loyally and faithfully, under his own arrangements.

21. *Deduction of Zakat on amounts of interest:*

Position taken by the Respondents was that the Zakat is deducted from the Profit/Loss Accounts (PLS) and not interest-bearing accounts. This question shall, however, be finally examined separately by this Court, while examining the questions pertaining to nature and definition of *riba*.

22. *Refund of excess or undue amounts deducted as Zakat to non-Muslims and Foreigner:*

It is quite reasonable and apparently logical that all undue amounts deducted in excess must be refunded to the legitimate/legal owners of such amounts.

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Sh. Petition No.38/I of 1990
Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
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23. *G.P.Fund:*

G.P.Fund is also a saving, which is liable to deduction of Zakat.

24. *Three times Zakat deduction in two years as Ramzan occurred three times during two consecutive years:*

Apparently occurrence of Islamic month of Ramadhan has been mistakenly counted in a Solar Calendar instead of a Lunar, i.e. Zakat is applicable within Lunar Calendar.

25. *Zakat not deducted from maturity/surrender value payable in foreign currency if the premia were paid in foreign currency.*

Foreign Currency is not the local legal tender, i.e., the currency that the sovereign or legal jurisdiction has declared to be money or legal tender in the country. Historically, legal tender, i.e., currency, has been supported by some reserve, e.g., gold, silver, or Foreign Exchange, for its financial value. Most money is now fiat money, i.e., that which has been declared to be legal tender by a government and would not be regarded as such without government backing. Nothing else qualifies as local legal tender for exchange of goods and services or for effecting receipts and payments in the country. Dealings in Foreign Exchange are allowed under special arrangements in certain economic and financial segments. Zakat and Ushr Ordinance, 1980,

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covers a very limited segment in banking system using local legal tender.

However, it may also be noted that notwithstanding any technical complexities involved, the fact remains that the Zakat and Ushr Ordinance, 1980, does not reckon all wealth and assets on which Zakat is legitimately leviable under the Injunctions of the Quran and the Sunnah of the Holy Prophet (Peace be upon him).

26. *Zakat not deducted from companies with more than fifty percent of its shares owned by non-Muslims or foreigners,*

Majority share in a company shows character or nature of investment and its overall financial composition. Share of local Muslim investor could possibly be reckoned for levy of Zakat by him as the present system of Zakat does not comprehend all possible sources qualifying for levy of Zakat. It may be recalled that the Zakat Ordinance, 1980 has not introduced all comprehensive Zakat system in the country.

27. *Zakat deducted on maturity of investments and on 1st of Ramadhan:*

It is quite in conformity with Islamic practice that Zakat is levied on yield becoming mature/available, on a time line (i.e., 1st of Ramadhan) within a time frame (Lunar year). ✓

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Sh. Reference No.1/I of 1991
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28. *Whether Zakat and Ushr Ordinance is a Muslim Personal Law:*

The question whether the Zakat and Ushr Ordinance is a Muslim Personal Law or not, came up for consideration before this Court in Shariat Petition No.4/I of 1981 (Mian Khalid Rauf V President of Pakistan and another) reported in PLD 1982 FSC 237. A Full Bench of five learned Judges of this Court relying on the judgment of august Supreme Court in a case Federation of Pakistan V Mst. Farishta (PLD 1981 SC 120) held as under:

“Since the Zakat and Ushr Ordinance, 1980 applies exclusively to Muslim citizens of Pakistan as well as bodies corporate or incorporate having such citizens, it must fall within the definition of Muslim Personal Law under Article 203-B and should be treated to be immune from challenge before this Court.”

Earlier, the Honourable Supreme Court in Federation of Pakistan V Mst. Farishta PLD 1981 SC 120 had observed that:

“Muslim Personal Law in article 203-B (c) of the Constitution means such codified or legislated law which is being applied to Muslim citizen of Pakistan as or with the denomination Muslim to Muslim which governs their

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person as such and as distinct from General Law of the land which applied to every body.”

29. On 25.06.1990 Dr. Mahmood-ur-Rehman Faisal and others filed Shariat Petitions challenging a number of provisions of Zakat and Ushr Ordinance, 1980 being in clash with the Islamic Injunctions. On 13.01.1991, these petitions were dismissed and the Court was pleased to order that:

“On expiry of the period of 10 years, the fiscal laws have now come within the jurisdiction of this Court, but Muslim Personal Law still remains outside the pale of authority of this Court and so the Zakat and Ushr Ordinance, 1980, which falls within the definition of Muslim Personal Law, is outside the jurisdiction of this Court. For the reasons aforesaid, these petitions are dismissed in limine.” (PLD 1991 FSC 35).

30. The Shariat Appellate Bench of Supreme Court in appeal against the above cited decision of the Federal Shariat Court, reviewed the view taken in Mst. Farishta’s case and disagreeing therewith held that the *Federal Shariat Court has the jurisdiction to examine the provisions of all codified or statute law in the field of Muslim Personal Law which apply to the Muslims in general.* (PLD 1994 SC 607).

31. The present case (Shariat Petition No.24/I/1990, Shariat Petition No.34/I/1990, Shariat Petition No.38/I/1990, Shariat Petition No.40/I/1990, ✓

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Sh. Petition No.38/I of 1990
Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
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Shariat Petition No.44/I/1990 and Shariat Petition No.45/I/1990), vide Honourable Supreme Court Judgment dated 13.06.1993 passed in Shariat Appeal No.1 of 1991 titled Dr. Mahmood-ur-Rehman Faisal Vs. Government of Pakistan, reported in PLD 1994 SC 607, has been remanded to this Court for adjudication afresh on merits, in the following terms:

“In our view, the addition of explanation to Article 227(1) of the Constitution immediately after insertion of present Chapter 3-A in the Constitution was very significant. The Federal Shariat Court was established for the first time under the Constitutional mandate in pursuance of the provisions contained in Chapter 3-A, which became part of the Constitution on 27.05.1980. The jurisdiction of Federal Shariat Court was specified in Article 203-D (supra) after defining the word ‘Law’ in Article 203-B(c) (supra). The establishment of Federal Shariat Court in the Constitutional scheme was undoubtedly a part of the process of Islamization of laws. The addition of the explanation to Article 227(1) (supra) immediately after establishment of Federal Shariat Court and defining its jurisdiction indicated the scope of process of Islamization of laws. This explanation in our view also provided an insight to the real meaning of expression “Muslim Personal Law” used in defining ‘Law’ under Article 203-B of the Constitution. The explanation to Article 227(1) provides that while applying clause (1) of Article 227, which contains a command to bring all existing laws in conformity with the Injunctions of Islam and prohibits the legislature to enact

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any law in future repugnant to the Injunctions of Islam, the personal law of any Muslim sect, will be construed on the basis of interpretation of Quran and Sunnah by that sect. It needs no elaboration here that Muslim Ummah consists of several sects and each sect interprets Holy Quran and Sunnah of Holy Prophet (peace be upon him) in its own way and considers it as the personal law of that sect. This personal law of each sect of Muslims has been given full protection during the process of Islamization by adding the explanation to Article 227(1) of the Constitution. It was necessary to protect the personal law of each sect of Muslims based on the interpretation of Holy Quran and Sunnah of Holy Prophet (peace be upon him) by that sect as otherwise it would lead to unresolvable controversies and conflict between different sects of Muslim Ummah. To us, it appears that the Constitutional scheme of Islamization of laws intended to keep the personal law of each sect of Muslims outside the scope of scrutiny of Federal Shariat Court under Article 203-D of the Constitution. The expression "Muslim Personal Law" used in Article 203-B (c), therefore, in our view means the personal law of each sect of Muslims based on the interpretation of Quran and Sunnah by the sect. The expression "Muslim Personal Law" used in Article 203-B (c) (supra), therefore, will be limited in its meaning only to that part of personal law of each sect of Muslim which is based on the interpretation of Holy Quran and Sunnah of Holy Prophet (peace be upon him) by that sect. Therefore, a law which a particular sect of the Muslims, considers as its personal law based on its own

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interpretation of Holy Quran and Sunnah is excluded from being scrutinized by the Federal Shariat Court under Article 203-D of the Constitution as it would fall within the meaning of "Muslim Personal Law". All other codified or statute law which apply to the general body of the Muslims will not be immuned from scrutiny by the Federal Shariat Court in exercise of its power under Article 203-D of the Constitution. Mere fact that a codified law or a statute law applied to only Muslims population of the country, in our view, would not place it in the category of "Muslim Personal Law" envisaged by Article 203-B(c) of the Constitution.

In the case before us, the Federal Shariat Court refused to entertain the petitions of the petitioners on the ground that the Zakat and Ushr Ordinance being a codified law and applicable exclusively to the Muslim population of the country, fell in the category of "Muslim Personal Law" and therefore, it was outside the jurisdiction of Federal Shariat Court, to examine this statute under Article 203-D of the Constitution. As we have reached the conclusion that only by reasons of being a codified or statute law and applicable exclusively to the Muslim population of the country, a law would not fall in the category of "Muslim Personal Law" unless it is also shown to be the personal law of a particular sect of Muslims, based on the interpretation of Holy Quran and Sunnah by that sect, the Ordinance was not outside the scope of scrutiny of Federal Shariat Court under Article 203-D of the Constitution. We, accordingly, allow the appeal, set aside the order of

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Federal Shariat Court and remand the case with the direction to dispose of these petitions in accordance with the law. There will be no order as to costs.”

32. In view of the above judgment of apex Court of the Country, it is decided that the Zakat and Ushr Ordinance, 1980 is not a Muslim Personal Law and amenable to the jurisdiction of the Federal Shariat Court.

33. However, the matter regarding deduction of Zakat at source by the banks had been conclusively decided by the Hon'ble Supreme Court of Pakistan in the case of Federation of Pakistan Vs. Miss Farzana Asar reported in PLD 1999 SC p.476 whereby it has been declared as under:-

----“the proviso of sub section 3 of section 1 of the Zakat and Ushr Ordinance, 1980 does not make any distinction between any of the recognized Fiqhs and that a person can claim exemption from the deduction of Zakat-at-Source, in respect of Zakatable assets, if he file a declaration in the prescribed Form (CZ-50) in the manner prescribed in the proviso to the effect that he is a follower of the five recognized Fiqhs and his “Faith” and “Fiqah” do not oblige him to pay the whole or any part of “Zakat” in the manner as laid down in the Zakat and Ushr Ordinance, 1980-----.

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Sh. Petition No.44/I of 1990
Sh. Petition No.45/I of 1990
Sh. Reference No.1/I of 1991
Sh. Reference No.2/I of 1991
Sh. Petition No.1/K of 1993
Sh. Petition No.2/K of 1993
Sh. Petition No.9/I of 1994
Sh. Misc. No.14/I of 1996

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34. Before parting with this judgment, we would like to observe that during the hearing of these petitions, we have noticed that the present system of deduction and distribution of "Zakat" lacks confidence of public at large and as such, they tend to opt for exemptions on one ground or the other. Therefore, we would like to direct Ministries of Finance and Law in consultation with the Islamic Ideology Council of Pakistan as well as the Provincial Governments to take necessary steps, within the legal framework, in the light of Injunctions of the Quran and the Sunnah of the Prophet (P.B.U.H) to:-

(i). bring uniformity and clarity in the system of deduction of Zakat through banks and

(ii) ensure transparent distribution of Zakat strictly according to the Injunctions of the Quran and the Sunnah of the Prophet (Peace be upon him)

35. The upshot of the above discussion and observations is that the petitioners could not prove that the impugned provisions of the Zakat and Ushr Ordinance, 1980, are repugnant to the specific Injunctions of the

Sh.Petition No.24/I of 1990
Sh.Petition No.34/I of 1990
Sh.Petition No.38/I of 1990
Sh.Petition No.44/I of 1990
Sh.Petition No.45/I of 1990
Sh.Reference No.1/I of 1991
Sh.Reference No.2/I of 1991
Sh.Petition No.1/K of 1993
Sh.Petition No.2/K of 1993
Sh.Petition No.9/I of 1994
Sh.Misc.No.14/I of 1996

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Quran and the Sunnah of the Prophet (P.B.U.H). Therefore, we find no merit in these petitions and same are accordingly dismissed.

These are the reasons for our short order dated 20.11.2012.


Sd-

Sd


JUSTICE SHAHZADO SHAIKH

JUSTICE MUHAMMAD JEHANGIR ARSHAD

Sd/-


JUSTICE SHEIKH AHMAD FAROOQ

Dated, Islamabad, 7th January, 2013

Imran/*

Approved for Reporting

Sd/-


JUSTICE SHAHZADO SHAIKH