



ANNUAL REPORT 2018



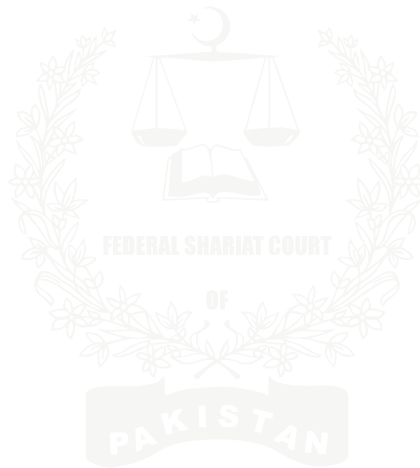
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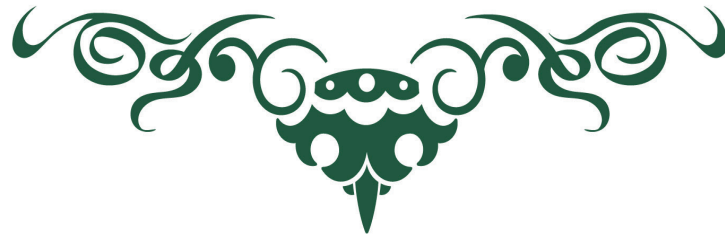
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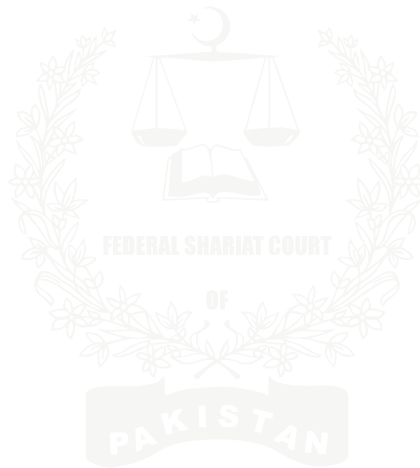


إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ
بِمَا أَرَاكَ اللَّهُ وَلَا تَكُنْ لِلْخَائِنِينَ خَصِيمًا

“Surely we have revealed the book with truth so that you may judge by means of that which Allah hath taught you”. (Al Qur’an, 4:105).

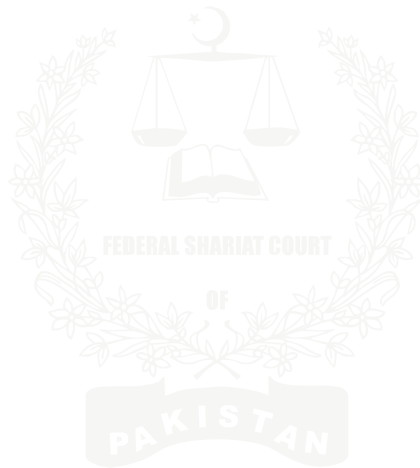
اے نبی ہم نے یہ کتاب حق کے ساتھ تمہاری طرف نازل کی ہے تاکہ جو راہ راست اللہ نے تمہیں دکھائی ہے اس کے مطابق لوگوں کے درمیان فیصلہ کرو۔ تم بددیانت لوگوں کی طرف سے جھگڑنے والے نہ بنو،





بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ







MR. JUSTICE SHEIKH NAJAM UL HASAN
HON'BLE CHIEF JUSTICE
FEDERAL SHARIAT COURT OF PAKISTAN

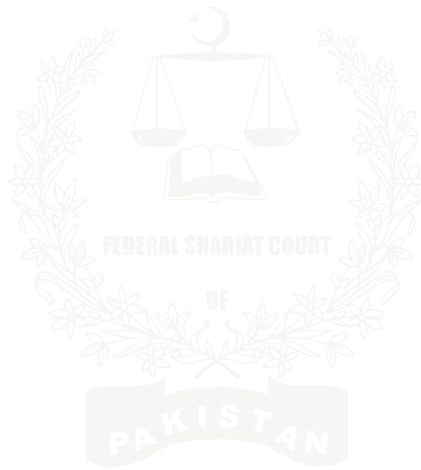


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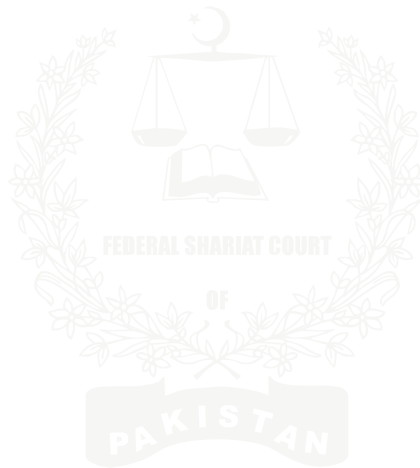
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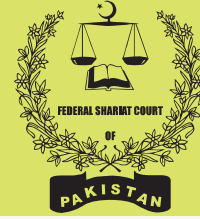
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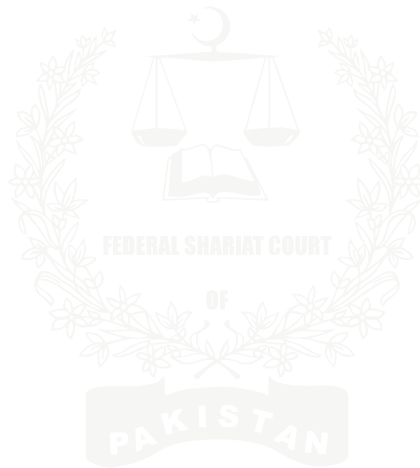
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FOREWORD



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

FOREWORD

The publication of Annual Report by now is a regular feature of the working of this Court which provides essential information about the composition, jurisdiction, functioning of the Court and its offices; important decisions pronounced during the period under report. It also exhibits the performance of the Court through statistical data/charts in a simple yet comprehensive manner and highlights the achievements made in the course of its working.

The role of Federal Shariat Court in the development of Islamic Laws is of immense importance. It has been vested with the Constitutional Powers to examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of The Holy Quran and the Sunnah of The Holy Prophet. There are number of Verses of Holy Quran and the traditions of the Holy Prophet which enjoin upon Muslims to do justice whatever the consequence may be. A tradition of the Holy Prophet Muhammad (ﷺ) reads as under:-

(عدل ساعة افضل من عبادة ستين سنة الترييب و الترييب)

“Administration of justice even for an hour is better than sixty years of additional worship”.

My first priority was to provide speedy justice to the helpless and wretched litigant public specifically those prisoners who are confined in jail since long. For this purpose, efforts were made to clear the backlog of the oldest criminal cases. By the Grace of Almighty Allah many of these cases have been disposed of and some are also underway.

During the year, this Court has delivered judgments on important issues pertaining to the examination of Laws inconformity with Injunctions of Islam as well as on criminal side. In the current annual report, efforts have been made to reflect the working of the Federal Shariat Court in an efficacious and transparent manner. Leading Judgments of this Court are reported in prominent journals of the country, a continuous source of knowledge, particularly for judicial officers, professional lawyers, law students and all other interested persons.

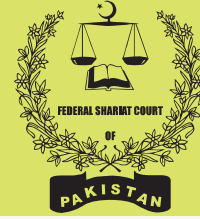
The period has observed a marked increase in the disposal of pending cases. In this period, 300 new cases were instituted in the Federal Shariat Court while disposing of 492 cases. It is of paramount importance to mention here that beside usual institution/filing of cases in the year 2018 additional 104 cases consisting of murder references, appeals, other criminal appeals and revisions were transferred from all the four High Courts after a letter was sent to them through Registrar of this Court indicating that trials in which charge was framed under Hudood Laws but conviction was made under other laws then the appeal lies in Federal Shariat Court. Copies of the judgment of this Court and that of the Hon'ble Supreme Court were also

sent and in response 104 matters mostly relating to old cases were received and entertained by this Court, the delay was condoned and after searching and procuring the record, most of these appeals have been decided on merits by the Full Bench and Division Bench of this Court at Principal Seat and at relevant Bench Registries.

The Court has also introduced SMS Alert System that electronically shares the cause lists and changes (if any) with concerned Advocates. We have also improved and upgraded the Federal Shariat Court Website in Bi-lingual i.e. English and Urdu which has been widely appreciated by the end-users. Case Flow Management has also been updated to facilitate the Advocates and Litigants to ascertain the latest progress of the case through Internet without visiting the Court. Furthermore, the revised detailed and comprehensive Federal Shariat Court (Terms and Conditions of Services of Staff) Service Rules, 1982 have been prepared and after approved by the Full Court sent to the Law & Justice Division for seeking approval of President of Islamic Republic of Pakistan as required under Article 208 of the Constitution of Islamic Republic of Pakistan.

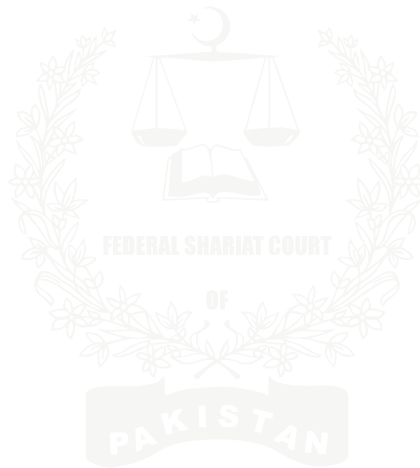
It is added that beside me my brother Judges are also determined to decide all pending matters before this Court by the mid of 2019. In the end, I sincerely thank my brother Judges and every one who played a part in the Institutional growth during the reporting year, commitment and hard work of Staff, the lawyers and jurist-consults for their assistance and support.

(Justice Sh. Najam ul Hasan)
Chief Justice



INTRODUCTION





INTRODUCTION

The Constitution of Islamic Republic of Pakistan guarantees the basic human rights and provides equal opportunities to all citizens. Islam is the State Religion and Islamization of Laws is the primary objectives of creation of Pakistan. Legislature, Judiciary and Executive enjoy independence and work in their domain under the guiding principles laid down in the Constitution. Islam also defined limits and relations of these organs with each other and strictly prohibits transgressions of limits. It also provides guiding rules that those values which are known as permanent fixture of the Islamic System are binding and applicable everywhere and all the times. It is an accepted and consensus oriented rule of Shari'ah that there is no *Ijtihad* where there is an explicit rule in the text.

The function of judiciary is to ensure that the rule of law is observed and actually enforced. This can be possible only when the judiciary enjoys complete independence. The judicial history of Islam indicates that competent judges were authorized to resolve all kinds of disputes. In the case of pressing need, they consulted the great jurists of that time and also sought guidance of the Caliph. They were bound to base their decisions on the Holy Injunctions of Islam.

In Islamic State, judiciary is the guardian of the Constitution. It may declare a statute to be invalid if it is repugnant to the Injunctions of Qur'an and Sunnah of the Holy Prophet (SAWS). The Prophet Muhammad (S.A.W.S) was the executive head, legislature and Chief Justice of the Islamic State. He did not consider himself to be above the law. He sought to establish this by his own acts and precepts and established an important rule of law that head of an Islamic State could be sued both as a private individual and also in respects of his public acts.

Federal Shariat Court is a unique court in judicial history of the World exercising jurisdiction of examination of laws in the light of Islamic injunctions. If these Laws are declared repugnant to the injunctions of Islam, the concerned authorities are bound to amend the said law according to the directions of the court within the specified time period.

In 1979, Shari'at Benches were constituted in High Courts and Shari'at Appellate Bench in the Supreme Court of Pakistan. A Constitution Amendment for this purpose was promulgated to take effect on 10 February 1979. These Benches were empowered to strike down existing as well as future laws, with the exception of the Constitution, Muslim personal law, laws relating to the procedure of any Court or tribunal, fiscal law for a period of ten years if these were repugnant to the injunctions of Islam.

On May 26, 1980, the four Shari'at Benches of High Courts were replaced by establishing a Federal Shari'at Court at the Capital of Pakistan Islamabad. This Court is composed of Eight Muslim Judges, Five Regular Judges and Three 'Ulema. The Federal Shari'at Court could examine and decide the question of whether or not any law or provision of law is repugnant to the injunctions of Islam. It is also vested with the powers of hearing appeals or revisions against the decision passed by any criminal Court in relation to any law relating to the enforcement of *Hudood*. The Federal Shari'at Court has been given power to undertake the examination of any matter *Suo Moto*, with a view to seeing whether or not it is in conformity with the Qur'an and Sunnah. Federal Shariat Court, in exercise of powers conferred by Article 203-J of the Constitution has also made Federal Shariat Court (Procedure) rules 1981.

In the beginning of the judicial year 2018 there were only three Judges including chief justice. His Excellency the President of Pakistan on the recommendation of Judicial Commission and Parliamentary Committee appointed two new Judges Hon. Justice Syed Muhammad Farooq Shah from the province of Sindh and Hon. Justice Shaukat 'Ali Rakhshani

from the province of Baluchistan as Judges of this Hon. Court for a period of three years. The Hon. Chief Justice Mr. Justice Sh. Najam Ul Hasan administered oath to both of them on 9th February 2018.

The administrative work of the Superior Courts is controlled and supervised by the Registrars, Deputy Registrars, Assistant Registrars and Superintendents. A distinctive feature of the Federal Shariat Court in terms of administrative work, however, is the establishment of full-fledged Research Branch. The Original Jurisdiction of the Federal Shariat Court is to examine any law, provision of law, or custom or usage having the force of law, in the light of the Holy Qur'an and the Sunnah of the Holy Prophet (SAWS). During the course of examination of these laws, modern issues are placed before the court for adjudication, issues that have usually not been discussed by the earlier jurists. This entails, besides the prescribed requirement of deriving arguments from the Holy Qur'an and the Sunnah of the Holy Prophet (SAWS), thorough research based mainly on the original sources of Islamic law and to ensure the process of Islamisation of laws, the establishment of full-fledged research branch was the cry of the hours.

As a Constitutional requirement, the Court also maintains a list of Jurisconsults comprising prominent 'Ulema of the Country who represent the various schools of thought. The names of the jurisconsults, with respect to a particular petition, are suggested by the Senior Advisor for final approval by the Hon. Chief Justice. In short, the Research Branch remains in touch with the Shari'at Petitions right from its registration in the Court up to its final disposal.

The Federal Shari'at Court examined a large number of laws with a view to ascertain whether and to what extent these laws are repugnant to the injunctions of Islam. During the current year on January 1, 2018, one hundred and ninety Shariat Petitions were pending for hearing; seventy two new Shariat Petitions were instituted while one hundred and thirty eight were disposed. On 31 December 2018, the balance was one hundred and twenty four Shariat Petitions.

During the current year a total number of Criminal matters (Appeals, References and Suo Moto notices) pending were three hundred and seventy seven. Two hundred and twenty eight new appeals/references were instituted in the principal seat Islamabad while thirty three in bench registries. The Hon. Court disposed of three hundred and fifty four while the balance on 31st December 2018 was two hundred and fifty one.

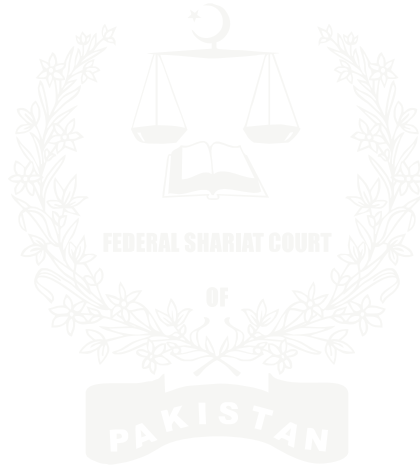
Under article 203-F of the Constitution, appeal against the judgments passed by the Federal Shari'at Court can be filed before the Supreme Court of Pakistan. A Special Bench Shari'at Appellate Bench of the Supreme Court shall hear this appeal. The Bench shall consist of three Muslim Judges of the said Court together with two 'Ulema Judges.

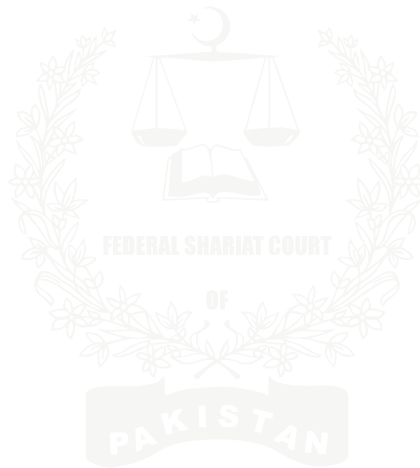
After promulgation of the Protection of Woman Act 2006, the appellate and revisional jurisdiction of Federal Shariat Court was curtailed and the vast jurisdiction automatically shifted to High Courts. And hence backlog of cases in High Courts increased day by day. If jurisdiction of this Court is extended or at least restored to its previous position, it will be beneficial to the general public and particularly to the judiciary itself. The backlog in High Courts will be decreased and speedy justice will be provided to all.

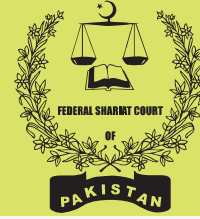
It is to be remembered that during the reporting year many developments in Federal Shariat Court took place under the patronage of the Hon. Chief Justice Sh. Najam ul Hasan. Arabic portion of library shifted to the second floor and hence all the three portions are now gathered in one floor to facilitate readers. Office and a reading room with all facilities for Hon.

retired judges are also established. Renovation and repair of the main building and rest house was the keen interest of Hon. Chief justice.

The Federal Shariat Court played important role for the development of the legal system of the Country in the light of Islamic Injunctions and has delivered important judgments which protected and preserved rights of society in general and of individuals in particular. These judgments can also be taken as guiding principles for the whole world and particularly for the Muslim Ummah. May Allah the Exalted shower His blessing upon us.

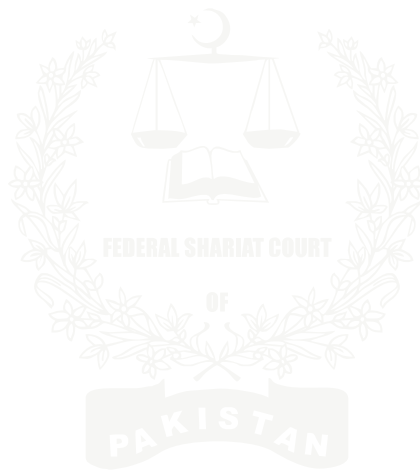






PROFILE OF HON'BLE CHIEF JUSTICE & HON'BLE JUDGES







MR. JUSTICE SHEIKH NAJAM UL HASAN
Chief Justice Federal Shariat Court of Pakistan

Date of Assumption of Office : 15-05-2017

Hon'ble Mr. Justice Sh. Najam ul Hasan was born on 15.3.1952 at Lahore. His father was a prominent lawyer but unfortunately he died young when His Lordship was only 15 years old. Hon'ble Mr. Justice Sh. Najam ul Hasan after passing matriculation from Govt. Pilot High School, Lahore, graduated from F. C. College, Lahore and then passed his LL.B. Examination from Punjab University Lahore. He was enrolled as Advocate on 19.12.1977 and then Advocate of High Court on 21.1.1980. He joined the Law Chamber of Khawaja Sultan Ahmad, Senior Advocate Supreme Court of Pakistan, conducted and assisted in many important legal matters and trials. He started his own independent Law Chamber. He was enrolled as Advocate of the Supreme Court on 12.3.2003. He independently conducted hundreds of murder trials as well as other Criminal Cases of important nature in different Districts, Murder References, Criminal Appeals and Constitutional matters in High Court and Supreme Court of Pakistan. He appeared as counsel in many cases of Federal Shariat Court.

He remained Standing Counsel for WAPDA for many years. He also provided legal advice to different notable Companies like Philips Electrical Company, Kanor Industries Dawood Group of Industries, Kakasheen Industries, Best Fruit Juices and many other companies for many years.

Also conducted important cases as Advocate in A.T.A. Courts, C.N.S.A. Courts, Accountability Courts, Tribunals and Appellate Tribunals.

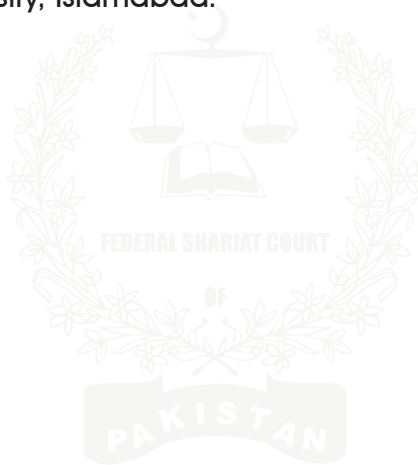
His Lordship was purely a professional lawyer having no affiliation with any Group or Party and has unblemished record of thirty five years in legal field. He was elevated as Judge of the Lahore High Court on 15.9.2009.

After elevation to the Bench of Lahore High Court, His Lordship was appointed as Chairman of the Punjab Bar Council Tribunal, Lahore. He worked as Election Tribunal, Punjab and in this capacity decided many important cases. He remained Member of Board of Governors and Member Board of Trustees, National College of Arts Lahore for three years and has attended meetings of the Board and rendered legal opinions for betterment of the College. He was nominated by the Government of Pakistan as Judge, Special Appellate Court for the Province of Punjab under the Prevention of Smuggling Act, 1977 and remained as Administrative Judge of the Accountability

Courts of Punjab, Special Courts (Central), Anti-Corruption Courts, Courts under the Control of Narcotics Substance Act, 1997 and the Courts under Customs Act, 1969. His lordship also remained Senior Judge at Bahawalpur and Multan Benches of Lahore High Court for more than a year. He remained Member of Administrative Committee of Lahore High Court for nearly three years and was nominated as Senior Puisne Judge and as such handled important administrative matters. He was appointed Acting Chief Justice of the Lahore High Court. He remained as Member Administrative Committee of Punjab Judicial Academy. After retirement from the Lahore High Court Lahore on 14.3.2014 he was appointed as Chairperson of the Punjab Environmental Tribunal wherefrom His Lordship resigned as he was appointed as Judge Federal Shariat Court.

He assumed the office as Judge of Federal Shariat Court on 08.8.2014 and elevated as Chief Justice, Federal Shariat Court of Pakistan on 15.05.2017.

As Chief Justice, Federal Shariat Court, he is Ex-Officio Member, National Judicial (Policy Making) Committee, Member, Law & Justice Commission of Pakistan, Member, Advisory Board of Al-Mizan Foundation, Member, Administration Committee of Al-Mizan Foundation, Member, Board of Governors, Board of Trustees and Selection Board of the International Islamic University, Islamabad.





MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN

Alim Judge Federal Shariat Court of Pakistan

Appointed as Alim Judge, Federal Shariat Court of Pakistan on 10 August, 2017.

Academic Qualification

- * BA 1st class, 1st Position in the University of Peshawar(with distinction), was awarded gold Medal and Merit scholarship.
- * M.A. (Islamiyat) 1st class (with distinction).
- * B.Sc. (War Studies).
- * M.A. (Arabic) 1st class (with distinction).
- * B.T.
- * M.A. (English) 1st position in the University (with distinction).
- * Diploma Course in German Language.
- * Ph.D. (Islamic Law and jurisprudence).

Publication and Experience

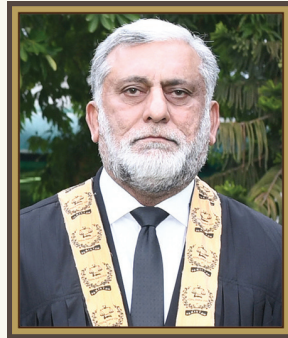
- * Translated the Holy Quran (into English)
- * Compiled several books which for several years remained part of Syllabus, prescribed for Degree level in the University of Peshawar,(1962).
- * Remained Lecturer Islamiyat at Post-Graduate Level University of Peshawar, from 1962 to 1968 (about six years).
- * Served as Deputy Director of Education/Director of Motivation, PAF from 16th April 1968 to 1st October 1988 (about twenty years).
- * Appointed as Juris-consult on Honorary basis and assisted the Federal Shariat Court on several occasions, for about eight years (Prior to 1988).
- * Was appointed Judge and remained Senior Puisne Judge, Federal Shariat Court of Pakistan. (for twenty one years): From 2nd October, 1988 to 1st October, 2009.
- * Was appointed and served as Adhoc Member Shariah Appellate Bench Supreme Court of Pakistan (From 25 March, 2010 till 4 July 2011).
- * Reappointed as Judge Federal Shariat Court Islamabad (w.e.f. 5 July, 2011 to 8.8.2017).
- * Appointed as Acting Chief Justice, Federal Shariat Court Islamabad (w.e.f. 12th

December, 2014 to 7th March, 2015).

- * Reappointed as Alim Judge Federal Shariat Court Islamabad (w.e.f. 10 August, 2017).

Honorary Membership of Various Academic/Educational/Welfare Bodies

- * Former Chairman Shariah Board, State Bank of Pakistan (for about 4 years). Resigned in 2013 for some personal reasons.
- * Chairman, Economic Reforms Commission KPK. (since 2004)
- * President, Quran Asaan Tahreek, Pakistan since January, 2006 (for life)
- * Member Advisory Board, World Jurists Council.
- * Founder Member Board of Trustees International Islamic University, Islamabad.
- * Member Syndicate Mohyuddin Islamic University Azad Kashmir
- * Member Board of Trustees International Islamic University (IIU) Islamabad.
Ordinary
- * Member Research Fund Supervisory Committee(IIU) Islamabad
- * Member Board of Governors, (IIU),Islamabad.
- * Member Academic Programme Committee, Dawa Academy,IIU Islamabad
- * Member Council, Dawah Academy, (IIU),Islamabad (several terms)
- * Patron-in-Chief Prevention of Blindness Society,Islamabad.
- * Member Council, Islamic Research Institute,Islamabad till date (several terms)
- * Former Member, Syndicate, Agriculture University,Faisalabad.
- * Member Council, Shariah Academy, (IIU),Islamabad till date (several terms).
- * Former Member Executive Council, Allama Iqbal Open University (AIOU), Islamabad.
- * Member Council, Institute of Islamic Economics(IIU), Islamabad
- * Former Chairman, Executive Council Committee, AIOU, Islamabad.



MR. JUSTICE MEHMOOD MAQBOOL BAJWA
Honorable Judge

Appointed as Judge, Federal Shariat Court on 10th August 2017.

Mr. Justice Mehmood Maqbool Bajwa was born on 27th September, 1954 in Khanewal. He attended Govt. High School/College, Khanewal up to graduation. He obtained L.L.B. degree from Punjab University Law College, Lahore in the year 1975-77.

He was selected as Civil Judge in the year 1979. He stood second in the Punjab Public Service Commission competitive examination. He was promoted as Senior Civil Judge in the year 1995 and in the year 1997 as Additional District & Sessions Judge. He served as Judge Labour Court for six months. He worked as Judge Anti-Terrorism Court from May, 1999 to October, 2003. In February 2003, he was promoted as District & Sessions Judge. He was appointed one man Tribunal in order to conduct inquiry into the Donga-Bonga (Bahawalnagar) incident. He also served as Joint Secretary in Ministry of Law for about two years. Also officiated the office of Solicitor of Pakistan.

Justice Bajwa has been visiting Faculty in Pakistan College of Law, Lahore, City Law College, Lahore, Muslim Law College and Punjab Law College, Rawalpindi, Federal Judicial Academy, Islamabad. He is visiting faculty in Punjab Judicial academy.

Served as District & Sessions Judge, Muzaffargarh, Bahawalnagar, Nankana-Sahib, Gujarat, Faisalabad and Rawalpindi till his elevation as Judge, Lahore High Court, Lahore on 12th May, 2011. While being Judge High Court he served as Chairman Punjab Subordinate Judiciary Service Tribunal, Lahore for 1 ½ year. He remained member Syndicate, University of Engineering and Technology, Taxila.

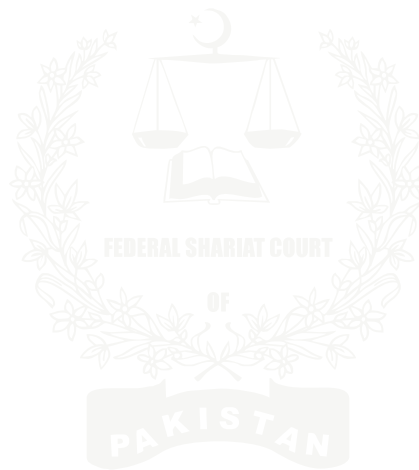
He also served as Administrative Judge of Anti-Terrorism Courts, Punjab from April, 2015 till his retirement.

Attended number of Seminars and conferences in his carrier.

Retired as Judge, Lahore High Court, Lahore on 26th September, 2016.

Served as Chairperson, Punjab Environmental Tribunal prior to elevation as Judge, Federal Shariat Court.

He took oath as Judge of Federal Shariat Court on 10th August, 2017.





MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH
Honorable Judge

Date of Birth: 1st October, 1955

Appointed as Judge, Federal Shariat Court on 9th February 2018.

Academic Qualification

M.A. , LLB (From Karachi University)

Legal Practitioner

On 23-11-1978, enrolled as an Advocate District Courts by Sindh Bar Council.

- On 31-12-1980, enrolled as an Advocate High Courts.
- Started practicing as an Associate of Late Mr. Z.U. Ahmed Advocate as well as an independent counsel on both criminal and civil side.

Judicial Experience

- In November 1983 qualified examination of Civil Judges conducted by Sindh Public Service Commission and consequently appointed as a Civil Judge & 1st Class Magistrate; took charge on 04.03.1983 at Taluka Gari Yasin, District Shikarpur and on further transfer posted at District Thatta, District Jacobabad, District Hyderabad and lastly at District Mirpurkhas @ Sindh Province.
- On promotion as a Senior Civil Judge/Assistant Sessions Judge/Rent Controller posted at District Hyderabad and Jacobabad @ Sindh. On further promotion as an Additional District & Sessions Judge in the year 1995, remained posted at District Karachi (South); Shahdadpur and again at Karachi District South; from where in the year 2000 transferred on deputation to the affairs of Federation.

Ex-Cadre Experience

- On Deputation, posted as Deputy Secretary Administration, Finance & Accounts and tendered legal opinions in the Ministry of Law, Justice & HR Division.

- On further promotion as District & Sessions Judge posted as Joint Secretary (Opinion) and subsequently discharged enormous duties as a Joint Secretary Administration in Law, Justice & HR Division at Islamabad; also performed functions as a Member of the Drug Appellate Board; dealt with Representation filed against the orders of Wafaqi Mohtasib & Tax Ombudsman, as well.
- Secretary/Head of Department in the office of Attorney General of Pakistan.
- Senior Consultant Law, Justice & HR Division.
- In November 2008 repatriated to the parent Department.

Details of Job Descriptions on Repatriation.

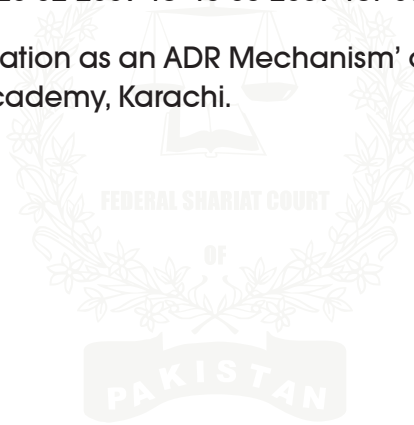
- On repatriation posted as Project Director (Access to Justice Program), High Court of Sindh. Completed 14 Judicial Complexes within the short span of nine months. Judicial Complexes at Tando Adam & Sehwan Sharif were inaugurated by the then Hon'ble Chief Justice of Pakistan Mr. Justice[®] Iftikhar Muhammad Chaudhary.
- Plinth/Foundation of administration block at Karachi was laid down during mentioned period under the supervision of the then Chief Justice/Judges of High Court of Sindh.
- Subsequently, my services were again transferred to the affairs of the Federation and in the Year 2009 I was posted as Judicial Member Appellate Tribunal Inland Revenue (Former ITAT).
- Elevated to the Bench and took Oath on 27th June, 2012 as a Judge of Sindh High Court and decided causes of different nature including Constitution Petitions, Criminal Appeals, Civil Cases/Appeals, Rent Matters etc at different Benches & Circuits @ Karachi, Hyderabad, Sukkar & Larkana; also acted as an Administrative Judge Anti-Terrorism Courts of Sindh for about 15 Months.
- On Superannuation, the legal fraternity both Bench & Bar had paid a rich tribute during a Full Court Reference held on 28th September 2017.

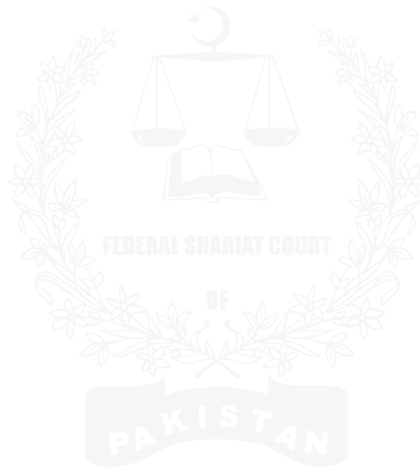
On 09th February, 2018, the Hon'ble Chief Justice Federal Shariat Court (FSC) Justice Sh. Najam Ul Hasan administered Oath to the Hon'ble Justice Syed Muhamad Farooq Shah as FSC Judge. Earlier, President Mamnoon Hussain appointed Justice Syed Muhammad Farooq Shah as FSC Judge for three years on recommendation of Judicial Commission of Pakistan and parliamentary committee.

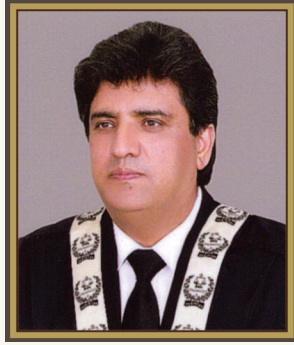
Attended Following National / International Trainings, Workshops & Seminars

- Attended Refreshers Course/Training of Judicial Officers @ Pakistan Judicial Academy at Islamabad in The Year 1991-1992.
- Fundamentals of Electronic office from 16-04-2001 to 12-05-2001 at Islamabad, Pakistan Computer Bureau.

- Singapore Cooperation Program Training Awards at Singapore from 05 to 20 March, 2001, Conducted by Supreme Court, Singapore.
- Promoting the rule of law and Strengthening the Criminal Justice System at the International Training Centers, SEOUL (South Korea), from 11 to 30th, October, 2001.
- DIAL (Development Of Internet For Asian Laws), Training on 9th and 10th May 2002 at COMSATS, Institute of Information Technology at Islamabad.
- Workshop on Computer Networking, Internet Firewall & Proxies Conducted By NIPA at Karachi from 18 to 22 March, 2002.
- Judicial Training Course for ADJ's at Sindh Judicial Academy Karachi from 2nd July to 20th July 1995.
- Workshops on Anti-Terrorism Laws at Vienna, Austria and Berlin/Germany in September, 2008.
- Organized basic Computer Orientation Training Course at Sindh Judicial Academy from 20-02-2009 to 13-05-2009 for Judicial Officers.
- Course on 'Mediation as an ADR Mechanism' on December 20 & 21, 2010 at Sindh Judicial Academy, Karachi.







MR. JUSTICE SHAUKAT ALI RAKHSHANI
Honorable Judge

Appointed as Judge, Federal Shariat Court on 9th February, 2018.

Mr. Justice Shaukat Ali Rakhshani was born on 4th August, 1969 at Quetta, Balochistan, whereas he actually, belongs to a remote area of Dalbandin, District Chaghai of Balochistan. His father Mr. M. Shafi Rakhshani (late) was a prominent Advocate, who remained Advocate General Balochistan, Deputy Attorney General Pakistan and Deputy Prosecutor General (NAB).

Hon'ble Judge initially completed his education from St. Francis Grammar School, Quetta and did his matriculation in the year, 1984. After passing F.Sc and doing graduation got admitted in the University Law College Quetta and passed his LL.B in the year, 1990 with distinction.

He was enrolled as an Advocate on 15.10.1991 and then as an Advocate High Court on 28.11.1993. He was enrolled as an Advocate of the Hon'ble Supreme Court of Pakistan on 13.9.2008.

He was elected as Joint Secretary, Balochistan Bar Association in the year, 1995 and remained in the office till 1996. He was also elected as Vice President, High Court Bar Association, Balochistan for a period of two years commencing from 1998 to 2000 and then once again elected as Senior Vice President, High Court Bar Association, Balochistan in the year, 2009 till 2011.

In the year, 1995, he successfully completed his Refresher Course from Federal Judicial Academy, Islamabad.

He has conducted several high profile criminal cases of murder, NAB, CNS and Constitutional Petitions in the High Court of Balochistan and Hon'ble Supreme Court of Pakistan.

In the year, 2002 Hon'ble Judge was appointed as Judge, Anti Terrorism Court, Quetta and after demise of his father in the year, 2005 resigned from office, due to personal reasons.

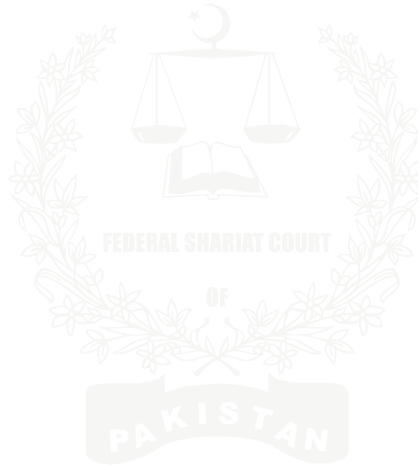
He has served as Advisor of the Askari Commercial Bank from 1997 to 2002, Special Prosecutor Customs and Taxation Balochistan, Advisor to Market Committee, Agricultural

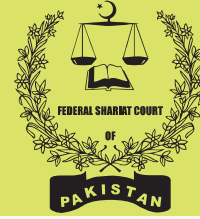
Department, Government of Balochistan, Sui Southern Gas Company, Balochistan as well as remained counsel of the Speaker, Provincial Assembly Balochistan in various cases before the High Court of Balochistan and Hon'ble Supreme Court of Pakistan. He has also conducted cases as Special Public Prosecutor, A.N.F Balochistan, in the High Court and Apex Court.

During almost his entire career, he had been a thorough professional lawyer, having no commitment with any political party.

He had also been delivering lectures on criminal law including Criminal Administration of Justice and Hudood Laws, as Visiting Lecturer in the University of Law College Balochistan as well as in Zarghoon Law College, Quetta.

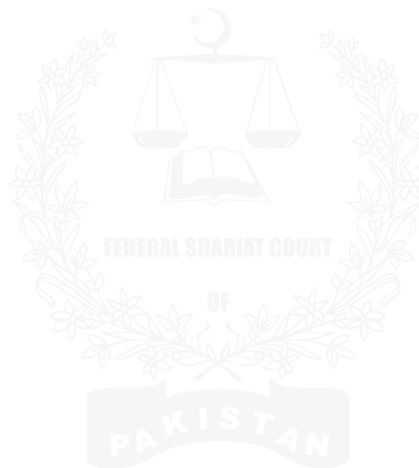
He took oath as Judge of Federal Shariat Court of Pakistan on 09th February, 2018.





COMPOSITION







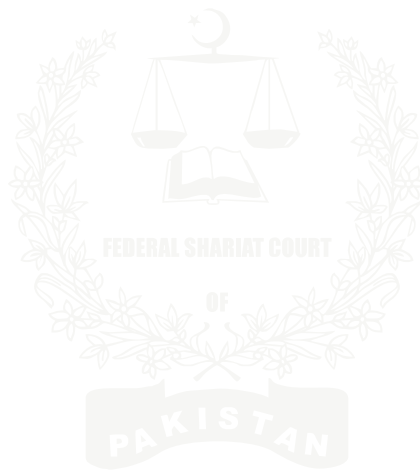
FEDERAL SHARIAT COURT COMPOSITION

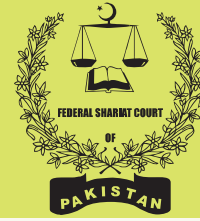
THE HON'BLE CHIEF JUSTICE

Name	Date of Assumption	Date of Relinquishment
Mr. Justice Sheikh Najam-ul-Hassan	15.05.2017	14.05.2019

HON'BLE JUDGES OF THE FEDERAL SHARIAT COURT

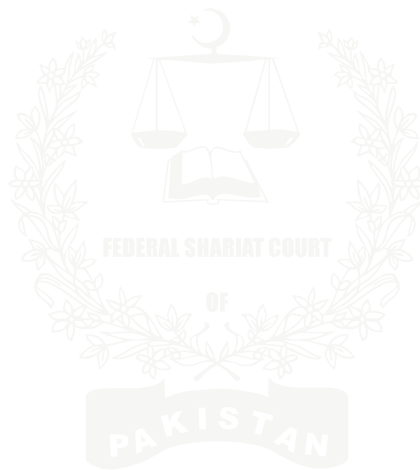
Name	Date of Assumption	Date of Relinquishment
Hon. Mr. Justice Allama Dr. Fida Muhammad Khan	10.08.2017	09.08.2019
Mr. Justice Mehmood Maqbool Bajwa	10.08.2017	09.08.2019
Mr. Justice Syed Muhammad Farooq Shah	09.02.2018	08.02.2021
Mr. Justice Shaukat Ali Rakhshani	09.02.2018	08.02.2021





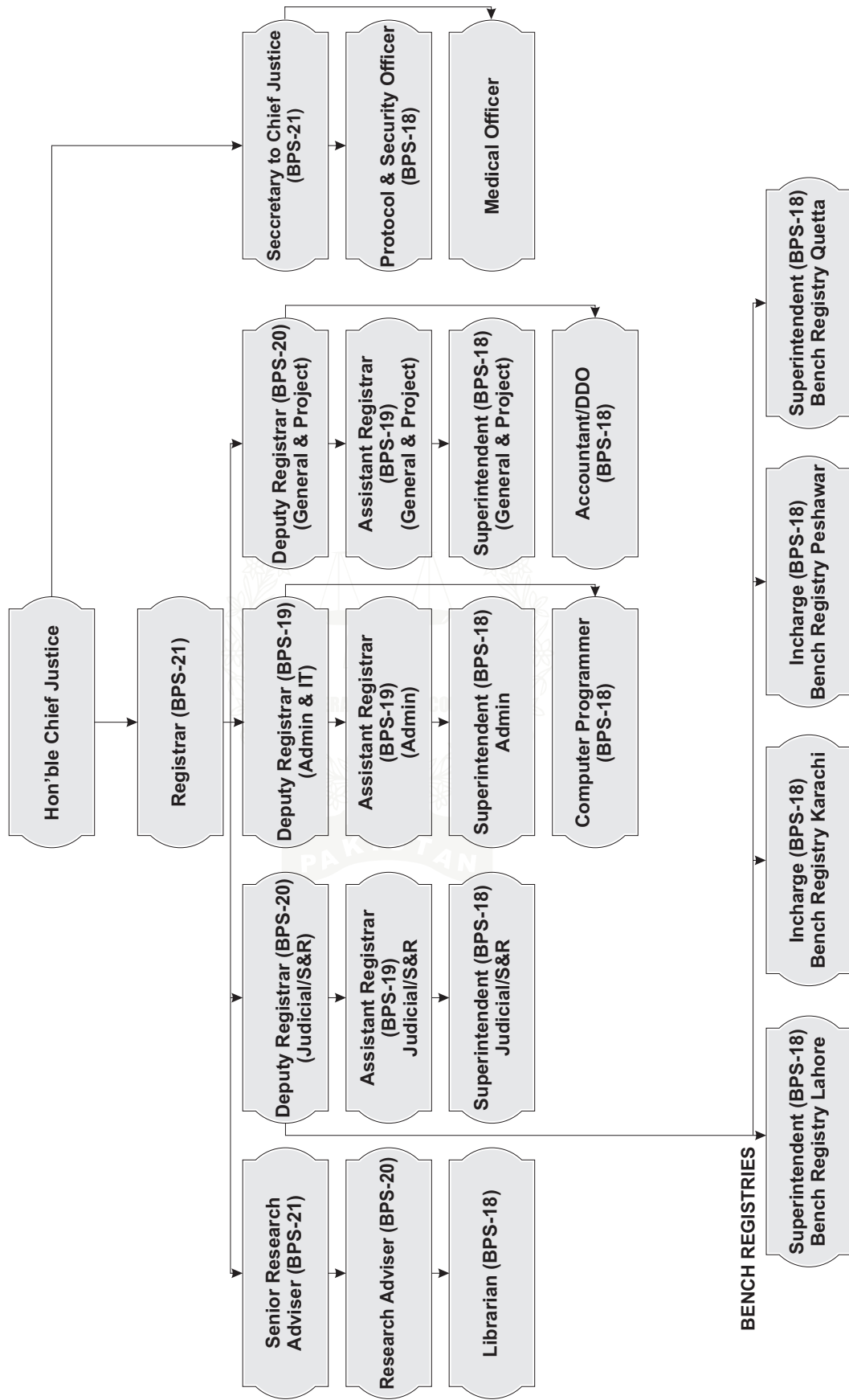
ORGANIZATIONAL CHART

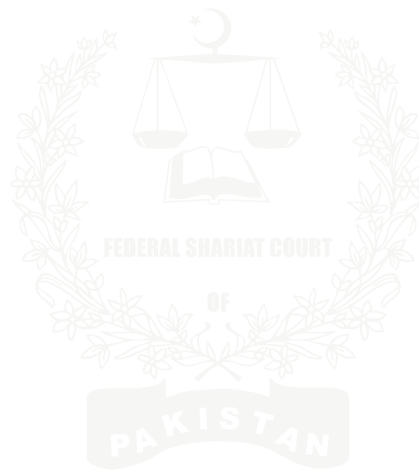


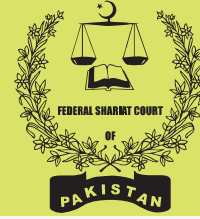


ORGANIZATIONAL CHART

FEDERAL SHARIAT COURT OF PAKISTAN

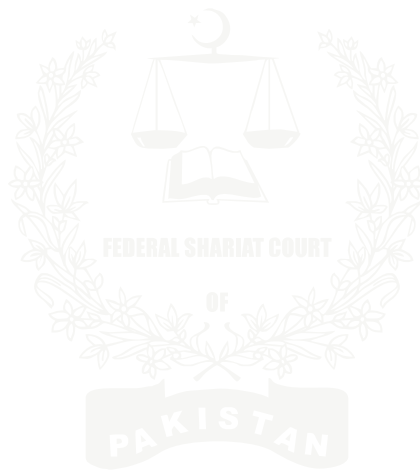






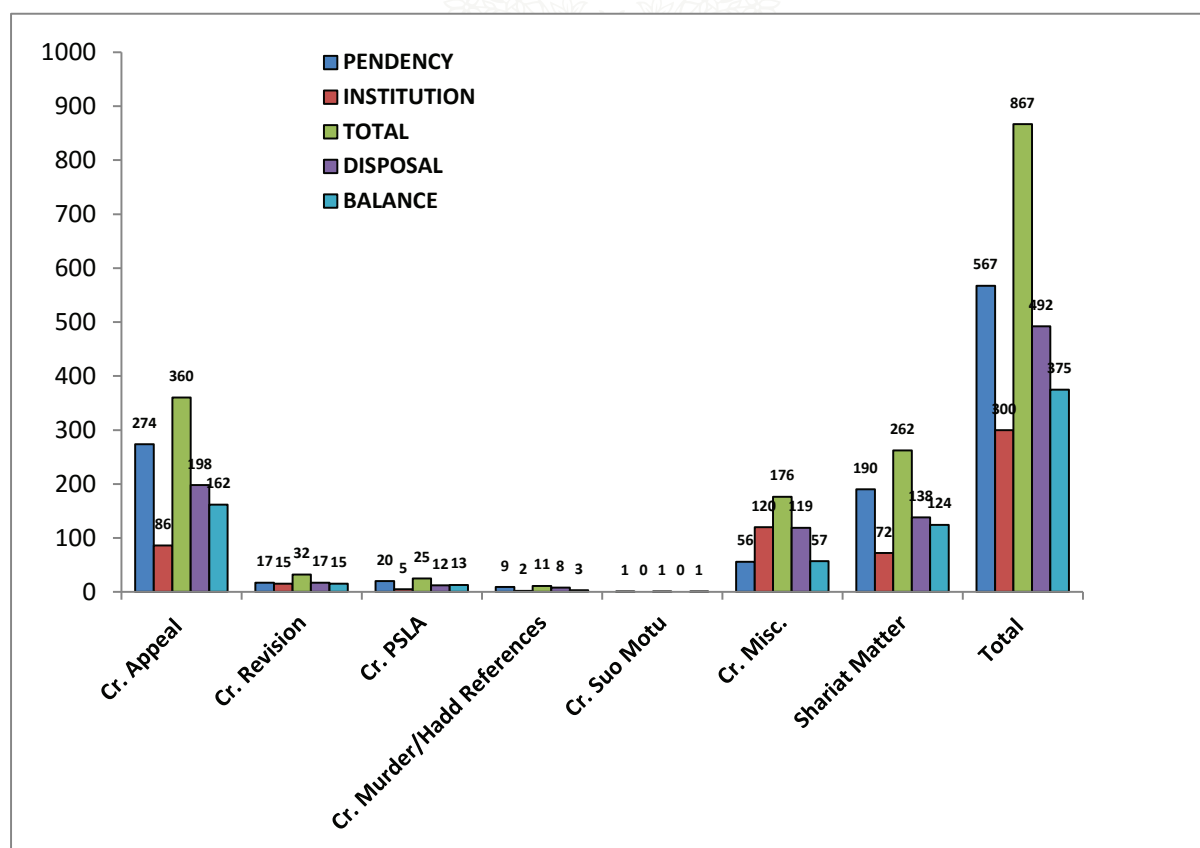
JUDICIAL ACTIVITY/ STATISTICAL TABLES





Judicial Activity and Statistics
Court Performance from 01-01-2018 to 31-12-2018
Category-Wise Consolidated Position during the year 2018

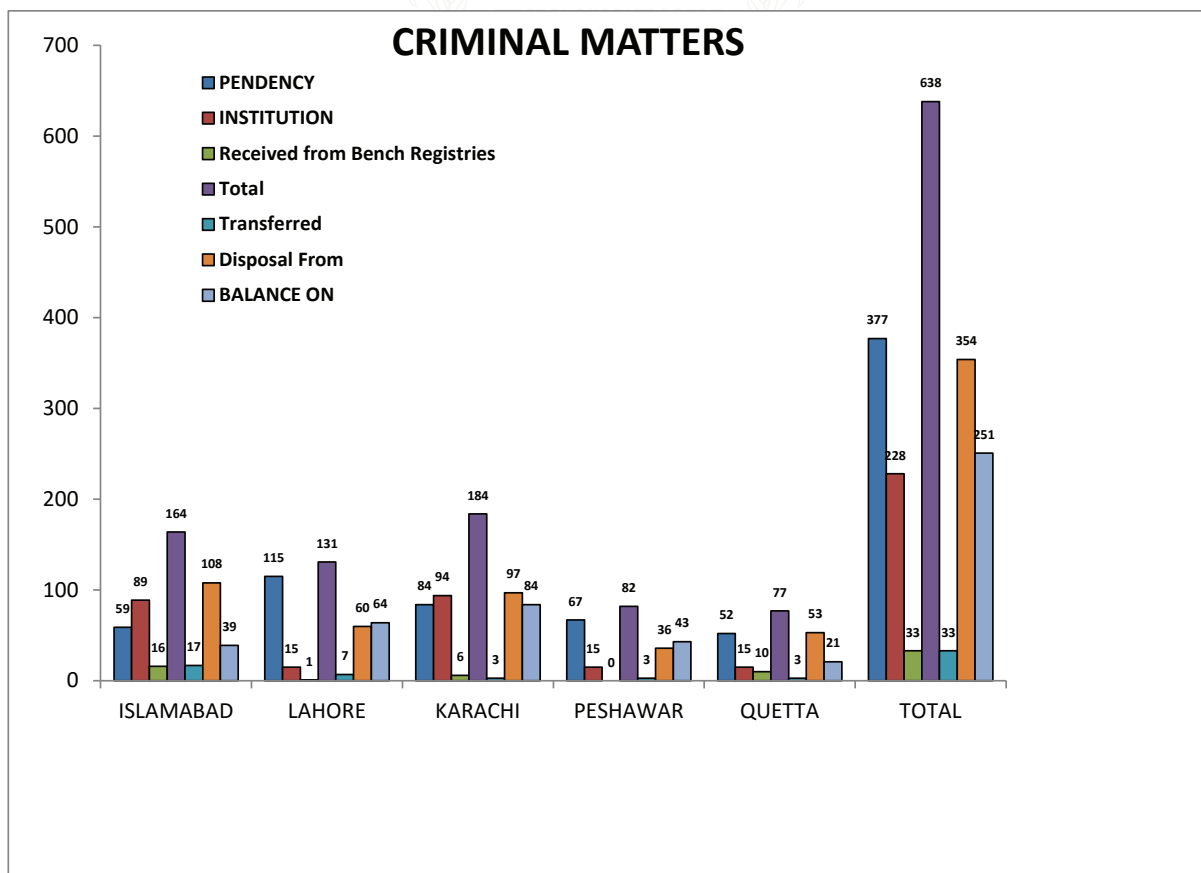
Sr.No.	CATEGORY OF CASES	PENDENCY ON 31.12.2017	INSTITUTION FROM 01.01.2018 TO 31.12.2018	TOTAL	DISPOSAL FROM 01.01.2018 TO 31.12.2018	BALANCE ON 31.12.2018
1.	Cr. Appeal	274	86	360	198	162
2.	Cr. Revision	17	15	32	17	15
3.	Cr. PSLA	20	05	25	12	13
4.	Cr. Murder/Hadd References	09	02	11	08	03
5.	Cr. Suo Motu	01	-	01	-	01
6.	Cr. Misc.	56	120	176	119	57
7.	Shariat Matter	190	72	262	138	124
Total		567	300	867	492	375



Consolidated Position at Principal Seat and Bench Registries for the period from 01-01-2018 to 31-12-2018

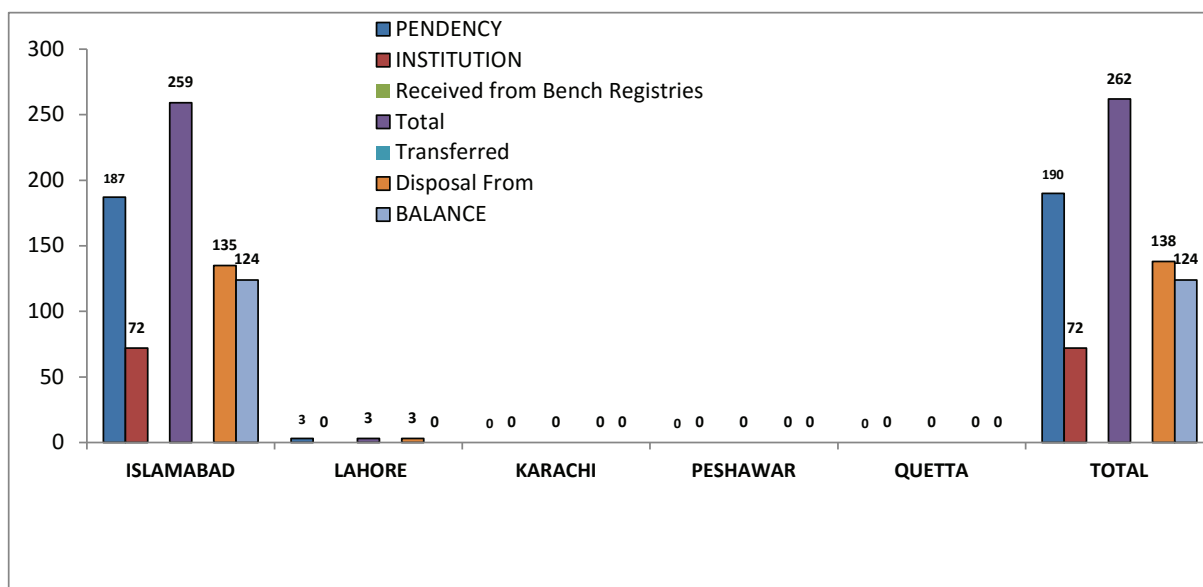
CRIMINAL MATTERS

Sr.No.	STATIONS	PENDENCY ON 31.12.2017	INSTITU- TION FROM 01.01.2018 TO 31.12.2018	Received from Bench Registries	Total	Transferred	Disposal From 01.01.2018 TO 31.12.2018	BALANCE ON 31.12.2018
1.	PRINCIPAL SEAT ISLAMABAD	59	89	16	164	17	108	39
2.	BENCH REGISTRY LAHORE	115	15	01	131	07	60	64
3.	BENCH REGISTRY KARACHI	84	94	06	184	03	97	84
4.	BENCH REGISTRY PESHAWAR	67	15	-	82	03	36	43
5.	BENCH REGISTRY QUETTA	52	15	10	77	03	53	21
TOTAL		377	228	33	638	33	354	251



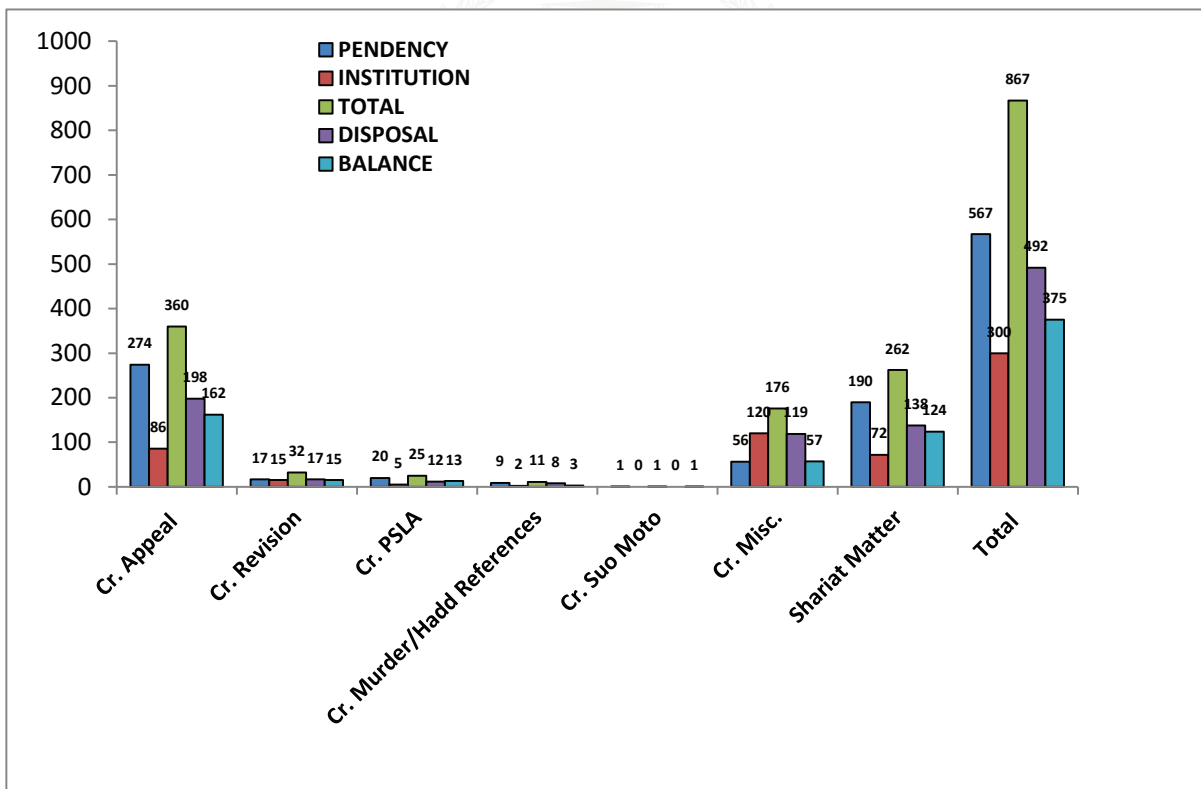
SHARIAT MATTERS

Sr.No.	PRINCIPAL SEAT ISLAMABAD	187	72	-	259	-	135	124
1.	BENCH REGISTRY LAHORE	03	-	-	03	-	03	-
2.	BENCH REGIS- TRY KARACHI	-	-	-	-	-	-	-
3.	BENCH REGIS- TRY PESHAWAR	-	-	-	-	-	-	-
4.	BENCH REGIS- TRY QUETTA	-	-	-	-	-	-	-
TOTAL		<u>190</u>	<u>72</u>	<u>=</u>	<u>262</u>	<u>=</u>	<u>138</u>	<u>124</u>



Consolidated Statement Showing Category-wise Institution, Disposal and Balance of Cases in the Federal Shariat Court from 01-01-2018 to 31-12-2018.

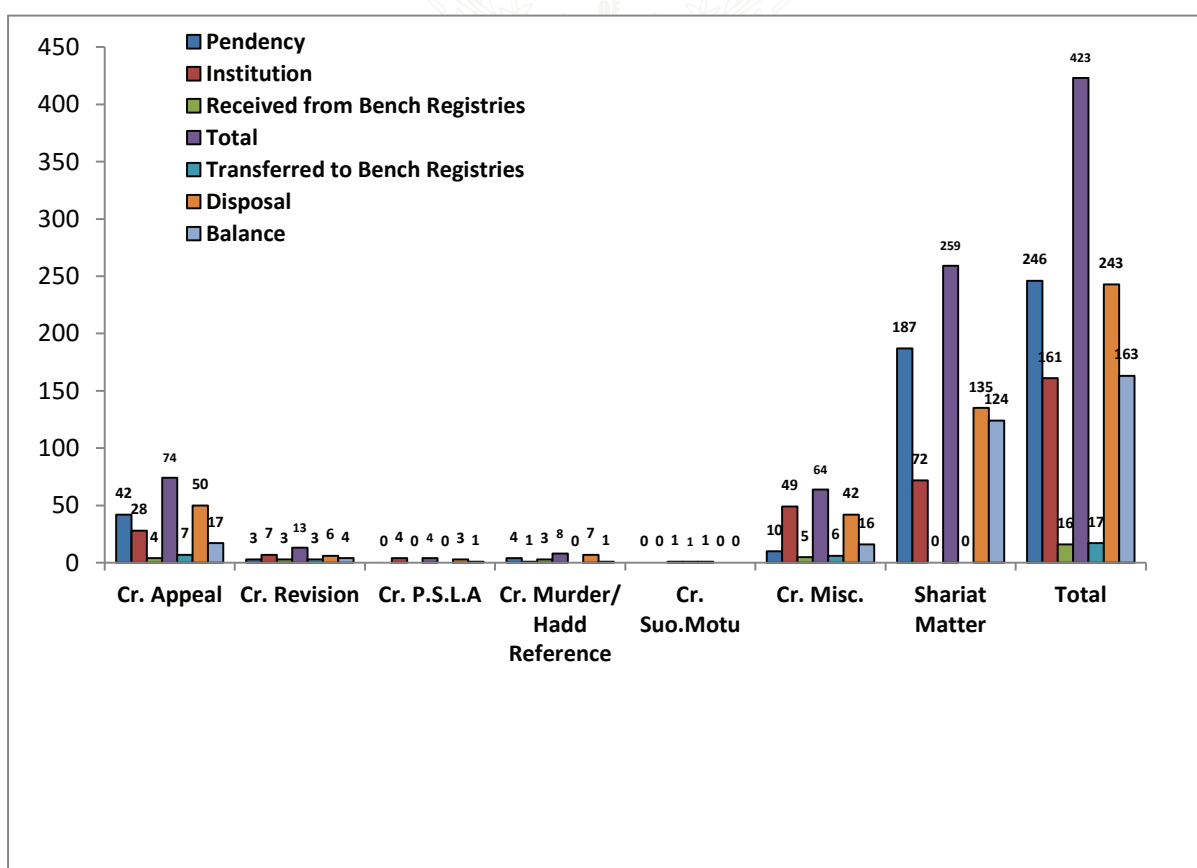
.Sr.No	CATEGORY OF CASES	PENDENCY ON 31.12.2017	INSTITUTION FROM 01.01.2018 TO 31.12.2018	TOTAL	DISPOSAL FROM 01.01.2018 TO 31.12.2018	BALANCE ON 31.12.2018
1.	Cr. Appeal	274	86	360	198	162
2.	Cr. Revision	17	15	32	17	15
3.	Cr. PSLA	20	05	25	12	13
4.	Cr. Murder/Hadd References	09	02	11	08	03
5.	Cr. Suo Motu	01	-	01	-	01
6.	Cr. Misc.	56	120	176	119	57
7.	Shariat Matter	190	72	262	138	124
Total		567	300	867	492	375



Category-wise Institution, Disposal and Balance of Cases in the Federal Shariat Court, Principal seat and Bench Registries from 01-01-2018 to 31-12-2018.

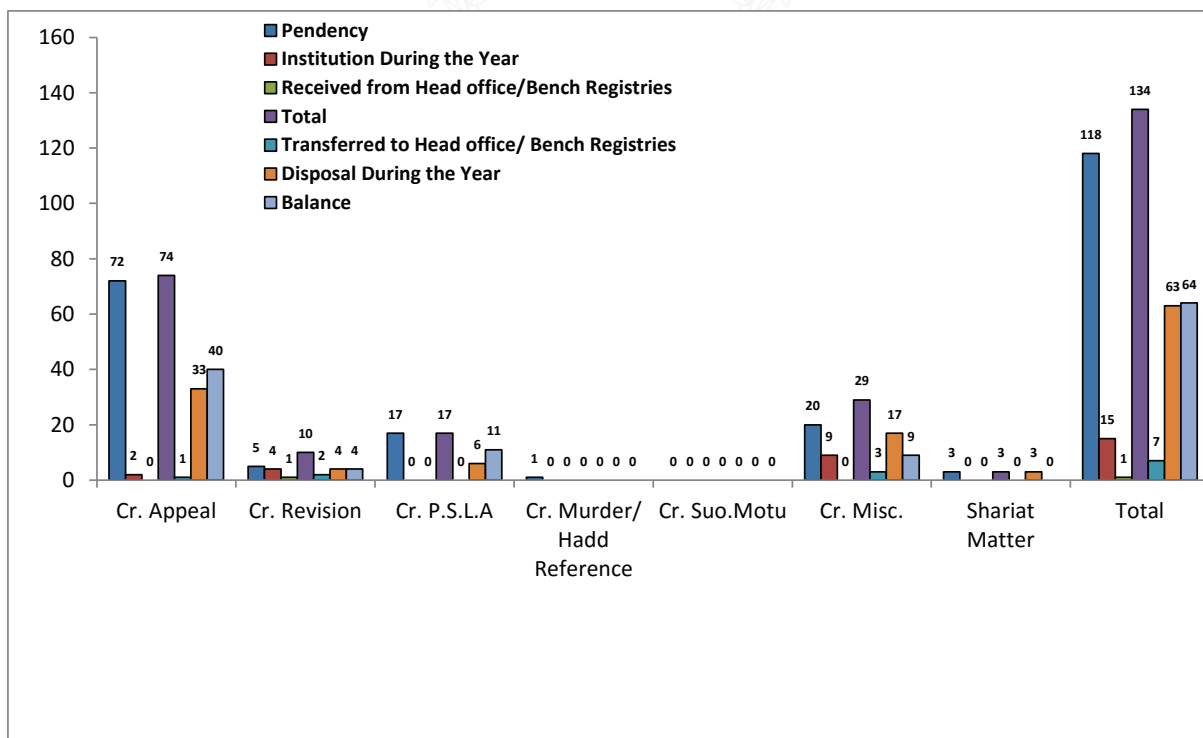
Principal Seat, Islamabad

Sr.#	Category of Cases	Pendency on 01-01-2018	Institution During the Year	Received from Bench Registries	Total	Transferred to Bench Registries	Disposal During the Year	Balance on 31-12-2018
1.	Cr. Appeal	42	28	04	74	07	50	17
2.	Cr. Revision	03	07	03	13	03	06	04
3.	Cr. P.S.L.A	-	04	-	04	-	03	01
4.	Cr. Murder/ Hadd Reference	04	01	03	08	-	07	01
5.	Cr. Suo.Motu	-	-	01	01	01	-	-
6.	Cr. Misc.	10	49	05	64	06	42	16
7.	Shariat Matter	187	72	-	259	-	135	124
Total		246	161	16	423	17	243	163



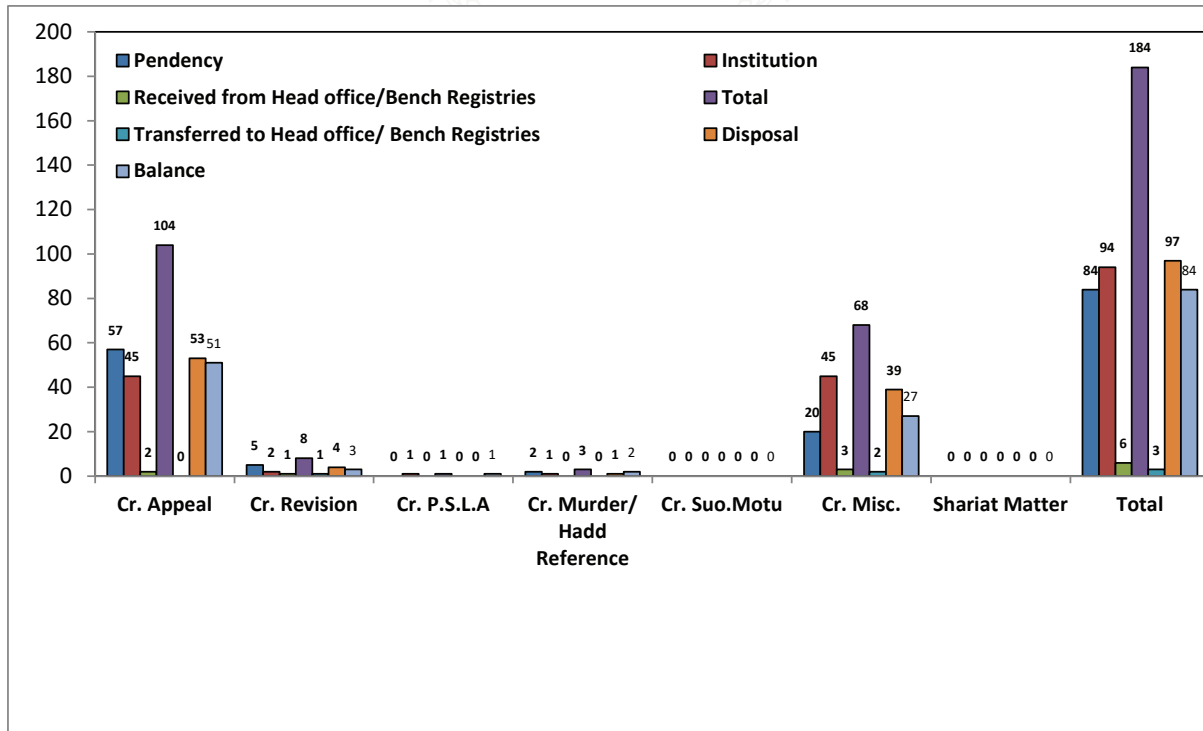
Bench Registry, Lahore

Sr.#	Category of Cases	Pendency on 01-01-2018	Institution During the Year	Received from Head office/ Bench Registries	Total	Transferred to Head office/ Bench Registries	Disposal During the Year	Balance on 31-12-2018
1.	Cr. Appeal	72	02	-	74	01	33	40
2.	Cr. Revision	05	04	01	10	02	04	04
3.	Cr. P.S.L.A	17	-	-	17	-	06	11
4.	Cr. Murder/ Hadd Reference	01	-	-	01	01	-	-
5.	Cr. Suo. Motu	-	-	-	-	-	-	-
6.	Cr. Misc.	20	09	-	29	03	17	09
7.	Shariat Matter	03	-	-	03	-	03	-
Total		118	15	01	134	07	63	64



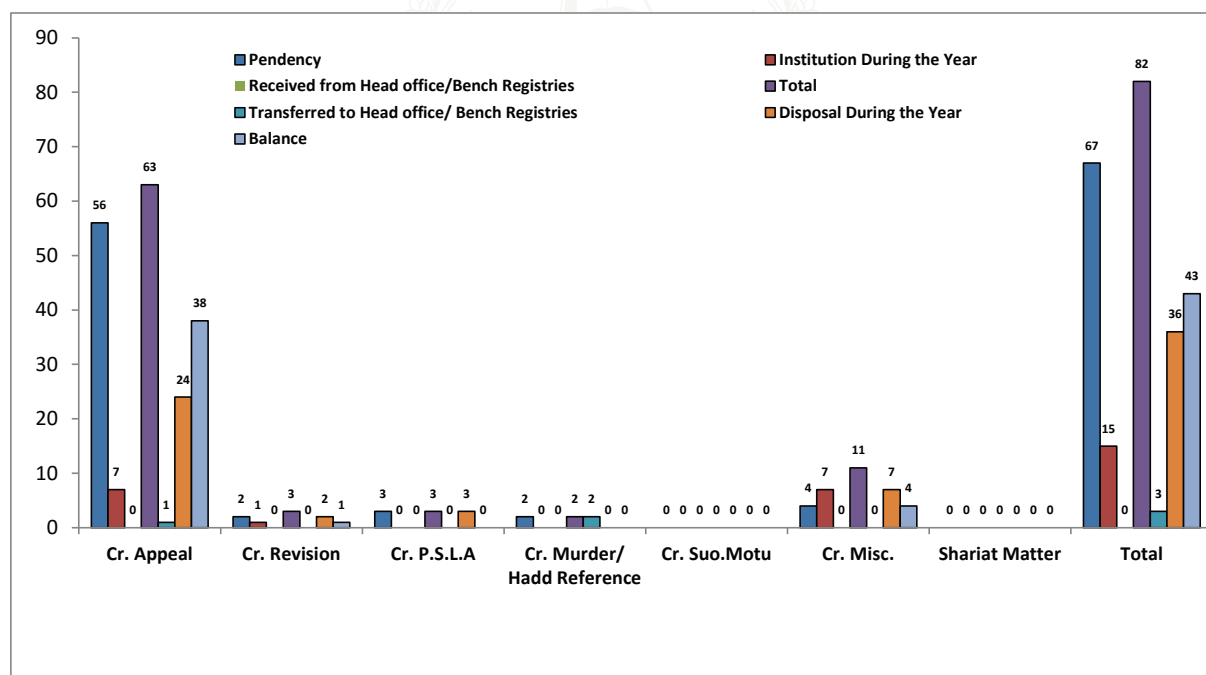
Bench Registry, Karachi

Sr.#	Category of Cases	Pendency on 01-01-2018	Institution During the Year	Received from Head office/ Bench Registries	Total	Transferred to Head office/ Bench Registries	Disposal During the Year	Balance on 31-12-2018
1.	Cr. Appeal	57	45	02	104	-	53	51
2.	Cr. Revision	05	02	01	08	01	04	03
3.	Cr. P.S.L.A	-	01	-	01	-	-	01
4.	Cr. Murder/ Hadd Reference	02	01	-	03	-	01	02
5.	Cr. Suo.Motu	-	-	-	-	-	-	-
6.	Cr. Misc.	20	45	03	68	02	39	27
7.	Shariat Matter	-	-	-	-	-	-	-
Total		84	94	06	184	03	97	84



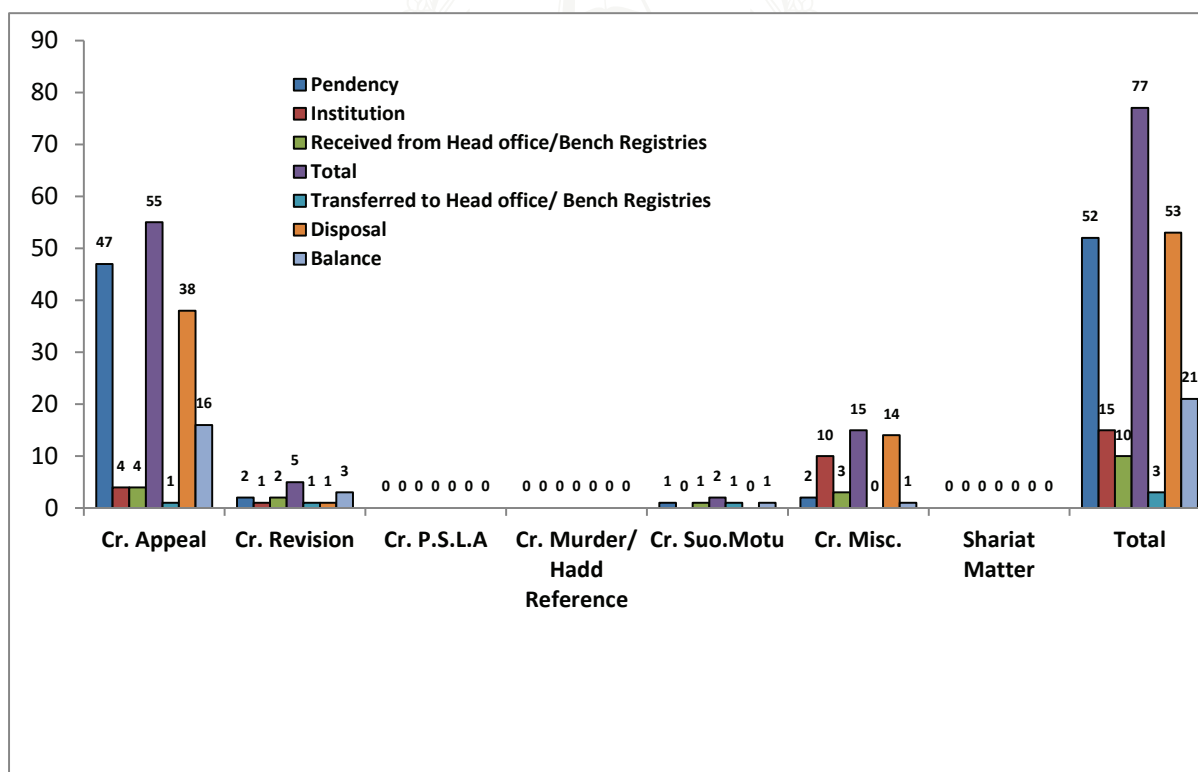
Bench Registry, Peshawar

Sr.#	Category of Cases	Pendency on 01-01-2018	Institution During the Year	Received from Head office/Bench Registries	Total	Transferred to Head office/ Bench Registries	Disposal During the Year	Balance on 31-12-2018
1.	Cr. Appeal	56	07	-	63	01	24	38
2.	Cr. Revision	02	01	-	03	-	02	01
3.	Cr. P.S.L.A	03	-	-	03	-	03	-
4.	Cr. Murder/ Hadd Reference	02	-	-	02	02	-	-
5.	Cr. Suo. Motu	-	-	-	-	-	-	-
6.	Cr. Misc.	04	07	-	11	-	07	04
7.	Shariat Matter	-	-	-	-	-	-	-
Total		67	15	-	82	03	36	43



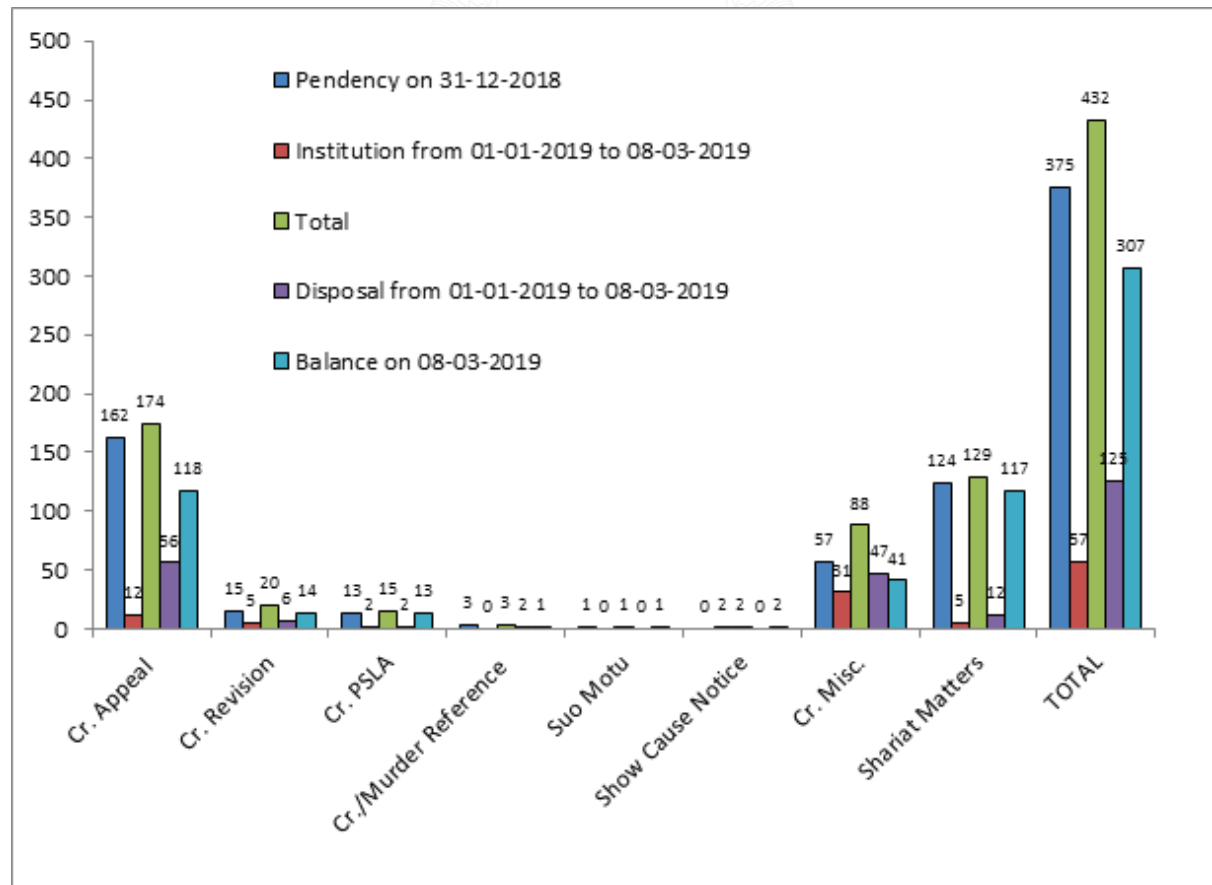
Bench Registry, Quetta

Sr.#	Category of Cases	Pendency on 01-01-2018	Institution During the Year	Received from Head office/ Bench Registries	Total	Transferred to Head office/ Bench Registries	Disposal During the Year	Balance on 31-12-2018
1.	Cr. Appeal	47	04	04	55	01	38	16
2.	Cr. Revision	02	01	02	05	01	01	03
3.	Cr. P.S.L.A	-	-	-	-	-	-	-
4.	Cr. Murder/ Hadd Reference	-	-	-	-	-	-	-
5.	Cr. Suo.Motu	01	-	01	02	01	-	01
6.	Cr. Misc.	02	10	03	15	-	14	01
7.	Shariat Matter	-	-	-	-	-	-	-
Total		52	15	10	77	03	53	21



CONSOLIDATED STATEMENT OF CRIMINAL/SHARIAT CASES INSTITUTED
AND DISPOSED OF FROM 01-01-2019 TO 08-03-2019.

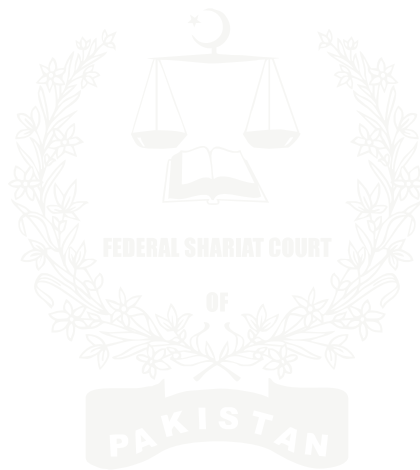
Category of Cases	Pendency on 31-12-2018	Institution from 01-01-2019 to 08-03-2019	Total	Disposal from 01-01-2019 to 08-03-2019	Balance on 08-03-2019
Cr. Appeal	162	12	174	56	118
Cr. Revision	15	05	20	06	14
Cr. PSLA	13	02	15	02	13
Cr./Murder Reference	03	0	03	02	01
Suo Motu	01	0	01	0	01
Show Cause Notice	0	02	02	0	02
Cr. Misc.	57	31	88	47	41
Shariat Matters	124	05	129	12	117
TOTAL:-	375	57	432	125	307

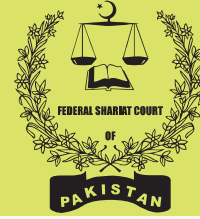


After appointment of the present Hon'ble Chief Justice, the cases were reorganized at Principal Seat and Bench Registries and are regularly fixed besides the normal inflow of criminal cases. In response to a letter dated 30.10.2017, sent on behalf of the present Hon'ble Chief Justice of this Court to the Registrars of Lahore High Court, High Court of Sindh, Peshawar High Court, Islamabad High Court and High Court of Balochistan, directing them to transfer those criminal cases in which during trial charge against the accused was framed under *Hudood* Laws and on conclusion of the trial, the accused was/were not convicted under *Hudood* laws but under provisions of other laws, hence the appeal(s) or revision(s), as the case may be, shall lie before the Federal Shariat Court and not to the respective High Courts. In this respect, in the year 2018, almost 104 cases consisting of murder references, murder appeals, other criminal appeals and revisions were transferred from four High Courts.

Detail is given below:

S.N	Name of High Court	No. of cases
1.	Lahore High Court	Nil
2.	High Court of Sindh.	82
3.	Peshawar High Court	10
4.	High Court of Balochistan	02
5.	Islamabad High Court	10
Total		104





CEREMONIES, MEETINGS AND GROUP PHOTOS







Hon. Mr. Justice Sh. Najam ul Hasan, Chief Justice Federal Shariat Court of Pakistan administering oath to Hon. Mr. Justice Syed Muhammad Farooq Shah and Hon. Mr. Justice Shaukat Ali Rakhshani as judges of the Federal Shariat Court of Pakistan, Islamabad on 9th February, 2018.



A group photograph of IT Branch and participants of Basic IT Training (Group-2) with Hon'ble Mr. Justice Shaukat Ali Rakhshani, IT Judge at Federal Shariat Court of Pakistan, Islamabad on 11-02-2018.



The participants of Shariah Academy presenting Souvenir to the Hon'ble Chief Justice of Federal Shariat Court of Pakistan, Islamabad



Group photo of participants of Shariah Academy with Hon'ble Chief Justice Sh. Najam ul Hasan & Hon'ble Mr. Justice Allama Dr. Fida Muhammad Khan Federal Shariat Court of Pakistan, Islamabad on 11-02-2018.



Hon'ble Chief Justice presenting Souvenir to the Chairman Press Council of Pakistan, Islamabad on April 19, 2018



Dr. M. Salah-ud-Din Mengal, Chairman Press Council of Pakistan presenting Souvenir to the Hon'ble Chief Justice Federal Shariat Court of Pakistan at Islamabad.



A group photo of students of Islamabad School of Law with Hon'ble Chief Justice on 26-09-2018 at Federal Shariat Court of Pakistan at Islamabad.



Hon'ble Chief Justice presenting Souvenir to Hon'ble Mr. Justice M. Tabassum Aftab Alvi, Chief Justice High Court/Shariat Court of Azad Jammu and Kashmir on 19-11-2018 at Federal Shariat Court of Pakistan, Islamabad.



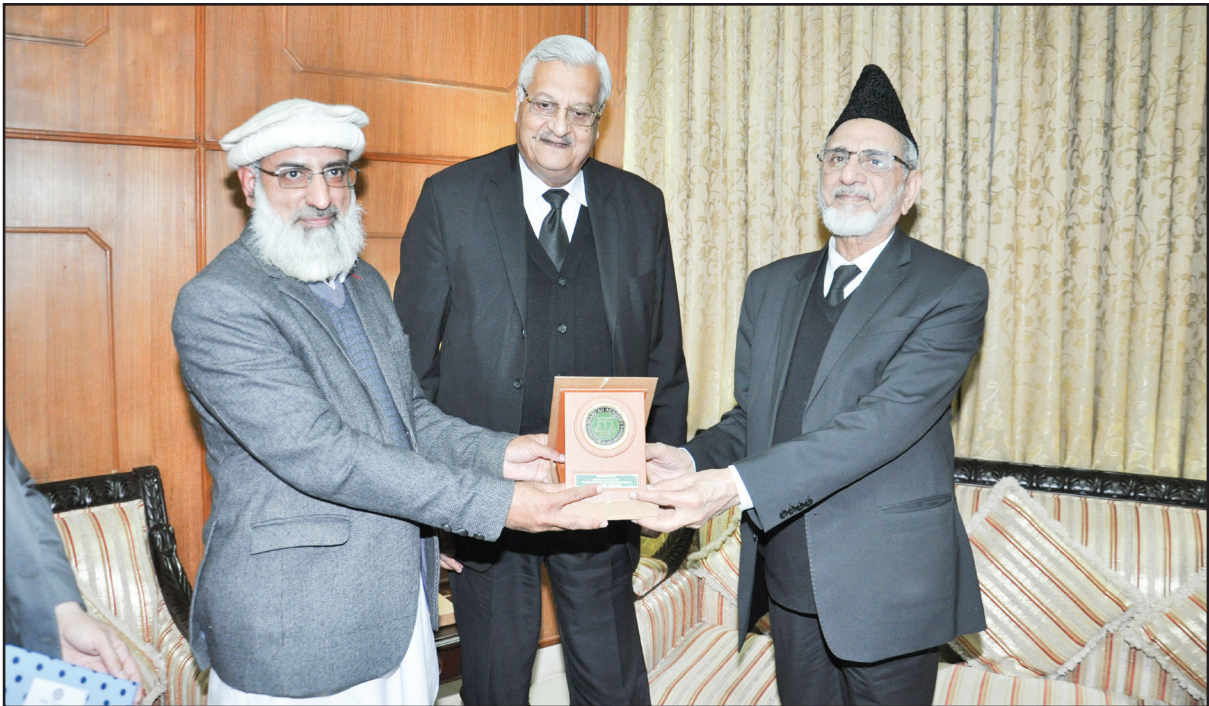
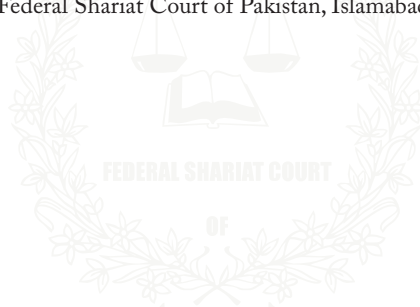
Mrs. Shazia Yasir, Incharge IT Branch giving presentation at the Bilingual Website Launching Ceremony at Federal Shariat Court of Pakistan, Islamabad on 19-12-2018.



Group photo of IT Branch with Hon'ble Chief Justice & Hon'ble Judges of Federal Shariat Court of Pakistan at Islamabad on 19-12-2018.



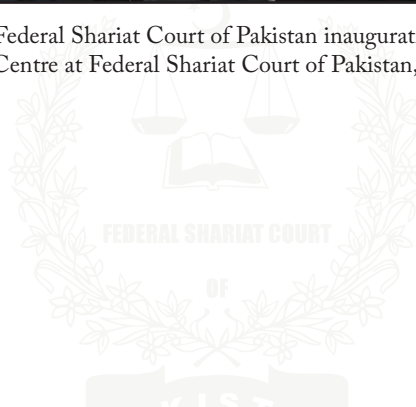
Dr. Habib ur Rehman, Chairman Department of Training of IIU presenting Souvenir to the Hon'ble Chief Justice, Federal Shariat Court of Pakistan, Islamabad.



Dr. Habib ur Rehman, Chairman Department of Training of IIU presenting Souvenir to the Hon'ble Mr. Justice Allama Dr. Fida Muhammad Khan, Judge Federal Shariat Court of Pakistan.



Hon'ble Chief Justice, Federal Shariat Court of Pakistan inaugurating the newly established Medical Centre at Federal Shariat Court of Pakistan, Islamabad.



Hon'ble Chief Justice, and Hon'ble Judges praying after inauguration of Medical Centre of Federal Shariat Court of Pakistan at Islamabad.



A view of newly established Medical Center at Federal Shariat Court of Pakistan, Islamabad.



An inside view of Dispensary of Federal Shariat Court of Pakistan, Islamabad.



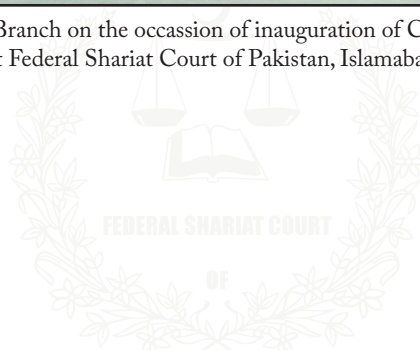
Hon'ble Chief Justice handing over keys of Staff Van to the staff member
at Federal Shariat Court of Pakistan, Islamabad.



Hon'ble Chief Justice and Hon'ble Judges praying after handing over keys of Staff Van.



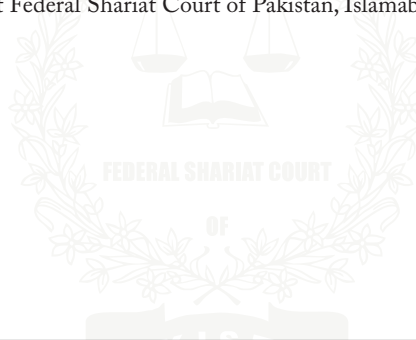
Staff of IT Branch on the occasion of inauguration of Computer Lab at Federal Shariat Court of Pakistan, Islamabad..



Hon'ble Chief Justice and Hon'ble Judges inaugurating the Computer Lab at Federal Shariat Court of Pakistan, Islamabad.



Hon'ble Chief Justice and Hon'ble Judges praying after inauguration of Computer Lab at Federal Shariat Court of Pakistan, Islamabad.



Mr. Fayyaz Ahmad Khan (Network Administrator) briefing on Basic IT Training at Certificate Distribution Ceremony at Islamabad.



Hon'ble Chief Justice awarding Certificate of Basic IT Training to the participant.



Registrar Federal Shariat Court of Pakistan presenting bouquet to Hon'ble Chief Justice at Certificate Distribution Ceremony at Federal Shariat Court of Pakistan, Islamabad.



Hon'ble Mr. Justice Allama Dr. Fida Muhammad Khan, Judge Federal Shariat Court of Pakistan
awarding Certificate of Basic IT Training to the participant.



Hon'ble Mr. Justice Syed Muhammad Farooq Shah, Judge Federal Shariat Court of Pakistan
awarding Certificate of Basic IT Training to the participant.



Hon'ble Mr. Justice Mehmood Maqbool Bajwa, Judge Federal Shariat Court of Pakistan
awarding Certificate of Basic IT Training to the participant.



Hon'ble Mr. Justice Shaukat Ali Rakhshani, Judge Federal Shariat Court of Pakistan
awarding Certificate of Basic IT Training to the participant.



Hon'ble Chief Justice inaugurating the "Retired Judges Room" at Federal Shariat Court of Pakistan, Islamabad.



Hon'ble Chief Justice presiding a meeting with Hon'ble Judges alongwith Officers of Federal Shariat Court of Pakistan, after Certificate Distribution Ceremony at Islamabad.

OFFICIAL WEBSITE (English Version)



English
اردو

Introduction
Hon'ble Judges
Administration
Branch Registries
Resources
News & Publications



FEDERAL SHARIAT COURT OF PAKISTAN

The Federal Shariat Court was established on 26th May, 1980 by the President's Order No.1 of 1980 as incorporated in part VII of the Constitution of Pakistan, 1973 under the title of chapter 3A. This Court is a unique institution with no parallel in the entire Muslim world. It is backed by powerful provisions of the Constitution. The preamble of the Constitution explicitly affirms that sovereignty over the entire universe belongs to Almighty Allah alone and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust. Article 2A lays down that the principles and provisions set out in the Objectives Resolution are a substantive part of the Constitution. Article 227 makes it incumbent that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet (peace be upon him), and Chapter 3-A which pertains to the functions and organization of Federal Shariat Court, empowers the court and entrusts it with the responsibility to examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet (peace be upon him). "Law" is defined in article 203 B (c) of the Constitution and includes any custom or usage having the force of law but does not include the Constitution, Muslim personal law, any law relating to the procedure of any court or tribunal.

News & Updates



Trainees of 60th Sharia Course from International Islamic University, Islamabad visited the Federal Shariat Court, Islamabad on 31.01.2019.

January 31, 2019



Launching Ceremony of Bilingual Website of Federal Shariat Court.

December 19, 2018



Roster
Latest Roster sitting of Hon'ble Judges.



Cause List
Find Cause List of Cases.



Online Case Status
Search Case Status by Case No, Party Name etc.



Reported Judgments
Search Reported Judgments by Case no, Party name or Decided By (Name of Hon'ble Judge/Hon'ble Judges).



Leading Judgments
Find and Download Leading Judgments of Hon'ble Chief Justice and Hon'ble Judges.



Monthly statement for NJAC
Monthly Statement of Criminal & Shariat Cases for NJAC.

Contact Us

Federal Shariat Court of Pakistan
Constitution Avenue, G-5/2, Islamabad

051-9203091

051-9202724

mail@federalshariatcourt.gov.pk

www.federalshariatcourt.gov.pk

Quick Links

Supreme Court of Pakistan
Islamabad High Court
Lahore High Court
Sindh High Court
Peshawar High Court
Balochistan High Court
Law & Justice Commission of Pakistan
Pakistan Law Site



Human Right Cell

- ✓ **For Overseas Pakistanis:**
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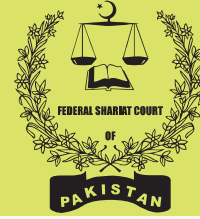
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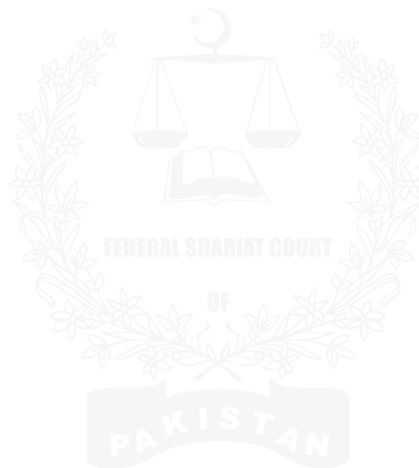
A view of newly established Library (Arabic Section) at Federal Shariat Court of Pakistan, Islamabad.



An inside view of Library (Arabic Section) at Federal Shariat Court of Pakistan, Islamabad.



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RIGHTS OF FOUNDLINGS IN ISLAM: LINEAGE AND CITIZENSHIP

BY

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

قال الله تعالى:

مَنْ أَجَلَ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَءِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي
الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ
رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لُمْسِرُونَ

On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land.¹

Rights of Foundlings in Islam: lineage and citizenship.

It is common among the people that illegitimate children are thrown away in streets, parks and hospitals. This is not the only cause but there are so many other causes which lead the people to commit this act. These are: poverty, theft, loss or the mother of the child suffer from a chronic disease and cannot bear expenses even of her treatment and the maintenance of the infant or there is enmity between the parents of the child and the enemy kidnaps the child and then throw him in an unknown place for the purpose to harm his/her parents or the father of the child deny him and exercise the option of *li'an* against the mother of the child or the child born as a result of *Zina* and the mother leaves him in hospital, park or in an unknown place or the parents of the child were killed in wars, earth quake or any other sudden accident or disasters and the NGOs picked them up, hence their parents are unknown.

The foundling is a human being; his life is sacred and trusts with the finder, so his protection is obligatory duty of every finder.

In this paper we will discuss definition of foundling, *Hukm e Shar'i*, Rights of Foundling. Focus will be on registration of foundling as a citizen and his right of Nationality.

Different Terms Used for Foundling:

The literal meaning, as stated by Ibn Manzoor in his famous *Lisn al 'Arab*, is as:

الطفل الذي يوجد مرميا علي الطريق لا يعرف أبوه ولا أمه

Foundling is that child who has been thrown in a way and whose parents are unknown.²

1 5:32.

2 Ibn Manzor : lisan al 'Arab, the word لفظ

In Islamic Law the following terms have been used for foundling and each term has a background. These are:

الضائع (lost), الضال (Stray), الدعي (Adoptee), المنبوذ (abandoned), and اللقيط (foundling)³

Definition of Foundling.

The four famous schools of thought defined foundling in different ways with different words. The definition of Foundling according to *Hanafi* Jurists is:

إسم لحي مولود طرحه أهله خوفاً من العيلة أو فراراً من تهمة الزينه

A living child who has been abandoned by its parents out of fear or destitution or to avoid an accusation of fornication.⁴

Ibn 'Arafa al Maliki has defined as:

صغير آدمي لم يعلم أبوه ولا رقه

It is a child of human being, his parents and his status as slave are unknown.⁵

Shafi'ee jurists defined as:

كل صبي ضائع لا كافل له

Every lost child who has no guardian.⁶

Hanbali jurists defined as:

طفل غير مميز لا يعرف نسبه ولا رقه طرح في الشارع أو ضل الطريق ما بين ولادته إلى سن التمييز

A child incapable of understanding, whose lineage or status as a slave is unknown, thrown in a way or has lost the way and is below the age of understanding.⁷

The preferred definition seems to be that of the *Hanbali* Jurist. It comprehends the ingredients of foundling.

The *Maliki* jurists opined that the age of foundling is up to four or five years while the other jurists like *Shafi'i* and *Hanbali* consider foundling age from the birth to the age of understanding. Some of the *Hanbali* jurists say that this age extends upto majority.⁸

From all these definitions it is clear and agreed upon by all the jurists that only a minor male or female is considered to be a foundling. Because he / she is unable to run his day to day affairs and preserve and protect his interests. From this it may also be derived that a major or an adult person cannot become foundling. However the jurists differed in their opinion regarding the limit of minority ages. *Hanafi* said that only infant is eligible to become foundling while *Maliki* and some of *Shafiei* said that the person bellow the age of understanding (تميز). *Shafi* and *Hanbali* considered that a child up to the age of understanding is foundling. After adult hood no one can be presumed as foundling.

3 Mohammad bin abi Sahal al Sarakhsi ; Al Mabsoot 10:209, Ibn Nujaim al Hanafi:Al Bahr al Ra'iq; 5:155.

4 Al Mabsoot 10:209

5 Al Kharshi 'ala Mukhtasar Sayyidi al Khalil: 7:130

6 Muhammad bin al Sharaf al Din: Raodatul Talibeen wa 'Umdatul Muftiyeen; 5:418

7 Mansoor bin yunus Idrees al Bahooti: Kashshaf al Qana'; 4267:

8 Sharh al Zarqani 'ala Mukhtasar Sayyidi al Khalil ; 7:117, Kashshaf al Qana'; 4266; ,Shahab al Din Qalyobi wa 'Umairah: Hashiyata Qlyobi wa 'Umairah 'ala sharh Minhaj al Talibeen By Muhye al Din al Nawawi: 3:123, Al Ghazali: al Waseet;4:301, Muhammad Amin: Hashiyat ibn 'Abideen: 4:269

The second condition is that he must be a person thrown/ left in a place and this can be understood through circumstantial evidence i.e. thrown in mosques, parks, ways, roads and parents or guardian of the foundling are unknown. This was the opinion of Muslim Jurists.⁹

The European laws have also defined foundling as he is a child of unknown parentage found abandoned on the territory of a State.¹⁰

It must be an infant at the time it was found abandoned. The Black's Law Dictionary defines a *foundling* as "a deserted or abandoned infant; a child without a parent or guardian, its relatives being unknown."¹¹

The Oxford English dictionary also uses the term *infant* in defining *foundling*, thus: an infant that has been abandoned by its parents and is discovered and cared for by others. And he is a very young child or baby."¹²

The term *laqeet* has also been referred to in the Holy Qur'an in the case of two prophets *Yousuf* (A.S) and *Musa* (A.S). The Holy Quran discussed the event of *Yousuf* (A.S) said:

وَالْقُوَّةَ فِي غَيْبَتِ الْجُبِّ يَلْتَقِطُهُ بَعْضُ السَّيَّارَةِ إِنْ كُنْتُمْ فَاعِلِينَ

(Rather, cast him into the bottom of a pit, so that some wayfarers may pick him up,)¹³

The cause was enmity and jealousy of his brothers with him.

The Holy Quran said about *Mosa* (AS):

فَالْتَقَطَهُ آلُ فِرْعَوْنَ

So the family of Pharaoh picked him up.¹⁴

The cause of throwing *Mosa* (AS) into the river was the law made by Pharaoh to kill the new born male babies of the tribe of *Banu Israeel*. Mother of *Mosa* (AS) due to fear and on the revelation from Almighty Allah, threw him into the river and later the Pharaoh picked him up.

Al-Hukm Al-Shar'i for picking up of foundling: Picking up and Rearing of a foundling is *Fard Kifayah*.

According to the opinion of majority of the Jurists like *Shafi'i*, *Maliki*, and *Hanbali*, picking up and rearing of a foundling is *Fard Kifaya*. Therefore if some of the people performed this duty, liability of the others dropped but if none of them performed this job all became sinner. There are a number of verses of the Holy Quran and *Ahadith* of the Holy Prophet (SAWS) from which the jurists derived this *hukm al shar'i* that picking up of foundling is *fard kifaya* on the local community. The Islamic injunctions made it obligatory on every human being to take proper care of foundling. The Holy Quran says:

وَمَنْ أَحْيَاهَا فَكَانَ مِمَّا أَحْيَا النَّاسَ جَمِيعًا

9 Al Ansaf:6:432, Muhammad al Khateeb al Sharbini: Mughni al Muhtaj 2:418, Kashshaf al Qana'; 4226: , Nihayatul Muhtaj 5:444, Al Mabsoot 10:209, Muhammad 'Arafa: Hashiyat al Dasooqi dar al Fikr, 4:124, Tuhfatul Fuqaha':2:602.

10 European Union Democracy Observatory on Citizenship, *The EUDO Glossary on Citizenship and Nationality*, available at <http://eudo-citizenship.eu/databases/citizenship-glossary/glossary>, accessed on September 7, 2015.

11 H.C. Black, *Black's Law Dictionary* (5th ed. 1979)

12 *Oxford English Dictionary*, Oxford University Press, 1989

13 12:10

14 28:8

(And whoever saves the life of a person is as if he has saved the life of the whole of humankind).¹⁵

Imam al Razi, while commenting on this verse, said:

Saving of a life means to protect him from all kinds of dangers like burning, drowning, excessive hunger, cold and heat, and that to save a life is like to save the mankind as we have declared that killing of one person is like killing of all persons.¹⁶

The following verses and Sunnah of the Holy Prophet (SAWS) may also be cited to encourage the people to help the foundlings.

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Help each other in righteousness and piety, and do not help each other in sin and aggression. Fear Allah. Surely, Allah is severe at punishment.¹⁷

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ

We have honoured the sons of Adam;¹⁸

This verse mentioned that the children of Adam were made much superior than many of those Allah created in this world, higher and lower. This includes the foundlings as will.

The Holy prophet (SAWS) said:

ترى المؤمنين في تراحمهم وتوادهم وتعاطفهم كمثل الجسد إذا اشتكى منه عضو تداعى له سائر الجسد بالسهر والحمى

Muslims are like one body in their mutual love, mercy and sympathy. If a part of body is in trouble the rest of the body feels wakefulness and fever.¹⁹

In another Hadith the Holy prophet (SAWS) said:

من لا يرحم لا يرحم وفي رواية لمسلم من لا يرحمه الناس لا يرحمه الله

Those who do not mercy on others they are also not blessed with mercy. According to Muslim those who do not mercy on others, Allah also not bless his mercy on them.²⁰

In another Hadith the Holy prophet (SAWS) said:

قال رسول الله ﷺ من لم يهتم بأمر المسلمين فليس منهم

The Holy Prophet (SAWS) said that who do not care about the affairs of Muslims is not one of them.²¹

‘Abdul Razzaq narrated Judgment of ‘Umar ibn al Khattab regarding a foundling in

15 4:32

16 Abu ‘Abd Allah Muhammad bin ‘Umar Fakhr al Din al Razi: Mafateeh ul Ghaib- Al Tafseer al Kabeer 6:219 and also see Al Jami’ Li Ahkam al Quran by Qurtubi 6:134

17 4:2

18 17:70

19 Al Jami’ al Sahih by Abu ‘Abd Allah Muhammad bin Ismai’l al Bukhari. Chapter of Adab and in Sahih Muslim Chapter of Fadai’l

20 Al Jami’ al Sahih by Muslim bin Hajjaj: Book of virtues (fada’l) Chapter , his mercy on children :4:1809

21 ‘Ali bin Abi Bakr al - Haythami: Majma’ ah Zawa’d; Book of faith, chapter in advice

(النصيحة) 1:79

these words:

روي عن سنين أبي جميلة من بني سليم أنه وجد منبوذاً في زمان عمر بن الخطاب فقال: «فجئت به إلى عمر بن الخطاب فقال: ما حملك على أخذ هذه النسمة؟ فقال: وجدتها ضائعة فأخذتها فقال له عريفه يا أمير المؤمنين إنه رجل صالح. فقال عمر: أكذلك؟ قال: نعم فقال عمر بن الخطاب: اذهب فهو حر ولك ولاؤه وعلينا نفقته

Narrated from Saneen abu Jumaila from banu Sulaim that he found a foundling in the era of 'Umar ibn al Khattab(R.A). So he brought him to 'Umar (R.A). He asked him what made you to take this child. He said "I found a lost therefore, I took him. The head of the tribe said, O chief of the believers, he is a man of good character". 'Umar said, if this is the situation, take him, he is free, you are his *Marwla* and his maintenance is upon us.²²

The jurists derived hukm shar'i from these sources that picking up of foundling is *Fard Kifaya*. The duty of the finder after taking the foundling, is to inform the authority immediately so that he may give him to a trustworthy person to take proper care of him.²³

They also agreed that taking of foundling became *Fard Ain* فرض عين if the finder knows that a little negligence may cause his death because he is in a place far from the reach of passersby. So to save his life picking him up became obligatory on the person who saw him.²⁴

Islam encouraged the people to help the foundlings. The Rightly Guided caliphs and after them different Countries made rules for proper care and maintenance of foundlings.

Rights of Foundling:

Islam prescribed in much detail the rights of foundlings. We will summarize these rights and will discuss the issue of nationality and lineage in detail. Generally foundling is a child and has no sense of religion. But the jurists have considered him Muslim or non Muslim on the basis of places where he was found or the person who found him. For example if he was found in a masque or in a city, town, village of Muslim community, he will be considered as Muslim and Muslim Law will be applied and in case he died he will be buried like a Muslim Child. This is opinion of all the jurists of Islam.²⁵

When he was found by a Zimmi in church or in residential area of non Muslims, Hanafi and Maliki jurists are of the opinion that his religion will be decided accordingly.²⁶

Shafi'i and *Hanbali* jurists said that he will be considered according to the religion of the finder if there was no Muslim in that area, but if there was Muslim then he will be presumed as Muslim. The Muslim jurists have discussed this issue in detail and will be consulted in their Books.

They also have rights of freedom that he is considered as free human being because the original rule is that all human beings are descendents of Adam and Eve and they were free not slaves.²⁷

22 'Abd al-Razzaq: al Musannaf, chapter of allegiance of foundling (14: ولاء اللقيط 9)

23 Ibn Qudamah: Al Mughni; and Al Sharh Al Kabeer 6:202

24 Bidayatul Mujtahid :2:209, Al Ikhtyar:3:29, Al Mughni and al Sharh al kabeer 6:374, Al Sharh al sagheer :4:178. Al sewasi: Sharh Fath al Qadeer 6:110, Burhan al Din al Murghinani: Al Hidayah; 2:173, al Mughribi: Mawahib al Jalil ;6:80, al Nawawi: Rawdat al Talibeen 5:418, Al Mughni 6:35, Ibn Hazm al Zahiri: al Muhalla 8:273.

25 Al Mughni 5:748, Qalyobi wa 'Umairah :3:126, Bidayat al Mujtahid: 2:310, Bada'i':7:198.

26 Muhammad bin Yusuf abi al Qasim al 'Abdari: al Taj wa al Ikhlil 6:82 Dar al Fikr, Bada'i':7:198

27 Bidayatul Mujtahid :2:310, Al Mughni 5:747, Qalyobi wa 'Umairah :2:128, Bada'i':6:197.

He possesses right to keep property because being a human he has the capacity to accrue rights for himself it is called (أهلية وجوب). As he is child therefore no obligation (أهلية الاداء) confer on him.

He possesses right of maintenance like cloths, foods etc these will be paid from his own property, if any, or which is gifted to him or from *Waqf* made for this purpose or from Baitul mal.

He possesses right of inheritance, generally parents of foundling are unknown and hence question of lineage and inheritance from them does not arise, if they were known then he can inherit from them and they can inherit from him. In case of his death, his property will go to Baitul mal.

Nationality and Citizenship²⁸

Nationality is generally understood as the legal bond that connects a person to a particular State. It constitutes his membership in the particular State and makes him a *national* of that State. Nationality creates reciprocal obligations between the citizen and the State. It imposes upon the citizen the duty to render allegiance to the State and subjects him to the obligations created by the laws of that State. Thus, it is the basis of the State's exercise of jurisdiction over the person. On the part of the State, nationality imposes the responsibility to protect the citizen. It also gives the State the right to accord diplomatic protection to its nationals and to make claims on their behalf. Therefore, the issue of nationality is a universal issue and hence various Resolutions, Declarations and Conventions provided general guiding principle for states to adopt it. The following are the few important provisions:

1. Article 15(1) of Universal Declaration of Human Rights, UN General Assembly, 10 December 1948 A (III).
2. Article 1 and 2 of the 1930 Hague Convention.
3. Article 8 of The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, adopted on 3 December 1986, and published on 6 February 1987.
4. European Convention on Nationality, Council of Europe, 6 November 1997, CETS 166.
5. League of Arab States, Arab Charter on Human Rights, May 22, 2004.
6. Article 24(3) of the International Covenant on Civil and Political Rights, which was adopted on 16 December 1966 in New York.
7. Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012.

28

Nationality and citizenship: Both are often used as a synonym for each other in English— notably in international law — although the term Nationality is sometimes understood as denoting a person's membership of a nation. In some countries, e.g. the United States, "nationality" and "citizenship" have different meanings, and it is possible to be a national of the country but not a citizen. Citizen of a Country means man's place of dwelling and stability— a place where he belongs. Hence linguistically, the citizen is every person who belongs to a country which he has adopted as an abode a home and a dwelling for his life and prepared himself to live therein. In Arabic language the word "مواطنة" and جنسية has been used for citizenship while for nationality the word إقامه is used. (Qamooos al Mustalahat al Siyastah)

«المواطنة» بأنها : مكانة أو علاقة اجتماعية تقوم بين شخص طبيعي ، وبين مجتمع سياسي (الدولة) ، ومن خلال هذه العلاقة يقدم الطرف الأول الولاء ، ويتولى الطرف الثاني الحماية ، وتحدد هذه العلاقة بين الشخص والدولة بالمساواة أمام القانون «الوضعي» في ظل هيمنة الدولة القومية. (قاموس المصطلحات السياسية)

Citizenship is a relationship between an individual and a state in which the individual owes allegiance to the state and in turn is entitled to its protection. This relationship is determined through equality before the positive law in accordance with the rules of sovereignty of State.



8. Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969.
9. Regional Treaties, Agreements, Declarations and Related, Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 26 May 1995.
10. UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171
11. Article 7(1) and (2) of Convention on the Rights of the Child, UN General Assembly, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3
12. Article 6 of African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990) Organization of African Unity (OAU).
13. Article 24 of The 1995 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, adopted on 26 May 1995 at Minsk, Belarus.

All these Resolutions, Declarations, and Conventions framed the following principle:

1. Everyone has the right to a nationality;
2. Statelessness shall be avoided;
3. No one shall be arbitrarily deprived of his or her nationality.

Hence, it is the general right of everyone to acquire nationality. However it does not impose an unqualified obligation on the part of a State to give its nationality to every child born on its territory but they are independent to regularize it according to the will of the nation.

International Conventions that Specifically Apply to Foundlings

While the international conventions cited above deal with the right to nationality as applied to anyone or any person, or to children in general, there are several international conventions contained specific provisions that apply to foundlings and their right to a nationality.

The 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws provides:

"Article 14. A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.

A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.

Article 15. Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases."²⁹

²⁹ League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137

The 1961 Convention on the Reduction of Statelessness,³⁰ on the other hand, contains the following provisions:

Article 1

A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

- (a) at birth, by operation of law, or
- (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

Article 2

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

Article 12

In relation to a Contracting State which does not, in accordance with the provisions of paragraph 1 of article 1 or of article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph 1 of article 1 or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

The provisions of paragraph 4 of article 1 of this Convention shall apply to persons born before as well as to persons born after its entry into force.

The provisions of article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

The *European Convention on Nationality* also provides:

Article 6 – Acquisition of Nationality

Each State Party shall provide in its internal law for its nationality to be acquired by the following persons:

Children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law;

Foundlings found in its territory who would otherwise be stateless.

The Covenant on the Rights of the Child in Islam,³¹ which was adopted by the 32nd

30 UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175

31 Organization of the Islamic Conference (OIC), *Covenant on the Rights of the Child in Islam*, June 2005, OIC/9-IGGE/



Islamic Conference of Foreign Ministers in Sana'a, Republic of Yemen in June 2005, states:

Article Seven – Identity

A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined and to know his/her parents, all his/her relatives and foster mother.

States Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.

The child of unknown descent or who is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title and nationality.

In Pakistan the Pakistan Citizenship Act 1951, The Pakistan Citizenship Rules 1952, the Naturalization Act 1926, the Pakistan Naturalization Rules 1961 and NADRA Laws and Rules are applied for this purpose. The following laws serve the services, supervision and control of Children in orphan houses which is examined by the Federal Shariat Court on its own motion in the following manner:

The Punjab Supervision and Control of Children Homes Act. XVI OF 1976.³²

The Sindh Orphanages (Supervision and Control) Act. VII of 1976.³³

The North West Frontier Province Orphanages (Supervision and Control) Act. XIV of 1976.³⁴

The Baluchistan Orphanages (Supervision and Control) Act. V of 1978.³⁵

Federal Shariat Court directed the Government of the Punjab to amend section 15(6), 11 and section 18. Amendments to the above effect were also ordered to be made by the Baluchistan Government in section 11 and 18 of Baluchistan Ordinance. The Baluchistan Government amended the Ordinance through Ordinance No. XIX of 1984.

The Government of NWFP the now (KPK) was directed to amend sections 10 and 19 in the same manner as was directed in respect of the Punjab and Baluchistan statutes. The Government of Sind was directed to amend section 4(3) and 17 of the Act.

Appeal was also filed on 17.12.1984 and was allowed on 16.1.1988.

The NADRA formulated Orphan Registration Policy under section 9 of NADRA Ordinance 2000. In this policy rules for Grown up and new entrant orphans have been made and a considerable CNIC/CRC has been issued.

Chronological Sequence of Development on Adoption Policy.

The issue of registering of abandoned children of un-known parentage as well as children

32 HRI/2004/Rep.Final.

33 SSM. No.219/P/84.

34 SSM. No. 181/S/84.

35 SSM. No. 90/NWFP/84.

36 SSM. No. 126/B/84.

with biological known parentage was surfaced in year 2006, when ‘Abdul Sattar Edhi (Edhi Foundation) implored NADRA Authorities for registration of these children.

It was suggested by ‘Abdul Sattar Edhi that in case of children with biological unknown parentage, the name of “ ‘Abdullah” may be entered in the father name column for such children.

NADRA authorities sent this proposal to Ministry of Law for approval which in turn suggested that field of “father name” should be left blank or the word “نامعلوم”. unknown be placed there. The suggestion given by Ministry of Law was considered derogatory as children registered with the word “نامعلوم” may grow up under inferiority complex and may cause psychological trauma.

NADRA authorities in Oct. 2006 again took the initiative and suggested that name of “ادم” and “حوا” to be entered in column of father and mother respectively. The proposed solution was referred to Ministry of Interior for onward submission to Islamic Ideological Council and to make clear cut decision/ verdict on the subject.

This issue was also raised in the Ideological Council which examined it and recommended that in column of father, instead of a particular name any name and if the guardian is a known person his name may be added. The Council revised its decision and examined all aspects in detail and finally decided that NADRA should add a column of special guardian (خصوصی سرپرست) in the form for the purpose of issuing national identity card.³⁶

In Feb 2007, NADRA in the light of Islamic Ideological Council instructions issued a detailed SOP on adopted children which permitted the printing of “Guardian Name” for both type of cases i.e. with known and un-known parentage

The issue of naming the children’s unknown parentage will got raised on reaching the majority age i.e. 21 years when guardianship of the child lapses under Majority Act, 1875 and according to section 10 of NADRA Ordinance, the Authority shall issue National Identity Card to every citizen who has attained the age of 18 years.

In year 2010, On Chairman NADRA’s Instructions to help out the issue of naming parentage of children with unknown parentage, the fatwa’s from Iran and Saudi Arabia were also sought.

The principal of Madrasatu Walaye Sayyed ‘Ali Mohammad Naqwi issued fatwa on 16.2.2010 that any name may be inserted in the column of father and mother, if their parents were unknown.

Supreme Appellate Court of Gilgit-Baltistan.

The Chairman (NADRA) being Registrar General of Pakistan took notice that children are being taken to foreign countries from Gilgit-Baltistan (GB) under legal cover. Consequently, Legal Dte was assigned the task of visiting GB to dig out the factual position and propose necessary action. Manager (Legal) visited and met all the District & Sessions Judges of GB as well as the Chief Judge of the Supreme Appellate Court of GB and explained them with reference to section 26 and 39 (b) and (g) of Guardian & Wards Act, 1890. After detailed discussion with the Honorable chief Judge and other judges of the Supreme Appellate Court of GB, an application was filed by



Manager (Legal) NADRA in the Supreme Appellate Court GB on behalf of Chairman NADRA. The Honorable Chief Judge took Suo Moto action on the application and passed an order supporting the contentions of NADRA on 03.11.2010 and issued instructions to subordinate judiciary of GB and stopped processing of all adopted cases of abandoned children to foreigner with immediate effect till the finalization of the application. Further ordered to keep track of those adopted children who have already proceeded abroad, the need for a judicial protocol with Canada, USA and UK (as signed by Govt. of AJ&K with UK) has also been expressed.

The Honourable Supreme Appellate Court of GB was pleased to pass the following directions on dated 22.06.2011 in C.MISC 13/2011 in S.M.C No. 12/2010:-

- i). The Orphanage Centers immediately on taking a child into custody will intimate the home department of Government of Gilgit-Baltistan and will maintain the record of all children in the custody of Orphanage center under intimation to the home department.
- ii). The welfare Organization or Orphanage Centre, as the case may be will not accept the custody of child of unknown parentage without obtaining undertaking of the person who brings the child to an Orphan Centre about the origin of child.
- iii). The Welfare Organization Registered under the Voluntary Social Welfare Agencies Ordinance 1961, may not run Orphan Centre without proper authorization and registration, with controlling authority of Welfare Organization.
- iv). The chief Secretary Government of Gilgit-Baltistan and NADRA authorities will take up the matter with Ministry of Interior Government of Pakistan for initiation of the process for the enactment of law on adoption.

Abdul Sattar Edhi Case in the Honourable Supreme Court of Pakistan.

‘Abdul Sattar Edhi filed a petition in the Supreme Court of Pakistan regarding registration of abandoned children with unknown parentage in the custody of organization like Edhi Foundation vide HRC No. 22607-S of 2011. In this regard detailed report along with proposed Policy for Registration of abandoned children was submitted in Honorable Supreme Court of Pakistan which disposed of the case and passed the following order:

“In view of the written stand and the Orphanage Registration Policy which has already been promulgated by NADRA, the grievance of the applicant, Dr. Abdul Sattar Edhi appears to have been redressed. The respondent- NADRA is, however, directed to ensure that all such applications for registration of orphan children are promptly dealt with. The Chief Secretaries of all the four Provinces are directed to make sure that the concerned departments/agencies of the Provincial Governments are aware this policy and provide full assistance to NADRA in this regard as, also for the implementation of relevant provincial laws.”

Federal Shariat Court has examined Section 8 and 21 of the NADRA Ordinance(viii) of 2000 in a Shariat Petition entitled ‘Anbareen Tariq A‘wan vs Federal Government of Pakistan. She challenged the above sections for being repugnant to the injunctions of Islam. This petition was dismissed by this Hon. Court on 24. 6.2013.³⁷

Federal Shariat Court also took *Suo Moto* action that under National Database and Registration Authority (NADRA) Ordinance(viii) of 2000, children whose parents are unknown and living in various Orphan Houses being denied the right to get their Pakistani National Identity Card or form “B” by the NADRA authorities where as under sections 9 and 10 of NADRA Ordinance 2000, every Pakistani citizen is entitled to be registered and obtain National Identity Card on attaining the age of eighteen years.

In pursuance of the Orphan Policy, NADRA invited all Orphanages which are registered under any of the Federal/Provincial Law to get themselves registered. In this regard, NADRA wrote letters to almost all Orphanages/Institutions to get itself registered with NADRA under the Approved Registration Policy.

Till the beginning of the year 2017, there were 56 orphanages/Institutions that were registered with NADRA and they have referred almost 808 orphans with known and unknown parentage for registration. The detail is as under:

Total Referred Cases	Registered	Under Process	Rejected
808	426	129	252

The Concept of Adoption in Islam.

Allah Almighty has prohibited adoption decisively because we cannot, by any case, change reality by any false claim. Allah Almighty says:

وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَفْقَهُ الْقَوْلَ وَالْحَقُّ وَهُوَ يَهْدِي السَّبِيلَ ۚ ادْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَلِاخْوَانِكُمْ فِي الدِّينِ وَمَوَالِيكُمْ

Nor did he make your adopted sons your (real) sons. That is (merely) a word uttered by your mouths. And Allah says the truth and He shows the (right) way. Call them by (the name of) their (real) fathers; It is more equitable in the sight of Allah. And if you do not know their fathers, then they are your brothers in faith and your friends.³⁸

One of the major sins is that a person attributes another to other than his real father, so that person competes with the man's children, knows his secrets, and denies the right of his real father and mother. Therefore, the Prophet (SAWS) said:

أَلَا تَرَعْبُوا عَنْ آبَائِكُمْ فَمَنْ رَغِبَ عَنْ أَبِيهِ فَإِنَّهُ كُفْرٌ

Do not detest your fathers; he who detested his father committed infidelity.³⁹

عَنْ سَعْدِ رَضِيَ اللَّهُ عَنْهُ قَالَ سَمِعْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ وَهُوَ يَعْلَمُ أَنَّهُ غَيْرُ أَبِيهِ فَالْجَنَّةُ عَلَيْهِ حَرَامٌ

“Whoever claims to be the son of a person other than his father, and he knows that person is not his father, then Paradise will be forbidden for him.”⁴⁰

Allowable Forms of ‘Adoption’ in Islam

Orphans and foundling

38 33:4-5.

39 Al Jami’ al Sahih by Muslim bin Hajjaj: Book of Eman, Chapter 438

40 Al Jami’ al Sahih by Abu ‘Abd Allah Muhammad bin Isma’ al Bukhari. Book of Fara’d, Chapter those who detested his father...

This is a completely different form of adoption, which is not prohibited by Islam - that is, when a man brings home an orphan or a foundling and wants to raise, educate, and treat him as his own child. In this case, he protects, feeds, clothes, teaches, and loves the child as his own without attributing the child to himself, nor does he give him or her the rights which the Shari'ah (Islamic Law) reserves for his natural children. This is a meritorious and noteworthy act in Islam, and the man who does it will be rewarded by being admitted to Paradise. In Islamic Law this is termed as *kafil al yateem*. Prophet Muhammad (SAWS) once said: "I and the guardian of an orphan, will be in Paradise like this" (and he gestured with his two middle and index fingers).⁴¹

There are also numerous Quranic verses that support the act of taking care of orphans.⁴² The prohibition of adoption does not mean to leave the foundling without care and protection, or offending him by any mean or defaming his honor or disdaining him. A foundling or abandoned child is also regarded as an orphan, and one may apply the term 'wayfarer' *عابر السبيل أو ابن السبيل* to him as well. In this case too, as in that of orphans, the child's lineal identity must be unchanged and parenthood to the natural parents should not be denied. When the parents of such children are unknown, the children must be made brethren in faith⁴³ as cited at the beginning of this article.

Foundling is a free Muslim who has the same rights as a Muslims and should do the same obligations. One of his rights on the community is to have his lineage protected if it was known, he should not be attributed to other than his real father, and his status should be maintained. If his lineage was unknown his status will be like a free slave for Muslims who enjoys their love, care, and help.

Zayd ibn Harithah was a companion whom the Messenger of Allah (SAWS) loved, was attributed to his father after he was attributed to the Messenger of Allah (SAWS) and that did not decrease his status and did not affect his excellence. The Messenger of Allah (SAWS) said to him: "You are our brother and our freed slave."⁴⁴

Salim, was another companion of the Holy Prophet (SAWS) and was the freed slave of *Abu Hudhayfab ibn 'Utbah*. He did not know who his father was and that did not decrease his status. *Salim* participated the Battle of *Badr*. He used to teach the Qur'an to Muslims. The Prophet (SAWS) said: Learn the Qur'an from four persons and *Salim* was one of them.⁴⁵

'Umar ibn Al Khattab said at his death: "If *Salim* had been alive, I would have appointed him as a successor."

Islam, therefore, does not permit the finder to attribute the foundlings to himself as his/her own children and apply all the laws as are applied for one own son or daughter as this was prevailing in the days of ignorant. Islam commands for protection of all of his rights as a human being.

Lineage of Foundling.

If it is necessary to add name of father with name of foundling for the purpose to issue a birth certificate or for any other reason, is the finder allowed to attribute him to himself?

41 Abu Eisa Muhammad bin Eisa Al-Tirmizi: Jamia Al Sunan; Chapter of mercy on orphan

42 see: Quran: 2:220; 4:2; 4:6; 4:10; 4:127; 17:34

43 33:4-5

44 Al Jami' al Sahih by Muslim

45 Al Jami' al Sahih by: Imam Bukhari; Fada'il al Quran, H.499

Or to add the name of any person in the box of father although he is not his real father?

This issue was raised in the Ideological Council which examined it and recommended that in column of father, instead of a particular name any name and if the guardian is a known person his name may be added. The council revised its decision and examined all aspects in detail and finally decided that NADRA should add a column of special guardian (خصوصی سرپرست) in the form for the purpose of issuing national identity card.⁴⁶

Some of the Jurists said that the finder may add his name in the box of father but should name him after a common name such as to say: so and so son of 'Abdullah, or he may give him a name similar to his own name.

The government of Saudi Arabia considers foundling born inside the Kingdom as its citizen. Section 7 of Saudi Arabian Citizenship System approved by the Cabinet according to the Decision No. 4 dated in 25.1.1374 H, says: Individuals born inside or outside the Kingdom from a Saudi father, or Saudi mother and unknown father, or born inside the Kingdom from unknown parents (foundling) are considered Saudis.⁴⁷

The grand Mufti of Saudi Arabia 'Abdul Aziz bin 'Abdullah bin Baz issued the following fatwa:

And they will be attributed to show that they are slave of Allah like to say: 'Abdullah bin 'Abdul Rahman, the son of 'Abdul Latif, the son of 'Abdul-Malik, the son of 'Abdul Majeed. They will be identified and registered by that name and there is nothing wrong in it.⁴⁸

This issue was also discussed by the Mufti of Egypt Dr 'Ali Jum'a in another way. He said:

The Mufti of Egypt Dr. 'Ali Jum'a permitted the finder to add his nickname or surname to the orphan, or a person whose father is unknown for the purpose to show his affiliation to his tribe. It is written in the text of the *Fatwa*, "it is permissible for the finder of orphan or foundling - male or female- to add nickname of his tribe with his name or to change the last ward of his name into the name of the tribe to show his affiliation only without prejudice or fraud to show that he is his real son or daughter and so as this may also not enter in the scope of forbidden adoption. The Grand Mufti said that this addition would be considered like *Wala'* which was prevalent in the ancient 'Arab tribes and it is clear that *Wala'* was religiously permissible and it also protect the interests of the child in different stages of his life. By this way we may act upon Islamic Injunctions and can also protect ourselves from the prohibited adoption and its consequent effects. Dr. Ahmed 'Umar Hashem and Dr. Yousuf al-Badri opposed this opinion.⁴⁹

The issue of adoption and traveling of children from one country to another is a burning issue of the day. The same practice was noticed by the chairman NADRA that children

46 Annual Report 2011-12 pages 89.

47 www.refworld.org/pdfid/3fb9eb6d2.pdf accessed on 27.1.2016

48 وينسبته إلى العبودية لله كأن يقال: عبد الله ابن عبد الرحمن، ابن عبد اللطيف، ابن عبد الملك، ابن عبد المجيد حتى يعرف بهذا الاسم ويسجل بهذا الاسم ولا حرج في ذلك،

(www.binbaz.org.sa/mat/19606 last access dated 23.1.16)

49 وأجاز مفتي الديار المصرية د. علي جمعة إضافة لقب كافل اليتيم أو مجهول النسب إليه بحيث يظهر مطلق الانتماء لهذه العائلة، وجاء في نص الفتوى «يجوز شرعاً لكافل اليتيم أو مجهول النسب أن يضيف لقب عائلته، سواء أكان رجلاً أو امرأة إلى اسم الطفل، أو تغيير الاسم الأخير من اسمه إلى تلك العائلة، بحيث يظهر مطلق الانتماء إليه دون الإخلال أو التدليس بأنه ابنه أو ابنته من صلبه حتى لا يدخل ذلك في نطاق التبني المحرم شرعاً وأضاف فضيلة المفتي أن تلك الإضافة ستكون مثل علاقة الولاء التي كانت بين القبائل العربية القديمة وأوضح أن الولاء جائز شرعاً، ويحقق مصالح الطفل في مراحل العمرية المختلفة، مع الاحتفاظ بالأحكام الشرعية من حرمة التبني، وما يترتب عليها من آثار شرعية. وللفتوى معارضين مثل د. أحمد عمر هاشم، د. يوسف البدري

from Gilgit Baltistan are taken to foreign countries under legal cover. On his direction an application was moved in the Supreme Appellate Court of Gilgit-Baltistan.

The precise questions involved in the matter were relating to the jurisdiction of the guardian Judges in Gilgit-Baltistan to issue guardianship certificate of a deserted child in favour of a non citizen or a stranger to take the custody of child beyond territorial jurisdiction of Court. There was yet another question as to whether a Muslim or a non Muslim stranger or a non citizen can be given custody of a Muslim or non Muslim deserted child without the intervention of official agencies of government of Gilgit-Baltistan and Government of Pakistan.

The issue before the Court was the permissibility of adoption on the basis of guardianship certificate and limitation on the jurisdiction of District Judge Gilgit.

The learned Advocate General on the basis of official version of Kingdom of Saudi Arabia and with reference to a Fatwa given by an authorized forum in Saudi Arabia has submitted that a Child of Saudi Origin is not allowed to be taken out of Saudi Arabia either on adoption or otherwise by a non citizen and Saudi Government is under obligation to establish the social organization for welfare of deserted children within the country, therefore, in absence of law on the subject in Pakistan, the law enforced in Saudi Arabia may be followed as precedent. The Order of the Government of Saudi Arabia is confined to the extent of territory of Saudi Arabia whereas in Pakistan, neither there is a codified law on adoption nor there is any such official arrangement for protection of deserted Children. In Islam there is no prohibition on adoption except that a non Muslim cannot adopt a Muslim Child but a non citizen Muslim may not be able to adopt a deserted child from a Welfare Centre without the registration of Child with NADRA and permission of the concerned official agencies. In Islam Government is custodian of its Citizen, consequently, in pursuance of Order Dated 03-11-2006, it shall be mandatory for a non citizen Muslim to fulfill the following legal requirement for adoption of a deserted /parentless Child from the custody of parents or a welfare centre/organization.

In absence of specific proof to the contrary a deserted/parentless child in custody of welfare centre or organization is considered a child of Muslim Faith and the custody of Muslim child cannot be given to a non Muslim.

If the parents of child are known, the consent of parents in writing with full particular and declaration of adoption by adoptive parents before the District Judge of the concerned District.

If the child is deserted and is in the custody of welfare organization as parentless subject to the Police verification and undertaking of the Centre or Organization that child was genuinely in their lawful custody which was not obtained in an illegal and unauthorized manner with declaration on oath before the District Judge of the concerned district that Organization shall be responsible for legal consequence of the concealment of any material fact.

In case of adoption of child from a Welfare Centre or Organization in Gilgit-Baltistan in addition to the declaration on oath, the adoptive parents whether citizen or non citizen, must fulfill the following requirements.

The proof of origin and faith of child and the origin and faith of adoptive parents with

their full particulars with declaration of adoption supported by an affidavit of facts before the District Judge concerned.

The verification certificate of Home Secretary Gilgit-Baltistan regarding the desertion of child and genuineness of adoptive parents and the welfare organization.

The NOC of Interior Division, of Government of Pakistan to be issued on the basis of verification certificate of Home Secretary, Government of Gilgit-Baltistan and verification of credentials of the adoptive parents by the Foreign Office through High Commission/Consulate of Pakistan in the Country of adoptive parents.

The Interior Division, Government of Pakistan before issuing of NOC will direct registration of child with NADRA Islamabad.

The adoptive parents may on the basis of above documents obtain Guardianship Certificate with permission to take the Custody of Child out of Pakistan from District & Sessions Judge, Islamabad.

The adoptive parents shall maintain the record of registration of child.

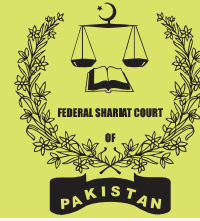
The adoptive parents shall give undertaking before the High Commission/consulate and also NADRA authorities in the country of which they are citizen to maintain the child as their natural child in according with Muslim faith and will not hand over the custody of child to any other person or take the Child to any other country without prior permission of above authorities.

It is concluded that illegitimacy is not the only cause for throwing of children in unknown places. Poverty, theft, enmity among the people, wars, sudden accidents etc are also the main causes. The *Hukmi Shar'i* that Picking up and Rearing of a foundling is obligatory as *Fard Kifaya* and some time it became *Fard Ain*. Islam prescribed in much detail the rights of foundlings like maintenance, education, inheritance etc. The upbringing right of such children lies on the shoulder of Islamic State. The most important issue in the contemporary world is that of his lineage, adoption and proper registration as a citizen and other connected rights.

The appropriate opinion in this regard seems to be that of the grand Mufti of Sa'udia Arabia 'Abdul 'Aziz bin 'Abdullah bin Baz that in column of father of the foundling any name giving the meaning of slave of Allah like son of 'Abdul Majeed etc and his/her mother name like 'Attiatullah may be added.

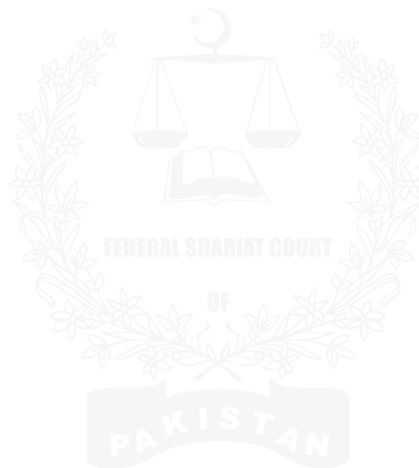
Foundling should be given full citizen status and standing by the state. The state should also use funds to provide for expenses, even when the foundling is adopted and under the care of a guardian.

The state should ensure that the foundling be given life opportunities equal or better than the place he was found.



BRANCH REPORTS





REPORT BY ADDITIONAL REGISTRAR

With a view to implement the vision of Hon'ble Chief Justice, certain plans for capacity building of human resource and renovation and beautification of office building were initiated. Following the gracious approval, our team commenced implementative action on envisioned plan. The restructuring plan for the head office has been impacted with objects of (a) Capacity building of the officers and officials, (b) Expanding its outreach to the Branch Registries, and (c) Renovation and beautification of the main building.

Spade work has been done for the capacity building of staff in technical fields. Many officers/officials of this Court have been sent for various trainings. Besides, number of internal trainings have also been arranged in the Head Office. i.e. Introduction of Computer, Ms Office, Internet Browsing, Email Searching etc. and use of other applications. Furthermore, Secretariat Training has also been arranged which includes PPRA Rules, Service Laws and Rules, Financial Issues, GFR Procedure Rules, Office Automation, Duties and Responsibilities of drivers/dispatch riders and English Short Hand Refresher courses etc.

As far as renovation and beautification work is concerned, various assignments have been completed. Renovation of roof of the main building was carried out and proper complete water proof chemical ('luk') has been laid thereupon. Streamer emission air terminals have been installed on the roof to protect the building from the Sky lightning. General public lift operation was suspended for long which has been repaired and the lift is thus operational for the General Public, Advocates and Staff of the Court. Security measures have been taken, and backside wall of the main building has been renovated and left side wall of the building has been enhanced significantly for the safety purposes. Security Cameras are also working with its recording. Fire-fighting articles have been repaired and updated and all fire extinguishers and water pipes are smoothly functioning. The work relating to smoke detectors to save/protect the building from the fire is in its final stage. White wash work in the verandas and outside of the building has been done with iron grills. The front lawn has been renovated with replacement of soil and new grass and plantation. Medical Dispensary with services of a qualified doctor has been started and the medicines and medical check up are available within the Court premises for all staff members of the Court. Coffee machine has been fixed/installed in the office. The work for installation of ATM is in progress and will be finalized upto March 2019. An official Van 15seater has also been purchased for the use in the Court and handed over to Staff of Federal Shariat Court. For security and safety of the Court, the iron grills have been installed on the outer wall of the Rest House. Besides, two rooms in the Rest House have been renovated for the Guests.

An area which has been part of the planning in the context of developing the Institution has been "Administrative Reforms" in the Court. We have made some progress in this regard. For maintenance of order and discipline, number of initiatives have been taken which are:-

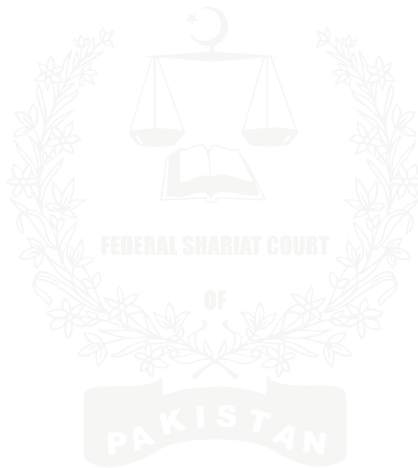
- (a) dress code has been introduced for the first time i.e. officers/officials shall wear lounge suit and in case of shalwarKameez vaste coat is mandatory;
- (b) monitoring of computerized/biometric attendance for all staff members of Federal Shariat Court has been done;
- (c) officials RFID Cards have been issued to all officers and officials of this Court

at Principal Seat and at all Bench Registries;

- (d) “Visitor Cards” have become compulsory for the outsiders who visit the office premises; and
- (e) Leave Record including Casual Leave and LFP is being maintained on monthly basis and submitted before the authority for perusal.

I am glad to report that in light of vision of Hon’ble Chief Justice, we have made headway in two directions (i) capacity building and (ii) beautification and renovation of this building of Federal Shariat Court and we have almost finalized/completed such projects. It is hoped with the passage of time, we shall make more efforts in this direction as well. Before ending I should record my appreciation to the technical staff of this court for the arduous work done by them particularly Mr. Zahir Shah, Mr. Tanveer Ahmed Caretakers for the completion of assignments relating to renovation and beautification work of Federal Shariat Court building and Rest House at Islamabad.

(Syed Nadeem Haider)
Additional Registrar





REPORT BY DEPUTY REGISTRAR (JUDICIAL)

The Hon'ble Chief Justice is very keen to dispose of cases as early as possible specially backlog of old cases of years from 1994 to 2010. At the end of year 2017, we had 180 old criminal cases and now it has been reduced to 81 old criminal cases upto 31.12.2018. These old criminal cases are against acquittal wherein accused/respondents are fugitive from law.

2. Under the directions of Hon. Chief Justice, we had tried to overcome the delaying tactics usually used by the litigants. We had developed a mechanism so that unnecessary adjournments may not hamper the process of early disposal. The service being effected upon the parties by using modern means of communication i.e. email, fax, telephonic calls and through mail service. SMS alert system has been developed and likely to be functional in near future actively.
3. Placed below is a table showing statistics for the period from 01.01.2018 to 31.12.2018.

Sr.No.	CATEGORY OF CASES	PENDENCY ON 31.12.2017	INSTITUTION FROM 01.01.2018 TO 31.12.2018	TOTAL	DISPOSAL FROM 01.01.2018 TO 31.12.2018	BALANCE ON 31.12.2018
1.	Cr. Appeal	274	86	360	198	162
2.	Cr. Revision	17	15	32	17	15
3.	Cr. PSLA	20	05	25	12	13
4.	Cr. Murder/Hadd References	09	02	11	08	03
5.	Cr. Suo Motu	01	-	01	-	01
6.	Cr. Misc.	56	120	176	119	57
7.	Shariat Matter	190	72	262	138	124
Total		567	300	867	492	375

4. The above mentioned table shows that the pendency of cases has been reduced to 375 inclusive, 124 Shariat matters and 251 criminal cases upto 31.12.2018.
5. After enactment of Women Protection Act, 2006, the rate of institution of criminal cases falling under *Hudood* laws have drastically been reduced. Now, the cases of *Zina-bil-Jabr* (Rape), *Qazaf* (Enforcement of Hudood) Ordinance 1979 and under Prohibition Order IV of 1979, have been lifted from Hudood law by curtailing jurisdiction of the Court. Some shariat petitions were filed against Women Protection Act, 2006 and in respect of matters falling under Prohibition (Enforcement of Hadd) Order, 1979 and other matters regarding jurisdiction of this Court, which were decided by this Court vide judgment dated 22.12.2010 passed in Sh. Petition Nos. 01-I of 2010, 03-I of 2007 and 01-I of 2007 reported in PLD 2011 FSC 1. The aforesaid judgment of this Court has been assailed by the Federation of Pakistan before the Shariat Appellate Bench of the Hon'ble Supreme Court of Pakistan and is still pending adjudication. Proviso of Article 203-D (2) of the Constitution of Islamic Republic of Pakistan, 1973 provides that after filing of appeal before Shariat Appellate Bench of Hon'ble Supreme Court against decision of the Federal Shariat Court, implementation of judgment/order of this Court does not take effect until disposal of the case by Shariat Appellate Bench of Hon'ble Supreme Court.

6. After appointment of the present Hon'ble Chief Justice, the cases were reorganized at Principal Seat and Bench Registries and are regularly fixed besides the normal inflow of criminal cases. In response to a letter dated 30.10.2017, sent on behalf of the present Hon'ble Chief Justice of this Court to the Registrars of Lahore High Court, High Court of Sindh, Peshawar High Court, Islamabad High Court and High Court of Balochistan, directing them to transfer those criminal cases in which during trial charge against the accused was framed under *Hudood* Laws and on conclusion of the trial, the accused was/were not convicted under *Hudood* laws but under provisions of other laws, hence the appeal(s) or revision(s), as the case may be, shall lie before the Federal Shariat Court and not to the respective High Courts. In this respect, in the year 2018, almost 104 cases consisting of murder references, murder appeals, other criminal appeals and revisions were transferred from four High Courts.

Detail is given below:

S.N	Name of High Court	No. of cases
1.	Lahore High Court	Nil
2.	High Court of Sindh.	82
3.	Peshawar High Court	10
4.	High Court of Balochistan	02
5.	Islamabad High Court	10
Total		104

7. The benchwise break up of pendency upto the 31.12.2018 is also given below.

Pendency of Criminal Matters Benchwise.

Category	Pendency 31.12.2017	Institution 01.01.2018 To 31.12.2018	Received From Bench Registries 01.01.2018 To 31.12.2018	Transferred To Bench Registries 01.01.2018 To 31.12.2018	Disposal 01.01.2018 To 31.12.2018	Balance 31.12.2018
F.B	37	19	07	09	38	18 (02converted from DB)
D.B	275	110	18	16	210	175 (02converted into FB)
S.B	65	99	08	08	106	58

8. The cases pending at Principal Seat and at four Bench Registries hopefully will be decided upto the month of April, 2019. Thereafter, pendency of criminal cases may be dropped to zero except fresh institution of cases which are under pipeline in this Court. However, the Court will remain in function actively by exercising its original jurisdiction under Article 203-D of the constitution. At present, there are 128 shariat petitions pending at principal seat upto 31.12.2018. The benchwise pendency of shariat matters is given below:

Pendency of Shariat Matters Benchwise.

Category	Cases	Balance
Larger Bench	Remanded Riba Cases	53
	Other Riba Cases	29
Full Bench	Other Shariat Cases	42
Total		124

9. The Shariat Appellate Bench of Hon'ble Supreme Court vide judgment reported in "PLD 2002 S.C 800" (UBL vs. M/s. Farooq Brothers), involving question of *Riba*/Interest, remanded to this Court. In these shariat matters, 20 different acts/ordinances were challenged being repugnant to the injunctions of Islam. These shariat petitions are being fixed for hearing together and are being dealt with by Full Court (comprising 5 Judges including Chief Justice).
10. The questions to be determined in accordance with the remand order of the Shariat Appellate Bench of Hon'ble Supreme Court were prepared on which the case has to proceed. It was agreed that after constitution of new Bench the case shall be heard afresh on each point including the matter of jurisdiction. Besides other directions contained in the remand order, the economic system of other Islamic countries has to be examined before deciding the case. Parties and all factions of public/*ulema* throughout Pakistan are to be taken on board. The case is in progress and being regularly fixed for hearing on availability of Full Court (all five Judges) at Principal Seat at Islamabad. Other shariat petitions pending at Principal Seat at Islamabad are regularly being fixed for hearing on availability of Full Court (three judges). All such other shariat petitions are now fixed for hearing in the cause list of March, 2019 and are expected to be decided in the month of April or May, 2019.
11. Another table is given below showing the rate of disposal of last three years.

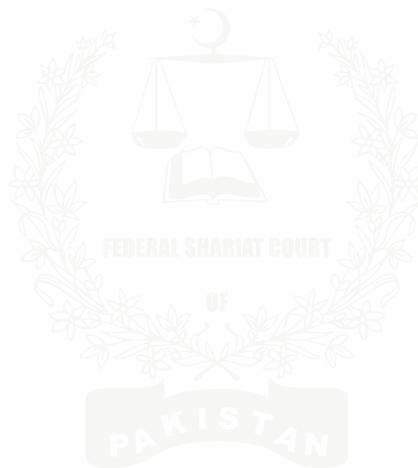
YEAR	PENDENCY	INSTITUTION	DISPOSAL	BALANCE
2016	773	178	295	656
2017	656	205	294	567
2018	567	300	492	375

12. According to table the rate of disposal during the year 2018 is much higher than last two years i.e. 2016 & 2017. The Hon'ble Chief Justice has desired to clear back log of cases pending upto year 2010. Therefore, at least 50% of old cases are being fixed for hearing alongwith new cases on each court roster. During this year all the Shariat petitions pending at bench registries were disposed of and no Shariat matter is pending at Bench Registries except few criminal full bench cases at Principle Seat, Lahore, Karachi & Quetta upto 31.12.2018.
13. During the year 2018 vide notification No. F.9(3)/90-Admn:FSC dated 30.10.2018 the court fee of advocates on panel of this Court for pauper accused has been increased/ revised as under.

1. Criminal appeal/Revision Rs. 6000/-
(short sentences other than life imprisonment)

2. Criminal appeals (life imprisonment) Rs. 7000/-
3. Hadd/Murder Reference with appeal Rs. 9000/-
14. And vide notification No.F.9(3)/90-Admn:FSC dated 19.10.2018 the fee of Juris-consult as provided in Rule of Federal Shariat Court (Procedure) Rules 1981 has been increased from rupees Two Thousand to rupees Four Thousand as daily allowance.
15. The Court roster upto 29.03.2019 has been constituted according to which the Court is functioning at Islamabad and visiting twice at Bench Registries with a target to finish pendency of Criminal cases upto the month of May 2019 except few Shariat Matters including Riba Cases.

(Jamal Mustafa)
Deputy Registrar (J)



REPORT BY DEPUTY REGISTRAR (ADMIN)

Revision of Federal Shariat Court (Terms and Conditions of Services of Staff) Service Rules, 1982.

Short Service Rules of this court were framed in exercise of powers conferred by Article 208 of the Constitution in 1982 and only few amendments were made in 1986 and 1989. During the past about 30 years, several posts were created and upgraded, however these were not reflected in existing rules. There was also an audit observation standing in this regard.

A committee for Revision/Amendment of Federal Shariat Court (Terms and Conditions of Services of Staff) Rules, 1982 was constituted by the Hon: Chief Justice under the Chairmanship of Hon'ble Mr. Justice Mehmood Maqbool Bajwa. Committee framed/drafted the subject rules keeping in view service rules of Supreme Court, High Courts and other Government Departments. It aimed at providing equal opportunities of career progression, equity and fair play to the employees of this court. The committee, after detailed deliberations on each and every clause, finalized the draft of Revised Rules and placed the same before full court for perusal /discussion as mandated by Article 208 of the Constitution of Islamic Republic of Pakistan.

The Full Court was comprising of following Judges:-

1. Hon'ble Mr. Justice Sheikh Najam ul Hasan, Chief Justice
2. Hon'ble Mr. Justice Allama Dr. Fida Muhammad Khan
3. Hon'ble Mr. Justice Mehmood Maqbool Bajwa
4. Hon'ble Mr. Justice Syed Muhammad Farooq Shah
5. Hon'ble Mr. Justice Shaukat Ali Rakhshani

Several meetings of full court were held and after detailed deliberations and thorough examination of each and every provision of said rules, Full Court of Federal Shariat Court framed "Federal Shariat Court Establishment Rules 2019" on 10-01-2019 providing rules for appointment of Employees of this Court and other terms and conditions of their service.

Now, Full Court approved draft of Federal Shariat Court Establishment Rules 2019 have been sent to the Law & Justice Division for seeking approval of President of Islamic Republic of Pakistan as required under Article 208 of the Constitution of Islamic Republic of Pakistan.

A number of measures were taken in Federal Shariat Court in the year 2017 for enhancing the organizational structure of the Court and capacity building of the staff. Following are the impacts of these measures taken by the Administration wing.

1. Job Description of Office of FSC:

Job Description of all the employees of this court was formulated for the first time in consultation with Head of all the Wings including Bench Registries, and circulated to all the staff. The same is now being followed in its letter and spirit and has removed the ambiguities amongst the staff in discharge of their official duties. It has also brought uniformity and improvement in the official work.

2. Maintenance of Order & Discipline:

Order and discipline is being maintained by wearing proper dress code by all the staff as per following detail:-

For Officers/Officials; Lounge suit or Shalwar Kameez with Waist-Coat

For Class-IV Staff ; White Shalwar Kameez with Black/Blue Waist-Coat and Black Shoes.

Attendance and leave record is now well-maintained in administration branch with the collaboration of IT branch through biometric system. At the end of every month a consolidated report is prepared by Administration wing by incorporating attendance and leave record of Head Office Islamabad as well as all the Bench Registries. In this respect, explanations and warnings are being issued to late comers to ensure the timely attendance. This has reduced the number of late comers and office timing is being followed strictly by all the staff.

3. **Training of Officers/Officials:**

For capacity building of staff in technical fields, many Officers/officials of this Court have been sent for training conducted by various Government & Private Organizations. A short list of training programs attended by the staff of this court is as under:

a. STI trainings

The Secretariat Training Institute conducts various training programs for Government employees (BPS 19-2) from time to time. Officers and officials of this court have been nominated in trainings relevant to their job description. The details of same are given as under:-

i. Public Procurement Rules and Procedures.

To develop understanding of Government rules / procedures on procurement of goods, works and services, Senior Assistant and Network Administrator of this court have attended the five days training on the following topics:-

- PPRA's Authority Ordinance 2002
- PPRA Rules 2004
- Procurement Planning
- Advertisement
- Methods of Procurement
- Opening and Evaluation of bids
- Acceptance/Awards of Contents
- Redressal of Grievances

ii. Service Laws & Rules/Regulations

To refresh professional knowledge for better understanding/applications of rule and update knowledge about prevailing rules and regulations Judicial Assistant and Senior Assistants of this court have attended the five days training on the following topics:-

- Civil Servant Act 1973-
- Govt. Servant Conduct Rules, 1964
- General Principles of Leave
- Revised Leave Rules 1980
- TA/DA Rules
- APT Rules
- E&D Rules

- Promotion Policy
- Appeal Rules 1977
- iii. **Financial Issues Relating to Retirement**
To build the capacity in preparation of pension cases and relevant documents i.e preparation of service book/pension papers etc, Assistants of this Court have attended one week training on the following topics:-
 - Preparation of Service Book
 - Benevolent and Group Insurance Rules
 - Pension Rules/Preparation of Pension Papers
 - G.P Fund Rules and G.P Fund Advances
 - Revised Leave Rules,1980
 - TA/DA Rules
- iv. **General Financial Rules & Procedures**
To update and refresh knowledge about the financial rules and procedureAccounts Assistant of this court has attended the five days training of General Financial Rules & Procedures on the following topics:-
 - Overview of Financial Control & Budgeting,2006
 - Expenditures and Payment of Money(GFR Chapter 2)
 - Defalcations , Losses etc.(GFR Chapter 5,Section IX)
 - Supplementary grants(GFR Chapter 6,Section II)
 - Stores(GFR Chapter 6,Section II)
 - Pay (FR/SR Part III,IV,V)
- v. **Office Automation/IT(English Typewriting)**
For capacity Building in required skills, Translation Assistant and LDCs of this court haveattended one month training of Office Automation/IT on the following topics:-
 - Basics of Microsoft Office(MS Word/Power point/Excel)
 - Typewriting Key Board
 - Introduction to Urdu Computer In-Page Software Program
- vi. **Duties & responsibilities of Drivers/ Dispatch Riders**
For awareness about their duties & responsibilities as well as traffic rules, Drivers and Dispatch Riders of this court have attended one week training on the following topics:-
 - General Ethics and Behavior
 - Discipline, Control and Punctuality
 - Rules for the use of Staff Cars,1980
 - Dress Code
 - Traffic Rules/Regulations
 - Maintenance of Log Book
 - Maintenance and safety of vehicles
 - Attending Protocol duty

vii. Improving Personal Effectiveness

Improving self awareness, confidence building, teamwork and interpersonal communication skills the Protocol officer of this Court has attended five days training on the following topics:-

- Personal effectiveness, ethos and attitudinal change
- Emotional Intelligence for successful leaders
- Interpersonal communication skills

viii. Public Sector Management

Providing learning on how professional knowledge and efficiency of staff may be enhanced to achieve desired goals in public sector organizations, Superintendent of this Court has attended one week training on the following topics:-

- Rules of Business
- Secretariat Noting and Drafting
- Secretariat Instructions & Office Procedures
- Financial Rules & Budgeting
- Human Resource Management
- MIS & e-Government

ix. Effective Communication and Negotiations Skills

To cater emerging requirements of negotiation and communication skills for effective utilization of human resources and the role of information technology for improving communication skills the Assistant Registrar of this Court has attended five days training of Effective Communication and Negotiations Skills on the following topics:-

- Fundamentals of communication and negotiation skills
- Improving organizational communication
- Negotiation and problem solving techniques
- The role of information technology for improving communication skills

x. Daftary Urdu

For reading and writing rules in National Language with a sound understanding of Urdu terminology, the Readers of this Court have attended the five days training of Daftary Urdu.

xi. Budget Preparation and implementation in Public Sector

To build capacity in preparing budget estimates / revised estimates / appropriation and reappropriation of funds according to the instructions on the subject the Accountant of this Court has attended five days training on the following topics:-

- Constitutional Provisions: Articles 78 to 82
- Budget Instruction(GFR)
- General procedure for estimating Revenue and Ordinary expenditures
- System of Financial Control & Budgeting 2006

xii. Duties & Responsibilities of Private Secretaries/ Assistant Private Secretaries

For capacity building and awareness about the duties and responsibilities of private secretaries/assistant private secretaries the Private Secretary of this Court has attended one week training on the following topics:-

- Basics of Secretariat Instructions
- Procedure of official meeting
- Communications skills
- Handling of classified documents
- Organizational skills in workplace Profile of an ideal PS/APS
- Secretary's office work

xiii. Duties and Responsibilities of DDOs/Cashier

For capacity Building of DDOs/ Cashiers for better and standardized performance the Cashier of this Court has attended one week training on the following topics:-

Financial Management in Public Sector, Organizations

Budget Preparation

- Preparation of bills/sanction & relevant provisions of GFR/FTR
- Cash handling, Maintenance of cash book, disbursement of claims
- Monthly expenditure statement & Re-conciliation with AGPR/Banks
- Development and Non-Development Expenditures
- Financial powers delegated to the Ministries/Divisions and Head of Department

xiv. English Shorthand Refresher Speed

For capacity building in required skills the Stenotypist of this Court has attended one month training of English shorthand refresher speed on the following topics:-

- a) Dictation
- b) Detailed Office Procedures
- c) Basic English Grammar, pronunciation, vocabulary and usage.

xv. Ethics, manners & hospitality

- To build capacity for mannerful performance the Naib Qasids of this Court have been nominated and attended, one week training of Ethics, manners & hospitality on the following topics:-
- General Ethics & behavior
- Punctuality & discipline
- Mannerism
- Dress code
- Serving the officers/guests
- Movement of papers
- Handling of Fax / Photocopiers / Computer

- Receiving/ attending guests
 - Attending telephone when required
- b. **AHK NCRD (Library training)**
For the use of modern techniques in library management & effective use of Automation & digital system in libraries, a five days orientation training course on “Role of Information & Communication technologies in Library management” conducted by AHK, NCRD, Islamabad, has been attended by the Cataloguer of this Court.
- c. **PPRA trainings**
To provide basic guidelines for procurement related issues i.e problems arising during procurement proceedings, proper management of procurement process and to control corruption in public procurement several workshops conducted by Institute of Tender Management have been attended by the Assistant Registrar, Senior Assistant and Accounts Assistant of this Court.
- d. **MTBF Training for Budget**
For capacity building training on “performance monitoring” the Accountant/ DDO of this Court has attended one day workshop of MTBF training for budget at Ramada Club.
- e. **Training of Librarian**
For capacity building of law librarians, the Librarian of this Court has attended three days workshop conducted by Federal Judicial Academy.
- f. **Basic IT training for all staff (Internal training conducted by IT wing of this Court):**
For capacity building of the staff in using Computer, Internet and MS Office for performing daily tasks involving use of computer in typing related skills two groups of officers and officials were formed, have attended and successfully completed the same. On completion of IT trainings of all the staff, certificates of successful completion of the trainings were given to all the officers and officials in a certificate distribution ceremony held in the Auditorium of Federal Shariat Court.

4. **Appointment of a Permanent Doctor**

For the first time a permanent Doctor has been appointed in this august court to provide medical facilities to the all the staff. A dispensary has also been setup in the court for providing basic medicines. Further, for maintaining medical record of the employees a medical proforma has been prepared and circulated to all the staff. In this respect, doctor will interview and examine the employees and record past medical history to address acute health problems, and minimize chronic health conditions. Maximum 8 to 10 patients visit the Doctor daily. Medicines for general diseases/health problems i.e flu, fever, sore throat, BP, allergy etc are available in the dispensary of court. This has reduced the outdoor visits of employees for medical checkups.

(Shabnam Amir Khan)
Deputy Registrar (Admn)

REPORT BY DEPUTY REGISTRAR (GENERAL)

Administration plays a very crucial role for effective and efficient day-to-day operations of any organization. General Branch of Federal Shariat Court played its role through the year 2018 to enhance upkeep and maintain the amenities in order to facilitate the functioning of different wings and sections of the Court. The detail of activities under taken by General Branch is as under:-

1. **Construction of Boundary Wall in Office Building.**

The rear boundary wall of Main Building of Federal Shariat Court was in very bad condition and was likely to fall any time. It's height was very low which was posing security threat General Branch managed to construct it in emergency in a short span of one month with raising of its height and installation of razor wire to beef up security.

2. **Replacement and Repair of Main Sewerage line of Hon: Judges Rest House.**

Main Sewerage line of 13 Inch dia at Hon: Judges Rest House, Islamabad was blocked due to which the Waste Water of all the bath Rooms was seeping into foundation of building. Tiles and others accessories/installations of bath rooms were in dilapidated condition. On directions of Hon: Chief Justice, new sewerage line was laid and all the bath rooms were got repaired by fixing new tiles and other accessories and white washing.

3. **Repair and Maintenance at Hon: Judges Rest House.**

Masonry work was carried out wherever the building structure of Hon: Judges Rest House was damaged. Kitchens attached with all the suites were got repaired and white washed. New kitchen cabinets were fixed and other wood work was also carried out in the kitchens. New GI pipes for water supply from CDA tube well to main water tank of building was replaced and all the water supply connection pipes connecting to suites were also replaced.

4. **Renovation of Suite No.8-9**

Suite No.8 and 9 were not in go condition and were not up to mark for stay of Hon: Guest. Both the suits were renovated. New tiles were fixed on floor of rooms and bath rooms and corridor/veranda in front of these suits. All the fixture/accessories was replaced with new one, including curtains. Kitchen attached with these suites was also renovated. New kitchen cabinets and wooden work was carried out. Marble tiles were fixed in front compound of these suites. Compound wall was also white washed with weather shield. Both the suites were brought to the required standards for Hon'ble Guest.

5. **Maintenance of Lawn in Hon: Judges Rest House and Main Building.**

Main Building of Federal Shariat Court contains two large lawns one on front side and second on back side of the Building. Both the lawns were not in good condition and gave a shabby look. Front lawn was re-leveled and all grass was removed in order to weed out un-necessary roots. Twenty trolleys of new soil, and fertilizer was spread before new plantation. New fresh grass was planted in the whole lawn. After necessary Masonry repair of flowers beds, new rose and other flowers plants were planted.

6. General Auction of Unserviceable items.

A large quantity of un-serviceable items i.e broken furniture, machinery item use less Tyre of official vehicles and other un-serviceable items were dumped at different places of Hon: Judges Rest House, as well as office building which has covered much useful office space. The same was disposed of according to relevant rules through open auctions and amount received against these items was deposited in Government Treasury.

7. Auction of Vehicles

One 1800-CC Honda Car and one 100-CC YAHAMA Motor Cycle were declared condemned on completion of their use full life. Both the vehicles were out of order which were disposed of by the open auction through tender process after observing all the codal formalities, in accordance with PPRA rules, and hand some amount received against these vehicles was deposited in Government Treasury.

8. Purchase of New Vehicles

Two new Cars 1800-CC Honda were purchased after observing all the codal formalities for Hon: Judges of the Federal Shariat Court as per their entitlement. One 2700-CC Toyota Hi-ace Van was also purchased for official use as well as to facilitate the staff of this Court.

9. Facility extended to Retired Judges

Hon: Retired Judges of the Federal Shariat Court often visit the Court in order to settle their Pensionery claims and other retirement benefits, but no proper sitting place was available for them in Federal Shariat Court. A VIP room with proper staff at Second Floor of Office Building of this Court was , therefore, setup to facilitate them.

10. General cleanness in the Office

Since its construction of office building no proper repair and maintenance work was carried out and there was no proper arrangement for its general cleanliness. Necessary arrangements for repair and maintenance of damaged part of whole building were made, keeping in view of Masonry work, Plumbing works and electrical works etc white washing on exterior side of whole building was carried out. Work regarding fixation of Marble tiles on the roof of domes of building were also carried out, in order to stop seepage.

A team of one sweeper and farash has been deputed at each floor of the building for its cleaning under the supervision of their Supervisor. The Caretaker of building was also directed to check the building keeping view of its cleanliness on daily basis and report thereof be submitted to Assistant Registrar (General).

11. Facilitation to Bench Registries

All the Bench Registries of Federal Shariat Court were facilitated with logistic support stores and stationary items, arrangements of payment against necessary procurement and Utility and telephone bills, repair and maintenance of office equipment i.e. Photo-stat Machine, Computer, Printer, Air conditioners installed at Hon: Judges Rest Houses and in office building, payment fuel charges and repair of vehicles. All other necessary items/articles used at Judges Rest House were also arranged.

12. Necessary contact with other departments.

General Branch keeps liaison with others departments like Pak PWD, CDA, Wapda etc for smooth supply of utilities and repair and maintenance of office buildings.

13. Repair and Maintenance of Official Vehicles.

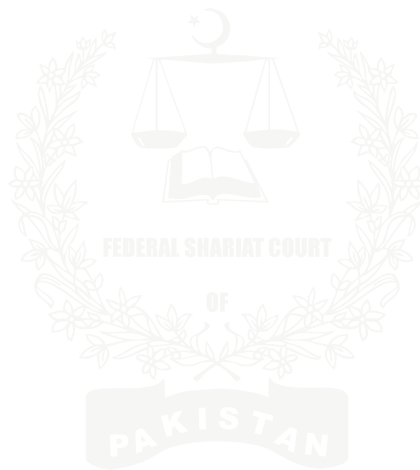
All the official vehicles under the use of Hon: Judges and general office use were kept upto date by their timely repair and maintenance.

14. Training to Officers and Staff.

During this period, officers and staff were referred to different Institution for refresher training and courses. Mr. Ghulam Rasool, Assistant Registrar obtained following training:-

Sr. No.	Name of Course	Duration	Institutions.
1.	PPRA Rules	1-week	PPRA Head Quarter
2.	Effective Communication	1-week	STI
3.	Prepare of Tender documents	1-week	PPRA
4.	Basic Computer training	3-week	Federal Shariat Court
i.	Mr. Musaddat Iqbal		
ii.	Mr. Mashooq Hussain Soomroo		
iii.	Mr. Farooq Ahmed		

(Muhammad Ijaz Ghani)
Deputy Registrar (Gen)



REPORT BY INCHARGE MEDICAL CENTRE

(MEDICAL CENTRE)

Dispensary of Federal Government Polyclinic (FGPC) was established in Federal Shariat Court of Pakistan (FSC) in June, 2018, which is comprising of following staff:-

1. Senior Medical Officer	From	F.G.P.C
2. Dispenser/Technician	From	F.G.P.C
3. Qasid	From	F.S.C.P

Basic infrastructure including:-

- i. **Furniture/fixtures**
- ii. **Equipments**

BP apparatus such as Gluco meter, Spiro meter, wheel chair, stretcher, oxygen, delivery system, tableware including all examination tools.

(All are provided by the Federal Shariat Court of Pakistan).

- iii. **Medicine**

A formulary of 61 medicine and 10 injections for emergency use.

(All provided by FGPC in sufficient amount and will continue to be provided on monthly basis).

This dispensary is capable of following things:-

- a. Providing medical cover to all the staff and their family members
- b. Can deal all routine medical and certain surgical emergencies

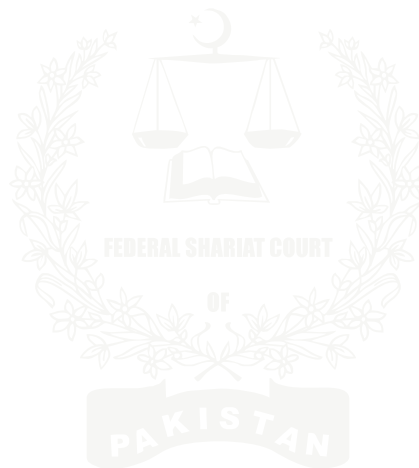
We have dealt with following number of patients since over beginning:-

June, 2018	120
July, 2018	213
August, 2018	178
September, 2018	189
October, 2018	219
November, 2018	123
December, 2018	317

On the desire and proposal of Hon'ble Chief Justice, we have computerized a detailed Medical/ Surgical record of all staff members of Federal Shariat Court for ready reference.

The numbers of patients is showing a trend of increase, which is evident of trust of staff in our performance and provision of facilities.

(Dr. Naeem Aslam)
Incharge Medical Centre



REPORT BY INCHARGE IT BRANCH

The latest technologies especially the Information Technology have changed the dynamics of every field of life. So, the importance of IT in Judicial System is unavoidable. Therefore, Federal Shariat Court has started its journey of digitization in 2008 with a project titled “Automation of Federal Shariat Court” funded by Access to Justice Program. This journey was started with procurement of Hardware including Computers, Printers, Scanners etc and establishment of Local Area Network (LAN). With the passage of time the IT Branch of the Court has worked hard and added the following achievements:

I. **OFFICIAL WEBSITE (www.federalshariatcourt.gov.pk)**

To facilitate the public, the website of the Court has been developed in National Language i.e. Urdu as well as in English. The following information is available online on the official website:

- Brief history of Establishment of Federal Shariat Court.
- Chapter 3-A of the Constitution of Pakistan
- Procedure Rules of the Court.
- Leading Judgments of the Court
- Reported Judgments.
- Case Status
- Roaster & Cause List.
- Tenders
- Notifications
- Monthly Statement of Criminal & Shariat Cases.
- Access to Human Right Cell.

The official website can be accessed with the following links

- For Urdu:
<http://www.federalshariatcourt.gov.pk/ur/صفحہ-اول/>
- For English:
<http://www.federalshariatcourt.gov.pk>

The bilingual website was launched by the Hon’ble Mr. Justice Shaikh Najam-ul-Hassan Chief Justice Federal Shariat Court in a function arranged in the Auditorium of the Court Building in presence of all the Hon’ble Judges of the Court and the staff. The Incharge IT Branch Mrs. Shazia Yasir has explained the key features of the bilingual website in a presentation.

II. **CASE FLOW MANAGEMENT SYSTEM:**

A Case Flow Management System has been developed with the following features for quick access to the information regarding cases:

- Computerized Case Institution
- Searching Case Record
- Checking Case Status
- Proposed Cause List
- Date Fixation
- Bench Allocation
- Case Proceedings
- Finding Judgments
- Report generation regarding pendency, disposal, institution & offence wise Statistics.

- Case Adjournment Application developed to expedite the Justice.
- Application for District wise Judgment Search has also been developed.

III. **HUMAN RESOURCE MANAGEMENT SYSTEM:**

The HRMS (Human Resource Management System) is helping the Administration Branch of the Court in dispensing their duties with the following key features:

- Computerized Information of the Employees.
- Leave Record of the Employees
- Seniority list of Employees
- Promotion History Employees
- ACRs of the Employees

IV. **VIDEO CONFERENCING:**

A Simple Video Conferencing facility has been provided in the Head Office, Islamabad and the four Branch Registries has been linked with the system for discussing the official matters of the Court.

V. **APPLICATIONS USED IN RESEARCH BRANCH:**

The following applications has been installed in the Research Branch to boost up and make easy the Research work:

- Shamila Library
- Easy Quran wa Hidith
- Quran e Muajam etc

VI. **HARDWARE INFRASTRUCTURE:**

To meet the requirements and implementation of IT the following steps has been taken:

- IT Infrastructure Upgradation Plan Phase-I has been implemented by purchasing new latest Desktop Computers & Printers in replacement of old ones while the Phase-II which includes the Upgradation of LAN (Local Area Network) is in progress.
- CCTV Cameras have been installed in the office for monitoring & security purposes. Display has been provided in the office of Hon'ble Chief Justice & the Registrar office for vigilance.
- The implementation of Bio-Metric Attendance System in the Branch Registries is in progress.

VII. **CAPACITY BUILDING TRAINING COURSE ON IT:**

For capacity building and to improve the IT skills of officers & officials of this August Court, a 6 weeks **“Basic Training Course on IT”** was started on 10th February, 2018 to meet the requirements of National Judicial Automation Committee (NJAC) as mentioned in the minutes of the 18th meeting of NJAC held on 3rd June, 2017.

1. **Purpose/Objectives of the Training:**

The main purposes of this IT Training was as under:

i. **Capacity Building in the field of IT:**

Capacity building (or capacity development) is the process by which individuals and organizations obtain, improve, and retain the skills, knowledge, tools, equipment and other resources needed to do their jobs competently or to a greater capacity (larger scale, larger audience, larger impact, etc). Therefore, the main purpose of this IT training is capacity building.

ii. **Best utilize the IT infrastructure:**

The Importance of Information Technology is unavoidable. Using information technology, organizations perform far faster than they usually do. For this purpose organizations purchase IT Hardware & Softwares on payment of huge amounts. To best utilize these IT Hardware & Softwares the users must have abilities and expertise in relevant field. Therefore, one of the main purpose of this training is to best utilize the IT infrastructure i.e. Computers, LAN (Local Area Network, Printers, Internet and the softwares/applications used to perform the official duties/tasks etc.

iii. **Maximize the use of IT in Justice Sector for speedy Justice:**

Technology not only assists the Judiciary in disposal of cases but also helps the common man access to justice. With the use of Information Technology the purpose of speedy justice system may be obtained as this helps both the judiciary and the public. The records need to be digitized. The summons/notices should be online. Other related tasks needs to be digitized for quick & speedy justice system. This IT training was a step towards the digitization of judiciary for speedy justice.

iv. **Improve the performance:**

The use of Information Technology can play a vital role in improvement of performance. Therefore, this training was organized to improve the performance of the officers & officials of this August Court in disposing their official duties.

2. **Contents of the Training:**

A need assessment was done by the IT branch and checked the requirements of the staff and problems faced by the staff for performing the official duties while utilizing the IT infrastructure available in this August Court. The following various type of courses/trainings/content have been added in this training after need assessment:

- i. Introduction to Computer.
- ii. Internet.
- iii. Microsoft Office (Word, Excel, Power Point).
- iv. Applications (PDF, Easy Quran wa Hadith, Audio, Video applications, Microsoft Picture manager etc).
- v. Digital Library.

Some other courses are also part of this training but those trainings are specific ones and not necessary for all the staff members. Those trainings will be conducted later on as per requirements. The trainings are:

- i. Human Resource Management System (HRMS)
- ii. Stock & Inventory Management System
- iii. Case Flow Management System (CFMS).
- iv. KOHA software for Library.

The complete contents, timings and other details have been prepared by IT branch in shape of a book titled “**Computer Skills Training Manual**”.

3. **Trainers of the training:**

The Trainers duties have been performed by:

- i. Mr. Fayyaz Ahmad khan (Network Administrator)
- ii. Mr. Faheemullah Khattak (Scanning Expert)

It is noteworthy to mention here that major part of training was completed by Mr. Fayyaz Ahmad Khan (Network Administrator).

4. Schedule of the Training:

The Training process was initiated by IT Branch on 2nd December, 2017 and after approval, the training was started on 10th January, 2018.

The schedule of training was as under:

Group	Start Date	End Date
Group No. 01	10.01.2018	16.02.2018
Group No. 02	14.03.2018	22.04.2018
Group No. 03	15.09.2018	23.10.2018
Group No. 04	12.11.2018	21.12.2018

5. Number of Trainees:

Total four groups were arranged including the Officers & Officials of this Court. The details of Groups are as under:

Group No	Number of Participants	Remarks
01	16	
02	16	
03	18	
04	20	
Total	70	

6. Grade wise distribution of participants:

Grade wise distribution of Trainees is as under:

Grade	Group1	Group2	Group3	Group4	Total
Grade-21	1	0	0	1	2
Grade-20	1	1	0	0	2
Grade-19	1	2	0	2	5
Grade-18	2	3	4	2	11
Grade-17	0	1	4	2	7
Grade-16	3	4	2	2	11
Grade-15	0	0	0	1	1
Grade-11	2	0	2	4	8
Grade-09	4	4	3	3	14
Grade-03	0	0	0	1	1
Grade-02	2	1	3	2	8
Total	16	16	18	20	70

7. Computer Lab:

As per directions of Hon'ble Chief Justice a Computer Lab has been established in the Court to facilitate the officers & Staff.

8. Certificate Distribution Ceremony:

A Certificate Distribution Ceremony was held at Federal Shariat Court on 14th February, 2019. The Chief Guest was the Hon'ble Mr. Justice Shaikh Najam-ul-Hassan Chief Justice Federal Shariat Court. Hon'ble Mr. Justice Allama Dr. Fida Muhammad Khan,

Hon'ble Mr. Justice Mahmood Maqbool Bajwa, Hon'ble Mr. Justice Syed Forooq Ahmed Shah, Hon'ble Mr. Justice Shaukat Ali Rakhshani, The Registrar, Officers & Staff have participated in the ceremony. Mr. Fayyaz Ahmad Khan has presented a detailed Report on the training. While addressing the Ceremony he has explained that this training is a step towards speedy Justice and digitization of Judiciary. Later on Hon'ble Chief Justice & Hon'ble Judges distributed the certificates to the participants. A Certificate of Appreciation was presented to Mr. Fayyaz Ahmad Khan on his contribution as Master Trainer on successfully conducting the IT Training.

9. **Outcomes of the Training:**

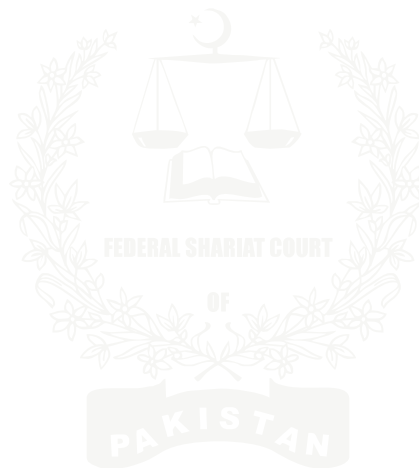
The results have been noticed in the following manner:

- i. Improved the efficiency of officers staff.
- ii. Troubleshooting burden has reduced on the IT Branch.
- iii. Trainees are now able to handle the emails etc while working in Branch Registries.
- iv. Employee Satisfaction has been increased as Job satisfaction generally increases & self-esteem improves when employees better understand the working.
- v. Enhanced morale on the job.

10. **Conclusion:**

The IT training designed and conducted by the IT branch has fulfilled the decision taken in the 18th meeting of NJAC held on 24th June, 2017 as well as played a vital role in capacity building of the officers & staff of the Federal Shariat Court for better performance by utilizing the latest technologies i.e. Information Technology. This training is a step towards the goal of speedy & transparent justice system.

(Shazia Yasir)
Incharge IT Branch



REPORT BY AZHAR IQBAL THE LIBRARIAN

Introduction of the Federal Shariat Court Library:

Federal Shariat Court Library is one of the richest and oldest special Libraries of the Federal Capital. The library is now fully enriched and re-organized under the patronage, personal interest and special attention of the Hon'ble Chief Justice, Federal Shariat Court. The library was established in 1980. Collection was developed in three languages i.e. English, Urdu, and Arabic covering the areas of Law, Islamic law, History of Pakistan, Biographies, Seerat-un-Nabi, Quran, Hadith, Fiqh-e-Islami and comprehensive works on Islam. Major Law Journals have been subscribed to provide latest case law to the Hon'ble judges and officers of the Court. Complete record of Gazette of Pakistan is available in the shape of Bound volumes. The numbers of Volumes are increasing day by day.

After implementation of the automation plan, OPAC (Online Public Accessible Catalogue) is available on intranet. All Hon'ble Judges and officers can search and locate the books of their interest sitting on their desktop.

Establishment of digital library database

The Books/Journals are very costly and their prices are charged in Dollars/Pounds/Euro etc. The library is not in position to purchase all the relevant/required library material for our valuable readers. **The Librarian made the good efforts and established a Digital Library Database of more than 2000 (Two thousand) latest digital Books including dictionaries, and Encyclopedias especially on Law and generally on all subjects to meet the requirements of Hon'able judges/Officers/ Researchers by downloading the digital books from the various free of cost databases and saved the huge money of public exchequer in the very short span of time.** The worth of database is in millions. The database helps the Officers who participate in promotional exams for preparing presentations and report writings. These books are added in a Digital Library Software "Calibre E-books Manager" in the office of Librarian of this Court.

Technical Services:

Library Automation

Library of Federal Shariat Court fully automated in Koha LIS (Library Software) for the quick retrieval of the Information.

Daily Press Clippings:

Daily press clippings relevant to the subject of Law and Judiciary of Pakistan are presented to Hon'ble Chief Justice, Learned Registrar and Senior Research Advisor as CAS (Current Awareness Services).

Circulation (Issue and Receipt of Books):

Issue and receipt of library books is one of the permanent functions of library staff. The books are issued to the Officers of FSC to help out in their daily routine court work as well as for enhancement of educational qualifications and promotional exams etc.

Supply of Newspapers:

Library is providing Newspapers to the Rest Houses/Residences of the Hon'ble Judges, Office of the Learned Registrar and Bench Registries of FSC.

Inter-library Loan:

This Library also provides Inter-Library Loan (ILL) facility to the Hon'ble Judges/

Officers/Researchers of FSC and borrows the books and other material from other libraries to assist the users to meet their research needs.

Classifying and Cataloguing of Library Materials:

Library Classifies and Catalogue the library materials according to internationally used Dewey Decimal Classification (D.D.C) Scheme for the purpose of organization and identification of the materials. Spine labels are generated and pasted through Library software. Book Cards are also generated for newly purchased books and old /gifted books.

Subscription of Law Journals/Magazines:

Library subscribes the following Law Journals for the use of Hon'ble Chief Justice, Hon'ble Judges of this Court, Learned Registrar and Officers etc. The list of Subscribed journals is as under:

- I. Supreme Court Monthly Review (SCMR)
- II. The All Pakistan Legal Decision (PLD)
- III. Pakistan Law Journal (PLJ)
- IV. Pakistan Criminal Law Journal (PCr.L.J)
- V. National Law Reporter- Shariat Decision (NLR-SD)
- VI. Civil Law Cases (CLC)
- VII. Pakistan Labour Cases (PLC)
- VIII. Law Notes (LN)
- IX. Yearly Law Reporter (YLR)
- X. Shariat Law Report (SLR)

Subscription of Newspapers:

Library is subscribing newspapers for the Library Reference Section. The detail of the Newspapers is as under:

- I. The Daily Dawn
- II. The Daily News
- III. The Daily Jang
- IV. The Daily Nawa-i-Waqat
- V. The Daily Express

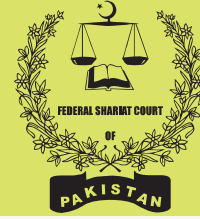
Training/Workshop:

Librarian of this Court attended the Three Days workshop/Training on "Capacity Building of Law Librarians" working in the Superior Courts, District Judiciary and Allied Organizations from all over the Pakistan held from 4th to 6th April, 2018 arranged by the Federal Judicial Academy Islamabad.

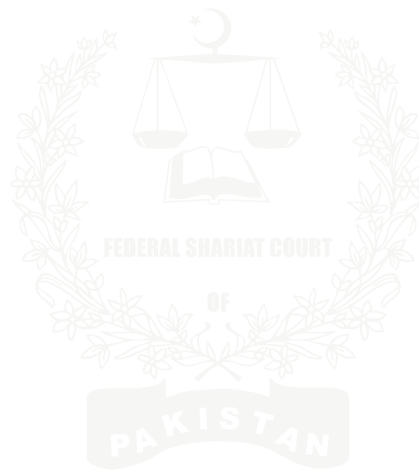
Late Sitting:

The library remains open till the Hon'bles Judges leave the Court after office hours.

(Azhar Iqbal)
Librarian



PRESS CLIPPINGS



روزنامہ ”نوائے وقت“

مورخہ 10 فروری 2018ء

وفاقی شرعی عدالت کے دو نئے ججوں نے عہدے کا حلف اٹھا لیا

چیف جسٹس شیخ نجم الحسن نے جسٹس فاروق شاہ اور جسٹس شوکت علی رخشانی سے حلف لیا

ہوئی۔ تقریب میں جسٹس علامہ ڈاکٹر فدا محمد خان، جسٹس محمود مقبول باجوہ، شرعی عدالت کے افسران، وکلاء نے شرکت کی۔ نئے دو ججز کو تین سال کی مدت کے لئے تعینات کیا گیا ہے۔ ان کے عہدے کی معیاد حلف اٹھانے کے دن یعنی 9 فروری سے شمار کی جائے گی۔

اسلام آباد (نمائندہ نوائے وقت) وفاقی شرعی عدالت کے دو نئے ججز سید محمد فاروق شاہ اور جسٹس شوکت علی رخشانی نے اپنے عہدے کا حلف اٹھا لیا ہے۔ چیف جسٹس وفاقی شرعی عدالت جسٹس شیخ نجم الحسن نے ان سے حلف لیا۔ اس حوالے سے ایک پروکار حلف برداری تقریب شرعی عدالت میں منعقد



روزنامہ ”ایکسپریس“

مورخہ 11 مارچ 2018ء

شرعی عدالت نے فروری میں 49

مقدمات نمٹائے، 526 زیر التواء

اسلام آباد (خصوصی خبرنگار) وفاقی شرعی عدالت نے فروری کے مہینے میں مجموعی طور پر 49 مقدمات نمٹائے جس کے بعد زیر التواء مقدمات کی تعداد 570 سے کم ہو کر 526 ہو گئی ہے۔ فاضل عدالت کی جانب سے جاری اعداد و شمار کے مطابق یکم فروری کو شرعی عدالت کے زیر التواء مقدمات کی تعداد 570 تھی اور مہینے کے 28 ایام میں صرف 5 نئے مقدمات کا اندراج ہوا جس کے بعد مقدمات کی تعداد بڑھ کر 575 ہو گئی جن میں سے 49 مقدمات نمٹا دیئے گئے جس کے بعد مقدمات تعداد کم ہو کر 526 ہو گئی۔

روزنامہ ”جنگ، لاہور“

مورخہ 24 اپریل 2018ء

(سودی نظام کے خلاف درخواستوں کی سماعت) کافی عرصہ بعد پنج مکمل ہوا، کیس نمٹانا چاہتے ہیں: شرعی عدالت

سپریم کورٹ کی طرف سے کیس بھجوانے والے حکم کا جائزہ اور عدالتی دائرہ اختیار کے معاملے کو دیکھا جائے گا، چیف جسٹس

جائے گا۔ عدالت نے قرار دیا کہ تمام فریقین کے وکلاء کو نوٹسز کی تعمیل یقینی بنانی چاہئے گی۔ عدالت چیف جسٹس شیخ نجم الحسن کا کہنا تھا کہ اب ہم کیس کوس کر نمٹانا چاہتے ہیں، آئندہ سماعت سے تمام معاملات کو ترتیب سے چلائیں گے۔

عدالتی معاونین کی بڑی تعداد پیش ہوئی۔ چیف جسٹس کا کہنا تھا کہ یہ کیس عدالت عظمیٰ سے رہمانڈ ہو کر آیا ہے اب کافی عرصہ بعد شیخ کی تشکیل مکمل ہوئی ہے، عدالت نے قرار دیا کہ چونکہ کچھ فریقین اور وکلاء کو نوٹس موصول نہیں ہو سکے اس لئے آئندہ سماعت پر سپریم کورٹ کی طرف سے کیس رہمانڈ کر کے بھجوانے والے حکم کا جائزہ لیا جائے گا، رہمانڈ آرڈر کے جائزے کے بعد عدالتی دائرہ اختیار کے معاملے کو دیکھا

اسلام آباد (صبح نیوز) وفاقی شرعی عدالت نے سودی نظام کے خلاف درخواستوں کی سماعت 14 مئی تک ملتوی کرتے ہوئے کہا ہے کہ کافی عرصہ کے بعد شیخ کی تشکیل مکمل ہوئی ہے اب اس کیس کو نمٹانا چاہتے ہیں، تفصیلات کے مطابق سپریم کورٹ چیف جسٹس شیخ نجم الحسن کی سربراہی میں پانچ رکنی لارجر شیخ نے سماعت کی اس دوران جماعت اسلامی کے وکیل قیصر امام ایڈووکیٹ، پروفیسر محمد ابراہیم اور



روزنامہ ”ایکسپریس“

مورخہ 20 مئی 2018ء

شرعی عدالت انسانی حقوق سیل میں 77 درخواستیں دائر

پاکستان سے 44، تارکین وطن 5 جبکہ 28 غیر ملکی شہریوں نے خطوط لکھے، ذرائع

عظمیٰ کی ہدایت پر بنیادی انسانی حقوق کے معاملات پر نوٹس لیکر سائلین کی داد رسی کیلئے وفاقی شرعی عدالت میں انسانی حقوق سیل قائم کیا گیا تھا۔ جس میں درخواستوں کی وصولی کی تعداد عدالت عظمیٰ میں موصول ہونے والی درخواستوں کے مقابلے میں انتہائی کم ہے۔

اسلام آباد (عابد علی آرائیں) وفاقی شرعی عدالت میں قائم انسانی حقوق سیل میں اب تک کل 77 درخواستیں دائر کی گئیں، پاکستان سے کل 44 جبکہ تارکین وطن کی طرف سے صرف 5 جبکہ 28 غیر ملکی شہریوں کی جانب سے حقوق انسانی سیل کو تحریری خطوط لکھے گئے، ذرائع کے مطابق گذشتہ سال عدالت

روزنامہ ”ایکسپریس“

مورخہ 12 جون 2018ء

سودی نظام کا خاتمہ آئینی تقاضا ہے، شرعی عدالت

عدالت کا حکم امتناعی نہیں، حکومت نے عمل کرنا ہے، چیف جسٹس

نفاذ کیخلاف وفاقی شرعی عدالت سمیت کسی عدالت نے کوئی حکم امتناعی جاری نہیں کر رکھا حکومت نے ہی آئین پر عمل کرنا ہے۔ ان کا کہنا تھا اس اہم نوعیت کے معاملہ کو عام مقدمات سے ہٹ کر دیکھ رہے ہیں، موجودہ صورتحال میں ہم کوئی حکم دے بھی دیں تو کچھ نہیں ہوگا، بعد ازاں عدالت نے سماعت غیر معینہ مدت تک ملتوی کر دی۔

اسلام آباد (عابد علی آرائیں) چیف جسٹس وفاقی شرعی عدالت جسٹس شیخ نجم الحسن نے واضح کیا ہے کہ ملک سے سودی نظام کا خاتمہ آئینی تقاضا ہے کیونکہ آئین کے آرٹیکل 38 میں کہا گیا ہے کہ ملک سے جتنا جلدی ممکن ہوگا ”رباہ“ کا خاتمہ کیا جائے گا۔ سودی نظام کا خاتمہ حکومت کی ذمہ داری ہے اور حکومت رباہ ختم کرنے میں مکمل طور پر آزاد ہے۔ سود سے پاک نظام کے

روزنامہ ”ایکسپریس“

مورخہ 21 ستمبر 2018ء

شرعی عدالت: سودی نظام خاتمہ کی 118 درخواستیں ایک بار پھر سماعت کیلئے مقرر

پہلی درخواست 30 جون 1990 کو دائر ہوئی، سپریم کورٹ نے فیصلہ چیلنج ہونے پر کیس دوبارہ ریماڈ کر دیا

16 سال سے درخواستیں زیر سماعت، 8 چیف جسٹس سبکدوش، کئی معاونین دنیا میں نہیں رہے، سماعت پیر کو ہوگی

ڈاکٹر فدا محمد خان اور جسٹس عبید اللہ خان پر مشتمل تین رکنی بینچ نے پہلا فیصلہ 14 نومبر 1991 کو سنایا اور اس فیصلہ پر 30 اپریل 1992 تک عملدرآمد کرنے کی ہدایت کی اس فیصلہ کو وفاقی حکومت نے سپریم کورٹ میں چیلنج کیا جس پر عدالت عظمیٰ نے 23 دسمبر 1999 کو شرعی عدالت کے متعدد احکامات برقرار رکھتے ہوئے حکومت کو ہدایت کی کہ 30 جون 2000 تک فیصلہ پر عملدرآمد یقینی بنایا جائے اس پر حکومت نے پہلے عملدرآمد کیلئے وقت بڑھانے اور بعد ازاں 2002 میں فیصلہ پر نظر ثانی کی اپیل دائر کی، اس نظر ثانی اپیل پر عدالت عظمیٰ کے بانچ رکنی بینچ نے 24 جون 2002 کو شرعی عدالت کا فیصلہ معطل کرتے ہوئے کیس ریماڈ کر کے واپس شرعی عدالت کو بھجوا دیا، گزشتہ 16 سال سے یہ مقدمات زیر التوا ہیں تاہم ان کی وقفے وقفے سے کچھ سماعتیں کی گئیں اس عرصہ میں کئی درخواست گزار اور کئی عدالتی معاونین اس دنیا میں نہیں رہے۔

پاک نظام کے کیخلاف وفاقی شرعی عدالت سمیت کسی عدالت نے کوئی حکمت امتناعی جاری نہیں کر رکھا حکومت نے ہی آئین پر عمل کرنا ہے۔ یاد رہے کہ سودی نظام کے خاتمے کیلئے دائر 118 مقدمات گزشتہ 27 سال میں اپنے منطقی انجام کو نہ پہنچ سکے۔ اس طویل عرصہ کے دوران وفاقی شرعی عدالت کے 12 چیف جسٹس صاحبان اپنی مدت پوری کر کے سبکدوش ہوئے جبکہ 16 سال قبل 2002 میں عدالت عظمیٰ نے جب یہ مقدمہ ریماڈ کر کے دوبارہ وفاقی شرعی عدالت کو بھجوا دیا تھا اس کے بعد بھی 8 چیف جسٹس صاحبان عہدوں سے سبکدوش ہو چکے ہیں، اب 9 ویں چیف جسٹس شیخ نجم الحسن نے اپنی تقرری کے ایک سال بعد ان مقدمات کو نمٹانے کا عزم کیا ہے تاہم اب اس معاملہ میں مزید متفرق درخواستیں بھی دائر ہو چکی ہیں۔ سودی نظام کے خاتمے کی پہلی درخواست 30 جون 1990 کو دائر کی گئی جن کی تعداد بڑھ کر 118 تک جا چکی، ان درخواستوں پر وفاقی شرعی عدالت کے اس وقت کے چیف جسٹس ڈاکٹر تنزیل الرحمان کی سربراہی میں جسٹس

اسلام آباد (عابد علی آرائیں) وفاقی شرعی عدالت نے ملک سے سودی نظام کے خاتمے کی درخواستیں 3 ماہ 10 روز بعد سماعت کیلئے مقرر کر دی ہیں۔ چیف جسٹس فیڈرل شریعت کورٹ جسٹس شیخ نجم الحسن کی سربراہی میں جسٹس ڈاکٹر فدا محمد خان، جسٹس محمد مقبول باجوہ، جسٹس سید محمد فاروق شاہ اور جسٹس شوکت علی رخشانی پر مشتمل 5 رکنی لارجر بینچ 118 سے زائد درخواست کی سماعت سوموار 24 ستمبر کو کرے گا۔ عدالت کی جانب سے انارنی جزل، وفاقی سیکرٹریز وزارت قانون و انصاف، سیکرٹری خزانہ، صوبائی چیف سیکرٹریز، ایڈووکیٹ جنرلز، وائس چیئرمین پاکستان بار کونسل، نجی بینکوں کے وکلاء سمیت مقدمات کے تمام فریقین کو نوٹس جاری کر دیے ہیں۔ کیس کی گزشتہ سماعت 11 جون 2018 کو ہوئی تھی۔ چیف جسٹس شیخ نجم الحسن نے گزشتہ سماعت پر واضح کیا تھا کہ آئین کے آرٹیکل 38 کے تحت ملک سے سودی نظام کا خاتمہ آئینی تقاضا ہے اور سودی نظام کا خاتمہ حکومت کی ذمہ داری ہے، حکومت رباہ ختم کرنے میں مکمل آزاد ہے، سود سے

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ربا کی آخری تشریح اسلامی نظریاتی کونسل کرے گی، وفاقی شریعت عدالت

عدالت کی فریقین کو آئندہ سماعت پر رہا اور انٹرسٹ کی تشریح سے متعلق تیاری کر کے آنے کی ہدایت

اٹھائے گئے سوالات کو پہلے حل کیا جانا چاہئے، جس پر فاضل چیف جسٹس شیخ نجم الحسن نے کہا کہ ہمارا دائرہ اختیار مختلف ہے، شریعت کورٹ ہدایات جاری کر سکتی ہے، سودی نظام کے خاتمے کیلئے عدالت نے کوئی حکم جاری نہیں کیا ہے، انہوں نے ریمارکس دیئے کہ سودی نظام کا خاتمہ آئینی تقاضا ہے لیکن اس کا خاتمہ پارلیمنٹ نے کرنا ہے۔ صبح نیوز کے مطابق وفاقی شریعت عدالت نے ملک سے سودی نظام کے خاتمے کے خلاف درخواستوں کی سماعت کے دوران آبزرویشن دی ہے کہ ملک سے سود کا خاتمہ آئینی تقاضا ہے آئین کی شق میں حکومت کو سود کے خاتمے کی ہدایت کی گئی ہے۔ اس ضمن میں شریعت عدالت نے کوئی حکم امتناعی نہیں دے رکھا۔ ہم صرف ہدایت دے سکتے ہیں، رہا کی آخری تشریح اسلامی نظریاتی کونسل کرے گی۔

اسلام آباد (جنگ رپورٹر، صبح نیوز) وفاقی شریعت عدالت نے ”ملک سے سودی نظام معیشت کے خاتمہ“ سے متعلق دائر کی گئی 118 درخواستوں کی سماعت کے دوران فریقین کو آئندہ سماعت پر رہا اور انٹرسٹ کی تشریح سے متعلق تیاری کر کے آنے کی ہدایت کرتے ہوئے کیس کی مزید سماعت غیر معینہ مدت کے لیے ملتوی کر دی ہے۔ چیف جسٹس شیخ نجم الحسن کی سربراہی میں پانچ رکنی لارجر بنچ نے درخواستوں کی سماعت کی تو انارنی جنرل انور منصور خان جماعت اسلامی کے رہنما پروفیسر ابراہیم، جماعت اسلامی کے وکیل قیصر امام ایڈووکیٹ متعدد فریقین عدالت عظمیٰ میں پیش ہوئے۔ انارنی جنرل انور منصور خان نے موقف اختیار کیا کہ عدالت پہلے رہا کی تشریح کرے تو پھر مقدمے کو آگے بڑھایا جائے، انہوں نے مزید کہا کہ سپریم کورٹ کی جانب سے سودی نظام کے خاتمے سے متعلق مقدمے میں

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آئین میں سود خاتمے کی ہدایت، اب تک متبادل نظر نہیں آ رہا چیف جسٹس شرعی عدالت

رباہ کے متعلق قرآن میں حکم واضح، آئندہ سماعت پر دائرہ اختیار، لفظ ”رباہ“ اور ”انٹرسٹ“ پر بحث ہوگی، ریمارکس

بینکنگ سے متعلق چار قوانین ختم ہونے پر 60 درخواستیں غیر موثر ہونے پر خارج، 78 پر سماعت آگے بڑھائی جائیگی

رہنما پروفیسر ابراہیم، جماعت اسلامی کے وکیل قیصر امام، معروف سکالر انور عباسی، تنظیم اسلامی کے رہنماؤں سمیت متعدد فریقین وصولی حکام عدالت میں پیش ہوئے۔ انارنی جنرل نے کہا کہ سب سے پہلے عدالت عظمیٰ کے ریمائنڈ آرڈر میں جو سوالات اٹھائے گئے ہیں انکا جواب دینا ہوگا اور ابھی تک لفظ ”رباہ“ کی کوئی تعریف سامنے نہیں آئی۔ پہلے رہا کی تعریف کرنا ہوگی اسکے بعد کیس کو آگے چلانا ہوگا۔

ہے، آئین کی شق میں حکومت کو سود کے خاتمے کی ہدایت کی گئی ہے تاہم ابھی تک کوئی متبادل نظام نظر نہیں آ رہا، باضی میں عدالت عظمیٰ کی ہدایت پر کمیٹیاں قائم کی گئی تھیں بتایا جائے کہ ان کمیٹیوں نے اب تک کیا پیشرفت کی ہے۔ چیف جسٹس کا کہنا تھا کہ آئین کی شق پر عملدرآمد روکنے کیلئے وفاقی شرعی عدالت نے کوئی حکم امتناعی نہیں دے رکھا۔ چیف جسٹس شیخ نجم الحسن کی سربراہی میں پانچ رکنی لارجر بنچ نے سماعت کا آغاز کیا تو انارنی جنرل انور منصور خان، جماعت اسلامی کے

اسلام آباد (خصوصی خبرنگار) وفاقی شرعی عدالت نے ملک سے سودی نظام کے خاتمے کیلئے دائر درخواستوں کی سماعت کے دوران بینکنگ سے متعلق چار وفاقی قوانین ختم ہونے پر 60 درخواستیں غیر موثر ہو چکی بنا پر خارج کر دیں اور قرار دیا کہ باقی 78 درخواستیں متعلقہ ہیں ان پر سماعت کو آگے بڑھایا جائیگا، سوموار کو سودی نظام کے خاتمے کیلئے دائر 138 درخواستوں کی سماعت کے دوران چیف جسٹس شیخ نجم الحسن نے آبزرویشن دی کہ ملک سے سود کا خاتمہ آئینی تقاضا

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سود کا معاملہ حساس نوعیت کا، تمام قانونی پہلوؤں کا احاطہ کیا جائیگا، وفاقی شرعی عدالت کیس نمٹانے کیلئے فریقین کردار ادا کریں جسٹس شیخ نجم الحسن، سوالنامہ فریقین کے وکلاء کے حوالے، آئندہ سماعت پر موقف جمع کرانیکا حکم

صرف سفارشات بھجوا سکتی ہے کہ اس معاملہ کا قانون و سنت کے اصولوں کی روشنی میں جائزہ لیا جائے تاہم اس حوالے سے قانون سازی پارلیمنٹ نے ہی کرنی ہے، انہوں نے مزید کہا ”رباہ“ کا لفظ قرآن پاک میں لکھا ہوا ہے اس حوالے سے عدالت اس پر بحث کر سکتی ہے اور نہ ہی کوئی اور کیونکہ یہ معاملہ بالکل واضح ہے، جسٹس محمود مقبول باجوہ نے کہا عدالت آئین کے آرٹیکل 203 میں دیئے گئے دائرہ اختیار سے باہر نہیں جاسکتی، کیس کے فیصلہ کے ذریعے عدالت نے صرف مسلمانوں کو ہی نہیں دیگر لوگوں کو بھی مطمئن کرنا ہے، بعد ازاں کیس کی مزید سماعت غیر معینہ مدت کیلئے ملتوی کر دی گئی۔

تو چیف جسٹس نے کہا سپریم کورٹ جانب سے ہمیں کیس دوبارہ بھجوانے کے حکم میں بڑا وسیع سکوپ دیا گیا ہے لیکن افسوس ہے کہ فریقین آج بھی اس حوالے سے نئے نکات لیکر نہیں آئے ہیں عدالت ابتدائی طور پر دو نکات پر کیس آگے بڑھائیگی، (اول) عدالتی دائرہ اختیار (دوئم) لفظ ”رباہ“ اور ”انٹرسٹ“ کی تعریف کرنا، جس پر ایک فریق کے وکیل نے دلائل دیتے ہوئے موقف اختیار کیا عدالتی دائرہ اختیار کا معاملہ ابتدائی طور پر زیر بحث نہیں لایا جاسکتا بلکہ سب سے پہلے لفظ ”رباہ“ کی تشریح ضروری ہے جس سے یہ بات واضح ہو جائیگی کہ اسکی تشریح میں انٹرسٹ لفظ آتا ہے یا نہیں، جس پر چیف جسٹس نے کہا عدالت اس حوالے سے پارلیمنٹ کو

اسلام آباد (جنگ رپورٹر) وفاقی شرعی عدالت نے ملک سے سودی نظام معیشت کے خاتمہ سے متعلق مقدمہ کی سماعت کے دوران لفظ رباہ کی تشریح کے حوالے سے سوالنامہ فریقین کے وکلاء کے حوالے کرتے ہوئے اسکی روشنی میں آئندہ سماعت تک تحریری موقف جمع کرانیکا حکم جاری کیا ہے۔ عدالت نے آئین رویشن دی اس کیس کو نمٹانے کیلئے تمام فریقین متحرک کردار ادا کریں سود کا معاملہ حساس نوعیت کا ہے اسلئے اسکے بہت سے قانونی پہلوؤں کا احاطہ کیا جائیگا۔ عدالت اس کیس کے فیصلہ کے ذریعے صرف مسلمانوں کو نہیں دیگر مذاہب کے لوگوں کو بھی مطمئن کرے گی، چیف جسٹس شیخ نجم الحسن کی سربراہی میں قائم پانچ رکنی لارجر جسٹس نے سماعت کی

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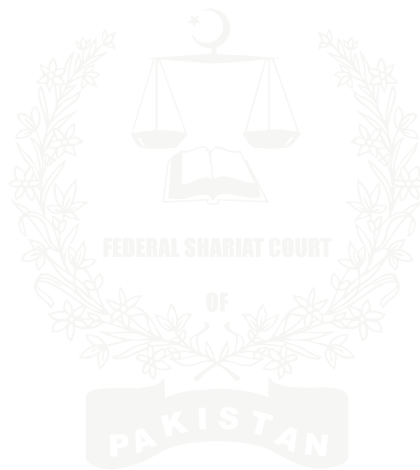
سود کے خاتمہ سے متعلق کیس کے فریقین متحرک کردار ادا کریں چیف جسٹس

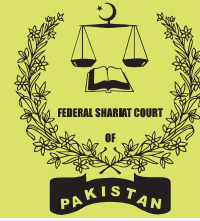
عدالت نے مسلمانوں ہی نہیں دیگر لوگوں کو بھی مطمئن کرنا ہے، قانونی نکات پیش کریں

ریمانڈ کے حکم میں وسیع سکوپ دیا گیا لیکن فریقین نئے نکات لیکر نہیں آئے، جسٹس نجم الحسن

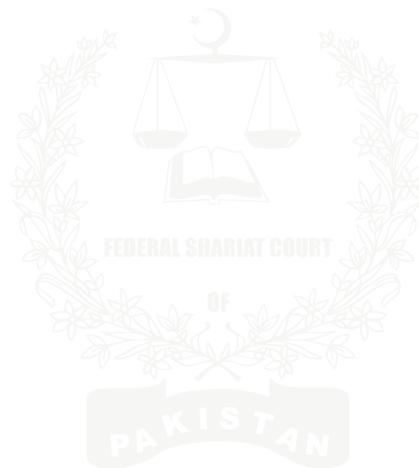
عدالت نے ابتدائی طور پر دو نکات پر معاملہ کو آگے بڑھانا ہے ایک معاملہ عدالتی دائرہ اختیار، اور دوسرا لفظ ”رباہ“ اور ”انٹرسٹ“ کی عریف ہے۔ جماعت اسلامی کے وکیل قیصر امام ایڈووکیٹ نے دلائل میں کہا کہ عدالتی دائرہ اختیار کا معاملہ ابتدائی طور پر زیر بحث نہیں لایا جاسکتا، لفظ ”رباہ“ کی تشریح ضروری ہے جس سے یہ بات واضح ہوگی کہ اس کی تشریح میں انٹرسٹ آتا ہے یا نہیں۔ چیف جسٹس شیخ نجم الحسن نے کہا کہ اس عدالت کے پاس اتنے اختیارات نہیں ہم صرف پارلیمنٹ کو سفارشات بھجوا سکتے ہیں کہ اس معاملہ کو قانون و سنت کے مطابق کیا جائے قانون سازی مقننہ نے کرنی ہے۔ ان کا کہنا تھا کہ رباہ کا لفظ قرآن پاک میں لکھا ہوا ہے اس حوالے سے نہ عدالت بحث کر سکتی ہے نہ کوئی اور کر سکتا ہے۔

اسلام آباد (نمائندہ نوائے وقت) اسلام آباد کی وفاقی شرعی عدالت میں سود کے خاتمے سے متعلق دائر درخواستوں کی سماعت کے دوران عدالت نے قرار دیا کہ مقدمہ کے تمام فریقین کیس میں اپنا متحرک کردار ادا کریں یہ بہت حساس معاملہ ہے جس میں بہت سے قانونی پہلوؤں کا احاطہ کیا جائے گا، عدالت نے کیس کے فیصلے میں صرف مسلمانوں کو نہیں دیگر لوگوں کو بھی مطمئن کرنا ہے، فریق وکلاء مقدمہ سے متعلق اپنے قانونی نکات تحریری طور پر پیش کریں۔ چیف جسٹس شیخ نجم الحسن کی سربراہی میں پانچ رکنی لارجر جسٹس نے سودی نظام کے خاتمے کے لئے دائر درخواستوں کی سماعت کی تو چیف جسٹس کا کہنا تھا کہ سپریم کورٹ کی طرف سے کیس ریمانڈ کر کے بھجوانے والے حکم میں بڑا وسیع سکوپ دیا گیا ہے، لیکن افسوس ہے کہ فریقین نئے نکات لے کر نہیں آئے،





SELECTED JUDGMENTS





IN THE FEDERAL SHARIAT COURT

(Original Jurisdiction)

PRESENT

MR. JUSTICE SH. NAJAM UL HASAN, CHIEF JUSTICE
MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN
MR. JUSTICE MEHMOOD MAQBOOL BAJWA

SHARIAT PETITION NO.07/I OF 2015

1. Dr. Muhammad Mazahir Alam, Medical Officer POF Wah Cantt,
2. Dr. Mrs.Farzana Mazahir, Medical Officer POF Wah Cantt,

Both resident of House No. C-167, Lala Rukh Wah Cantt.

.....

Petitioners

Versus

1. Federation through Secretary Ministry of Housing and Works, Pakistan Secretariat, Islamabad.
2. Pakistan Ordinance Factories through Director Administration POF Board Wah Cantt.

....

Respondents

Counsel for the Petitioner	....	In person
For Federation of Pakistan	....	Mr. M. Pervez Khan Tanoli, Assistant Attorney General.
For Housing Foundation Islamabad	....	Mr. Altaf Hayat Khan Langrah, Advocate.
For POF/respondent	....	Mian Muhammad Majid Bashir, Advocate.
Date of Institution	....	04.04.2015
Date of hearing	....	20.02.2018
Date of decision	....	20.02.2018
Date of Judgment	....	19.03.2018

JUDGMENT:

ALLAMA DR.FIDA MUHAMMAD KHAN, Judge: The petitioners Dr. Muhammad Mazahir Alam and Dr. Mrs. Farzana Mazahir have preferred the instant Shariat Petition whereby they have challenged the policy formulated by Pakistan Ordnance Board, which authorizes allotment of only one residential plot to either of the working spouse. They have specifically called in question Rules 6 and 8 which are mentioned herein-under:-

“Rule 6.Commutation of Merit: Quantitative assessment of length of service, meritorious achievement or adverse remarks/punishment imposed shall be carried out on the basis of following formula:-

a. *For Officers holding post in BS-17 & above*

(i) Length of Service 01 mark for each year of service.

.....
.....

c. *Additional Marks*

1. Meritorious service applicable 01 mark-for each Commendation
to all officers in BS-16 & above. Certificate or Cash Award.

.....

Rule 8.Ineligibility: Following employees (serving/retired/ deceased) shall stand Ineligible for allotment:-

a. *Employees who have been allotted plots in their own name or in the name of their spouse in POF Employees Cooperative House Building Society Scheme No.1, Officers Housing Scheme, Gulistan Colony or any other Schemes in WahCantt (Excluding LalaRukh Scheme No.2).....”*

2. According to the petitioner the aforementioned Rules are against the Injunctions of Islam. He has prayed that the same may be declared repugnant to the Injunctions of Quran and Sunnah of the Holy Prophet (ﷺ).
3. We may mention that the instant Shariat petition, filed on 04.4.2015, was admitted for regular hearing on 22.6.2015 and then comments were called from the respondents. The same are reproduced hereunder:-

(a) Comments of (Law, Justice and Human Rights) Government of Pakistan, Islamabad.

The petitioner through the instant petition intend to extend the said ruling of this Hon’ble Court to the allotment of residential plots in Government schemes as under the rules for allotment only one plot is allotted to married working couple. The issue is substantially related to other respondents as arrayed in the petition and the answering respondents have no concern with such issue as involved in the petition and for that reason the petitioner has reasonably not impleaded the answering respondent Department in the petition.

(b). Comments of respondent No. 2, Pakistan Ordnance Factories.

Preliminary Objections:-

1. That the instant petition is misconceived hence neither maintainable nor proceedable.

2. That the petitioners challenged POF Allotment Policy formulated by POF Board which has been challenged many times through various Writ Petitions before Lahore High Court Rawalpindi Bench, Rawalpindi. The Honorable High Court scrutinized and upheld the POF Allotment Policy.
3. That the instant petition is barred by law as it is hit by the doctrine of Res Subjudice. The petitioners have already invoked the jurisdiction of Federal Service Tribunal Islamabad and simultaneously filed instant petition.
4. That the instant petition is filed to vex the Respondents.

Reply to the brief facts:-

1. That the Para No.1 is not denied.
2. That the Para No.2 is not denied.
3. That the Para No.3 is partially accepted to the extent of ruling made by this Honorable Court. However, the petitioner's plea to implement the rule is not justified. It is imperative to mention here that 15 years service is the minimum eligibility criteria for allotment of plot but the allotment of plot in POF housing Schemes are subject to the approval of Federal Government which approved the independent allotment policy of POF. It is worth mentioning here that there are more than 70,000/- employees (retired and serving) and only 7300 plots have been allotted till now thus the overall ratio of allotment of plots to POF employees comes to 1:10. Hence POF motto is to provide shelters to maximum families by enforcement of said policy rather providing a monitory benefit to the persons as assumed by the petitioners.
4. That the Para No.4 is incorrect as stated hence denied vehemently. In fact being a Muslim we are bound to act upon the principles laid down by Islam in letter and spirit. No one can think about any deviation or refutation from them. The rationale of the policy for allotment of one plot to either spouse was based on the principle of Islam. It is further imperative to mention here that while formulation of allotment policy, all pros and cons related to discrimination amongst employees are taken care off according to the true spirit of Islam. The policy was framed to accommodate employees despite the limited availability of housing units. The husband/wives who have been provided government accommodation are in an advantageous position compared to those who have not been provided the housing facility. If maximum number of employees are not enjoying the facility than it would be against the principles of Islam to distribute the double benefit within persons of one family rather among various families of employees of POF. It is further imperative to mention here that when Prophet Muhammad (ﷺ) came to Madinah and the Muhajareen had no place for shelter than Prophet Muhammad (ﷺ) asked the Ansaar to give half share in properties to accommodate the Muhajareen. He (ﷺ) even asked that who has two houses give one to Muhajar and who has two wives give divorce to one and gave it in the Nikah of an unmarried Mahajer. But the petitioners who on the basis of equal rights try to get another plot in the name of spouse whereas

thousands of POF employees who retired/died without allotment of plots after rendering about 40-42 years of service. It may also be noted here that the petitioner No.1 Dr. Mazahir Alam's father Zaheer Alam had also served in POF and was lucky enough to get a single plot. Now the petitioner is trying to get the benefit for himself and his wife which is not only beyond the scope of POF allotment policy but also against the injunctions/teachings of Islam and practice of Prophet Muhammad (صلی اللہ علیہ وآلہ وسلم).

Reply To The Grounds:-

5. That the Honorable Court may consider the fact that providing shelter to every family is the responsibility of Islamic government. If a family gets double benefits/plots it will be injustice and will create frustration among the deprived families. Allotment of plot is meant for provision of shelter to the families, whereas allotment to both spouses as claimed by the petitioner, the second option falls in the definition of monitory benefits.
6. That the condition of allotment of plot to either of the spouse was reckoned in all POF Housing Schemes on the plea to provide shelters to maximum families whereas, the petitioner's demand is only for monitory benefits. As stated earlier allotment of plot is not a regular feature in POF, therefore, equalizing the allotment policy with grant of house rent as envisaged in the previous judgment dated 12-12-2012 passed by this Honorable Court is not justified.
7. That this para is denied in the light of submissions made in reply to Para No.4 above.
 - a) This point is made on the basis of mere assumptions which have no legal backing.
 - b) A working woman in Pakistan is in a better position in terms of financial status than a house wife, who is totally dependent on husband's earning. Therefore, here financial status cannot be compared with an employee who was the only bread earner of a family who leaves the family without shelter if he does not get a plot. The point is made on the basis of mere assumption which has no legal value. In case of assumed separation at old age, being a government servant monitory sources are available to them.
 - c) Denied as per the submissions made above.
 - d) Reply has already been given above.
 - e) Both husband and wife when living together shares the status of a family/unit. If either of them allotted a plot and other is enjoying its benefit there should be no deprivation for the other as both of them are provided shelter to live under one roof. Therefore, the petitioner's stance is unjustified.
8. That the Verse of Holy Quran connotes to the earning and earning has a different meaning. But in this case the allotment of a plot is not covered under earnings rather it is a benefit which the Government/ Employer

confer upon the employee in recognition of his/her service and as a shelter. The allotment of plot cannot be earned rather one can be eligible for allotment but it is not binding upon the employer and what is not considered to be binding upon by the Islam itself, the petitioner cannot claim it by filing either shariat petition or any form of writ.

9. That in this regard it can be submitted that allotment of a plot is not a right available to the employee rather it's a beneficial discretion of the Authority to provide with the employee a shelter for him and his dependants. Whereas, the petitioners are claiming the allotment of a plot for both spouses is totally unjustified. In fact the claim itself is against the injunctions of Islam as enumerated in the reply to the Para No.4.
10. That it is again necessary to submit that the claim of the petitioners is unjustified in accordance with the norms of Islamic Injunctions. It is imperative to mention here that the plots are not [فئة] to be distributed accordingly between bachelors and married employees rather it is to provide shelter to the needy families. Hence in the light of this the stance taken by the petitioners is not justified.
11. That the stance is denied vehemently. According to Quran and Sunnah an ignorant cannot compete with an intellectual than how a person with un-blemished service record is equal to the person who perform his duties with casual behaviour and have adversities in his service record. The policy for deduction of marks was introduced in the allotment policy which was amended in the light of decision dated 07-04-2009 passed by Lahore High Court Rawalpindi Bench Rawalpindi in Writ petition No. 2336/2006 and attained finality. (Copy of the decision dated 07.04.2009 passed by Lahore High Court is attached herewith as "Annexure A".
12. Denied in the light of submissions made above.
13. Denied in the light of submissions made above.
14. Denied in the light of submissions made above.
15. Denied in the light of submissions made above.
16. Denied. The total strength of POFs comes to about 25,000/- and the ratio of couples is enough which is under estimated by the petitioners, hence will have a greater impact on the organization. Moreover, the submissions have already made above and the prevailing policy is to accommodate maximum families to give shelter in accordance with tenets of Islam and the allotment policy is also based on the said principles of Islam.

PRAYER:-

In these circumstances, it is therefore, most respectfully prayed that keeping in view the larger interest of justice instant shariat petition may graciously be dismissed being unjustified in linking the house rent allowance which is a monitory benefit with the allotment of plot which is meant for providing shelter to needy families.

Any other equitable relief which this Honourable Court reckons just, apt and deem appropriate may kindly be granted to the Respondent.

(c). Comments of Federal Government Employees Housing foundation, Islamabad.

1. “That through the instant petition, the petitioners sought the jurisdiction of this Honourable Court to declare the relevant provisions of Pakistan Ordinance Factories and of Federal Government Allotment of residential plots under which only single plot is allotted to either of working spouse. In this regard it is submitted that the then Prime Minister of Pakistan has already approved the summary regarding allotment of plot by the answering respondent (Housing Foundation) to both the employees as well as their serving spouse at the same time. In this regard, in terms and conditions of Phase-VI housing scheme that, “In case both husband & wife are govt. servants, then both are eligible for the allotment of plot as individual service benefit and right, if they were not earlier allotted plot by CDA/FGEHF or any government agency”

(Copy of brochure Bharakahu Housing Scheme Islamabad Phase-VI is annexed as **Annexure ‘A’**)

2. That in view of the above policy formulated for Phase-VI, the present petition to the extent of the answering respondents has become infructuous.
3. That the petitioners are not entitled to claim any retrospective benefit on the basis of previous brochure annexed with their petition as the same are past and closed transactions.
4. That issue is substantially related to other respondents as arrayed in the petition and the answering respondents has no concern with such issue as involved in the petition and for that reason the petitioner has reasonably not impleaded the answering respondent department in the petition, hence the petition under reply is not maintainable under the law.
5. That the respondent department is a public functionary and performs its duties as per settled rules and regulations.

PARA-WISE REPLY

1. That para No.1 is denied being irrelevant.
2. That para No.2 of the petition is denied. The existing rules of the answering respondents for Phase-VI entitles both the spouse for allotment of plot.
3. That para No.3 of the petition is matter of record, however at present both the spouses are entitled to the service benefits separately and independently which is evident from the policy formulated for Phase-VI Bharakahu Housing Scheme.
4. That para No.4 of the petition is denied. The respondent department being public functionary performs its functions according to rules and regulations without any discrimination.
5. That in regard to para No.5, it is submitted that the Honourable Court may consider the fact that providing shelter to every family is the responsibility of Islamic Government. If a family gets double benefits/ plots, it will be injustice and will create frustration among the deprived families. Allotment of plot is meant for provision of shelter to the families.



6. That para No.6 of the petition pertains to court record, hence needs no comments.
7. That para No.7 of the petition along with its sub paras is denied being misconceived.
 - a. The contention of sub para 'a' is made on the basis of mere assumptions which has no legal backing.
 - b. In regard to sub para 'b' it is submitted that a working woman in Pakistan is in a better position in terms of financial status than a house wife, who is totally dependent on husband's earning. Therefore, her financial status cannot be compared with an employee who was the only bread earner of a family who leaves the family without shelter if he does not get a plot. The point is made on the basis of mere assumption which has no legal value. In case of assumed separation at old age, being a government servant monitory sources are available to them.
 - c. Denied as per the submissions made above.
 - d. Reply has been given above.
 - e. Both husband and wife when living together shares the status of a family/unit. If either of them is allotted a plot and other is enjoying its benefit, there should be no deprivation for the other as both of them are provided shelter to live under one roof. Therefore, the petitioner's stance is unjustified.
8. That the verse of Holy Quraan connotes to the earning and earning has a different meaning. But in this case the allotment of a plot is not covered under earning rather it is a benefit which the government/employer confers upon the employee in recognition of his/her service and as a shelter. The allotment of plot cannot be earned rather one can be eligible for allotment, but it is not binding upon the employer and what is not considered to be binding upon by the Islam itself, the petitioners cannot claim it by filing either Shariat Petition or any form of Writ.
9. That in regard to para No.9 it is submitted that allotment of a plot is not a right available to the employee rather it is a beneficial discretion of the Authority to provide with the employee a shelter for him and is dependents. Whereas the petitioners are claiming the allotment of a plot for both spouses in totally unjustified. In fact the claim itself is against the injunctions of Islam.
10. That in regard to para No.10 it is submitted that claim of the petitioners is unjustified in accordance with the norms of Islamic Injunctions. It is imperative to mention here that the plots are not to be distributed accordingly between bachelors and married employees rather it is to provide shelter to the needy families. Hence in the light of this, the stance taken by the petitioners is not justified.
11. That para No.12 of the petition is denied. According to Holy Quraan and Sunnah, an ignorant cannot compete with intellectual than how a person with unblemished service record is equal to the person who perform his

duties with casual behavior and have adversities in his service record.

12. That para No.13 is denied in the light of submissions made above.
13. That para No.20 is denied in the light of submissions made above.
14. That para No.21 is denied in the light of submissions made above.
15. That para No.22 is denied in the light of submissions made above.
16. That in regard to para No.23 it is submitted that according to the existing policy for allotment of plots in Phase VI of Bharakahu Housing Scheme, the working couples are entitled to apply for allotment of plots and get the same upon fulfillment of the criteria.

PRAYER

In view of the above, it is, therefore, respectfully prayed that the petition under reply is infructuous to the extent of the answering respondent department as the existing policy entitles the couple to allotment of plots separately, hence the names of the answering respondents may graciously be deleted from the array of respondents in the interest of justice.”

4. We have heard learned counsel for the parties and have also perused the record containing comments submitted by the Federal Government i.e Law, Justice and Human rights, Pakistan Ordnance Factories Board and Federal Government Employees Housing Foundation, Islamabad.
5. The petitioner Dr. Muhammad Mazahir Alam vehemently contended that the policy of allotment of one plot to a married couple, while each one of them is employee of the POF, is against the Injunctions of Islam. He added that both husband and wife being employees of the POF have independent equal roles and deprivation of either of them amounts to injustice. Both of them draw their own salaries, pension and enjoy all other service benefits, therefore each one should be allotted a separate plot as well. He placed reliance on a judgment of this Court dated 12.12.2012, delivered in Shariat Petitions No. 8/I of 2004-linked with Shariat Petition No. 6/I of 1994 linked with Shariat Petitions No. 8/I of 1994, Shariat Petition No. 12/I of 1994 and Shariat Misc. No. 69/I of 1994-which entitles both husband and wife –if employees of the Government etc.- to house rent allowance on the basis of their personal service. He also placed reliance on a number of Verses from the Holly Quran and a Hadith as well as the practice followed by Hazrat Umar (R.A) as narrated in Katab-ul-Amwal by Abu Abid Al Qasim.
6. Learned counsel for POF submitted that according to demands of justice, the first priority for allotment of plots has to be given to those employees who do not have any residential plot. Khalid Mehmood, Assistant Incharge, POF stated that the previous scheme for allotment of plot had been completed and presently there was no plot available for handing over to any employee of POF. He further stated that in case land was made available and any new scheme was introduced, then fresh rules for allotment of plots would be framed. He further added that more than 30,000/- employees have applied for allotment of plot but there is absolutely no possibility to accommodate so many employees even in upcoming housing schemes.
7. On the other hand, learned Assistant Attorney General, representing the Federation argued that while allotting the plots in any scheme of POF, the most eligible person for consideration shall be the one who does not have any plot for constructing his own residence. If an employee has already been allotted a plot, then instead of the other



spouse so many other employees who have not been allotted even a single plot should have the priority. He further argued that this petition is not maintainable at this stage especially for the reason that no new scheme has so far been announced or launched for allotment of plots by POF.

8. We have anxiously examined the impugned policy/rules but have found nothing that is against the injunctions of Islam. The Hadith as well as the Quranic Verses cited by the petitioners are general in nature and do not pertain to the issue under consideration. Regarding the impugned rule 6 pertaining to commutation of merit, it is sufficient to state that there is absolutely nothing which can, by any stretch of imagination, be termed as un-Islamic. In fact, acknowledgement of meritorious achievement or consideration of adverse remarks or imposition of punishment etc is basically an Islamic criteria to judge proficiency or performance of an employee for his/her promotion, reward, award of monetary or other benefit. This is what fair administration of justice demands. The following translation of Verses of Holy Quran pertaining to grant of reward in this world as well as in the hereafter make it quite clear.

"To all are degrees (or ranks), according to their deeds: For thy Lord is not unmindful of anything that they do." (6:132)

"To the righteous (When) it is said, 'What is it that your Lord has revealed?' they say, 'All that is good.' To those who do good, there is good in this world, and the Home of the Hereafter is even better and excellent indeed is the Home of the righteous----" (16:30)

"Whoever works righteousness, man or woman, and has Faith, verily, to him will We give a new Life, a life that is good and pure, and We will bestow on such their reward according to the best of their actions." (16:97)

"As to those who believe and work righteousness, verily, We shall not suffer to perish the reward of any who do a (single) righteous deed." (18:30)

"Those who believe and work righteous deeds---from them shall We blot out all evil (that may be) in them and We shall reward them according to the best of their deeds." (29:7)

"Say: 'O ye My servants who believe! Fear your Lord, Good is (the reward) for those who do good in this world. Spacious is Allah's earth! Those who patiently persevere will truly receive a reward without measure!" (39:10)

"So that Allah will turn off from them (even) the worst in their deeds and give them their reward according to the best of what they have done." (39:35)

"And to all are (assigned) degrees according to the deeds which they (have done), and in order that (Allah) may recompense their deeds, and no injustice be done to them." (46:19)

9. It would be appreciated that the judgment of this Court dated 12.12.2012, referred to above by the petitioner, is distinguishable in the sense that terms and conditions of service of each employee includes house rent as a substantive part of the mutual agreement right from the start of his/her career, irrespective of the marital status. However, the allotment of plot is not at all a right of the employee nor a part of the agreement pertaining to terms/conditions of service. One may or may not get a plot during his/her whole service as it all depends on the availability of plots as well as the number of applicant employees in any set up. As stated by Mr. Khalid Mehmood, Assistant Incharge POF, the number of employees in the POF is approximately 30,000/- and they all have a genuine concern to be considered on priority basis.
10. We may mention that according to Islamic Injunctions the State is supposed to be a

welfare State in all respects, not only for its functionaries but for its citizens as well and as such it is obligatory for the Government to provide all facilities including food, shelter, clothes, education, medical treatment, security and take care of all other necessary requirements of all citizens as far as possible. Therefore, the housing foundation and other similar organizations are duty-bound to make reasonable arrangements for providing basic facilities as far as possible. In this connection we may, however, refer to the fact that the citizens are also required to exercise due restraint, self-control and forego greed and avarice to let other brothers/sisters have their own proportionate share. The spirit of Islamic Injunctions can be well ascertained from the following verse of the Holy Quran:-

وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْغَيْرُ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ ٢١٩

Translated by Maulana Taqi 'Uthmani

“And they ask you as to what they should spend. Say, :The surplus . This is how Allah makes His verses clear to you, so that you may ponder.”

Translated by Yousef Ali

“They ask thee how much they are to spend; Say: “What is beyond your needs.” Thus doth Allah Make clear to you His Signs: In order that ye may consider- “

Translated by 'Allama Asad.

“And they will ask thee as to what they should spend [in God's cause]. Say: “Whatever you can spare.” In this way God makes clear unto you His messages, so that you might reflect.”

11. The following sayings of the Holy Prophet (صلى الله عليه وآله وسلم) also emphasize the same spirit.

حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ حَدَّثَنَا أَبُو الْأَشْهَبِ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ بَيْنَمَا نَحْنُ فِي سَفَرٍ مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذْ جَاءَ رَجُلٌ عَلَى رَاحِلَةٍ لَهُ قَالَ فَجَعَلَ يَصْرِفُ بَصَرَهُ يَمِينًا وَشِمَالًا فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ كَانَ مَعَهُ فَضْلٌ ظَهَرَ فَلْيُعِدْ بِهِ عَلَى مَنْ لَا ظَهَرَ لَهُ وَمَنْ كَانَ لَهُ فَضْلٌ مِنْ زَادٍ فَلْيُعِدْ بِهِ عَلَى مَنْ لَا زَادَ لَهُ قَالَ فَذَكَرَ مِنْ أَصْنَافِ الْمَالِ مَا ذَكَرَ حَتَّى رَأَيْنَا أَنَّهُ لَا حَقَّ لِأَحَدٍ مِنَّا فِي فَضْلٍ

[4517] 18 – (1728) “It was narrated that Abu Sa’eed Al-Khudri said: Whilst we were on a journey with the Prophet (صلى الله عليه وآله وسلم), a man came to him on a mount of his and started looking to his right and left. The Messenger of Allah (صلى الله عليه وآله وسلم) said: “Whoever has a surplus amount, let him give it to one who has no mount, and whoever has surplus provisions, let him give them to one who has no provisions.”

He mentioned various kinds of wealth, until we thought that none of us had any right to any kind of surplus”.

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْخَزَاعِيُّ وَمُوسَى بْنُ إِسْمَاعِيلَ قَالَا حَدَّثَنَا أَبُو الْأَشْهَبِ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ بَيْنَمَا نَحْنُ مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي سَفَرٍ إِذْ جَاءَ رَجُلٌ عَلَى نَاقَةٍ لَهُ فَجَعَلَ يُصْرِفُهَا يَمِينًا وَشِمَالًا فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ كَانَ عِنْدَهُ فَضْلٌ ظَهَرَ فَلْيُعِدْ بِهِ عَلَى مَنْ لَا ظَهَرَ لَهُ وَمَنْ كَانَ عِنْدَهُ فَضْلٌ زَادٍ فَلْيُعِدْ بِهِ عَلَى مَنْ لَا زَادَ لَهُ حَتَّى ظَنَّنَا أَنَّهُ لَا حَقَّ لِأَحَدٍ مِنَّا فِي الْفَضْلِ

“1663. Abu Sa’eed Al-Khudri narrated: “Once, while we were travelling with the Messenger of Allah (صلى الله عليه وآله وسلم), a man came to him on a she-camel that he owned, and he was turning it left and right. The Prophet (صلى الله عليه وآله وسلم) said, “Whoever has extra mount, let him give it to someone who has no mount, and whoever has extra provisions, let him give it to someone who has no provision,” until they thought that they had no right to anything extra that they had. (Sahih).

۷۸- حضرت عبداللہ بن مسعود رضی اللہ عنہ روایت کرتے ہیں کہ:

قالت: يا رسول الله! اى الظلم اظلم؟ فقال: ذراع من الارض ينتقصها المرء المسلم من حق اخيه، الا طوقها يوم القيامة الى قعر الارض ولا يعلم قعرها الا الله الذى خلقها

میں نے عرض کیا یا رسول اللہ! سب سے بڑا ظلم کیا ہے؟ آپ نے فرمایا: ایک گز زمین بھی کوئی مسلمان شخص اپنے بھائی کے حق میں سے کم کرے، تو اسے قیامت کے دن زمین کی تہہ تک اس کی گردن میں طوق بنا دیا جائے گا، اور زمین کی تہہ کا علم اللہ کے سوا کسی کو نہیں جس نے اسے پیدا کیا ہے۔

(مجمع الزوائد ص ۱۷۳ و ۱۷۵ ج ۴ و مند احمد ج ۱ ص ۳۹۷، و معجم کبیر للطبرانی، و اسناد احمد حسن)۔

۷۹- حضرت ابو مالک اشعری رضی اللہ تعالیٰ عنہ روایت کرتے ہیں کہ آنحضرت صلی اللہ علیہ وسلم نے ارشاد فرمایا:

اعظم الغلول عند الله عز و جل ذراع من الارض، تجدون الرجلين جارين في الارض او في الدار، فيقطع احد عما من خط صاحبه ذراعا اذا اقتطعه طوقه من سبع ارضين الى يوم القيامة.

اللہ تعالیٰ کے نزدیک عظیم ترین خیانت ایک گز زمین (میں خیانت) ہے، تم اگر دیکھو کہ دو آدمی کسی زمین یا کسی گھر میں پڑوسی ہیں، پھر ان میں سے ایک شخص اپنے ساتھی کے حصے سے ایک گز کاٹ کر لے لیتا ہے تو جب وہ ایسا کریگا تو قیامت کے دن اس کے گلے میں سات زمینوں کا طوق ڈالا جائیگا۔

(اسنادہ حسن کما فی مجمع الزوائد ص ۱۷۵ ج ۴ و مند احمد ج ۵ ص ۳۴۱)۔

۸۰- حضرت سعد بن ابی وقاصؓ روایت فرماتے ہیں کہ آنحضرت صلی اللہ علیہ وسلم نے ارشاد فرمایا:

من اخذ شينا من الارض بغير حقه طوقه من سبع ارضين لا يقبل منه صرف ولا عدل.

جو شخص زمین کا کچھ حصہ کسی جائز وجہ کے بغیر لے لے تو اسے سات زمینوں کا طوق پہنایا جائیگا، اور اس سے کوئی معاوضہ یا فدیہ قبول نہیں کیا جائیگا۔

(مجمع الزوائد ص ۱۷۵ ج ۴ و کشف الاستار ج ۲ ص ۱۳۵)۔

“لو استقبلت من امری ما استدبرت لاخذت فضول اموال الاغنياء فقسمتها على فقراء المهاجرين.

(تاریخ طبری ص ۲۹۱، ج ۳ مطبوعہ قاہرہ ۱۳۵۷ و اقتات ۲۳ھ)۔

“اگر شروع میں میری رائے وہ ہو جاتی جو بعد میں ہوئی تو میں مال داروں کا فاضل مال لے کر اسے محتاج مہاجرین میں تقسیم کر دیتا۔”

12. In view of the above, one can clearly make out that the Islamic State and its relevant organizations have to consider providing shelter to its citizens and make proper arrangements for the same within reasonable limits but by no means at the cost of someone else.
13. Regarding the instant petition, we may point out that allotment of plot is not at all a part of the terms and conditions of service. Therefore the Government, POF or other organization are not obliged to allot two plots to each and every married couple who happens to be its employees because it may amount to deprivation of certain other employees who have got no plot whatsoever. We have reproduced views of the respondent in this respect and fully support the same. Thousands of employees of the State organizations who are still waiting for allotment of plots, should have top priority for allotment of plots as compared to the spouses one of whom has already got a plot.
14. We may mention that the rationale of policy formulated by POF for allotment of one plot to either spouse is aimed to accommodate as many employees as possible and it seems quite reasonably justified on account of the limited availability of residential plots. As stated by learned counsel for the respondent, a large number of employees are not enjoying the said facility as the number of plots is extremely limited/insufficient to meet the needs and accommodate all of them. As stated above, one should realize the

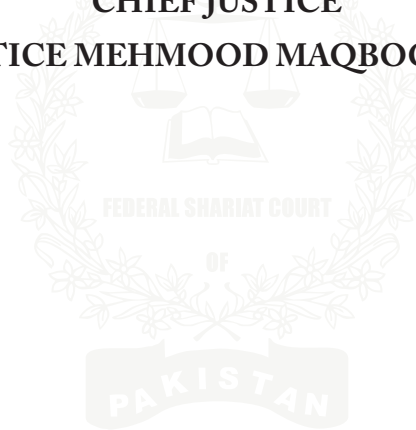
fact that on account of non availability of sufficient number of plots, there must be many employees who have not been able to get any plot during their whole service. We may add further that it is the responsibility of an Islamic Government to provide shelter to every family and this can only be made possible if the ground reality of availability of plots is kept in view and a suitable policy is planned on the basis of “**justice for all**”. It is obvious that after getting a plot both husband and wife as well as their children assume the status of one family and getting a plot facilitates residential accommodation for all of them. Allotment of double plots to one family and depriving hundreds of other families from the same facility would amount to a great injustice which cannot be defended according to Islamic principles designed for dispensation of justice. Hence, the prayer made by the petitioner is not at all justified on the touchstone of Islamic Injunctions.

15. In view of the above, we dismiss this petition being misconceived.
16. These are the reasons for our short order dated 20.02.2018.

MR.JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN

**MR.JUSTICE SH. NAJAM UL HASAN
CHIEF JUSTICE**

MR. JUSTICE MEHMOOD MAQBOOL BAJWA



IN THE FEDERAL SHARIAT COURT OF PAKISTAN

(Appellate/Revisional Jurisdiction)

PRESENT

MR. JUSTICE SH. NAJAM UL HASAN, CHIEF JUSTICE
MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE MEHMOOD MAQBOOL BAJWA

Crl. Misc. Application No.02-L of 2018**IN****Crl. Appeal No. 102-L of 2004 (Disposed of)**

1. Muhammad Nazir,
2. Muhammad Jehangir,

Both sons of Sher Muhammad R/o Mouza Pitarki, Tehsil Chiniot District Jhang.

Petitioners**VERSUS**

1. Superintendent, Central Jail, Faisalabad.
2. The State
3. Syed Mukhtar Hussain Shah S/o Gulzar Hussain Shah, R/o Tehsil & District Faisalabad.

Respondent

For the Petitioners	.... Mr. Shahid Azeem, Advocate.
For the State	.... Ch. Muhammad Sarwar Sidhu, Additional Prosecutor General, Punjab.
For the complainant	.... Syed Mukhtar Hussain Shah, in person.
FIR No. date & Police Station	.... 22/2002, 14.01.2002, Saddar Chiniot
Date of judgment of trial Court	.... 16.03.2004
Date of Judgment of FSC	.... 13.08.2008
Date of Judgment of Shariat Appellate Bench	.... 20.04.2017
Date of receipt of application in FSC	... 14.03.2018
Date of hearing and decision	.... 16.05.2018

JUDGMENT:

SH. NAJAM UL HASAN, CJ: Petitioners-Muhammad Nazir and Muhammad Jehangir have jointly filed this criminal miscellaneous application under section 561-A Cr.PC whereby they have prayed that their already converted death sentence to life imprisonment be ordered to run concurrently with the sentence of life imprisonment separately awarded under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

2. Facts leading to the instant application are that both petitioners-Muhammad Nazir and Muhammad Jehangir were tried alongwith others in case FIR No.22/2002 dated 14.01.2002 registered under section 16 and 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 at Police Station Saddar, Chiniot. After conclusion of the trial, learned Additional Sessions Judge, Chiniot, vide his judgment dated 16.03.2004, convicted and sentenced the petitioners on two counts as under:-
 - i) Under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to death;
 - ii) Under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 to life imprisonment each with whipping 30 stripes each and fine of Rs.5,000/- each or in default of payment of fine to further undergo three months S.I.

Benefit of section 382-B Cr.PC was extended to both the petitioners.

3. The petitioners filed appeal (**Crl. Appeal No.102-L of 2004**) in this Court against their above-mentioned conviction and sentence. The learned trial court also sent a reference for confirmation of death sentence awarded to the petitioners, which was registered and numbered as **Crl. Mur. Ref. No.11-L of 2004**. This Court, vide its judgment dated 13.08.2008, dismissed the above-mentioned appeal filed by the petitioners and upheld their conviction under both the offences under section 11 and 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Sentence under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was upheld whereas the sentence of death under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was converted to life imprisonment. The aforementioned murder reference was answered in negative.
4. The petitioners filed appeal (**Crl. Sh. Appeal No.15 of 2014**) before the Shariat Appellate Bench, Hon'ble Supreme Court but the same was not pressed and as such was dismissed vide order dated 20.04.2017.
5. Mr. Shahid Azeem, learned counsel representing the petitioners, submitted that as per Jail record, the petitioners have undergone sentence of imprisonment for more than 32 years which includes the remissions but still they are in Jail and have to undergo further sentence of imprisonment of more than 16 years because the Jail authorities are



considering both the sentences of life imprisonment under sections 11 and 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 awarded to the petitioners to run consecutively as no specific order for running the sentences concurrently has been passed. Learned counsel states that the petitioners were convicted by the trial court under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and were sentenced to life imprisonment alongwith other sentences for abducting the victim-Munaza Majeed for committing zina. At the same time, they were also convicted under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 for jointly committing *zina bil jabr* with the victim-Munaza Majeed and for that they were sentenced to death. Learned counsel further states that both the above-mentioned offences were statedly committed in the same transaction but the petitioners were convicted and sentenced on two counts. It is argued by the learned counsel that in the appeal preferred before the Federal Shariat Court, death sentence of the petitioners under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was converted into life imprisonment but it was not specifically mentioned that after converting death sentence into life imprisonment both the sentences of life imprisonment were to run either concurrently or consecutively. It is then argued by the learned counsel that under section 20 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 the provisions of Code of Criminal Procedure, 1898 were to apply '*mutatis mutandis*' on the Federal Shariat Court in respect of the cases under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and that under section 35 Cr.PC a person cannot be sentenced to imprisonment for more than 14 years in one trial. Learned counsel further argued that under section 57 of the Pakistan Penal Code, 1860, life imprisonment is described as imprisonment for 25 years, so in the circumstances, life imprisonment on two counts can only be awarded if the sentences of life imprisonment are directed to run consecutively. To strengthen his point of view, learned counsel relied upon the cases of "Shah Hussain Vs. The State" reported in PLD 2009 SC 460 and "Javed Sheikh Vs. The State" reported in 1985 SCMR 153. It has been argued that in the judgment of Federal Shariat Court, it is nowhere mentioned that both the sentences of life imprisonment shall run consecutively, so through this Miscellaneous Application, only clarification has been sought for declaring that as under section 35 Cr.PC sentence of more than 25 years cannot be imposed, so direction be issued that both the sentences of life imprisonment awarded to the petitioners shall run concurrently.

6. On the other hand, learned law officer has supported the arguments advanced by learned counsel for the petitioners and states that judgment of the Federal Shariat Court is silent and it was nowhere mentioned that sentences of life imprisonment were to run concurrently or consecutively, so only clarification in this respect has been sought by the petitioners but while passing order on this Miscellaneous Application, this court cannot be presumed to have interfered in the judgment earlier passed by this Court. Complainant-Syed Mukhtar Hussain Shah is present in the Court and states that he has no objection in this matter.
7. Heard the parties and perused the record.

8. The petitioners were convicted for two offences committed in the same transaction. They were convicted and sentenced to life imprisonment for abducting the victim-Munaza Majeed for the purpose of committing zina. They were also convicted and sentenced to death for jointly committing *zina bil jabr* with the victim-Munaza Majeed. Later on in an appeal preferred before this Court, sentence of death for jointly committing *zina bil jabr* was converted into life imprisonment. The petitioners assailed the same judgment before the Hon'ble Supreme Court but did not press the same and as such the appeal was dismissed as not pressed.
9. The present Miscellaneous Application has been filed under section 561-A Cr.PC seeking direction to the Jail authorities that both the sentences of life imprisonment should run concurrently because in the judgment of the Federal Shariat Court dated 13.08.2008, it was not specifically mentioned that after conversion of death sentence into life imprisonment, both the sentences of life imprisonment were to run consecutively. So keeping in view the provision of Proviso-I of sub-section 2 of section 35 Cr.PC "that in one trial of two or more offences, aggregate sentence of imprisonment shall not be more than 14 years". In the circumstances, sentences of life imprisonment can be directed to run concurrently as under section 57 of Pakistan Penal Code, 1860, one sentence of life imprisonment shall be reckoned as equivalent to imprisonment of 25 years.
10. In this regard, we are fortified with the view taken by the Hon'ble Supreme Court in the case of "Juma Khan and another Vs. The State" reported in 1986 SCMR 1573, relevant portion is reproduced below for reference:

XXXIII, R. 6—Penal Code (XLV of 1860), S. 302—Criminal Procedure Code (V of 1898), S. 35—Sentence—Sentence of imprisonment for life imposed by Trial Court upon petitioner under section 302, Penal Code, on each account, without clarifying whether same would run concurrently or consecutively—High Court dismissing prayer of accused made in his application under section 561-A, Cr.PC., to order sentences to run concurrently—Supreme Court ordered that sentences so ordered would run concurrently – Total period of imprisonment at one trial could not exceed 25 years—(Sentence).

Similar view was taken in the case of "Khan Zaman and others Vs. The State" 1987 SCMR 1382, which is also reproduced below:-

---Ss. 302, 149 & 148—Criminal Procedure Code (V of 1898), S. 35(2), proviso (a)—Sentence—Sentence of life imprisonment on two counts ordered to run consecutively—Consecutive running of such sentence being violative of S.35(2), proviso (a), Cr.P.C omission rectified and sentences ordered to run concurrently.

11. We are conscious of the fact that after announcing earlier judgment, this Court cannot interfere in the conviction and sentence awarded to the petitioners but in the present Miscellaneous Application, the only relief sought by the petitioners is that there was no specific order or direction in the earlier judgment that either both the sentences of



life imprisonment shall run consecutively or concurrently. So only clarification in the form of direction has been sought so that both the sentences of life imprisonment are directed to run concurrently.

12. We have anxiously taken into consideration the relevant provisions mentioned in section 20 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 which explicitly lays down that provisions of the Code of Criminal Procedure, 1898, shall apply '*mutatis mutandis*, in respect of cases under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.
13. Balck's Law Dictionary (Eighth Edition)-2004, has defined '*mutatis mutandis*' as 'All necessary changes having been made; with the necessary changes <what was said regarding the first contract applies *mutatis mutandis* to all later ones>'. Similarly, Oxford Advanced Learners' Dictionary (7th edition) stipulates the meaning of '*mutatis mutandis*' as (used when you are comparing two or more things or situations) making the small changes that are necessary for each individual case, without changing the main points: the same contract, *mutatis mutandis*, will be given to each employee (= the contract is basically the same for everybody, but the names, etc. are changed).
14. Keeping in view the definition, it is clear vide section 20 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 that the powers given to the High Court under section 561-A Cr.PC shall also apply '*mutatis mutandis*' on the Federal Shariat Court in respect of the cases under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.
15. In other words, all powers given to the High Court under section 561-A, CrP.C can be exercised by the Federal Shariat Court while exercising its jurisdiction under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.
16. In the case of "Rahib Ali Vs. The State" reported in 2018 SCMR 418, the Supreme Court has held at paragraph-17, page 426:-

"In the light of discussion made above, there remains no doubt that the High Court and so also this Court have jurisdiction under section 561-A read with section 35 and or section 397, Cr.PC as the case may to ordered such multiple sentences in same transaction/trial or in a separate and subsequent trial to run concurrently"

It is clear that this Court has power under section 561-A Cr.PC to look into this matter even at this stage and can declare both the sentences of life imprisonment to run concurrently if no specific order in this respect was passed while converting death sentence into life imprisonment.
17. The Hon'ble Supreme Court in the case of "Muhammad Sharif Vs. The State" reported in 2014 SCMR 668 has also held:-

----S. 35---penal Code (XLV of 1860), Ss. 302, 342 & 365--- Constitution of Pakistan, Art. 188---Supreme Court Rules, 1980, O.XXVI, R. 1---Suo motu review by Supreme Court-Qatl-e-amd, wrongful confinement, kidnapping or abducting with intent secretly and wrongfully to confine person—Multiple offences committed by accused part of the same transaction/incident---Concurrent running of sentences---Scope---Offences of murder, wrongful confinement and abduction were committed by the accused, in the present case, which were part of the same transaction, and, thus, ordinarily sentences passed for such offences ought to have been ordered to run concurrently with each other---Such aspect had escaped the notice of the Supreme Court while deciding appeal of accused---Supreme Court, in suo motu review, ordered that all sentences of imprisonment passed against accused, in such circumstances, should run concurrently with each other. (p.669) A.

18. This view of the Hon'ble Supreme Court was further fortified in the following cases reported as:
- i. "Faiz Ahmed and another Vs. Shafiq-ur-Rehman and another" 2013 SCMR 583.
 - ii. "Mst. Shahista Bibi and another Vs. Superintendent Central jail Mach and 2 others" PLD 2015 SC 15.
 - iii. "Sajjad Ikram and others Vs. Sikandar hayat and others" 2016 SCMR 467.
19. For what has been discussed above, we are persuaded to accept this Miscellaneous Application. We would, therefore, clarify that the sentences of life imprisonment imposed upon the petitioners-Muhammad Nazir and Muhammad Jehangir under sections 11 and 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 on two counts vide judgment of this Court dated 13.08.2008 in case FIR No.22/2002 dated 14.01.2002 registered under section 16 and 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 at Police Station Saddar, Chiniot **shall run concurrently. Order accordingly.**

**MR. JUSTICE SH. NAJAM UL HASAN
CHIEF JUSTICE**

**MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE MEHMOOD MAQBOOL BAJWA**

Dated: 31st May, 2018
at Islamabad
Approved for reporting.

IN THE FEDERAL SHARIAT COURT

(Appellate/Revisional Jurisdiction)

PRESENT**MR. JUSTICE SH. NAJAM UL HASAN, CHIEF JUSTICE****MR. JUSTICE DR. FIDA MUHAMMAD KHAN****MR. JUSTICE MEHMOOD MAQBOOL BAJWA****CRIMINAL APPEAL NO.30/I OF 2017 L/W**

1. Fiaz Ahmed

2. Allah Nawaz

Both sons of Farid Khan, resident of Basti Jamana Mauza Rahim Shah Jahanian,
District Khanewal.

.....

Appellants

Versus

1. The State.

2. Mst. Riffat Farnaz daughter of Muhammad Khan, wife of Malik
Muhammad Qadeer, resident of Basti Jamana Mauza Rahim Shah,
Tehsil Jahanian, District Khanewal.

.....

Respondents

CRIMINAL REFERENCE NO. 1/L OF 2017.

The State

Versus

1. Fiaz Ahmed son of Freed Khan, resident of Basti Jamana Mauza Rahim Shah Jahanian,
District Khanewal.2. Allah Nawaz son of Freed Khan, resident of Basti Jamana Mauza Rahim Shah Jaha-
nian, District Khanewal.

Counsel for the appellant Ch. Mumtaz Ali Hanjra, Advocate

Counsel for the State Ch. Muhammad Sarwar Sidhu, Additional Prosecutor
General, Punjab

Complaint case dated 24.10.2013.

Date of judgment of trial court 31.10.2017

Date of Institution of appeal 23.11.2017

Date of hearing and decision 15.01.2018

Date of judgment 20.02.2018

JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- The appellants/accused Fiaz Ahmed and Allah Nawaz have challenged the judgment dated 31.10.2017 passed by learned Additional Sessions Judge, Jahanian, District Khanewal, whereby they have been convicted under section 7 of the *Offence of Qazf (Enforcement of Hadd) Ordinance, 1979* (hereinafter referred to as the said Ordinance) and sentenced to whipping numbering eighty stripes for committing *Qazf* liable to *Hadd* against complainant/respondent Rifat Farnaz.

The learned trial Court has also forwarded a Criminal Reference No. 1/L-2017 for confirmation of punishment of whipping awarded to the appellants.

We are disposing of both these matters vide this judgment.

2. The facts, arising out of a private complaint, filed by Rifat Farnaz (PW-1), are to the effect that she was earlier married with accused Fiaz Ahmed on 20.02.1993 and out of that wedlock a baby boy namely Muhammad Ghazanfar Khan was born who has been residing with her. Accused Fiaz Ahmed divorced her on 22.08.2002 and disconnected his relations with his son Muhammad Ghazanfar Khan. He executed an agreement wherein, inter alia, he stated that the minor Ghazanfar Khan will remain with her and she will bear his expenses while Fiaz Ahmed accused/appellant will be entitled to meet the said minor. Later on, however, no contact remained between Muhammad Ghazanfar Khan and accused Fiaz Ahmed. Subsequently, Ch. Abdul Ghafoor Nazim/Chairman arbitration council 97 Gulberg, Lahore received the notice of divorce as well as the divorce deed executed by accused Fiaz Ahmed in favour of complainant/respondent. The Chairman arbitration council summoned the accused/appellant Fiaz Ahmed but he did not appear and ultimately on 28.11.2002 the aforementioned divorce got effected between the parties and a divorce certificate was issued accordingly. Thereafter, the complainant/respondent solemnized Nikah with Malik Muhammad Qadeer on 09.12.2002 and out of this wedlock two daughters were born. On 18.01.2013, the appellant/accused Fiaz Ahmed and others attacked upon her and she got registered a criminal case FIR No. 385/13 at P.S Jahanian. On 07.9.2013, the appellant/accused filed an application for registration of case against her and her husband Muhammad Qadeer and charged them both for committing Zina. However, later on it was dismissed as withdrawn.
3. The witnesses namely Allah Nawaz, Sajid, Imdad and Zafar Iqbal had the knowledge of divorce of complainant/respondent from Fiaz Ahmed and her solemnization of second marriage with Muhammad Qadeer. On 22.09.2013 at 06:00 PM when she was about to sit in her car along with her daughters in presence of witnesses Muhammad Qadeer, Ghazanfar Muhammad Khan and Asim, the accused Allah Nawaz, Fiaz Ahmed, Imdad, Sajid and Zafar Iqbal came and levelled allegation of Zina against her and her husband and stated that both of her daughters Dania and Sania were the result of Zina. On 24.10.2013, the respondent, Mst. Rifat Farnaz submitted a private complaint against Fiaz Ahmed, Allah Nawaz, Sajid, Imdad and Zafar Iqbal under the said Ordinance, before the Sessions Judge, Khanewal.

4. After the recording of cursory evidence, the accused Fiaz Ahmed, Allah Nawaz and Sajid were summoned to face trial under the above said allegation. After delivery of copies, as required under section 265-C of the Code of Criminal Procedure, the accused Fiaz Ahmed, Allah Nawaz and Sajid were charge-sheeted under section 7 of the said Ordinance to which they pleaded not guilty and claimed trial.
5. At the trial, the complainant herself appeared as PW-1 and also produced Muhammad Qadeer, PW-2, Muhammad Asim, PW-3 and Mr. Haroon-ur-Rasheed Nizami, Advocate PW-4 to prove her case.
6. The learned trial Court, on conclusion of the trial, convicted and sentenced the accused/appellants, as mentioned in the opening para of this judgment. Hence the present appeal.
7. We have heard learned counsel for the appellants/accused as well as learned Additional Prosecution General, Punjab for State and thoroughly perused the record with their assistance.
8. At the outset, learned counsel for the appellants/accused submitted that the complainant/respondent Mst. Rifat Farnaz has pardoned the appellants/accused in the name of Allah Almighty and has submitted an application regarding her compromise with the appellant/accused.
9. The complainant, present in Court alongwith her son Ghazanfar Muhammad Khan, was identified by her son. She submitted Cr. Misc. Application No. 02/I of 2018 for recording her statement in respect of her compromise. The same was accepted and she was allowed to do so. Accordingly Mst. Rifat Farnaz made deposition to the effect that a compromise has been effected with the respondents namely Fiaz Ahmed and Allah Nawaz and as such she does not press the present complaint. She has no objection, if the sentence of the respondents is not executed and they are acquitted of the charge under section 7 of the said Ordinance.

The learned Additional Prosecutor General, Punjab stated that he had no objection on the compromise effected between the parties.

10. Before discussing the instant case, it may be mentioned that the punishment of *Hadd* prescribed for commission of *Qazf* is based on the following Verse of the Holy Quran.

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ ﴿٨٠﴾

“Those who accuse chaste, honourable women (of unchastity) but do not produce four witnesses, flog them with eighty lashes, and do not admit their testimony ever after. They are indeed transgressors.”

It is pertinent to mention that, according to the injunctions of Islam, the dignity and self respect of every man is inviolable in all circumstances (17:70). Hence anyone who makes an imputation of Zina directly or indirectly, in alternative words, against any

person but fails to produce in support thereof, four witnesses before the Court, becomes liable to the punishment of *Qazf*.

The intention of this Command is to impose a complete ban on allegations about the people's unlawful connections and illicit relationships, because it gives birth to innumerable evils. Imperceptibly it creates and spreads an immoral atmosphere. One person tells someone else about another person's affairs and, whether true or false, the others keep on passing them over to still others with additions and exaggerations. This publicity invariably spreads evil passions on a large scale and, unless checked and curbed immediately, it creates a havoc in society and the person against whom such allegations are made feels absolutely helpless to defend himself and thus alongwith his whole family he/she suffers a lot of humiliation. Therefore, Islamic Shariat intends to nip this evil in the bud. On one hand it enjoins that if a person is found involved in *zina* and his guilt is fully established by evidence, he/she has to be awarded a severe exemplary punishment and, in the alternative, it has laid down that if a person accuses another of *zina* but is unable to prove his allegation before the Court by producing the required evidence, he must be awarded 80 strips so that not only he stops to utter such a baseless slander in future but also set a deterrent example for others. It follows that even if the accuser is an eye-witness of such an immoral act, but does not have the requisite proof, he is asked to keep his mouth shut and instead of causing it to spread, let the filth remain confined to the place where it is observed. However, if the accuser has the requisite number of witnesses, he should, instead, abstain from publicizing the matter in society but should bring it to the notice of concerned authorities and get the criminals duly punished by the court of law.

11. Following paras contain further details of the said law in serial order:

- (a) The context in which the words *والذين يرمون المحصنات* (those who charge chaste women with false accusation) clearly shows that it does not imply any other accusation except the specific accusation of *zina* against the chastity of women. The requirement to produce four witnesses in support of such accusation shows that it relates only to the allegation of *zina*. Such accusation of *zina* has been termed *Qazf* and, therefore, the ingredients of this injunction are not extended to cover cases of others accusations like that of theft, drinking, cheating etc. In those cases, the legislature has the power to determine proper punishments, as deemed suitable.
- (b) We may add that although the above verse only mentions *al-muhsanat* (the women), the jurists unanimously hold that the said law is not confined to the accusation in respect of women only, but applies to such accusation in respect of men also. Likewise, though the masculine gender has been used for the accusers, the law extends to female accusers as well. Male and female both have similar protection and the Islamic Law does not make any difference between the genders in this respect.

(c) Muslim jurists have classified various criminal offences on the basis of right violated and categorized them as follow:

- i) Cases pertaining to the rights of Allah.
- ii) Cases pertaining to the rights of people.
- iii) Cases where both the above rights are combined.

The third category has been further divided into two types and, after elaborate discussion, the jurists have held that in case of violation of the rights of Allah, the punishment prescribed is termed as “*Hadd*” or “*Qisas*”, while all the other punishments pertaining to the violation of the rights of individuals/public at large, are covered under the term “*Taazir*”.

12. As is obvious, the penalty for an offence against the right of Allah cannot be waived off or commuted after due trial and conviction. However, the penalty for an offence against the right of individual only, subject to various conditions, can be commuted. The important point to be made here is that violation of the right of Allah cannot be pardoned. Any sentence other than *Hadd* can be altered, reduced or waived off. In this connection, Muslim Jurists have thoroughly discussed the sentence of *Hadd-e-Qazf*.

A very prominent Jurist namely Dr Wahbah Zuhaili discussed this issue under the topic القذف حد صفة, where he writes:

“إن حد القذف فيه حقان: حق للعبد وحق لله تعالى---- وبناء على القول الثاني وهو مذهب الشافعية والحنابلة يصح للمقذوف ولو بعد رفع الأمر للحاكم إسقاط الحد والأبراء منه والعفو عنه والصلح والإعتياض عنه ويورث حق المطالبة بحد القذف لأنه من حقوق العباد”

“*Qazf* involves two kinds of rights, right of individual and right of Allah----- On the basis of the second opinion which is the opinion of Shafiets and Hanbaliets, it is permissible for “*Maqzoof*” (Complainant), even after the complaint is placed before the Court, to drop the *Hadd* from him and to forgive him or perform Sulh with him on consideration or without consideration. Demand for *Qazf* punishment is also inherited because it is the right of individual”. (الفقه الأسلامى و ادلتة ج 6 ص 31).

Another imminent jurist of repute, Sayyed Sabiq after discussing opinion of four schools of thought, also discussed the issue of repentance. He writes: “ولا تنفع القاذف النوبة حتى يخله المقذوف”.

Repentance does not give any benefit to the accuser (*Qazf*) unless he has been forgiven by *Maqzoof*”. (فقه السنة ج 2 ص 449).

The renowned universally acknowledged jurist Muhammad Abu Zahrah- states that in case of *Qazf*, the right of individual is predominant over right of Allah:

الشخصي فيه أوضح ” الحق جانب والقذف“

.In case of *Qadhif* the opinion regarding of the Right of individual is more obvious” (الجريمة والعقوبة فى الفقه الإسلامى- ص 67).

Another jurist of a very highly acknowledged repute, namely A.Qader Audah Shaheed, has elaborately discussed the said issue in the following words:

۵۶۹۔ کیا حد قذف حق اللہ ہے یا حق العباد ہے؟

فقہاء کے نزدیک جرائم سے پیدا ہونے والے حقوق دو قسم کے ہوتے ہیں، حقوق اللہ (اجتماعی حقوق) اور حقوق العباد (شخصی حقوق) جو خالصتاً للہ ہو یا جس میں حق اللہ غالب ہو وہ حقوق اللہ میں سے ہے اور جس میں حق العباد غالب ہو یا خالص حق العباد ہو وہ حقوق العباد میں سے ہے۔ جو جرائم اجتماعی مصالح اور اجتماعی نظام کو متاثر کرتے ہیں ان سے پیدا ہونے والے حقوق، حقوق اللہ ہیں اور افراد کو گزند پہنچانے والے جرائم سے پیدا ہونے والے حقوق، حقوق العباد ہیں۔

حق اللہ کو افراد اور معاشرہ ساقط نہیں کر سکتے اور جو سزا مصلحت عامہ یعنی دفع فساد اور تحفظ و سلامتی کی ضمانت کی خاطر مقرر کی گئی ہو وہ حق اللہ متصور ہوتی ہے، چنانچہ ہر وہ جرم جس کی برائی سے عام لوگ متاثر ہوں اور اس پر سزا دینا عامتہ الناس کے مفاد میں ہو حق اللہ ہے، اور اس لئے ہے تاکہ یہ مصلحت لازمی طور پر حاصل رہے اور معاشرے سے بگاڑ اور خرابی کو یقینی طور پر دور کیا جاسکے، کیونکہ جب کوئی سزا حق اللہ قرار پا جاتی ہے تو افراد اور معاشرہ اس کو ساقط نہیں کر سکتے۔

ہرچند کہ فقہاء کرام نے حقوق اللہ اور حقوق العباد کی تقسیم کی ہے لیکن بیشتر فقہاء یہ بھی کہتے ہیں کہ حقوق خواہ خالص اجتماعی ہوں یا خالص انفرادی، حق اللہ تو سب میں موجود ہے، کیونکہ ہر حکم شرعی اسی لیے صادر ہوا ہے کہ اس کی اتباع کی جائے۔ گویا اللہ کا بندوں پر یہ حق ہے کہ وہ اس کے احکام کی تعمیل کریں اور نوابی سے اجتناب کریں اور اس لحاظ سے ہر حکم میں حق اللہ موجود ہے اور اگر یہ کہا جائے کہ بعض حقوق خالصتاً انفرادی نوعیت کے ہوتے ہیں تو یہ کہنا اس لیے درست نہیں ہے کہ جو حقوق محض انفرادی ہوتے ہیں ان میں بھی حق اللہ موجود ہوتا ہے اگرچہ ان میں حق العباد غالب ہوتا ہے اسی طرح جو حقوق خالصتاً حق اللہ متصور ہوتے ہیں ان میں بھی حق العباد موجود ہوتا ہے کہ وہ مصالح افراد کو بروئے کار لاتے ہیں، کہ شریعت کا منشا ہی انسانی فلاح و بہبود ہے۔

یہ دونوں حقوق ایک ہی جرم سے بھی پیدا ہوتے ہیں۔ جیسے جرم سرقہ کہ اس سے حق اللہ یعنی اجتماعی حق بھی پیدا ہوتا ہے کہ مجرم کو سزا دی جائے اور محنبی علیہ کا بھی حق پیدا ہوتا ہے کہ اس کا مال واپس دلایا جائے یا اس کا معاوضہ دلایا جائے۔ بعض جرائم سے ایک ہی قسم کا حق پیدا ہوتا ہے جیسے جرم ارتداد کہ اس سے مجرم کو سزا دینے کا ایک ہی اجتماعی حق پیدا ہوتا ہے۔

شریعت اسلامیہ میں اصول تو یہی ہے کہ سزا کا وجوب اور اس کا اجراء حق اللہ ہے مگر بعض سزائوں کو شخصی حقوق (حقوق العباد) کے طور پر مستثنیٰ کر دیا ہے اور یہ وہ سزائیں ہیں جن میں ان کی زندگیوں اور اجسام پر زیادتی کی گئی ہو (یعنی قتل جرح ضرب وغیرہ) چنانچہ شریعت نے سزائے قصاص اور سزائے دیت کی وصولیابی کو حق افراد قرار دے دیا ہے اور افراد کو یہ حق دے دیا ہے کہ وہ چاہیں اس سزا کو وصول کریں اور چاہیں درگزر کر دیں۔ البتہ اگر وہ درگزر کر دیں گے تو معاشرے کو یہ حق حاصل ہوگا کہ وہ جرم اور مجرم کے حالات کے مناسب کوئی سزا دیدے۔ گویا بعض سزائوں کی وصولیابی کا حق افراد کو مل جانے سے معاشرے کا یہ حق سلب نہیں ہو جاتا کہ وہ اس مجرم پر کوئی اور سزا جاری اور نافذ کر دے۔

اس امر پر اتفاق ہے کہ جرم قذف میں دو حق ہیں ایک حق اللہ اور ایک حق مقذوف۔ البتہ فقہاء کا اس امر میں اختلاف ہے کہ ان میں سے کون سا حق زیادہ غالب ہے۔ امام ابوحنیفہ کے نزدیک اس میں حق اللہ غالب ہے اور یہ جرم حقوق اللہ سے متعلق ہے اور بعض فقہائے احناف ہی کی یہ رائے کہ اس میں حق العباد (شخصی حق) زیادہ غالب ہے۔ امام شافعی اور امام احمد کے نزدیک بھی اس میں شخصی حق غالب ہے اور یہ جرم حقوق العباد سے متعلق ہے اور امام مالک کے نزدیک شکایت سے قبل اس میں شخصی حق غالب ہے اور یہ جرم حقوق العباد سے متعلق ہے اور شکایت کے بعد حق اللہ غالب آ جاتا ہے گویا ان کے نزدیک جرم قذف شکایت سے قبل حقوق العباد سے متعلق ہے اور شکایت کے بعد حقوق اللہ متعلق ہو جاتا ہے۔

جرم قذف میں امام شافعی اور امام احمد حق العباد کو اس لیے غالب قرار دیتے ہیں کہ شخص متعلق کو یہ حق ملنا جماعت کو مل جانے سے زیادہ ضروری ہے اور امام ابوحنیفہ اجتماعی حق کو اس لیے غالب قرار دیتے ہیں کہ اس طرح حق اجتماعی اور شخصی دونوں محفوظ رہیں گے جب کہ حق العباد کے غالب قرار دینے میں اجتماعی حق کے ضائع ہو جانے کا اندیشہ موجود ہے۔ اور نیز چونکہ ولی امر (حکمران) افراد اور معاشرے دونوں کی طرف سے نیابت کر رہا ہوتا ہے تو وہ بہتر طور پر اجتماعی اور انفرادی حق کا تحفظ کرسکتا ہے جب کہ انفرادی حق کو غالب قرار دینے کی صورت میں فرد اجتماعی حق کا تحفظ نہیں کرسکتا۔ امام مالک نے قبل شکایت شخصی حق کو اس لیے غالب قرار دیا ہے کہ حق اجتماعی اس حق کے ظاہر ہو جانے پر یعنی بعد شکایت شروع ہوتا ہے اور جب تک شکایت نہ ہو اس وقت تک یہ شخصی حق رہتا ہے اور شکایت کے بعد اجتماعی حق نمایاں ہو جاتا ہے اور اجتماعی حق انفرادی حق پر غالب آ جاتا ہے۔

۵۷۰۔ دونوں قسم کے حقوق میں سے ایک کو دوسرے پر غالب قرار دینے کے بہت سے نتائج مرتب ہوتے ہیں، جن میں سے اہم ترین یہ دو ہیں:-

۱۔ میراث۔ اگر شخصی حق کو اجتماعی حق پر غالب قرار دیا جائے تو اس کا ایک نتیجہ یہ مرتب ہوگا کہ جرم قذف سے پیدا ہونے والے مقذوف کے حقوق میراث میں منتقل ہو جائیں گے اس لیے حقوق العباد میں میراث جاری ہوتی ہے۔ جب کہ ان فقہاء کے نزدیک جو حق اجتماع کو غالب قرار دیتے ہیں حق محاصمت Litigation Right میراث میں منتقل نہیں ہوگا، اس لیے کہ سزائے حد میں اگرچہ شخصی مفاد ملحوظ ہوتا ہے مگر یہ حق اللہ ہے اور آدمی آدمی کا ان چیزوں میں وارث بنتا ہے جو مال ہوں یا مال سے ملحق ہوں، جب کہ حق محاصمت مال یا مال سے ملحق نہیں ہے۔

۲۔ معافی۔ جن فقہاء کے نزدیک جرم قذف میں اجتماعی حق انفرادی حق پر غالب ہے، جیسے امام ابوحنیفہ ان کے نزدیک اثبات جرم کے بعد مقذوف کو قاذف کے معاف کر دینے کا حق نہیں ہے اگر معاف کر دیا تو یہ معافی باطل ہوگی۔ کیونکہ حد حقوق اللہ میں سے ہے اور فرد یا جماعت کو اس کے اسقاط کا حق نہیں ہے جس طرح کہ تمام حدود میں نہیں ہے۔

امام شافعی اور امام احمد جو حق العبد (شخصی حق) کو غالب قرار دیتے ہیں، ان کے نزدیک مقذوف قاذف کو وقت اقامت حد بھی معاف کرسکتا ہے اور جس وقت مقذوف معاف کر دے گا حد ساقط ہو جائے گی، البتہ اگر کئی افراد ایک ہی تہمت سے متہم کیے گئے ہوں تو سقوط حد کے لیے ان تمام کا معاف کرنا ضروری ہے، اگر کوئی ایک معاف کر دے اور ایک نہ کرے تو حد جاری ہوگی اور معاف کرنے والے کی معافی سے حد ساقط نہیں ہوگی۔

معافی کے بارے امام مالک سے متعدد آراء منقول ہیں۔ ایک رائے یہ ہے کہ قضیہ کو عدالت تک پہنچانے سے قبل معاف کر دینا درست ہے اور اس کے بعد معافی درست نہیں ہے۔ دوسری رائے یہ ہے کہ شاہدوں کی گواہی سننے سے قبل معاف کر دینا درست ہے اور شاہدوں کی شہادت پیش کر دینے کے بعد درست نہیں ہے۔ تیسری رائے یہ ہے کہ اگر مقذوف اپنے آپ پردہ ڈالنا چاہے تو قضیہ کے عدالت میں پہنچنے سے پہلے اور بعد میں معاف کر دینا درست ہے۔

جو فقہاء معافی کے قائل ہیں ان کے نزدیک صراحتاً یا ضمناً دونوں طرح معافی درست ہے اور قضیہ عدالت میں پیش کر دینے سے قبل معاف کر دینے پر یہ روا نہیں سمجھتے کہ دعویٰ قائم کیا جائے اس لیے کہ معاف کر دینے سے مقذوف کا حق شکایت ساقط ہو گیا ہے۔ (اسلام کا فوجداری قانون حصہ سوم ص ۱۵۱-۱۵۴)

13. In view of the above, it is quite clear that according to the overwhelming majority of prominent Muslim jurists, including some Hanafis, the offence of *Qazf* is a crime where the right of individual is predominant, and pardon may be granted to the accused by the complainant.

As is clear from the above, the offence of *Qazf* liable to *Hadd* is to be based on the statement of the complainant who has been accused of the commission of offence.

Hence, if he/she grants pardon or waives off his or her right, at any stage, the sentence of *Qazf* is to be warded off. In the instant case, as stated above, the complainant has made a statement before this Court, patched up the matter and granted pardon to the appellant/accused.

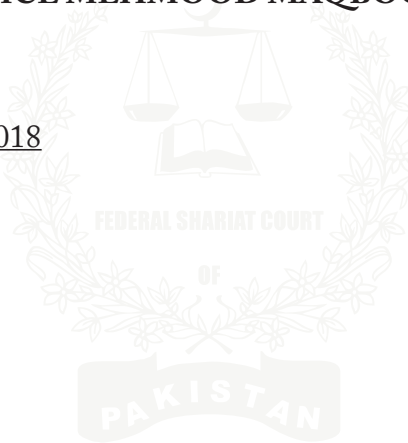
14. For the reasons stated above, therefore, we set aside the conviction and sentence of *Hadd* awarded to both the appellants and acquit them of the charges. Both the appellants/accused are present on bail. Their bail bonds are discharged. The Cr. Ref. is answered in negative.
15. These are the reasons of our Short Order dated 15.01.2018.

MR. JUSTICE DR. FIDA MUHAMMAD KHAN

**MR. JUSTICE SH. NAJAM UL HASAN
CHIEF JUSTICE**

MR. JUSTICE MEHMOOD MAQBOOL BAJWA

Islamabad the 20th February, 2018



IN THE FEDERAL SHARIAT COURT

(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE SH. NAJAM UL HASAN, CHIEF JUSTICE

MR. JUSTICE DR. FIDA MUHAMMAD KHAN

MR. JUSTICE MEHMOOD MAQBOOL BAJWA

JAIL CRL. APPEAL NO.39-Q OF 2001.

Wazir Muhammad Alias Lal Muhammad, s/o Saleh Muhammad Alias Raza, Nakhail by caste, r/o Afghanistan, presently at Quetta.

Appellant

...

Versus

The State

Respondent

MURDER REFERENCE NO.2-Q OF 2001.

The State.

Versus

Wazir Muhammad Alias Lal Muhammad, s/o Saleh Muhammad Alias Raza, Nakhail by caste, r/o Afghanistan, presently at Quetta.

Counsel for the appellant

... -----

Counsel at state expenses
(in murder reference)

...

Mehr Sardar Ahmed Abid, Advocate

Counsel for the State

...

Syed Abdul Baqir Shah, Additional
Prosecutor-General, Baluchistan.

Fir No. and Police Station

...

No.156 of 1999 P.S. Gawalmandi,
Quetta.

Date of judgment Of Trial Court

...

24.05.2001

Date of preference Of appeal

...

24.05.2001.

Date of hearing

...

07.02.2018

Date of decision

...

07.02.2018

JUDGMENT:

Mehmood Maqbool Bajwa, J: Consequent upon the conclusion of trial in case F.I.R. No.156 of 99 registered under Section 17(4) of The Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979) (Hereinafter called Ordinance VI of 1979) at Police Station Gawalmandi, Quetta, a learned Additional Sessions Judge, Quetta, while concluding the proof of charge against the appellant-convict under Section 396 of The Pakistan Penal Code, 1860 (Act XLV of 1860) (Hereinafter called The Act) recorded conviction under the aforesaid provision of law and awarded him sentence of death subject to confirmation by this Court.

The appellant-convict being aggrieved of the judgment dated 24th of May, 2001, has assailed the legality and validity of said judgment by way of appeal through jail bearing No.39-Q of 2001.

The learned trial Court sent Reference under Section 374 of The Code of Criminal Procedure, 1898 (Act V of 1898) (Hereinafter called The Code) for confirmation or otherwise of sentence of death awarded to the appellant.

2. The convict escaped from jail as pointed out by learned counsel for the complainant on 13th of April, 2004. Factum of escape was confirmed through report dated 27th of October, 2004 submitted by the Superintendent, Central Jail, Machh.

In view of the report, through order dated 23rd of November, 2004, direction was issued to procure the attendance of appellant-convict through non-bailable warrant of arrest which was sent to learned Sessions Judge, Quetta with further direction that in case of non-execution of warrant of arrest, proceedings under Sections 87 and 88 of The Code shall be carried out.

In view of non-execution of non-bailable warrant of arrest, the learned Sessions Judge, Quetta initiated proceedings against the appellant under Sections 87 and 88 of The Code and report was sent to this Court which fact was duly incorporated in order dated 12th of September, 2005. Taking into consideration the report referred to, the appeal was adjourned till arrest of the appellant.

However, appeal was re-listed on 15th of May, 2015. Again non-bailable warrant of arrest was directed to be issued in order to procure attendance of the appellant. The appeal as well as murder reference was listed on different dates of hearing but due to non receipt of report from the SHO police station Gawalmandi, it was being adjourned. On 13th of June, 2017, this Court again issued notice to the appellant with further direction to the District Police Officer, Quetta to submit report regarding the efforts made by police for arrest of the appellant.

On 13th of September, 2017, it was noted that requisite report has not yet been received. Taking into consideration inability shown by previous counsel appointed at State expenses earlier in appeal, preferred through Jail Superintendent, direction was issued to the office to appoint another counsel at State expenses in Murder Reference. On 11th of October, 2017, Muhammad Anwar Inspector (SHO police station Gawalmandi,

Quetta) put his appearance, made statement regarding non-availability of appellant with further stance that convict who was Afghan national had left Pakistan for his native country. His statement was also recorded in this regard.

Mehr Sardar Ahmed Abid, Advocate, who was appointed counsel at State expenses put his appearance on the same day.

In view of the report of S.H.O., it was directed to the learned counsel appointed at State expenses as well as learned Additional Prosecutor-General, Balochistan to assist this Court on the proposition whether this Court can proceed with the appeal of convict as well as murder reference in the absence of convict as well as his represented counsel.

3. We have not only heard arguments on the preliminary point referred to but also on merits in order to determine the legality of conviction and sentence awarded to the convict regarding which confirmation has been sought through Reference under Section 374 of The Code.
4. In the opinion of learned counsel appointed at State expenses in murder reference, appeal cannot be decided in either way in the absence of convict who was of the further view that murder reference should also be kept pending till the arrest of the convict as directed by this Court earlier.

However, learned law officer was of the view that murder reference can be decided even in the absence of appellant-convict contending that the legality of the conviction and sentence awarded to the convict, sent for confirmation has to be decided by this Court and cannot be deferred for an indefinite period.

5. Arguments on merits have also been heard as referred earlier by us in detail which though are not incorporated but will be reflective in the judgment if this Court reaches to the positive conclusion regarding its domain to decide the appeal as well as murder reference in *absentia*.
6. Prior to scanning the law on the preliminary moot point, it is desirable to make reference to Rule 25 of The Federal Shariat Court (Procedure) Rules, 1981, according to which, a Reference submitted to the Court by a lower Court for confirmation of sentence awarded to an accused shall be heard as an appeal and the provisions contained in Chapter-III of the said Rules shall *mutatis mutandis*, apply. Chapter-III of the Rules deal with form, mode of presentation and procedure of hearing the appeal.
7. In order to decide the preliminary issue, two-fold queries are required to be resolved.
 - i) *Whether in the absence of appellant who is fugitive of law, appeal can be decided? If so, what is the appropriate mode?*
 - ii) *Whether Reference under Section 374 of The Code can be decided in the same situation or shall be kept pending alongwith appeal till the arrest of convict.*

8. Sections 421 to 423 of The Code deals with the procedure for disposal of appeal and powers of appellate court.

Section 421 of The Code deals with summary disposal of appeal (preferred either under Section 419 or Section 420 of The Code). Due to admission of appeal for regular hearing, the provisions under reference are not required to be examined.

Section 422 of The Code describes the stage after admission of appeal. It envisages issuance of notice, which is mandatory in nature, highlighting the time and place of hearing the appeal. The expression “it shall cause notice to be given to the appellant or his pleader,.....” used in said provision is of significance. There will be sufficient compliance of the provision if notice is given either to the appellant or his advocate in view of use of word “or” between the expressions “appellant” and “his pleader.” Service of notice either upon the appellant or his pleader is not necessary. Admittedly, notices were given to the appellant time and again as is reflected from various interim orders and as such, there is sufficient compliance of Section 422 of The Code.

9. Question of disposal of appeal in such eventuality was dealt with in “Baldeo Dubey and others v. King Emperor” (AIR 1924 Patna 376), “Roora v. Emperor” (AIR 1930 Lahore 659(1), “Biswanath Chakravarty v. Haripada De Dhara and others” (AIR 1959 Calcutta 443), “MUHAMMAD YAR v. CROWN” (PLD 1950 Baghdad-ul-Jadid 54), “SRIKANTA KARMAKAR v. THE CROWN” (PLD 1951 Dacca 43), “GHULAM MUHAMMAD v. THE STATE” (PLD 1960 (W.P.) Lahore 11) and “MUHAMMAD KHALIL KHALID vs. THE STATE” (1972 P.Cr.L.J. 65).

Examining the provisions of Sections 421 to 423 of The Code, it was held that there is no enabling and permissive provision of law authorizing the Court to dismiss the appeal for want of prosecution if admitted for hearing and appeal in such eventuality subject to issuance of notice has to be decided on merits.

Similar proposition was moot point before learned Division Bench of High Court of West Pakistan (Peshawar Bench) in “KHANAN KHAN AND OTHERS v. THE STATE” (PLD 1966 (W.P.) Peshawar 232). In the report under reference, Khanan Khan and others after trial were convicted and condemned to sentence of death. Two convicts after giving power-of-attorney to an advocate escaped from jail. Appeal was preferred on their behalf. Reference under Section 374 of The Code was also sent by Court of Sessions, Mardan. Dealing with the proposition, it was held at page-240 as under:

“Under the law, as contained in Section 422 and 423 of The Code, notice of hearing of appeal has to be given to the appellant or his pleader, and where the records have been sent for after hearing the appellant or his pleader, if he appears, the court may dismiss the appeal or accept it or pass such other order as may be necessary. What is, therefore, obligatory is a notice of hearing to the appellant or his counsel and a hearing afforded to him or his pleader, if he appears, but not so, if he or his counsel does not”

(Emphasis supplied)



10. Dealing with question of reference under Section 374 of The Code (Murder Reference), while examining provision of Sections 374, 375 and 376, of The Code, it was concluded at same page as follow:

“It is clear from these provisions that for the completion of the process of confirmation of the death sentence or making any incidental or other order in that behalf, the presence of the convicted person is not necessary, unless it is directed by the High Court for any further inquiry under section 375, and that there are no limitations whatsoever on the High Court to finalize the matter of confirmation except that it has to wait till the time provided for appeal has expired or if an appeal has been filed, till it is disposed of.”

With this background, the appeal of all convicts (including absconder) was decided with disposal of Murder Reference. Two of them were acquitted. While death sentence of two including Gul Hassan (absconder) was confirmed.

Judgment of learned Division Bench was assailed before Apex Court and the Hon’ble Supreme Court approved the view assailed in “GUL HASSAN AND ANOTHER v. THE STATE” (PLD 1969 SC 89). Making reference to the Ratio expounded in “CHAN SHAH v. THE CROWN” (PLD 1956 Federal Court 43) stating the duty of attorneys and counsel in such like cases, it was held at pages-93 and 94 as follow:

“We fully subscribe to this view and reiterate that the attorneys and members of the bar will bear in mind the serious consequence of committing contempt of this Court in moving on behalf of a prisoner who is a fugitive from law. The appeal filed by the counsel on the basis of the power-of-attorney executed by Gul Hassan in favour of Kharwaja Muhammad Khan before his absconsion was thus not properly constituted and should have been dismissed by the High Court on that ground alone.

In this view Gul Hassan being a fugitive from law and a contemner was not entitled to hearing and leave granted to him on limited questions of law was liable to be rescinded. As to the proceedings under section 374, Cr.P.C., we endorse the view adopted by the learned Judges in the High Court that if a prisoner decamps and thereby forfeits the right of audience the sentence of death may be confirmed in his absence.”

Issue was also examined by Apex Court in “JUMA KHAN v. THE STATE” (1969 SCMR 249). Making reference to the provision of The Code under discussion, taking note of sending notice to the counsel for the appellant (since absconded), it was concluded that there is presumption in the absence of evidence to the contrary that notice reached to its destination in due time and as such disposal of appeal on merits in the absence of appellant and his counsel was held to be un-exceptionable.

In the case of “MUHAMMAD ASHIQ FAQIR v. THE STATE” (PLD 1970 SC 177), the Apex Court, while examining the provisions of Sections 421 and 423 of The Code held that absence of appellant or his pleader at the time of regular hearing does not relieve the court of its duty of procuring record and disposing of appeal on merits giving reasons in support of judgment proposed to be given.

In “ASIF ALI v. THE STATE” (PLD 1971 SC 223), moot point again came up for adjudication. The appellant whose appeal was pending before learned Lahore High Court, Lahore, was on bail but was absent and counsel engaged by him was also not present. The learned Single Judge of Lahore High Court proceeded with the hearing after waiting sometime with the assistance of learned counsel for the State. The learned counsel representing the appellant as per record appeared in the court nearly at the end of case, made request for adjournment on the ground of sufficient consumption of time, who ultimately on the direction of the court started arguments reluctantly, but in a manner, so as to waste time and on pointation, he refused to further argue the case, upon which the learned Judge decided the appeal. The circumstances referred above were agitated before Apex Court and it was held at page-228 as follow:

“After giving my anxious consideration to all the relevant events, in which this appeal was concluded by the learned Single Judge in the High Court. I have come to the conclusion that the step taken by him cannot be considered to be illegal or even unjustifiable, to warrant an interference with his judgment. While the learned members of the Bar appearing in cases as officers of the Courts are entitled to all genuine considerations and accommodation in conducting proceedings before the Courts consistently with the onerous responsibilities of the Court itself to discharge its duties diligently and conscientiously, it is impossible to concede that the learned counsel should be allowed to regulate the work or the proceedings in the Court, according to their own choice to suit their own convenience. It would certainly be a disservice to the cause of justice if the counsel were not accorded complete independence in the mode of presentation of their arguments or the exposition of their cases and in all the relevant respects in that behalf, but, at the same time, it would be an equal disservice if, in the dispensation of justice, Courts, in the fulfillment of their duties to do justice, were to be denied the powers to control and regulate the Court proceedings and to confine them to their legitimate and relevant limits, in consonance with the requirements of justice in each case.....”

Mode and manner of disposal of appeal was accordingly endorsed by the Apex Court.

In the case of “MUHAMMAD BAKHSH V. THE STATE” (1986 SCMR 59), Hon’ble Full Bench of the Supreme Court, while relying upon the Ratio of “MUHAMMAD ASHIQ FAQIR” (PLD 1970 SC 177) and making reference to the provision of Section 423 (1) of The Code ruled that appeal has to be decided on merits even in the absence of appellant and his counsel.

Matter was again examined by Hon’ble Larger Bench of the Apex Court in “HAYAT BAKHSH AND OTHERS v. THE STATE” (PLD 1981 SC 265).

In the report under Reference, the whole case law on the proposition was examined and ultimately it was concluded at page-281 as under:

“Before proceeding to the next step relating to the orders which are to be passed in to the light of the foregoing discussions, it is necessary to make three clarifications: (I)



That although the treatment of the case of a fugitive from law and justice can also be of general nature, yet in the present discussion it essentially relates to the proceedings before this Court. When applied to other proceedings and or before other Courts, these principles would have to be considered and applied only subject to the law applicable thereto; (2) the same principles are often applied to cases of preventive detention when a citizen seeking redress from a Court refuse to obey or ignore the orders of the very Court which in order to do justice to him requires his appearance or surrender before it. So far there does not seem to be any real conflict between the two fields: one of administration of justice by Courts and the other of maintenance and observance of law, because one factor remains namely, the defiance of the order of or the process connected with the Court proceedings. In every situation the question of surrender would have to be dealt with in accordance with the relevant law; and (3) the concept of doing complete justice in accordance with the principles, already discussed, would not be controlled by any bar of technicality, and notwithstanding the action of the Court in dealing with a fugitive from justice who seeks justice from it in one of the other way, on a proper cause being shown and after due submission of an explanation, the power of review, and in case of need, of rehearing in proper cases would remain in tact.

In Cr. Appeal No. 53, the matter is pending in this Court since July, 1976. It has on account of the abscondence of Hayat Bakhsh and Allah Bakhsh son of Mohammad Bakhsh appellants suffered inordinate delay. Their co-convicts are in custody. There is no justification now to await any further the surrender of these two appellants. They are fugitive from justice and have defied the process of this Court. Therefore, in accordance with the principles already discussed, their appeals are dismissed.....

(underlining is our)

In “NAZAR HUSSAIN v. THE STATE” (1985 SCMR 614), Hon’ble Larger Bench of the Supreme Court of Pakistan while noting the factum of escape of the appellant from jail dismissed the appeal for want of prosecution concluding that the said convict being fugitive from justice has forfeited the right of audience.

In “IKRAMULLAH and others v. The STATE” (2015 SCMR 1002) taking note of the abscondence of Adil Nawab (convict in one appeal, who escaped from jail), the Hon’ble Apex Court reiterating the settled proposition that fugitive from law, losses his right of audience before a Court dismissed the appeal on account of above-mentioned conduct of the said convict.

11. Reference to the case law in para (9) of the judgment reveals that in certain cases keeping in view the provisions of Sections 421 to 423 of The Code, it was held that appeal of appellant despite abscondence has to be decided on merits. However, in the case of “HAYAT BAKHSH AND OTHERS v. THE STATE” (PLD 1981 SC 265), “NAZAR HUSSAIN v. THE STATE” (1985 SCMR 614) and “IKRAMULLAH and others v. The STATE” (2015 SCMR 1002), which are later in time, having greater numerical strength of Hon’ble Judges in the cases of “HAYAT BAKHSH AND

OTHERS v. THE STATE” (PLD 1981 SC 265) and “NAZAR HUSSAIN v. THE STATE” (1985 SCMR 614), appeals of absconders were dismissed keeping in view their conduct without discussing merits.

Pursuant to above, Rule of law expounded in the later-mentioned “Reports” has to be followed.

The appellant before us who escaped from jail, ultimately was declared absconder. Being fugitive of law, has forfeited his right of audience and as such appeal preferred by him is hereby dismissed due to his above-referred conduct.

12. Question of disposal of murder reference in the absence of condemned prisoner can be conveniently answered in affirmative in view of the law laid down in “GUL HASSAN AND ANOTHER V. THE STATE” (PLD 1969 SC 89), in which while endorsing the judgment of learned Peshawar High Court deciding the murder reference in absentia, it was held that since the absconder forfeits right of audience, therefore, sentence of death may be confirmed in his absence.

We also may make reference to the Ratio expounded in the case of “HAYAT BAKHSH AND OTHERS v. THE STATE” (PLD 1981 SC 265) concluding that Reference sent under Section 374 of The Code can be decided even in the absence of absconder condemned prisoner on merits.

13. Consequent upon the settled proposition of law, we may examine the evidence adduced in the light of arguments advanced by learned State counsel as well as learned law officer.
14. Prior to dealing with the merits, it is desirable to narrate the prosecution version in brief in order to appreciate the evidence in its true perspective.
15. Muhammad Umar (P.W.1), brother of Muhammad Ali (deceased) got the FIR lodged while submitting “*Fard-e-Bayan*” (Ex.P-1/A) with the accusation that on 3rd of October, 1999, he alongwith his maternal nephew Muhammad Aslam (P.W.2) and friend Rehmat Ullah (P.W.6) were going to Sarki Road through Street No.4 when his deceased brother was coming back to his house. At the end of Street No. 4, two un-identified assailants emerged there on motorcycle, pointed out pistol upon the deceased, made an attempt to snatch the motorcycle and upon resistance, one of the unknown accused made two fires hitting on the left side of the chest and leg of the deceased. The unknown assailants while snatching the motorcycle managed to escape.

Contents of “*Fard-e-Bayan*” further reveal that one Muhammad Haneef who was standing nearby was in a position to disclose the particulars of said accused and can identify them.

Muhammad Ali (deceased) was taken to the civil hospital Quetta in injured condition who succumbed to the injuries there.



16. It is an admitted fact that in the crime-report, convict was not named and case was registered against unknown accused. The prosecution in order to prove its case banked upon the evidence of complainant Muhammad Umar (P.W.1), Muhammad Aslam (P.W.2), Rehmat Ullah (P.W.6) (eye-witnesses of the occurrence) and in order to establish the identity of convict as a culprit relied upon the identification parade, conducted under the supervisions of Muhammad Aslam, Extra Assistant Commissioner, Quetta (P.W.7) on 26th of October, 1999, in which proceedings, complainant (P.W.1), Muhammad Aslam (P.W.2) and Rehmat Ullah (P.W.6) identified the convict. Medical evidence is another aspect which was relied upon by the prosecution and in this regard reference was made to the evidence of Dr. Sarfarz Jamali (P.W.3).
17. As per contents of F.I.R, Muhammad Haneef who witnessed the occurrence was in a position to disclose the particulars of un-identified assailants, also able to identify them.

Strangely enough, said person who was the natural and best witness was neither associated in the investigation nor cited and produced as a witness.

Whole evidence led by prosecution is nowhere suggestive to justify omission in any manner, whatsoever.

In view of the matter, adverse presumption has to be drawn against prosecution under Article 129(g) of The Qanun-e-Shahadat Order, 1984 (President Order No.10 of 1984).
18. Though, the presence of Muhammad Umar, Complainant (P.W.1) was questioned heavily at the instance of learned State counsel but nevertheless keeping in view the time of occurrence, i.e. 10:00 A.M. and arrival of deceased at 11:00 AM in injured condition in civil hospital, Quetta, who was brought by complainant is sufficient to establish the presence of complainant at the spot.
19. Ocular account furnished by the witnesses (P.W.1, P.W.2 and P.W.6) and medical evidence though proves the unnatural death of deceased Muhammad Ali, to which evidence, no exception can be taken but nevertheless the fact by itself would not be sufficient to prove the culpability of convict for which, as referred earlier, prosecution banked upon the evidence of identification parade.
20. We have gone through the evidence produced by the prosecution on this aspect. At the very outset, it is desirable to add that "*Fard-e-Bayan*" (Ex.P.1/A) as well as contents of F.I.R. does not reveal that the complainant (P.W.1) ever disclosed the description of the unidentified assailants.

It is further to be noted that the witnesses Muhammad Aslam (P.W.2) and Rehmat Ullah (P.W.6) also did not highlight the description of the accused in their respective statements recorded under Section 161 of The Code.

Matter does not end here. Perusal of statement of Rehmat Ullah (P.W.6) recorded before police with which he was confronted reveals that due to considerable distance,

he could not properly see the culprits. Though the fact when put was denied by the witness in cross-examination but on confrontation as referred earlier, it was found mentioned in the said statement.

21. Omission to disclose description of un-identified accused is significant, going to the root of the case, putting a serious dent to the case of prosecution and by itself sufficient to brush aside the proceedings of identification parade. Reliance is placed upon the dictum laid down in “MAULA DAD alias MAULA and others v. EMPEROR” (AIR 1925 Lahore 426), “SABIR ALI alias FAUJI v. THE STATE” (2011 SCMR 563) and “MANSOOR AHMED alias SHAHZAD alias SHEERI and others v. THE STATE” (2012 YLR 2481).

22. Another infirmity which we have noted in the evidence of the witnesses (P.W.1, P.W.2 and P.W.6) is the omission to describe role of the convict in the occurrence.

The said infirmity is also reflected in the proceedings of identification parade (Ex.P.1-B, Ex.P.2-A and Ex.P.6-A). Since, there is an omission on the part of the witnesses to highlight the role of convict as a foe in the identification proceedings as well as in their deposition as a witness, therefore, no implicit reliance can be placed upon the said identification test. Reference may be made to “Lal Singh v. The Crown” (1924) 51 ILR 396), “KHADIM HUSSAIN v. THE STATE” (1985 SCMR 721), “SIRAJ-UL-HAQ and another v. THE STATE” (2008 SCMR 302), “GHULAM QADIR and 2 others v. THE STATE” (2008 SCMR 1221), “SHAFQAT MEHMOOD and others v. THE STATE” (2011 SCMR 537), “SABIR ALI alias FAUJI v. THE STATE” (2011 SCMR 563), “MUHAMMAD FAYYAZ v. THE STATE” (2012 SCMR 522) and “AZHAR MEHMOOD and others v. The STATE” (2017 SCMR 135).

23. It is also worth mentioning that statements of Muhammad Aslam (P.W.2) and Rehmat Ullah (P.W.6) under Section 161 of The Code were recorded on the next day of the occurrence, i.e., 04.10.1999, which fact was frankly admitted by Muhammad Aslam stating that their statements were recorded in police station but it was contradicted by Muhammad Umar, complainant (P.W.1) who in cross-examination while replying the question submitted that his statement, i.e., *“Fard-e-Bayan”* was recorded in Civil Hospital and just after recording his statement, statements of the witnesses (P.W.2-P.W.6) were recorded.

We are not unmindful of the argument advanced by learned law officer that the delay in recording the statements occurred due to transfer of the Investigating Officer, which fact was also referred to by the learned Trial Court while rejecting the contention of learned counsel for the convict before him but we are dealing with this aspect in order to highlight the contradiction in the stance of prosecution regarding the date and venue of recording the statements. In the circumstances, how the evidence of Muhammad Aslam and Rehmat Ullah (P.W.2-P.W.6) can be acted upon stating in their direct statements regarding the identification of convict as a culprit?

24. Identifying witnesses, i.e., Muhammad Aslam and Rehmatullah (P.W.2 and P.W.6)



replying another question categorically questioned the suggestion put to them in cross-examination that the convict was shown to them prior to the identification test held on 26.10.1999. However, perusal of record reveals that statements of Muhammad Aslam and Rehmat Ullah (P.W.2-P.W.6) were also recorded under Section 164 of The Code by Syed Zulfiqar Hasnain, the then Judicial Magistrate, Quetta (D.W.1). Copies of the said statements are (Ex.D-1/A and D-1/C). While recording the statements under Section 164 of The Code, the then learned Judicial Magistrate (D.W.1) called the convict providing an opportunity to cross-examine the said witnesses. In reply to question put by the convict, both the witnesses with one voice admitted that he (convict) was shown to them in the lockup prior to identification parade. Though as referred earlier, there was a denial by both the witnesses in the cross-examination regarding seeing the convict prior to identification test but the replies referred to are sufficient to question the evidentiary value and binding force of the identification parade which was heavily relied upon by learned law officer.

25. We are conscious of the argument advanced by learned law officer that premium was granted by both the witnesses to the convict but we regret to share and endorse the opinion keeping in view the inter-se relationship of the witnesses (P.W.2-P.W.6) not only with the complainant (P.W.1) but also with the deceased, Muhammad Ali. Muhammad Aslam (P.W.2) admitted in cross-examination that deceased was husband of his sister while Rehmat Ullah is the friend of complainant (P.W.1) as disclosed by the complainant (P.W.1). It is further to be noted that according to complainant (P.W.1), Muhammad Aslam (P.W.2) is son of his sister “*bhanja*”.
26. Evidence of Muhammad Aslam (P.W.2) and Rehmat Ullah (P.W.6) further reveals that improvements were made by both the witnesses in their direct statements by adding that one of the assailant made attack upon the head of the deceased but admittedly the said fact was neither disclosed by the witnesses in their respective statements recorded under Section 161 of The Code nor it is the case of complainant (P.W.1) in the F.I.R. It is to be noted that according to Rehmat Ullah (P.W.6), one of the accused gave pistol blow on the head of the deceased but perusal of the Medico-Legal Report does not suggest injury of any kind on the head of the deceased.

Factum of improvement is another aspect raising serious question about the veracity of the witnesses Muhammad Aslam (P.W.2) and Rehmat Ullah (P.W.6). Reliance is placed upon the Rule of law laid down in “AKHTAR ALI and others v. THE STATE” (2008 SCMR 6) and “MUHAMMAD RAFIQUE and others v. THE STATE and others” (2010 SCMR 385).

27. Admittedly, no empty was recovered from the spot. There is no justification highlighted by the Investigating Officer (Maqsood Ahmad-S.I.) (P.W.11), who conducted initial investigation at the spot. Though this aspect can be ignored but in view of the discussion made in the preceding paragraphs, we have no hesitation to conclude that evidence led by the prosecution is not sufficient to prove the culpability of convict.

28. Though, F.I.R was lodged with promptness as argued by learned law officer but the fact by itself is not sufficient to prove the culpability of convict, particularly, when he was not named in the F.I.R.
29. We are also not unmindful of the argument advanced by the learned law officer that how a real brother, complainant (P.W.1) can implicate the convict falsely while letting free the real culprit. The argument though appears to be attractive in form but is of little help to the prosecution in substance in the circumstances of the present case. Inference by itself would not be sufficient to prove the guilt of convict though it could have been used as a positive inference in order to support the convincing and confidence inspiring evidence, which undeniably prosecution failed to produce.

Conviction cannot be based on high probabilities as held in “YASIN alias GHULAM MUSTAFA v. THE STATE” (2008 SCMR 336).

30. Contention raised by learned law officer that medical evidence support the prosecution stands with reference to time of occurrence and nature of injuries sustained by the deceased to which no exception can be taken but nevertheless in the absence of convincing evidence, either direct or circumstantial, the medical evidence which is confirmatory in nature would not be sufficient to connect the convict in the commission of crime.
31. Viewed from whichever angle, evidence led by the prosecution and discussed by no stretch of imagination can prove the case of prosecution beyond shadow of doubt. Benefit of doubt in the circumstances has to be extended to the convict as a matter of right.
32. Next question for consideration before this Court is what should be appropriate order in the circumstances, particularly, in view of dismissal of appeal of convict due to his conduct being fugitive of law.

Section 376 of The Code provides answer to the query which is re-produced for read reference:

“376. Power of High Court to confirm sentences or annual conviction. *In any case submitted under section 374, [...] the High Court:*

- (a) *may confirm the sentence, or pass any other sentence warranted by law; or*
- (b) *may annul the conviction and convict the accused of any offence of which the Sessions Court might have convicted him or order a new trial on the same or an amended charge; or*
- (c) *may acquit the accused person;”*

Keeping in view the provision re-produced, this Court is competent to make three types of orders while deciding the Reference under Section 374 of The

Code.

33. In view of discussion made in proceeding paragraphs, we have concluded that prosecution failed to prove its case against the convict beyond shadow of doubt formulating opinion to extend benefit of doubt in his favour.

At this stage, it is also desirable to add that the conclusion drawn by learned trial Court recording conviction under Section 396 of (Act XLV of 1860) is also legally not sustainable, as the number of culprits were less than five as is evident from the case of prosecution.

34. Pursuant to discussion made above, we cannot endorse the judgment recording conviction and awarding sentence of death to the convict. We are also of the considered view that the prosecution also failed to prove any other offence against convict under any other provision of law.
35. Epitome of above discussion is that Reference sent by learned Trial Court cannot be endorsed. Conviction recorded and sentence of death awarded to the convict is hereby set side answering murder reference in negative.

Exercising the powers under Section 376 (c) of The Code, we hereby acquit the convict.

MR. JUSTICE MEHMOOD MAQBOOL BAJWA

**MR. JUSTICE SH. NAJAM-UL-HASAN
CHIEF JUSTICE**

MR. JUSTICE DR. FIDA MUHAMMAD KHAN

Dated, Islamabad the

07th February, 2018.

Approved for Reporting

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(Appellate Jurisdiction)

JUSTICE DR. FIDA MUHAMMAD KHAN
JUSTICE SYED MUHAMMAD FAROOQ SHAH

CR. APPEAL NO.01/P OF 2012

Arab Khan son of Malak Anwar Khan,
R/o village Larama, Tehsil & District Peshawar ----- Appellant.

Versus

1. Rajesh Masih son of Riasat Masih,
2. Amir Masih son of Munawar Masih,
3. Raheel Masih son of Liaquat Masih,
All residents of Christian Colony Tehkal,
Tehsil & District Peshawar.
4. The State ----- Respondents.

Counsel for the Appellant	---	Mr. Hussain Ali, Advocate.
Counsel for the Respondents	---	Qazi Intikhab Ahmed, Advocate.
Counsel for the State.	---	Mr. Wilayat Khan, A.A.G, KPK.
FIR No, date & P.S	---	FIR No.50 dated 21.01.2010,
	---	P.S Tehkal, District Peshawar.
Date of impugned judgment	---	02.12.2011.
Date of institution	---	10.01.2012.
Date of hearing	---	05.10.2018.
Date of decision	---	05.10.2018.

JUDGMENT

SYED MUHAMMAD FAROOQ SHAH, J.— The captioned appeal under Section 417 (2-A) Code of Criminal Procedure has been preferred by the Appellant/complainant Arab Khan, brother of deceased Sarmat Khan, feeling aggrieved and dissatisfied from the acquittal judgment, pronounced on 02.12.2011 by the learned Additional Sessions Judge-IX, Peshawar, whereby all three respondents (accused) were acquitted from the charges levelled against them in the FIR No.50, dated 21.01.2010, registered under Section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, lodged at Police Station Tehkal, Peshawar. A prayer to set-aside the impugned judgment and to convict the respondents according to law has also been made.

2. Necessary facts for disposal of the instant appeal are that local police received information about the dead body lying at *Charmari Road*; on such information, they proceeded to the spot and found a dead body. Nobody was found present on the spot to report; the dead body was transferred to mortuary for post mortem examination and necessary *Murasila* was drafted and sent to the Police Station for registration of case, where a formal FIR was registered. Later, on dated 9.2.2010, the appellant recorded his statement under section 164 of the Code of Criminal Procedure and charged the accused persons for commission of the offence. The investigation was entrusted to PW.11 *Zarwali Khan* Police Inspector/SHO; on receipt of FIR, he proceeded to the spot and prepared the site plan (Ex.PW11/1) on pointation of the complainant; the blood stained earth was secured vide recovery memo (Ex.PW6/1); clothes of the deceased vide recovery memo (Ex.PW.6/2-3); he arrested the accused *Rajesh Masih* and *Raheel Masih* vide memo (Ex.PW.11/4) and recorded the statement of the Appellant / complainant Arab Khan under section 164 Code of Criminal Procedure vide his application (Ex.PW11/5); he took the physical custody/remand of the accused persons and on pointation of accused *Raheel Masih*, he secured the incriminating weapon, i.e. .30 bore pistol vide recovery memo (Ex.PW8/1); he then secured the robbed motor car from PW *Allah Ditta* vide recovery memo (Ex.PW2/1); statement of *Allah Ditta* under section 164 Code of Criminal Procedure was recorded and thereafter all accused persons were produced for recording their confessional statements before the Magistrate, vide his application (Ex.PW1/1); only *Rajesh Masih* confessed his guilt before the Magistrate and remaining two accused have denied their participation in commission of the offence. The Investigating Officer on receipt of Chemical Examiner Report (Ex.PW11/10), recorded the statements of PWs and after completion of the investigation, handed over the case file to the CIO for submission of the final report under section 173 Code of Criminal Procedure before the court.
3. The challan was accepted under section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 against all the three accused and after complying codal formality under section 265 (c) Code of Criminal Procedure, the accused were charged for the offence under section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, to which they pleaded not guilty and professed their innocence.

4. To substantiate their contention, the prosecution examined as many as 13 witnesses from the calendar of 17 witnesses in all. On conclusion of prosecution evidence, statements of the accused persons were recorded under section 342 Code of Criminal Procedure; and after affording opportunity of hearing to both sides, the impugned judgment was pronounced by the trial court.
5. Arguments advanced by Mr. Hussain Ali, learned counsel for the appellant/complainant and Qazi Intikhab Ahmed, learned Advocate for the respondents in detail are considered. The impugned judgment as well as the record has carefully been scanned by us with the able assistance rendered by the learned counsel for the parties. Conversely, Mr. Wilayat Khan, learned Assistant Advocate General, *Khyberpukhtun Khwa* representing the State, supported the instant appeal to the extent of Rajesh, the Respondent No.1, as according to his contention, the respondent *Rajesh Masih* has voluntarily admitted the commission of offence in his confessional statement (Ex.PW.7/1) recorded under section 164/364 of the Code of Criminal Procedure.
6. It is an admitted position that the prosecution did not adduce ocular testimony being a case of unseen incident and that the case of prosecution hinges on circumstantial evidence and confessional statement of the accused/Respondent No.1, recorded on 11.2.2010 by Mr. Qudratullah, Id: Judicial Magistrate Ist-Class, Peshawar. As per Prosecution version, during interrogation in custody, the incriminating weapon viz pistol allegedly used in commission of the offence and cellular phone of deceased on pointation of accused *Rajesh Masih* were secured from his house. Remaining two Respondents have refused to confess their involvement in commission of offence; moreso, nothing was recovered from their possession. The robbed motor car No.205/FDO Khyber of white colour was recovered from PW *Allah Ditta* but surprisingly neither he was arrayed as an accused in this case nor he was examined as a witness.
7. Mr. Hussain Ali, learned advocate, representing the Appellant / complainant argued that the Respondents / accused are involved on the basis of strong circumstantial evidence; more particularly accused *Rajesh Masih* during his confessional statement has fully furnished the account of his involvement as well as involvement of co- accused in the incident; the learned counsel contended that the testimony of prosecution witnesses was sufficient to convict all three accused as there was unbroken chain of the circumstantial evidence, coupled with confessional statement of one of the accused and such evidence produced by the prosecution has not been considered in its true perspective. Learned counsel next argued that the impugned judgment is result of complete misreading of evidence indicting great miscarriage of justice in reasons and conclusion arrived at by the trial court. Per learned counsel, the reasons of acquittal of the respondents/accused persons, recorded by the trial court appears to be whimsical and unwarranted under the law, based on surmises and conjectures, which have caused great miscarriage of justice.
8. Conversely, Qazi Intikhab Ahmed, learned counsel representing the respondents has fully supported the impugned judgment and submitted that the circumstantial evidence brought on record by the prosecution including the retracted confessional statement of one of the accused namely *Rajesh Masih*, suffering from infirmities, making sufficient



room for reasonable doubt as to the involvement of the accused in the commission of the alleged offence and that the so-called circumstantial evidence produced at the trial is contradictory, insufficient, defective and chain to connect the accused with their guilt was missing; more particularly, the accused being poor persons, were involved in a blind murder, and so-called confessional statement of accused *Rajesh Masih*, retracted by him, cannot be considered voluntarily one. Learned counsel argued that the recovered pistol on pointation of accused during custody has got no significance as the same was not sent to the ballistic expert for getting his opinion regarding its function or use. In support of his contentions, the learned counsel placed reliance on Reported cases ie . **1994 S C M R 1928** (*Muhammad Iqbal V Abid Hussain alias Mithu and six others*), ii. **1988 S C M R 1532** (*Dosa V The State*), iii. **1995 SCMR 896** (*Zafar Hayat V The State*), iv. **PLD 1991 S C 447** (*Waqar Zaheer V The State*), v. **2008 S C M R 1064** (*Ghulam Akbar and another V The State*) and vi. **1974 P. Cr. L.J 164** (*Muhammad Hussain and 3 others V The State*).

It was contended by Qazi Intikhab Ahmed, the learned counsel representing the respondents that in absence of any direct and circumstantial evidence lending support to material particulars mentioned in the confessional statement, the trial court has correctly disbelieved implication of accused; more particularly, motive and lack of voluntariness in its true account was missing. Moreso, no direct evidence was available against the respondents and the witnesses of recovery of incriminating crime weapon as well as the robbed articles were not inspiring confidence; so much so that the robbed motor car No.205/FDO Khyber of white colour, allegedly recovered from PW Allah Ditta, who was neither joined an accused nor his evidence as a prosecution witness was recorded. Learned counsel further contended that the most striking feature of this case is that all recoveries have been affected in questionable circumstances as in fact nothing was brought on record to prove ownership of the car recovered from the possession of PW Allah Ditta, who received and retained stolen property transferred by commission of robbery, knowingly that the persons from whom he had received the stolen motor car have snatched from the deceased.

9. We have scanned the findings given by the trial court while keeping in mind the criteria to upset the acquittal based on evidence leading to miscarriage of justice *or* that the impugned judgment is based upon surmises, suppositions and conjectures and the acquittal is result of reasons which do not appeal to a prudent mind. It is well settled principle of law that extraordinary remedy of an appeal against acquittal is quite different from an appeal directed against the findings of conviction and sentences. The appellate jurisdiction under section 417 Code of Criminal Procedure can be exercised by this Court if gross injustice has been done in the administration of criminal justice. The scope of appeal against acquittal is considerably limited because presumption of double innocence of the accused is attached to the acquittal.
10. Neither this case rest on ocular testimony nor this was a case of last seen evidence, as admittedly it was a blind occurrence with no direct evidence. The entire case hinges on circumstantial as well as confessional statement of the respondent / accused *Rajesh Masih* who retracted the same firstly by pleading not guilty to the charge and then again

in his statement recorded under section 342 of the Code of Criminal Procedure, wherein he has vehemently denied in detail to confess his guilt. Before dilating upon the legal authenticity of retracted confessional statement of Respondent No.1 and circumstantial evidence brought by the prosecution on record, we deem it fit and proper, for the sake of administration of justice to highlight briefly, the events of the case in hand.

11. The date of occurrence as shown in the prosecution case is 21.1.2010 and PW Arab Khan, brother of deceased in his statement recorded under section 164 Code of Criminal Procedure on 9.2.2010, i.e. after about 20 days, charged the accused persons without showing any source of information and clue, stated that:-

“We tried our best to find out the accused and now I have come to the definite conclusion without any shadow of doubt that my brother late Sarmast Khan was murdered by one Rajesh Masih son of Riasat Masih, Raheel son of Liaquat Masih and Amir son of Munawwar Masih and they snatched from him motor car, mobile and cash amount”.

12. The learned trial court in paragraphs No.10 and 11 of the impugned judgment thoroughly discussed and discarded the evidentiary value of the confessional statement of one of the respondent namely *Rajesh Masih* as well as circumstantial evidence with regard to the recovery of incriminating weapon and mobile phone. A perusal of record reflects that in his statement under section 164 of the Code of Criminal Procedure, recorded after 20 days of the incident, the appellant/complainant involved all the accused by name with parentage without showing any source of information. His cross examination was reserved and thereafter the accused were not afforded opportunity to cross examine him though all the accused were involved on the strength of unknown source / clue which was not unveiled during trial. *Questionnaire* (Ex.PW7/1) annexed with the confessional statement reveals that in reply to *question No.4*, which reads that, ***“Have you been subjected to any torture, treat or force or given any inducement for making the confession?”***, accused *Rajesh* replied in affirmative by stating that, ***“Yes I was subjected to physical torture by police.”*** Moreso, in reply to *question No.8*, the accused stated that he was kept in police custody for **three days**. The above replies of the accused brushed aside the voluntariness of the so-called confessional statement reproduced hereinbelow:-

مورخہ ۲۰/۲۱-۲۰۱۰ء کو رات تقریباً ۹،۴۵ تا ۱۰،۳۰ بجے میں اپنے گھر واقع کرسچن کالونی تھکال سے نکلا اور ارباب روڈ سے ایک گاڑی دو صد روپے کرائے پر بک کرائی، ڈرائیور کو میں نے بتایا کہ پہلے کرسچن کالونی جانا ہے اور وہاں سے دو تین دوستوں کو ساتھ لینا ہے، راستے میں آتے ہوئے میں نے ڈرائیور کو پیچھے سے سر پر ایک گولی مار دی، جس سے ڈرائیور موقع پر فوت ہو گیا، میں گاڑی کو بیچنے کے لئے اسلام آباد لے گیا، لیکن کسی نے گاڑی ہم سے نہیں خریدی، ہم گاڑی پہلے اپنے ایک دوست اللہ دتہ کے پاس لے گئے اور پھر اسکے ایک دوسرے بندے فردوس کے پاس لے گئے، گاڑی تقریباً ایک ہفتہ تک اللہ دتہ کے پاس رہی، اس کے بعد اسلام آباد پولیس نے پکڑ لی، اور اللہ دتہ کو بھی پولیس نے گرفتار کر لیا تھا، جس کے بعد اللہ دتہ کے بتانے پر تھکال پولیس والوں نے مجھے گرفتار کر لیا،

Bare reading of above statement of the accused does not show that as to whether the deceased was driving the vehicle when he was done to death by firing a bullet shot from back of his head and that at the time of occurrence, the said accused was



accompanied with two other co-accused or not. It is also not clear as to whether he had thrown the dead body of the deceased on the spot. The second part of above statement reflects that the robbed vehicle was lying with his friend namely *Allah Ditta* and it was recovered by the police from *Allah Ditta* and on his disclosure, he (accused Rajesh) was arrested. From perusal of record, it appears that *Allah Ditta*, from whose possession the robbed vehicle was recovered, has neither been joined as an accused nor was he put in the witness box by the prosecution, although his statement under section 164 Code of Criminal Procedure was recorded and cross examination was reserved. His statement recorded under section 164 Code of Criminal Procedure available in the original record of the trial court at page No.114, transpires that the motor car was lying with him and *Rajesh Masih* asked him on phone to bring the said car to Police Station Tehkal and he took the same to the police station where he came to know that all three accused had committed the murder of a person and snatched the motor car No.205/FDO Khyber. He further stated that the robbed motor car was lying with him from 21.1.2010 till recording his statement on 10.2.2010, i.e. far about 20 days. As per prosecution story PW *Allah Ditta*, dishonestly received and retained the alleged robbed vehicle. He was having participation in robbery, punishable under section 412 of the Pakistan Penal Code, should have been made an accused; more particularly, he admitted his role and participation with regard to dishonestly receiving the robbed property. However, such point has not been agitated before us at the time of worthy arguments advanced by the learned counsel for the parties, we therefore, refrain ourselves to the extent of averments of the instant appeal filed under section 417 Code of Criminal Procedure.

13. So far as appraisal of prosecution evidence is concerned, suffice it to say that the Investigating Officer PW.11 Zarwali Khan Inspector/SHO admitted in cross examination that:-

“It is correct that during investigation I did not sent the recovered pistol to Fire Arm Expert in order to ascertain whether it was capable of firing or not. It is also correct that I did not sent the recovered pistol to FSL in order to ascertain whether any firing was made from the said pistol or not. It is also correct that I did not sent the said recovered pistol to the Finger Print Expert in order to ascertain the finger prints of the accused Rajesh and others....” He further admitted that at the place of recovery of pistol and Mobile telephone, people of the locality were present but he did not record their statement. He admitted in cross-examination that, *“It is correct that the motor car Khyber of white colour bearing registration No.205/FDO was handed over to me by Allah Ditta on 10.2.2010 in P.S.”* He has further clarified in cross-examination that *“The brother of decd: namely Arab Khan did not state to me during the investigation in his statement under section 164 Code of Criminal Procedure regarding the source of satisfaction that how he came to know regarding the names ,parentage and residence of accused”*. We have no hesitation to observe, in peculiar circumstances of the case that the alleged recovery of incriminating crime weapon and Mobile, made on pointation of the Respondent No.1 in the clutches of police seems that the same have been effected under duress and coercion.

14. The confessional statement of one of the respondent namely *Rajesh Masih* cannot be considered free from extraneous influences such as threat, promise or inducement and therefore it is neither made voluntarily, suffers from various defects and infirmities nor it is true statement which was retracted by the above named accused; enough to make it involuntary and diminish its intrinsic value. We are of the considered opinion that the confession of the appellant is not worth reliance. It is well settled principle of law that the retracted confessional statement if not made voluntarily has got no legal authenticity in the eyes of law, therefore, the impugned judgment delivered by the trial court is neither perverse nor is result of misreading of evidence leading to the miscarriage of justice. The case law relied upon by the learned counsel for the respondents, is fully attracting in the peculiar facts and circumstances of the case in hand. The learned counsel for respondents has rightly argued that the prosecution evidence suffers from infirmities and improbabilities and could not be made a base for conviction of the respondents.
15. In the case of *Muhammad Parvez & others..Vs..The State and others* reported in **2007 S C M R 670**, the Hon'ble Supreme Court (*Shariat Appellate Jurisdiction*), set-aside the impugned judgment dated 14.11.2003 of learned Federal Shariat Court, whereby conviction and sentence awarded to the accused by the trial court was maintained. It may be advantageous to reproduce hereinbelow the relevant noting of the said reported judgment:-
- “-----Ss. 395, 396, 397, 412 & 148--- *Criminal Procedure Code (V of 1898), S.164---Re-appraisal of evidence---Judicial confession---Unexplained delay---Exculpatory statement---Return of accused to police custody after recording the confession---Accused, after their arrest, were subjected to torture and thereafter confessional was recorded before the Magistrate---Trial Court as well as Federal Shariat Court mainly relied upon the confessional statement of accused and convicted and sentenced them to life imprisonment---Plea raised by accused was that confessional statement was recorded with unexplained delay and was a result of torture---Validity---Delay of over 24 hours would normally be fatal to acceptance of judicial confession and prosecution failed to explain the delay in recording of confessional statement---Such delay created doubt regarding confessional piece of evidence---Mere delay of 24 hours in recording confessional statements was not fatal but surrounding circumstances were also to be considered regarding believing or not believing confessional statement---Accused were tortured by police, therefore, courts below were not justified to come to the conclusion that confessional statement was voluntarily made by accused---Accused, after recording of confessional statement were handed back to police, such type of confession was irrelevant---Accused remained in police custody before and after recording confession for 24 hours and Magistrate had taken only one hour to record confession of the accused, such type of confession would not fall in the category of voluntary confession---Both the courts below erred in law to accept confessional statement, which was exculpatory in nature.*
16. It needs to be reiterated that extraordinary remedy of an appeal against an acquittal is quite different from an appeal preferred against the findings of conviction and sentence. Obviously, the appellate jurisdiction under Section 417 Code of Criminal Procedure. can be exercised by this Court if gross injustice has been done in the administration of



criminal justice, more particularly, wherein, findings given by trial Court are perverse, illegal and based on misreading of evidence, leading to miscarriage of justice or where reasons advanced by trial Court are wholly artificial. Scope of appeal against acquittal of accused is considerably limited, because presumption of double innocence of the accused is attached to the order of acquittal as held in **2002 SCMR 713**. Order of acquittal passed by trial Court which is based on correct appreciation of evidence would not warrant interference in appeal. Accused earns double presumption of innocence with the acquittal; first, initially that till found guilty he has to be considered innocent; and second, that after his acquittal by trial Court further confirmed the presumption of innocence as held in **2012 P Cr. L J 1699 (FSC)** (*Said Rasool V Sajid and 3 others*), **2013 YLR 223** (*Mst. Zabida V Koki Khan and 2 others*), **2011 P Cr. L J 1234 Abdul Ghafoor V Zafid Wali**. In **2013 P Cr. L J 374** (*Fateh Muhammad Kobhar v. Sabzal and 4 others*) it was held that appellate court would not interfere, unless misreading of evidence, violation of legal provisions, jurisdictional defect; acquittal order on face of it being contrary was established (**2013 P Cr. L J 345 and PLJ 2009 FSC 284**) (*The State V Faisal Munir*). The appellate Court by exercising its powers under section 417 Code of Criminal Procedure, could interfere only if the order of acquittal is based on misreading, non-appraisal of evidence or/was speculative, artificial, arbitrary and foolish as held in **2008 MLD 1007** (*Safdar Abbas and 4 others V The State*). In **2002 MLD 293** (*Tanveer Hussain Shah V Chan Waiz alias Khal Shah and others*) and **2000 YLR 190** (*Kbushi Muhammad V Muhammad Rafique and others*) the dictum as laid down is that the order of acquittal passed by the trial Court being balanced and well reasoned, would hardly call for interference of the appellate Court in appeal and similarly the appellate Court should not disturb acquittal if main grounds on which trial Court had based its acquittal order are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished. we have already fortified our views in judgments, delivered earlier by us in likewise appeals against acquittal, more particularly, in **Criminal Appeal No.65/P of 2001**, decided on 1.10.2018, **Criminal Appeal No.41/P of 2005**, decided on 2.10.2018 and **Criminal Appeal No.22/P of 2010** decided on 04.10.2018 by us while placing reliance on the case law in such context, expounded in **AIR 1934 P C 227 (2)** (*Sheo Swarup and others v. King Emperor*), (ii) **P L D 1985 S C 11** (*Ghulam Sikandar and another v. Mamraz Khan and others*), (iii) **PLD 1977 S C 529** (*Fazalur Rehman v. Abdul Ghani and another*), (iv) **P L D 2011 S C 554** (*The State and others v. Abdul Khaliq and others*), (v) **P L D 2010 S C 632** (*Azhar Ali v. The State*), (vi) **2002 S C M R 261** (*Khadim Hussain v. Manzoor Hussain Shah and 3 others*), (vii) **P L J 2002 S C 293** (*Khadim Hussain v. Manzoor Hussain Shah and 3 others*) (viii) **2013 P.Cr.L.J 374** (*Fateh Muhammad Kobhar v. Sabzal and 4 others*), (ix) **2011 P.Cr.L.J 856 (FSC)** (*Mst. Salma Bibi v. Niaz alias Billa and 2 others*), (x) **PLD 1994 S C 31**, (*Ghulam Hussain alias Hussain Bakhsh and 4 others v. The State and another*), (xi) **2010 S C M R 1592** (*Qurban Hussain alias Ashiq v. The State*), (xii) **2017 S C M R 633** (*Intizar Hussain v. Hamza Ameer and others*). In the case of *Intizar Hussain v Hamza Amir and others*, reported in **2017 SCMR 633**, the Hon'ble Supreme Court held:-

نیز انصاف اور قانون کا مسلہ اصول یہ ہے کہ اگر دو مختلف نوع کے رپورٹ یا شہادت فوجداری مقدمہ مثل میں آجائے تو عدالت اس شہادت اور مواد کو ترجیح دے گی جو ملزم کو فائدہ دے ناکہ اس شہادت اور مواد کو جو کہ استغاثہ کے حق میں جاتا ہو۔ لہذا اس مسلہ اصول جو کہ ایک صدی پر محیط ہے کو بروئے کار لا کر ملزم کو اس کا فائدہ لینے کا حق پہنچتا ہے۔

17. Undoubtedly, the instant occurrence had taken place in which Sarmast Khan was shot to death but not in the manner asserted by the prosecution. It is now settled law that a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused; entitle him to such benefit not as a matter of grace but as a matter of right; more particularly conviction cannot be based on high probabilities and suspicion cannot take the place of proof, therefore, no legal sanctity is attached to the statement made by the appellant/ complainant, reproduced above as well as the retracted confessional statement of the Respondent No.1.

Doubts Prevent Hudood in Islam. A general principle of the Islami Shariah is that *Hudood* are suspended by doubts. This theory is based on the tradition of the Holy Prophet (SAWS):

عَنْ عَائِشَةَ قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اذْرُؤُوا الْخُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ فَإِنَّ الْإِمَامَ أَنْ يَخْطِئَ فِي الْعُقُوبَةِ خَيْرٌ مِنْ أَنْ يَخْطِئَ فِي الْعُقُوبَةِ

Sayyidah 'Ayshah (R.A) reported that Allah's Messenger (صلی اللہ علیہ وآلہ وسلم) said "Avert as far as possible, infliction of prescribed punishment on Muslims. And if there is any way out then let them go, for, it is better for an Imam to err while forgiving than to err while giving a punishment. (Muhammad ibn 'Isa al Tirmidhi: Sunan al Tirmidhi Vol.2 Page 438-439. In another Tradition the Holy Prophet said: بالشبهات الحدود ادرؤا. In case of doubts set aside Hadd punishment. (Nihayat al Muhtaj, Vol.7 p.404)

18. Crux of the aforementioned discussion is that the prosecution has failed to bring home the charge against the Respondents beyond reasonable doubt and the defense succeeded to create serious doubt and dents in the prosecution case; thus the trial court rightly acquitted the Respondents of the charge. Suffice it to say that no case of interference in the impugned judgment is made out. We therefore, keeping in mind consistent view of the Superior Courts reached at the irresistible conclusion that the instant appeal against the impugned judgment is having no merits for consideration.

These are the reasons of short order of dismissal of appeal of even date announced by us in court.

The surety amounting to Rs.50,000/- each, deposited in cash with the Incharge Bench Registry, Peshawar, in compliance of order of this Court dated 21-03-2018 be returned to the said respondents.

JUSTICE SYED MUHAMMAD FAROOQ SHAH

JUSTICE DR. FIDA MUHAMMAD KHAN

Peshawar the

October 05th 2018.

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT:**MR. JUSTICE MEHMOOD MAQBOOL BAJWA****MR. JUSTICE SHAUKAT ALI RAKHSHANI****CRIMINAL APPEAL NO. 28-I OF 2017**

Kaleem Ullah son of Aslam Khan, Resident of Dawlat Tajazai, Tehsil and District Lakki Marwat

... Appellant
Versus

1. The State
2. Zahir Ullah son of Ali Marjan, Resident of Gambila Tehsil and District Lakki Marwat.

... Respondents

For the appellant

... M/S Sher Afzal Khan Marwat and
Shahidullah, Advocates,

For the respondent No.1

... Mr.Akhtar Hussain Awan, Assistant
Advocate General KPK.

For the respondent No.2

... Mr.Muhammad Ashraf Khan Advocate

No.& date of FIR & Police Station

... No.92/2014, dt.20.3.2014, P.S Ghazni
Khel, District Lakki Marwat.

Date of judgment of trial court

... 20.10.2017

Date of Institution in this Court

... 16.11.2017

Date of hearing

... 23.04.2018

Date of decision

... 02 .05.2018

JUDGMENT:

SHAUKAT ALI RAKHSHANI, J:- The appellant, Kaleem Ullah by means of instant appeal bearing No.28-I of 2017 has questioned the legality and factuality of the judgment dated 20.10.2017 (hereinafter referred as “Impugned Judgment”) rendered by Additional Sessions Judge-II, Lakki Marwat (hereinafter referred as “Trial Court”) in pursuance of FIR bearing crime No.92 of 2014 (Not Exhibited) registered with Police Station Ghazni Khel, whereby he has been convicted and sentenced under section 302(b) of the Pakistan Penal Code (hereinafter referred as “Penal Code”) to suffer rigorous imprisonment for life with fine of Rs.800,000/- , half whereof payable to the legal heirs of the deceased Sharif Khan as compensation as envisaged under section 544-A of the Criminal Procedure Code (hereafter referred as “the Code”) recoverable as land revenue and in case of default of payment of fine further to suffer simple imprisonment for six months with the premium of section 382-B of the Code.

The appellant through this appeal has sought annulment of the impugned judgment with consolation of acquittal.

2. Aphoristically, the facts surfaced by the prosecution appears to be that on 20.3.2014 at 9.30, P.W.6 Zahir Ullah (complainant) lodged an FIR (Not Exhibited) vide crime No.92 of 2014 with Police Station Ghazni Khel of District Lakki Marwat under section 17(4) of Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred as the ‘Hudood Ordinance’) read with section 302/34 of the Code, with the averments that his brother Sharif Khan (deceased) is driver of car bearing registration No.184-AXQ, white in colour XLI, Model 2012, owned by one Peer Abdul Bari. According to him, yesterday morning, his brother left the house and did not turn up, whereof today in the morning, he received information that a dead body of his brother Sharif Khan (deceased) is lying on a metalled road leading from nursery to old Gambila bridge near the fields of one Nawaz Khan at Tajazai, thus he rushed to the place of occurrence, where he found the dead body of his brother in the pool of blood murdered by fire arm and that the registration book of the said car was found lying on the chest of the deceased. He further stated that it appears that his brother had been murdered yesterday night by some unknown culprits, who have also taken away his car as well and maintained that he has no enmity with anyone.
3. P.W.7 Abdur Rahim Khan, S.I after being entrusted with the investigation of the case rushed to the crime scene, secured blood stained grass/earth through memo (Ex. PW.6/1), a crime empty of .30 bore pistol through memo (Ex.PW.6/2), registration book of the car bearing No.AXQ-184 through recovery memo (Ex.PW.6/3), blood stained clothes of the deceased through recovery memo (Ex.PW.6/4), and prepared Site Plan (Ex.PW.7/1). After preparation of inquest report (Ex.PW.2/3), the dead body of deceased was examined on 20.3.2014 by P.W.2 Dr.Niaz Ali, who issued post mortem report (Ex.PW.2/1), opining that the death was caused by firearm with a single entrance and exit wound coupled with a bruise and an abrasion.

Moving ahead with the investigation, the car in question bearing No.AXQ-184 was



recovered by the official of the Police Station Jarma District Kohat, lying abandoned in a grave-yard as such he went to the said police station and took into possession the aforesaid snatched vehicle and original CNIC of Irshad Khan through memo Ex.PW.7/2.

P.W.7 Abdul Rahim Khan, S.I. maintained that during the investigation, he collected the Data of SIM No.0310-5236846, being a suspect number used by one Kaleem Ullah working as Cleaner with the Coach. On perusal of the Called Deta Record (hereinafter referred as CDR) the aforesaid SIM number was found to be in contact with SIM 0312-1914740 used by one co-accused Tariq, obtained in the name of one Muhammad Ghulam, which further led him to know that said co-accused Tariq was in connection with one Muhammad Amin. Record also reveals that SIM 0341-8027600 of the deceased and SIM 0310- 5236846 were being used in a mobile set having IMEI No.35635105004477. As such having clue of appellant Kaleem Ullah, on 2.4.2014, he was arrested and from his personal search recovered two cellular sets one blue in colour MTK and another red in colour, Nokia 103, which were taken through memo Ex.PW.5/1.

Thereafter, Muhammad Amin was interrogated on 2.4.2014, who stated to be the nephew of said co-accused Tariq and disclosed that appellant Kaleem Ullah and his uncle co-accused Tariq came to his village, where he noticed some blood in the Car and on query co-accused Tariq told him that it is his own blood due to injury caused to him, but he did not find any wound on his body, therefore, he got suspected. In view of his such statement, allegedly he was produced on 3.4.2014 before P.W.3 Mr.Ajmal Shah, Judicial Magistrate, where the statement of said Muhammad Amin was recorded in the presence of appellant, who also availed the opportunity of cross- examination.

On 4.4.2014, appellant Kaleem Ullah in the presence of the complainant P.W.6 Zahir Ullah led the police party to the crime scene which was produced as (Ex.PL/3) and memo of spot verification was produced as (Ex.PW.PL/4).

On 5.4.2014, the appellant was allegedly produced before the Judicial Magistrate. The application of the police regarding recording of judicial confession was produced as (Ex.PW.3/1), questionnaire as (Ex.PW.3/2), judicial confession of the accused as (Ex. PW.3/3), the certificate as (Ex.PW.3/4), order for police as (Ex.PW.3/5).

On the conclusion of investigation, proceedings against absconder accused namely Tariq were initiated and the case file was handed over to P.W.11 SHO Raza Khan for submission of challan, who submitted complete challan on 10.4.2014, which was produced as (Ex.PL/9).

4. On receipt of the challan, the trial court proceeded against the absconding accused Tariq as envisaged under sections 87 and 88 of the Code and thereby declared him as proclaimed offender. The charge under section 17(4) of the Hudood Ordinance read with section 302 of the Penal Code, containing accusations of murder and decoity was denied by the appellant, claiming innocence and a fair trial.

The prosecution in order to establish the crime allegedly in the charge produced as many as 11 witnesses. After closure of the prosecution side the appellant was examined under section 342, Cr.P.C, wherein the evidence and accusation put to him, which were categorically denied, professing innocence. However, neither he opted to make statement on oath as envisaged under section 340(2) of the Code nor produced any witness in his defence.

After hearing the adversaries, the trial court on 20.10.2017 in Sessions Case No.41 of 2017, holding the appellant guilty of the charge, convicted and sentenced him in the terms mentioned in para supra.

5. The appellant, while challenging validity of the impugned judgment on factual and legal infirmities, preferred the instant criminal appeal bearing No.28-I of 2017, which was admitted for regular hearing.

On 16.4.2018, while commencing with the appeal, the counsel for the complainant sought adjournment on the ground that in recent past, he had gone through heart surgery, which request was strongly opposed by the learned counsel for the appellant on the ground that since 2014 the appellant is behind the bars and requested for hearing him on the said date. Keeping in view the request from both sides, we heard the arguments of the counsel for the appellant and the matter was next fixed on 23.4.2018 for arguments of counsel for the complainant. As such, on 23.4.2018 the arguments were concluded from both the sides.

6. Learned counsel for the appellant inter-alia contended that the impugned judgment is contrary to the facts and law as the learned trial court has based the conviction on a judicial confession of the appellant, which is inadmissible as not only the same is exculpatory but the requisite formalities as settled by the Apex Court have also not been adhered to. He also maintained that the statement under section 164 of the Code, got recorded by Muhammad Amin is of no significance as neither he has been produced nor his statement has been exhibited in the court and that pointation of place of occurrence is also worthless as the pointation of the place of occurrence allegedly made by the appellant was already known.

Regarding recovery of vehicle, it was maintained that it is of no use for the prosecution as it does not connect the appellant in any manner. The counsel as the appellant, while arguing the evidence of C.D.R., submitted that the same has not been proved in view of the settled principle of proving a document and that since the prosecution has failed to establish that the said SIM numbers being in use of the appellant or co-accused have not been proved at all, as such said C.D.R is of no worth to the case of prosecution connecting the appellant with the said data. To support his arguments the learned counsel for the appellant has relied upon the judgments reported as 2018 M L D 12, 2017 Y L R 515, 2015 Y L R 2076, 2016 Y L R 1291, 2017 S C M R 986, 2017 S C M R 898, 1987 P Cr.L J 884, 1985 P Cr.L J 829, PLD 1982 Karachi 975, 1992 PCr. L J 2119, 2016 Y L R 2212 and 2016 S C M R 274.



7. On the other hand, at the very outset, the counsel for the complainant questioned the maintainability of the instant appeal filed before this Court on the ground that since the conviction has not been recorded under the Offence of the Hudood Ordinance, therefore, the appeal instead of filing before this Court should have been filed before the Hon'ble Peshawar High Court. In this regard he has relied upon the judgments reported as PLD 2002 SC 534 and 2009 P Cr. L J 747.

Counsel for the complainant continuing his arguments on merits strenuously rebutted the arguments advanced by counsel for the appellant and urged that the judicial confession of the appellant is voluntary and true and while recording the same, P.W.3 Ajmal Shah, Judicial Magistrate, has complied with all the codal formalities, which has rightly been relied upon by the trial court, while recording conviction and sentence. He also maintained that the statement of Muhammad Amin is material in all respect, which has been proved by the prosecution by tangible evidence, thus the same could be read in view of section 265-J of the Code read with Article 46 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as "Order of 1984"). He emphasized upon the C.D.R, so collected during the course of investigation, which lead the police personal to reach the appellant being one of the culprits. He further referred to the pointation of place of occurrence, to be admissible and material, having corroborative value. Lastly, he prayed for dismissal of the appeal, while relying upon the judgments reported in 1995 SCMR 1365, 2013 P.L.R 612, 2012 P Cr. L J 588, 2010 S C M R 55, 2004 Y L R 1088, 2010 P Cr. L J 1011, PLD 2007 S.C 202, 2010 P Cr. L J 192, 2014 P Cr. L J 1036, PLD 2005 S C 168, PLD 2006 S C 219 and 2010 SCMR 1090.

8. Learned Assistant Advocate General KPK adopted the arguments of the learned counsel for the complainant and with all vehemence supported the judgment impugned herein, by maintaining that the learned trial court has rightly convicted and sentenced the appellant.
9. Priorily, before going into the merits of the instant appeal, we would like to earnestly decide the question of jurisdiction, raised by the learned counsel for the complainant, who has challenged the jurisdiction of this Court on the ground that since the conviction and sentence has not been recorded under the Hudood Ordinance, but under section 302(b) of the Penal Code, therefore, appeal is competent before the Hon'ble High Court but not before this Court. We are clear in mind that if a conviction and sentence is either passed under the Hudood Ordinance or in case not proved due to non-fulfillment of requisites as contemplated under sections 7 and 16 of the Hudood Ordinance, the punishment is directed to be awarded under section 20 of the Hudood Ordinance. For convenience, section 20 of the Hudood Ordinance is reproduced herein below:--

"20. Punishment for haraabah liable to tazir. Whoever commits haraabah which is not liable to the punishment provided for in section 17, or for which proof in either of the forms mentioned in section 7 is not available, or for which punishment of amputation for death may not be imposed or enforced under this Ordinance, shall be awarded the punishment provided in the Pakistan Penal

Code, for the offence of dacoity, robbery or extortion, as the case may be”

To step ahead, we would also like to refer to section 24 of the Hudood Ordinance, which reads as under:--

“24. Application of Code of Criminal Procedure, 1898.-- (1) The provisions of the Code of Criminal Procedure, 1898 shall apply, mutatis mutandis, in respect of cases under this Ordinance:

Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and to award punishment therefore, be convicted and punished for that offence.

Provided further that an offence punishable under section 9 or section 17 shall be triable by a Court of Session and not by a Magistrate authorized under section 30 of the said Code and an appeal from an order under either of the said sections {or from an order under any other provision of this Ordinance which imposes a sentence of imprisonment for a term exceeding two years} shall lie to the Federal Shariat Court”.

Provided further that trial by a Court of Session under this Ordinance shall ordinarily be held at the headquarters of the Tehsil in which the offence is alleged to have been committed.

- (2) To provisions of the Code of Criminal Procedure, 1898, relating to the confirmation of the sentence of death shall apply, mutatis mutandis, to confirmation of sentences under this Ordinance.**
- (3) The provisions of subsection (3) of section 391 or section 393 of the Code of Criminal Procedure, 1898 shall not apply in respect of the punishment of whipping awarded under this provision.**
- (4) The provisions of Chapter XXIX of the Code of Criminal Procedure 1898, shall not apply in respect of punishments awarded under section 9 or section 17 of this Ordinance”**

The bare perusal of the afore-mentioned section 24 of the Hudood Ordinance, clearly gives us an understanding that the appeal against conviction and sentence rendered either under specific offences of Hudood Ordinance or under Penal Code, but imposing a sentence of imprisonment for a term exceeding two years, shall lie only to the Federal Shariat Court.

The Hon’ble Supreme Court of Pakistan came across a similar proposition of jurisdiction, thus in view of section 20 of the Hudood Ordinance, Hon’ble Full Bench of the Apex Court, in the case of **Muhammad Abbas and another (1984 SCMR 129)** expounded

the following principle, which is reproduced for ready reference:--

“The next objection was in regard to the competency of the reference before the Federal Shariat Court, as according to learned counsel the reference for confirmation of the death sentence on a murder charge could lie only before the High Court. In this connection, he pointed out that in fact an appeal (Criminal Appeal No.171 of 1983) had already been preferred before the High Court and was still pending there. As the trial by the Court of Session under the provision of the Ordinance was competent, the appeal would lie only before the Federal Shariat Court in view of the fourth proviso to section 20 (1) and a reference for confirmation of the death sentence to that Court would be competent under subsection (2) of the said section. The objection, too, had been rightly rejected by the Federal Shariat Court.”

Similarly, the Division Bench of the Lahore High Court in the case of **Ghazzanfar Ali Vs. The State (2010 Y L R 657)** and then Karachi High Court on the foot steps of the aforementioned judgments rendered and re-affirmed the aforesaid dicta in the case of **“Ijaz and others Vs. The State” (2016 P.Cr.L.J 130)**. The Hon’ble Division Bench of Peshawar High Court in the case of **“Khushdil Vs. The State” (2017 Y L R 835)**, once again, while placing reliance upon the judgments (para supra) delivered the judgment by holding that irrespective, of the conviction and sentence passed under the Penal Code or under the offence of Hudood Ordinance, appeal shall lie before Federal Shariat Court as cognizance of an offence by the Court of trial shall determine the jurisdiction rather the ultimate verdict.

10. In so far as the judgment referred by the learned counsel for the complainant in the case of **Muhammad Tariq (2009 P.Cr.L.J 747)** is concerned, the same has been rendered by the Hon’ble Single Bench, wherein reliance has been placed upon the case of **Attaullah Vs. Abdul Razzaq and another (PLD 2002 S.C 534)**. On examination and perusal of the aforesaid judgments, we believe that the judgments rendered in the case of **Muhammad Abbas and another Vs. The State (1984 SCMR 129)** has precedence upon the case of **Attaullah Vs. Abdul Razzaq and another (PLD 2002 S.C 534)** as in the earlier mentioned case, the numerical strength of Hon’ble Judges is more than the later. Henceforth, instant appeal is competent.
11. Undeniably, it is a case of blind murder, which has been witnessed by none. P.W.6 Zahir Ullah (complainant) reached the place of occurrence and found the dead body of the deceased on the crime scene, whereof he deposed to have no clue of the murderer and even did not suspect anybody to be involved. One of the surprisingly element of this unfortunate episode of the crime is that the murder had been committed with the purpose of dacoity but astonishingly, the question arises as to why the dacoit would take extra fatigue during the course of dacoity and murder to take out the registration book of the car in question and put it on the chest of the deceased while leaving, which aspect has not been explained at any stage by the prosecution. More so, another mysterious aspect of the case is that after snatching the vehicle from the deceased, on the very next

day, the aforesaid car was recovered lying abandoned in the graveyard of the District Kohat, as taken into possession by Police Station Jarma of District Kohat.

P.W.6 Zahir Ullah (complainant) on 4.4.2014, after the arrest of accused Kaleem Ullah got recorded supplementary statement, wherein he nominated the appellant as the culprit on the basis of self intuition but nothing else. The supplementary statement made by him has no legal worth and cannot at all be considered as incriminating evidence because nomination of the appellant after his arrest, glaringly appears to be an after thought act, which has always been disapproved by the Apex Court by holding that supplementary statements are always afterthought and of no credence, particularly in the case of capital charge. In this regard reliance can be placed upon the judgment of **Kashif Ali Vs. The Judge ATC and others (PLD 2016 SC 951)**.

12. As the instant case is un-witnessed and the appellant or any other co-accused have not been nominated as felon by any eye-witness, therefore, it is judged that this case in absence of any ocular evidence, hinges upon circumstantial evidence. The prosecution mainly rests its case upon the judicial confession of appellant, statement of one Muhammad Amin allegedly recorded under section 164 of the Code, C.D.R, recovery of snatched cellular set, medical evidence, extra-judicial confession made during pointation of the place of occurrence by the appellant and last but not least the recovery of snatched vehicle.
13. Initially, while discussing the circumstantial evidence so collected by the prosecution, we would like to refer to the yard sticks settled by the Hon'ble Supreme Court of Pakistan for appraisal of the circumstantial evidence, which follows as under:
 - i) The circumstantial evidence must be of impeachable character and reliable for conviction.
 - ii) The circumstances must be so inter linked, which must make out a string of unbroken events.
 - iii) One end of chain of events shall touch dead body and the other, the neck of the accused.
 - iv) Any missing link shall destroy the entire case.
 - v) The court must take extra care and caution while relying upon circumstantial evidence about its credibility.
 - vi) It must be ensured that no dishonesty was committed by the I.O. while collecting such circumstantial evidence.
 - vii) The circumstantial evidence must be admissible and proved in the court.

(SEE; Naheed Akhtar Vs. the State (2015 Y L R 1279) and Hashim Qasim and another Vs. The State (2017 SCMR 986)

The prosecution has mulled upon the retracted confessional statement of appellant, maintaining that it can solely be based for holding the appellant guilty of the charge.

There is no cavil in the proposition that the retracted judicial confession can be made basis for awarding conviction and sentence but to be on safer side, if the case is merely based on the circumstantial evidence, then the judicial confession must be corroborated with some impeachable, independent corroborative evidence, particularly, in a case where the accused has to be held responsible for the capital charge. Thus, the alleged judicial confession of the appellant, has been examined in isolation as well as in view of the corroborative pieces of evidence to extend premium to the prosecution.

On scanning of the questionnaire (Ex.PW.3/2), confessional statement (Ex.PW.3/3), Certificate (Ex.PW.3/4) and order for police (Ex.PW.3/5), it appears that P.W.3 Ajmal Shah, Judicial Magistrate had committed fatal irregularities, which has rendered the confessional statement in admissible as such no explicit reliance could be placed on such evidence, particularly, when a judicial confession is a retracted one.

The touch stone of a judicial confession can be tested on the following points;

- a) Voluntarily without any promise or coerciveness.
- b) Admissible and proved in all respect before the court.
- c) True and
- d) Consistent, having co-herence to the other facts and circumstances.

Coming to the voluntariness of the judicial confession, allegedly made by the appellant, we have cautiously examined the testimony of P.W.3 Ajmal Shah, Judicial Magistrate and perused aforesaid questionnaire, confessional statement, certificate and order for police minutely, so put forth in respect of judicial confession, which depicts that the questions of the form (Ex.PW.3/2) before recording confessional statement has not been reduced into writing by P.W.3 Ajmal Shah, Judicial Magistrate in his own hand writing, which he was obliged to do so. He has also not given sufficient time of reflection before recording statement under section 164 of the Code as it was incumbent upon him to have had given sufficient time of reflection with three intervals, henceforth by not doing so, P.W.3 Judicial Magistrate failed to observe the pre-cautions held to be necessary before recording a confessional statement. Moreover, the certificate (Ex. PW.3/4) issued by him as envisaged under section 364(2) of the Code, lacks the time of reflection, recording confessional statement of the appellant in his language i.e. *pushto*, warning that if he records or does not record the judicial confession, he would not be handed over to police again and that he himself is acquainted with *pushto* language.

Looking into the judicial confession from another angle, even, if, the order for police file (Ex.PW.3/5) dated 5th April, 2014 is taken and considered as a certificate, even then, it does not show that sufficient time of reflection was given. According to the said Order for police, 15 (fifteen) minutes with three intervals as a whole were given to think over before recording judicial confession, which is absolutely insufficient. The said order also does not show that P.W.3 Ajmal Shah, Judicial Magistrate is himself acquainted with *pushto* language.

Above all, the order for police (Ex.PW.3/5), demonstrates that after recording of the alleged confessional statement of the appellant, he was handed over to Naib Court for remanding him to judicial lock up. Although during cross-examination, he denied such fact, which amounts to denial of his own said Order for police (Ex.PW.3/5) dated 5.4.2014, which has not only made the statement of P.W.3 Ajmal Shah, Judicial Magistrate unreliable but worthy of no credence too, as such no explicit reliance can be placed thereupon. In view of the discussion made herein before, we are of the firm opinion that confessional statement is neither voluntary nor admissible in evidence as held by the Hon'ble Supreme Court of Pakistan in the case of **Hashim Qasim and another Vs. The State reported in (2017 SCMR 986)**, **Noor Ahmad and others Vs. The State (2017 Y L R 515)**, **Kabir Shah Vs. The State (2016 YLR 1291)**, **Qaisar Ali Vs. The State (2016 Y L R 1903)**, and **Asif Mehmood Vs. The State (2005 SCMR 515)**.

14. Now advertng to the test of the confessional statement with regard to truthfulness, consistencies and having coherence to the facts and circumstances, it is relevant to highlight that in the confessional statement allegedly made by the appellant, it was confessed that he stood by near Nusray bridge, aboard in the car of deceased and on the way Tariq took pistol from him, murdered the taxi driver Sharif, whereafter dead body was thrown out side the car. According to the confessional statement, the appellant along with Tariq went to Kohat and handed over the vehicle to Muhammad Amin and that co-accused Tariq gave him mobile set of the driver and Rs.1000/- as fare.

Whereas, the statement of Muhammad Amin allegedly recorded under section 164 of the Code belies the confessional statement of the appellant with regard to car in question. He maintained that when he saw blood stains upon the clothes of his maternal uncle co-accused Tariq, he became suspicious on finding no wound on his person and when co-accused Tariq stated to have snatched the said car so as to sell it, he refused to give him shelter, who left in the said car towards Jarma, henceforth, the alleged confessional statement is contrary to the so called corroboratory evidence of Muhammad Amin. Thus in such view of the matter, we are of the firm believe that it would be un-safe to rely upon the said untrue and inadmissible judicial confession of appellant to hold him guilty of the capital charge. More so, there is also no mention in the judicial confession that registration book was left on the dead body of the deceased, while leaving the crime scene, which suggests us to believe, that the story narrated in the alleged confession is improbable, which does not fit within the circumstances of the prosecution story.

15. Learned counsel for the appellant emphasized that the confessional statement is exculpatory, thus being an inadmissible confessional statement, the same cannot be relied upon. Having given a due care and caution to the aforesaid alleged confessional statement, we are not persuaded to the argument advanced by him that the said confession is exculpatory as he has implicated himself by participating in the alleged crime, however, we have observed that while making such confession, the appellant has given a very meager role to himself and has shifted the entire burden of committing murder of the deceased



and taking away the motor car to co-accused Tariq, without any gain, merely against one thousand rupees as fare for himself, which is impossible.

16. Another piece of evidence, whereupon the prosecution rest its entire case is the statement of Muhammad Amin under section 164 of the Code but we are surprised to observe that how come such statement could be stressed upon to believe, and make reliance as a corroborative piece of evidence. The statement of Muhammad Amin cannot, at all be read in evidence, firstly, for the reason that said witness has not stepped into the witness box to affirm the facts narrated in his alleged statement recorded under section 164 of the Code, secondly, while deposition of P.W.3 Ajmal Shah, Judicial Magistrate, who allegedly recorded his statement under section 164 of the Code also did not mention of appearance of Muhammad Amin before him and recording his statement.

Above all, while appellant being examined under section 342 of the Code was also not confronted with any question to offer his explanation with regard to the statement of Muhammad Amin recorded under section 164 of the Code. Muhammad Amin is stated to be the nephew of co-accused Tariq, who has not been produced by the prosecution before the court, whereof inference can comfortably be drawn as enshrined under Article 129(g) of the Order of 1984 that in case said witness does not appear or his evidence is withheld for one or the other reason, such witness would testify against the prosecution and in favour of the appellant.

17. Before dilating our view, upon the touch stone of appraisal of such evidence, we have anxiously given a thorough thought to section 265-J of the Code and Article 46 of the Order of 1984, in view of the dictum expounded in case of **Abdul Haleem and another Vs. The State (PLD 1982-Karachi-975)**, wherein it has been held that such statement cannot be made basis for conviction unless notice in writing is served upon the accused and a fair opportunity of cross-examination is provided to the accused with the dicta that stating by an investigating officer that such notice was served, would not be sufficient for a fair consideration under the criminal administration of justice, as it would give rise to serious criticism for non-compliance of the requisite formalities as of such factum proof is required, otherwise such statement suffice, at all be of no significance.

Admittedly, said Muhammad Amin has not been produced before the trial court as such in view of section 265-J, such statement cannot be taken into account as incriminating piece of evidence, credible enough to warrant conviction. For ready reference section 265- J of the Code is reproduced as under;

“Section 265-J; Statement under section 164 admissible. The statement of a witness duly recorded under Section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Qanun-e-Shahadat Order, 1984.”

(Emphasis)

In this case, the statement of Muhammad Amin recorded under section 164 of the Code has not been produced and exhibited through any prosecution witness as such, on this score alone being worthless, has no evidentiary value and sanctity.

In view of the above discussion, we believe that neither the statement of Muhammad Amin recorded under section 164 of the Code has been proved by not producing him or tendering and placing such statement on record nor the same can be held to be true and corroborative in nature, rather, the same appears to be contradictory, belying the entire version of prosecution.

Importantly, another piece of evidence is CDR, whereupon the prosecution relies the most. The same is also of no importance on various counts. Initially, it was the duty of the prosecution to have had received the C.D.R with an endorsement of the Cellular Company concerned, having stamp and signature thereupon of the concerned authorized officer, then while taking into possession the CDR, through a recovery memo, at least a mushir should have been associated from the Cellular Company to independently prove the recovery or at least, recorded the statement of representative of the Cellular Company to the effect of issuance and receipt of C.D.R but no such evidence have been collected and pre-cautions observed. The perusal of CDR also demonstrate that there is not even a single signature of authorized officer of the said Company, thus, it cannot be safely relied upon in any manner. It can be doubted that the investigating officer has himself generated such CDR or the same have been issued by the Company concerned.

Furthermore, neither there is any transcription, pertaining to the conversation of alleged crime nor proof of issuance of the SIM number in question allegedly used either by the appellant or by co-accused in their names. Even if, for the sake of discussion the CDR is believed to be true and correct, which is not the case, even then the appellant cannot be held responsible unless the recovery of Cellular set is proved without any shadow of doubt, as during arrest and making recovery of the mobile set Nokia 103, no independent witness was associated amongst the passengers or any outsider, when the appellant was de-boarded from the Coach, thus by deliberately not complying with the provisions of Section 103 of the Code, the recovery has become unreliable and doubtful. Addedly, P.W.6 Zahir Ullah, while lodging FIR or subsequently has failed to give the details of the stolen mobile set Nokia 103, regarding its make, colour or IMEI number etc, which could make the subsequent recovery of said mobile relevant to the crime. It may also be worth noted that the alleged stolen mobile set has not been put to an identification test to make the recovery readable as incriminating article connected with the felony charge herein. Therefore, such evidence is also unworthy and not confidence inspiring, which can be made basis for holding the appellant guilty of offence.

The autopsy report (Ex.PW.2/1) issued by P.W.2 Dr.Niaz Ali, is also no help to the prosecution in respect of connecting the appellant, as autopsy report can not be used as corroborative piece of evidence, rather, the same can be seen to affirm the use of kind of weapon, type and duration of injury sustained, which at the best can be used as a confirmatory evidence and for contradicting the ocular evidence but for no other purpose, as held in the case of **Hashim Qasim and another Vs. The State (2017 SCMR 986)**



18. In so far as the extra judicial confession made by the appellant in the presence of P.W.6 Zahir Ullah, while making pointation of the place of alleged occurrence is concerned, the same is inconsequential for not being admissible and worthy of credence. The pointation of the place of occurrence cannot be considered as discovery of new and fresh fact as contemplated under Article 40 of the Order of 1984, rather, the aforesaid pointation is hit under Articles 38 and 39 of the said enactment because the place of occurrence, was already known and inspected by P.W.7 Abdul Rahim and other officials in the presence of P.W. 3 Zahir Ullah (complainant) while preparing sketch plan of place of occurrence, so making pointation of the place of occurrence at a subsequent stage by the appellant in no terms can be believed to be discovery of new facts. Reliance is placed upon the case of **Zia ur Rehman Vs. The State (2000 SCMR 528)** and **Hashim Qasim and another Vs. The State (2017 SCMR 986)**.
19. Be that as it may, the said statement of P.W.6 Zahir Ullah (complainant) by no definition and interpretation of law and procedure can be held to be an extra judicial confession as the same was not at all made by the appellant as a free man rather admittedly during custody of police the alleged extra judicial confession was made, which has no sanctity in the eyes of law as voluntariness and truthfulness cannot be found in such like so called extra judicial confession. Even otherwise, the extra judicial confession has already been treated as weak type of evidence requiring strong and independent corroboration to prove such factum as held in the case of **Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274)**.
- The recovery of stolen car is also fruitless in the case of prosecution as it was found lying abandoned in the grave-yard, whereof, the prosecution has not offered any explanation as to why and who left the car over there. Neither any prosecution witness has clarified the mystery nor such explanation can be gathered or found in the alleged confessional statement of the appellant or in the statement of Muhammad Amin. On the contrary, it belies both the aforesaid statements. Apart from that, we did not find any evidence, whereby the appellant can be connected with the said alleged stolen car, thus, such recovery has no nexus with the appellant, therefore, the same being immaterial cannot be given weightage in favour of the prosecution.
20. After in depth analysis and reappraisal of the evidence, we have arrived at the conclusion that not only the prosecution has miserably failed to prove the charge but the conclusion drawn by the trial court has also been found to be erroneous and based on flagrant reasons.

For what has been discussed hereinbefore, the appeal is allowed, impugned judgment dated 20.10.2017 is set aside and the appellant is acquitted of the charge. He shall be released forthwith, unless required in any other case.

SHAUKAT ALI RAKHSHANI JUDGE
MEHMOOD MAQBOOL BAJWA JUDGE

Announced in open Court on 2nd May, 2018
at Islamabad, 9.30 A.M/

