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1. **Fundamental Right.** A 'Right' is an interest recognized and protected by law.⁴ It can be created and enforced either by a constitutional provision or by an ordinary enactment. When a right is safeguarded by a Constitutional guarantee it is called 'fundamental right' because by doing so it has been placed beyond the power of any organ of the State, whether, Executive or Legislative to act in violation of it. Such a right cannot be taken away, suspended or abridged save as expressly provided by the Constitution. An ordinary right on the other hand can be enlarged, abridged or destroyed by an ordinary enactment. Thus fundamental rights are those natural rights which are personal to the individual as a citizen of a free and civilized community and belong alike to every man, woman and child. The essential characteristic of fundamental rights is that they impose limitations, express or implied, on public authorities, interfering with their exercise. [PLD 1969 S.C. 387] Fundamental Rights are most superior and special in nature and cannot be interfered with without having strict recourse to the law and that too subject to the condition provided for the exercise of these rights. Superior Courts by means of Articles 199(2) and 184(4) of the Constitution have been made responsible to provide remedy to those citizens, whose rights have been encroached by the State, or its functionaries. [PLD 2004 Lah. 376] People of Pakistan have Fundamental Rights that they be governed by state which provides by a effect safeguards for their economic well-being; a State which protects, inter alia, the belongings and assets of the State and its citizens from waste and malversation. Constitution is not silent on issues which affect economic life of nation and its citizens. Constitution contains a whole range of Articles which have a direct nexus with good economic governance and Fundamental Right. [PLD 2012 S.C. 132] No right can be properly described as fundamental if the legislature can take it away by a law not involving an amendment of the Constitution, or unless its suspension or surrender in a national emergency is specifically provided by the Constitution itself. [PLD 1957 S.C. 9]

4 Salmond.

Fundamental Rights

[Article 8]

The idea behind the concept of fundamental right is that the preservation of certain basic human rights against State interference is an indispensable condition of free society. The paramount to State-made laws is the hallmark of a Fundamental Right. It follows that the aim of having a declaration of Fundamental Rights is that certain elementary rights of the individual such as his right to life, liberty, freedom of speech, freedom of faith and so on, should be regarded as inviolable under all conditions and that the shifting majorities in the Legislatures of the country should not be able to tamper with them. Absolute and unrestricted individual rights do not exist in any modern State and there is no such thing as absolute and uncontrolled liberty. The collective interests of the society, peace and security of the State and the maintenance of public order are of vital importance in any organized society. Fundamental Rights have no real meaning if the State itself is in danger and disorganized. If the State is in danger, the liberties of the subjects are themselves in danger. It is for these reasons of State that an equilibrium has to be maintained between the two contending interests at stake; one, the individual liberties and the positive rights of the citizen which are declared by the Constitution to be Fundamental, and the other, the need to impose social control and reasonable limitations on the enjoyment of those rights in the interest of the collective good of the society. [PLD 2007 S.C. 642] The Fundamental Right can neither be treated lightly nor interpreted in a casual or cursory manner but while interpreting Fundamental Rights guaranteed by the Constitution, a cardinal principle has always to be borne in mind that these guarantees to individuals are subject to the overriding necessity or interest of community. A balance has to be struck between these rights of individuals and the interests of the community. If in serving the interests of the community, an individual or number of individuals have to be put to some inconvenience and loss by placing restrictions on some of their rights guaranteed by the Constitution, the restrictions can never be considered to be unreasonable. No infringement or curtailment in any Fundamental Right can be made unless it is in the public interest and in accordance with valid law. No doubt that reasonable restriction can be imposed but it does not mean arbitrary exercise of power or unfettered or unbridled powers which surely would be outside the scope of "reasonable restriction" and it must be in the public interest. A reasonable restriction is one which is imposed with due regard to the public requirement which it is designed to meet. Anything which is arbitrary or excessive will of course be outside the bounds of reasons in the relevant regard, but in considering the disadvantage imposed upon the subject in relation to the advantage which the public derives, it is necessary that the Court should have a clear appreciation of the public need which is to be met and where the statute prescribes a restraint upon the individual, the Court should consider whether it is a reasonable restraint, in the sense of not bearing excessively on the subject and at the same time being the minimum that is required to preserve the public interest. [PLD 2007 S.C. 642] Fundamental Right should not be treated lightly or permitted to be interfered with a casual or cursory manner through sub-Constitutional measure. [PLD 2011 Lah. 120] While construing and enforcing such rights, generous and purposive interpretation should be made and fullest possible meaning and amplitude must be given enforcing to the real spirit of these rights. [PLD 2009 Lah. 240]

Fundamental Rights guaranteed by the Constitution are not meant merely to be pious enunciations of certain principles supposed to be the basis of the Constitution. The characteristic of a Fundamental Right is its paramount to ordinary State-made laws. They are immune from the pale of legislative enactments and executive actions. They

constitute express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation. The sanctity of the Fundamental Rights is protected by Article 8(2) of the Constitution which prohibits the State which includes the Legislature not to make any law by which any Fundamental Right may be curtailed or taken away and if any law is made to this effect then to the extent of such contravention it shall be void. It is not liable to be abridged by any legislative or executive orders except to the extent provided in Article 233 of the Constitution. Fundamental Rights cannot be waived. No right which is based on public policy can be waived. Citizens of Pakistan cannot themselves waive out of the various Fundamental Rights which the Constitution grants them. The Fundamental Rights are not to be read as if they included the words 'subject to a contract to the contrary'. [PLD 2007 S.C. 642]

The Constitutional Law in America provides an extensive and wide meaning to the word 'life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. Article 9 of the Constitution which guarantees life and liberty according to law is not to be construed in a restricted and pedantic manner. Life has a larger concept which includes the right of enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights. The human dignity is inviolable and that the right to life cannot be taken away except as provided by law. There is no law to justify such an act perpetrated by the State machinery. The object of guaranteeing Fundamental Rights and providing for their enforcement under Article 184(3) is intended to promote social, economic and cultural conditions, which promote life, liberty and dignity. The right to life, therefore, not only guarantees genuine freedom, but freedom from wants, illiteracy, ignorance, poverty and above all freedom from arbitrary restraint from authority. The right to life includes the right of personal security and safety, the right to have clean and lawful administration, the right to have honest and incorruptible actions by the authorities. All Government Authorities, civil military or paramilitary are bound by the Constitution to enforce, respect and protect such rights and do not have the authority, power or right to destroy it, trample it or make a mockery of such right. All persons who are found responsible for such actions and violations must suffer prosecution and should be brought to book according to law. The right to life includes the right to live with respect, honour and dignity. Even a person, who violates any law, has the right to be treated and dealt with according to law. If a person is denied the right to life, then all rights which emanate from being a living human being, also vanish. [PLD 1998 S.C. 388] Fundamental rights are most superior and special in nature and cannot be interfered with without having strict recourse to the law and that too subject to the condition provided for the exercise of these rights. Superior Courts, by means of Articles 199(2) and 184(4) of the Constitution have been made responsible to provide remedy to those citizens, whose rights have been encroached by the State, or its functionaries. [PLD 2004 Lah. 376] Right to acquire, hold and dispose of property is one of the fundamental rights enshrined by Article 23 of the Constitution and guarantee for protection of the right has been provided. Such protection has been laid down under

Article 24(1) of the Constitution. Acquisition process employed to deprive some one of his property is an exception visualized by the Constitution and the process has to be in consonance with conditions, parameters and manner laid down in Article 24(2) & (3) of the Constitution. State is enabled under the provisions of Land Acquisition Act, 1894, to acquire property of someone for public purpose. No one can ordinarily object to such acquisition, despite his unwillingness to lose his property and owner of such property can only ask for compensation. If property of any person is being taken over to serve the public purpose and interest, such person is to be given adequate, fair, just and due compensation. Property to be acquired in a particular case may be the only source of income or the acquisition may render the owner shelterless. Court being guardian of fundamental rights of citizens has to keep all such factors in mind while dealing with the cases of such nature and ensure award of due and fair compensation to the landowner.
[2004 YLR 608]

1.1 Construction. Fundamental rights enshrined in the Constitution in fact reflect what has been provided in some of the Articles of Universal Declaration of Human Rights. Supreme Court, while construing the Fundamental Rights may refer to the Articles of the Universal Declaration of Human Rights, if there is no inconsistency between the two with the object to place liberal construction as to extend maximum benefits to the people and to have uniformity with the comity of nations. [1999 SCMR 1379] It may be stated that Fundamental Rights are subject to law and reasonable restrictions imposed by law. [2012 SCMR 186] Limitations imposed by Constitution upon the action of the Government, both Provincial and Federal, are essential to the preservation of public and private rights, notwithstanding the representative character of political institutions in the country. Enforcement of such limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of members, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the Government. Such are the limitations upon all the powers of Government, Legislative as well as Executive and Judicial. Rights which have been conferred on a human being under the Islamic Injunctions, besides forming part of the Constitutional mandate, are not only beyond the legislative restrictions and enforceable through the Courts of law and without any exception of fundamental nature. Such rights which have the element of Islamic mandate are not amenable to any change or subject to any usurpation by way of suspension for days muchless, for years together. Even if Proclamation of a state of emergency was justified, suspension of fundamental Rights in circumstances is not warranted.
[PLD 1999 S.C. 57]

Fundamental Rights in essence are restraints on the arbitrary exercise of power by the State in relation to any activity that an individual can engage. Although Constitutional guarantees are often couched in permissive terminology, in essence they impose limitations on the power of the State to restrict such activities. Moreover, Basic or Fundamental Rights of individuals which presently stand formally incorporated in the modern Constitutional documents derive their lineage from and are traceable to the ancient Natural Law. With the passage of time and the evolution of civil society great changes occur in the political, social and economic conditions of society. There is, therefore, the corresponding need

to re-evaluate the essence and soul of the fundamental rights as originally provided in the Constitution. They require to be construed in consonance with the changed conditions of the society and must be viewed and interpreted with a vision to the future. [PLD 1993 S.C. 473]

1.2 Suspension of enforcement of Fundamental Right. Suspension of enforcement of fundamental rights, guaranteed under Articles 10, 23 & 25 of Constitution, when under Article 233(1) of the Constitution the State had already acquired power to make any law or take any executive action in deviation of Articles 15, 16, 17, 18, 19 & 24 of the Constitution, is not justified and warranted by law and, thus, the same is of no legal effect. [1999 SCMR 1598]

1.3 Reasonable classification. Legislature has the exclusive domain to legislate laws subject to Article 8(2) of the Constitution. Based on reasonable distinction / basis, different laws can validly be enacted for different sexes, persons in different groups and persons having different status or financial standing etc. [2004 YLR 1856]

1.4 Increase in consumer prices. Any increase in consumer prices, which results from lack of competence or integrity or because of inefficient regulation would result in depriving citizens of their fundamental rights guaranteed by Articles 9, 14, 18, 23 and 24 of the Constitution because scales would impermissibly stand tilted against citizens and in favour of those engaged in regulated activities. If taxes or fees are spent in violation of law, it would amount to breach of Articles 3, 4 and 5(2) of Constitution and would also constitute denial of citizen's fundamental rights guaranteed by Article 9, 14, 18, 23 and 24 of the Constitution. Oil and Gas regulatory Authority is the institution which is mandated to regulate oil and gas trade and to determine tariffs and fix prices for consumers and its effective functioning has a direct nexus with securing fundamental rights of the people of Pakistan. [PLD 2012 S.C. 132]

1.5 Fundamental Right and Human Rights. Human rights cannot be confined only to basic civil rights and liberties, including political liberty because a man cannot think for individual and collective development, when he cannot meet the basic necessities of life such as minimum food, clothing and housing. Rights to those basic necessities of life are basically and fundamentally economic rights. Both basic civil rights and liberties and those economic rights must go hand in hand and are inseparable and indivisible. [2011 SCMR 1621]

2. Object. The purpose of Article 8 is to invalidate all existing laws in so far as they are inconsistent with Fundamental Rights conferred by the Constitution. The Article provides that any law or any custom or usage having the force of law shall be void if they are in contravention of the rights conferred by this Chapter. It has further been provided in the Constitution that within a period of two years the appropriate Legislature shall bring the laws specified in the First Schedule into conformity with the right conferred under this Chapter. The principle embodied in this Article is that any invasion upon the rights of citizens by any body no matter whether by a private individual or by a public official or body, must be justified with reference to some law of the country. [PLD 1967 Dacca 607 = 19 DLR 689] Law is here not confined to statute law alone but is used in its generic sense as connoting all that is treated as law in this country including even the judicial principles

laid down from time to time by the Superior Courts. It means according to the accepted forms of legal process and postulates strict performance of all the functions and duties laid down by law. It may well be, as has been suggested in some quarters, that in this sense it is comprehensive as the American "Due process" clause in a new garb. It is in this sense that an action which is *mala fide* or colourable is not regarded as action in accordance with law. Similarly, action taken upon extraneous or irrelevant considerations is also not action in accordance with law. Action taken upon no ground at all or without proper application of the mind of the detaining authority would also not qualify an action as in accordance with law and would, therefore, have to be struck down as being action taken in an unlawful manner. [PLD 1969 S.C. 14]

3. Fundamental Rights cannot be waived. Fundamental Rights cannot be waived. No right which is based on public policy can be waived. Even the right which the Government servant possesses under the Constitution of being entitled to a show-cause notice before dismissal cannot be waived. Citizens of Pakistan cannot contract themselves out of the various fundamental rights which the Constitution grants them. The fundamental rights are not to be read as if they included the words "subject to a contract to the contrary". One way of putting the matter is this. Every law which is inconsistent with a fundamental right, is void. The Contract Act in so far as it permits an agreement to waive a fundamental right is void. It is not necessary to labour the point as the proposition that rights granted on account of public policy cannot be waived is well established. [PLD 1965 S.C. 527 (p. 588)]

3.1 Exercise of power u/s 144, Cr.P.C. Authority vested in the Government under S. 144, Cr.P.C., is more in the nature of an administrative character and it is unimaginable in view of the position and the importance of the fundamental rights, that the administrative authority can be invoked to suspend or interfere with those rights, particularly in view of Article 4 & 8 of the Constitution which provide that said rights are inviolable and even the State has been prohibited to make any law inconsistent with the free exercise of said rights and even the existing laws impinging upon the rights have been declared void. Zila Nazim and the Government thus cannot directly or indirectly, in exercise of power under S. 144, Cr.P.C. interfere, curb, forfeit, suspend or take away the fundamental rights of the petitioner under Article 18 of the Constitution. Notification by the said Authorities, in that behalf, therefore, was issued in clear breach of the petitioner's right as mentioned in Article 18 of the Constitution, and on said account declared by the High Court to be violative of said rights and nullity in the eye of law. [PLD 2004 Lah. 376] No law repugnant to Article 25 of the Constitution could be made by Legislature in view of Article 8 of the Constitution. [2004 CLC 1353] Any law which is inconsistent to the rights conferred by Chapter II of the Constitution, to the extent of such inconsistency is void under Article 8 of the Constitution. State is prohibited to make any law which takes away or abridges the rights so conferred. Such law, in contravention of Article 8 of the Constitution remains void. High Court in view of the provisions of Article 199 of the Constitution is equipped with jurisdiction to declare any law as void which is in contravention of Article 8 of the Constitution. [2004 YLR 1856]

4. Fundamental Right—Not absolute. Absolute and unrestricted individual rights do not exist in any modern State and there is no such thing as absolute and uncontrolled liberty. The collective interests of the society, peace and security of the State and the

maintenance of public order are of vital importance in any organized society. Fundamental Rights have no real meaning if the State itself is in danger, and disorganized. If the State is in danger, the liberties of the subjects are themselves in danger. It is for these reasons of State that an equilibrium has to be maintained between the two contending interests at stake; one the individual liberties and the other the the citizen which are declared by the Constitution to be Fundamental and the other the need to impose social control and reasonable limitations on the enjoyment of those rights in the interest of the collective good of the society. [PLD 1965 (WP) Lah. 632]

In the present Constitution, like the Constitution of 1962,⁵ Fundamental rights are neither indefeasible nor permanent, for their operation may be suspended after a proclamation of emergency under Article 233 and like any other statutory right they, being the creation of the Constitution, may be taken away or abridged by an amendment of the Constitution. [PLD 1959 S.C. 387]

5. Construction. When a restriction which is not otherwise imposed by the law, is thrust upon the owner qua the free user of his property, it was a clear case of the breach of his fundamental right. Access from public road could not be curtailed and on account of the action of the authorities not only that the landowner's fundamental right had been breached, but his right to way had also been violated. High Court, while allowing the Intra Court Appeal, set aside the order of the Single Judge of High court and action of fixing/installing the wire/hedge across the frontages of the owner's land was declared as without lawful authority, with direction to the authorities to remove the wire/hedge with immediate effect. [PLD 2009 Lah. 240]

6. Law inconsistent with fundamental rights. Provision of Article 8(1) of the Constitution of Pakistan (1973) is founded on the assumption that custom or usage has the force of law as the law has itself but they will not be enforced to the extent inconsistency within the Fundamental Rights. [PLD 1996 S.C. 324]

7. "Void"—Does not signify to repeal the law but merely to render it inoperative *in futuro*. By using the word "void" in clause (1) of Article 6 of the Constitution 1962 which claims the same contents as used in the present Article 8 does not intend to repeal the law that had already been validly made but merely to render it inoperative *in futuro*. That law would still be operative in respect of rights, obligations and liabilities already accrued and the validity of acts done and completed under it whilst it was a valid law in force would still have to be determined according to that law. The use of the word "void", therefore does not produce the result of obliterating the inconsistent provisions of the existing law altogether from the statute book, but all that happens is that in enforcing a fundamental right the High Courts will not give effect to any of the provisions of the existing law in so far as they are inconsistent with the fundamental rights guaranteed by the Constitution. [PLD 1964 S.C. 673 (p. 785)]

8. Its aim. It follows that the aim of having a declaration of Fundamental Rights is that certain elementary rights of the individual such as his right to life, liberty, freedom of speech, freedom of faith and so on, should be regarded as inviolable under all conditions and that the shifting majorities in the legislature of the country should not be able to temper with them. [AIR 1952 Mad. 613 (DB)]

9. **Enforceability.** The Constitution itself has clearly imposed upon the High Courts the duty of enforcing the fundamental rights and so far as fundamental rights are concerned the Constitution itself has declared that all laws inconsistent with those rights shall be void to the extent of the inconsistency. It is not necessary for the High Courts in this country to declare a law to be void, for, the Constitution itself has done that. All that the High Courts are called upon to do is to decide while enforcing a fundamental right as to whether that right has been restricted by any law and whether such a restriction is a reasonable restriction imposed in accordance with the terms of the Constitution. If it finds that there is a law which is inconsistent with the fundamental rights conferred by the Constitution then it becomes the duty of the Court to decide whether that law should prevail or the Constitution. The Constitution being supreme must obviously prevail and since the Constitution itself declares that all laws inconsistent with the rights conferred by it shall to the extent of the inconsistency be void, the High Courts have no other opinion but to treat that law as void to the extent of the inconsistency and enforce the fundamental rights. [PLD 1964 S.C. 673 (p. 783)]

10. **Laws.** The words "any law" used in clauses (1) and (2) of Article 8 of the Constitution do not include any provision of the Constitution which is evident from Articles 5, 61, 63, 137, 175(2), 199 and 202 of the Constitution, wherein the word "law" and the word "Constitution" have been used in contradistinction. There is a well-defined distinction between "Legislative power" and "constituent power". The above Articles apparently were framed keeping in view the above distinction. In this view of the matter, the same cannot be treated as synonymous connoting the same meaning. As a corollary, it must follow that the validity of a Constitutional provision cannot be tested on the touchstone of Article 8 of the Constitution. [PLD 1998 S.C. 1263]

10.1 **Laws inconsistent with Fundamental Rights not void 'ab initio'.** It is well established that the Constitution has no retrospective effect. This being the position any law which is repugnant to the Fundamental Rights is not void *ab initio*, namely, from the very beginning, but becomes invalid only with effect from the date when the Fundamental Rights are created. [PLD 1966 (WP) Pesh. 19 + PLD 1964 Dacca 795]

10.2 **Duty to protect.** It is the duty of the Superior Court to protect Fundamental Rights granted in the Constitution. Article 199 of the Constitution empowers High Court to issue any appropriate discretion for the enforcement of Fundamental Rights conferred by this chapter.

11. **"Due process of law".** "Due process of law" means that individuals are not required to be only dealt with in accordance with law but it qualifies further that the process adopted in this context is open, fair and transparent, therefore due determination of the default by an unbiased Tribunal or a court is sine qua non and anything to the contrary is offensive to the legal parameters of settled law. [2009 CLD 257]

The concept of due process clause is an outstanding feature of the American Constitution and no alike provision exists in our Constitution. But another provision was made like Article 6 of the 1962 Constitution, Article 7 of the Interim Constitution and Article 8 of the 1973 Constitution, which placed a limitation on the Legislature not to enact law in contravention with or in derogation of fundamental rights and if such law is made then to the extent of such contravention it is void. This constitutional provision placed a duty on the Court to examine the constitutionality of the law challenged. [PLD 1983 S.C. 457]

The term 'due process of law' is a term which is very commonly used in the American legal jurisprudence. It implies something more, than the actual existing law of the country. Under this clause the American Judiciary invalidates laws which are supposed to offend the spirit of the Constitution. The most famous definition of "due process of law" according to David Webster is, a law which hears before it condemns; which proceeds upon inquiry, and renders judgement after trial. [(1919) 4 Wheaton (US) 518-129 US 114]

Due process of law generally implies and includes *actor, reus, judex*, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings. [171 US 437] The clause, therefore, means that there can be no proceeding against life, liberty or property of a person which may result in deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights. The word law means not *just but lex i.e. enacted law*. It has been used in its recognized and accepted sense. Any procedure which does not have the quality of law will be inconsistent with this Fundamental Right.

Scales of justice do not and should not tilt on account of a particular position and status a person holds. Even-handed administration and dispensation of justice is the hallmark of a judicial system, necessary to maintain equilibrium in Society. No one should gain or be allowed to take advantage of his position or status, how high it may be. At the same time no one should suffer deprivation, on account of his status and position. All are equal before the law and the Court. The matters are to be decided without fear and favour. [2004 YLR 84]

12. Role of Armed Forces 'in aid of civil power'. Since Armed Forces admittedly are not part of the judicature, the Ordinance vesting the Armed Forces with power to hold trial of civilians in respect of offences which were not connected with Armed Forces, is not immune from scrutiny under Article 8(3)(a) of the Constitution. [PLD 1999 S.C. 504]

13. "In accordance with law". Article 2-A of the Constitution by which the principles and provisions set out in the Objectives Resolution were made substantive part of the Constitution, is not a supra-Constitutional provisions nor it is self-executing. Although, the principles of Islamic Law and Injunction of Islam have to be kept in view and applied while interpreting the statutes, but the superior Courts did not strike down such laws, rules and regulations on the touchstone of this Article. Article 4 speaks about right of individuals, which are to be dealt with in accordance with law. No action adversely affecting the life, liberty, body, reputation or property of any person is to be taken except in accordance with law. The proceedings or act, *ex facie*, which suffer from excess or lack of jurisdiction, or are *coram non iudice* or *mala fide*, are the examples, which cannot be termed as "in accordance with law". It is an inviolable right. Article 9 speaks about security of person. According to this Article, no person shall be deprived of life or liberty, save in accordance, with law. Article 15 deals with freedom of movement of the citizens. Article 25 mentions about equality of citizens. According to it, all citizens are equal before law and are entitled to equal protection of law. It discards discrimination on the basis of sex alone. It is noted that expression "Equal protection of law", in this Article does not prohibit classification, which is reasonable and sets out substantial differences. [PLD 1999 Kar. 402] While dealing with the laws empowering to deprive a person of his life, liberty and property.

mandatory requirements of law must be strictly adhered to for the reason that such action was to be taken keeping in view that under Article 9 of the Constitution, no person would be deprived of life or liberty save in accordance with law. Under Article 24 of the Constitution no person would be deprived of his property save in accordance with law. [2006 P.Cr.L.J. 23]

14. Right and interest of minorities. Article 36 of the Constitution of Pakistan (1973) makes it obligatory on State to safeguard legitimate rights and interests of minorities including their due representation in the Federal and Provincial Service. Personal, fundamental and other rights of individuals had to yield to national interest, collective rights and welfare of society. [1998 MLD 1832]

15. Voidness of law. Law which is inconsistent and in contravention of Fundamental Rights or which took away or abridged such rights, is void, to the extent of such contravention. Paramountcy of Fundamental Right is recognized by Article 9 of the Constitution of Pakistan, 1973 limiting the powers of State organs to the extent that what had been conferred by the Constitution as Fundamental Rights, could not be taken away or abridged by the State. What had been guaranteed by the Constitution as a Fundamental Right could not be annihilated or taken away in the garb of 'reasonable restrictions'. [2001 PLC (C.S.) 933]

15.1 Articles 8 and 24 read with Article 203-D-MLR 115 of 1972. The provisions of this Regulation, which relate to the ceiling or land ownership or provide for acquisition of surplus area by the Government are constitutionally protected, and it is not within the jurisdiction of Federal Shariat Court to go into their *vires*, even in the light of the Holy Qur'an and Sunnah of the Holy prophet (p.b.u.h). [PLD 1983 FSC 23]

15.2 Encroacher on Government land. Encroacher on Government land cannot be allowed to protect his illegal act on the ground that similar action is not being taken against another such encroacher. Constitutional guarantee is of equal protection of law and not protection of an illegal act. [2001 CLC 1229]

16. Punjab Local Government Ordinance, 2001, Ss. 85, 91 and 92—Modes of internal recall—Not discriminatory. In view of Article 8 of the Constitution, inconsistency and discrimination had to be looked into qua the fundamental rights warranted by Part-II of the Constitution. None of the voters had filed any petition to assert that his right if any had been snatched by the provisions of S. 85 or 92 of Punjab Local Government Ordinance, 2001. Petitioners having accepted the provisions of Punjab Local Government Ordinance, 2001, opted to contest the election thereunder, who, after winning the election, entered into their respective offices, performed their duties, whereafter, they could not be permitted to turn back and to say that provisions of Punjab Local Government Ordinance, 2001, which were accepted by them were proceeded against under punitive provisions like Ss. 85 and 92 of Punjab Local Government Ordinance, 2001. Petitioners were estopped to challenge any of the provisions of Punjab Local Government Ordinance, 2001, by saying that those were contrary to the Constitution or were opposed to their fundamental rights, if any. Legislation in form of Punjab Local Government Ordinance, 2001, especially its provisions of Ss. 85 and 92 were neither in conflict nor inconsistent with the rights given by Part-II of the Constitution nor were discriminatory and thus the same were *intra vires* of the Constitution and had no

conflict with Article 8 of the Constitution. High Court declined to declare the Recall Motions approved by the concerned Union Councils under the provisions of Punjab Local Government Ordinance, 2001, as illegal and ultra vires. [2004 YLR 1856; PLD 2001 S.C. 111; 2000 SCMR 1956 rel.]

17. West Pakistan Urban Immovable Property Act, 1958—Recovery of Tax—Principles. Legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purpose and objects of the Act. The increasing complexity of moderation, administration, the difficulty of passing complicated measures through the method of parliamentary debate and discussion, and the number of details and technical matters which must of necessity be provided for in statutes, have led to an increase in the practice of entrusting power to executive or other agencies to make subordinate or ancillary legislation. By entrusting that power to the Government, the legislature does not delegate its essential legislative functions. While testing the vires of a statute, no abstract standard, no general pattern and no hard and fast rule can be set down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the statute, the extent or urgency of the evil sought to be remedied thereby, the applicability of statute in generality to all in similar circumstances or the exercise of pick and choose by it and thereby landing on discrimination, and the prevailing conditions at the time, should enter into the judicial verdict. In view of the analysis of the provisions of sections 3, 5 and 5-A, it cannot be said that there are no guidelines in the scheme and provisions of the Act; that section 5-A confers blanket, unguided, uncanalized, vague and vagarious power on the Provincial Government. Every possible effort should be made by the Court to save the law rather than to scuttle it. Viewed in the above perspective and tested on the touchstone of principles enunciated in the decisions, particularly of the Supreme Court of Pakistan, it cannot be held that section 5-A of the Act is ultra vires any provision of the Constitution, the legislative power of the Provincial Assembly, or any other provision of the Urban Immovable Property Tax Act, 1958. Section 5-A of the Act is not liable to be struck down on the ground of impermissible delegation of power. The question here is whether section 5-A, as introduced by the Punjab Finance Act (No. VII of 1998), offends against any provisions of the Constitution or the existing Federal Statute. No frontal attack has been made on the power of the Provincial Legislature to have enacted section 5-A. However, the contention is that whereas in the existing section 5 of the 1958. Act, a Federal Statute, it was provided that the "annual value of any land or building shall be ascertained by estimating the gross annual rent at which such land or building together with its appurtenances and any furniture that may be let for use or enjoyment with such building might reasonably be expected to be let from year to year" less allowances etc., mentioned therein, but the provisions of section 5-A making "valuation tables" as the basis for ascertaining "annual value" was a clear departure therefrom; hence not sustainable being violative of section 5 of the Act. The precise submission is that the expression used in section 5 of the Act, viz: "annual value of any land or building shall be ascertained by estimating the gross annual rent" means nothing more than the annual rent which an owner/landlord is actually receiving from the tenant and not that which a property is reasonably expected to fetch. The argument at the first blush looked to be attractive, but when examined in depth, it loses significance. Even hen a vigorous break with the past

and smooth reconciliation with a radical Constitutional value-set are the object, and the art of reading down and reading wide is used, being permissible by jurisprudence of statutory construction as a part of interpretational engineering, there is no reason for implying a limitation in terms as is contended for, since the legislature itself has not thought it fit to impose any. The case of the petitioners themselves is that the Urban Immovable Property Tax Rules, 1958, having been framed under section 23 of the Act, the same have statutory force. A plain reading of clause (e) of Rule 6 of the Rules makes it indubitably clear that "gross annual rent" is not restricted only to the "earned" rent, but it also includes which "could reasonably be earned". Clause (f) further clarifies that it is competent for the assessing authority to take into consideration "such gross annual rent at which any property in the rating area may reasonably be expected to be let from year to year, if in its opinion the average gross annual rent of such property ascertained under clause (e) be not fair or reasonable when compared with such rent of any other property in that locality." Ex facie, the object of this provision in the Rules could not be a verbal excursion, but a meaningful exercise so that clever owners of the properties, in active connivance with their tenants, should not successfully hoodwink the assessing authority by deliberately showing the rent ridiculously low, thereby frustrating the whole intent and purpose of the statute. Upon proper construction of section 5 of the Act read with rule 6 of the Rules, the "annual value" of any land or building is not necessarily the actual rent received by the owner of the land or building, and if rent is fixed bona fide by the owner and represents actual rentability of the land or building that would be an important factor for the assessing authority to consider, but the rent received by the owner cannot, in all circumstances, be a conclusive proof of previous annual value as contemplated by the Act read with the Rules. Neither section 5-A nor the impugned valuation tables, prepared thereunder, can be struck down. Section 5-A is a valid piece of legislation, and so are the valuation tables prepared pursuant thereto. [PLD 2004 Lah. 599]

18. Right of education. Right of education is not expressly provided as one of the Fundamental Rights enumerated in the Constitution, but the same can be drawn from the right to life while giving a broad or expanded interpretation. [PLD 2005 Lah. 428] Right of education is part of right to life guaranteed under Article 9 of the Constitution and, therefore, Section 3 of the Sindh Medical Colleges Act, 1987 cannot be so construed as to enable the Government to make a rule permitting deprivation of a guaranteed fundamental right under the Constitution and, therefore, the stipulation in question has to be treated as *ultra vires* the rule making power conferred by section 3 of the Act. [PLD 2007 Kar. 116 ; *Ali Sain Dino Metlo, J.*] A statutory rule made by the Government itself in exercise of powers conferred by statute as distinguished from a bye-law or a regulation made by any other authority could not be struck down on the grounds of unreasonableness per se. A validly made rule under S. 3 of the Sindh Medical Colleges Act, 1987 would remain effective unless it is found to be repugnant to the Act itself. On the other hand, if regulations or bye-laws were to be made by any other subordinate authority they could always be struck down on the grounds of being unreasonableness. Statutory rules can always be questioned and struck down on the ground of being unreasonable. [PLD 2007 Kar. 116]

19. Admissions on Self-finance Scheme—A policy—Not repugnant to Fundamental Right. A law, rule or a custom, having force of law, under Article 8 of the Constitution can be declared by High Court void, provided such law, rule or custom is inconsistent or is in contravention of fundamental rights guaranteed under the

Constitution. In Constitution of Pakistan, fundamental rights are provided in Chapter 1 of Part-II of the Constitution. The list of fundamental rights does not include expressly right to acquire medical education free of cost, etc. However, in Chapter 2 of Part I of the Constitution, a list of principles of policy is provided. Article 37 provides that the State shall:-

- (a) promote, with special care, educational and economic interest of backward classes or areas;
- (b) remove illiteracy and provide free and compulsory secondary education within minimum possible period; and
- (c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit.

But these principles of policy are not enforceable by the Courts, though, under Article 29 of the Constitution it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those principles insofar as they relate to the functions of the organ or authority. However, Article 29 also provides that as far as the observance of any particular principle of policy is concerned, it may be dependent upon resources being available for the purpose. Therefore, the right to education is not expressly provided as one of the fundamental rights enumerated in the Constitution, but it can be drawn from the right to life while giving a broad or expanded interpretation. Similarly, while sitting in the Constitutional jurisdiction High Court would not like to enter into policy making domain of the State or question the Legislature wisdom. The directive principles of State of the policy are to be regarded as fundamentals to governance of the State, but they are not enforceable by any Court. Equal treatment means equal treatment amongst persons who are equally placed or belong to the same class of people. Therefore, classification in terms of equal treatment is legally permissible. Courts do not sit in judgment over a policy of the Government. The impugned scheme was introduced as matter of a public policy. The Courts do not normally interfere or strike down a policy made by the Government unless it is proved *mala fide* or made in a colourful exercise of authority. The impugned scheme may not be considered as an ideal scheme to meet the requirements and desire to provide medical education to all those who desire to join medical profession as doctors, nevertheless, something is better than nothing. Country is having more doctors nowadays than what it used to have in the past which is beneficial to the society. [PLD 2005 Lah. 428]

20. Law of Tort—To be promoted. Constitution contains Chapter 1 relating "Fundamental Rights" in which life of human being is given due importance. It requires every one to work for the welfare of the people of Pakistan but a person who is violating the law and Constitution works against the welfare of the people that is why it is high time to promote the law of tort so that the people must understand that they cannot live as a nation without performing their duties within the framework of law. Mere framing of law does not provide good results unless the law is strictly implemented by all the sections of the society in letter and spirit without fear, favour and nepotism as envisaged in "Sura-e-Baqra" of Holy Qur'an. To achieve the goal of ensuring every citizen and organ of the State on a right path the nation, as a whole, has to honour the commitment in terms of the

Constitution and law. One of the modes to achieve this goal is to file a suit for damages against the offenders by the aggrieved persons. It is the duty of the members of the Bar Associations and Bar Council to educate the people and to file suits for damages against the offenders apart from the criminal proceedings. It is also the duty and obligation of media to provide to cultivate awareness of rights specially law of tort which will ultimately bring/compel every authority and functionary including the Chief Executive of the country to work within the framework of law and Constitution. [2006 SCMR 207] Following are the principles to be kept in view while awarding damages in case a person dies on account of accident due to the negligence of the driver of the employer's vehicle:-

- (i) the position of each dependent of the deceased should be considered separately;
- (ii) the damages are not to be given as solatium but should be calculated with reference to a reasonable expectation of pecuniary benefit, from the continuance of the life of the deceased. Damages claimed by dependents for their own pain and suffering or for the loss occasioned to them due to the death of the deceased which is not referable to the expectation of any such pecuniary benefit, is outside the scope of the Act;
- (iii) the deceased need not be earning or the dependents need not be actually deprived of benefit. Reasonable expectation of such earning or benefit is enough;
- (iv) the pecuniary loss due to the death should stem not from a mere speculative possibility of pecuniary benefit from the continuance of the life of the deceased but only from a reasonable possibility of such benefits;
- (v) where the actual extent of such pecuniary loss cannot be ascertained accurately, the sum may be an estimate or partly a conjecture;
- (vi) in assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages should be considered;
- (vii) the pecuniary loss of each dependent should be ascertained by balancing on the one hand the loss to him of future pecuniary benefits and on the other any pecuniary advantage which from whatever source comes to him by reason of death. [2006 SCMR 207]

21. Reasonable classification. Where the State itself does not make any classification of persons or things and leaves it to the discretion of the Government or any authority to select and classify persons or things, without laying down any principle or policy to guide the government or authority in exercise of discretion, or a law is made by the State, whereby certain persons or group of persons are discriminated without any rational and reasonable classification and leaving the other groups of the same class, the denial of benefit, privilege or right to one group of persons and allowing same to the other group of persons would certainly be a discrimination between the persons or things similarly situated and consequently would be void on account of the provisions contained in Article 25(1) of the Constitution read with Article 8 thereof. [PLD 2007 Kar. 139]

22. High rise buildings .. Objection thereto . Every citizen has right to live in a peaceful environment, clear atmosphere and the right to have protection from encroachment on privacy and liberty. Any law, in so far as it is inconsistent with the rights conferred by Chapter I of the Constitution of Pakistan, 1973, shall, to the extent of such inconsistency be void. Admittedly, the said plot is situated in a residential area and the

plaintiffs are residents of the said area. The plaintiffs have right to object construction of high rise building in their neighbourhood provided they establish that their right of privacy, light and air will be disturbed. [2007 CLC 943] As observed by the Supreme Court (PLD 1994 S.C. 512):-

“Framing of housing scheme does not mean simpliciter, leveling of land and carving out of plots, but it also involves working out approximate requirements of water, electricity, gas, sewerage lines, streets and roads etc. If a housing scheme is framed on the assumption that it will have residential units 1+1. But factually the allottee of the plots are allowed to raise multi-storied buildings having flats, the above public utility services will fall short of requirements, with the result that everyone living in the aforesaid scheme will suffer. This is what has happened in Karachi. Without any planning and without expanding the provisions of the above items of public utility services, the people were allowed to erect multi-storied buildings having shops and flats. In consequence thereof everyone living in Karachi is suffering. There is scarcity of water, some people even do not get drinking water. The above other items of the public utility services are short of demand. Roads and streets are normally flooded with filthy and stinking water on account of choking and overflowing of sewerage lines. To reduce the miseries of most of the Karachiites, it is imperative on the public functionaries like the Authority to ensure the adherence to the Regulations. However, it may be clarified that it may not be understood that once a scheme is framed, no alterations can be made. Alterations in a scheme can be made for the good of the people-at-large, but not for the benefit of an individual for favouring him at the cost of other people.” [2007 CLC 943]

It has further been observed by Karachi High Court (1996 CLC 417):-

“.... It would be pertinent to observe that one of the prime duties of every Government is to ensure requisite provision of water, sewerage, a pollution-free environment etc., without which any residential project will not only be incomplete but will also add to the magnitude of the problems of the residents of area or locality. As such it will be in public interest not to permit any residential scheme to assume a size and dimension which is in flagrant disregard of the availability of utilities. One will certainly notice mushroom growth of high-rise buildings in Karachi predominantly motivated by Commercial considerations which without being equipped with necessary amenities had intensified the every growing miseries of the urban population.”

23. Jurisdiction of Supreme Court to examine constitutionality of a law. Sub-Article (1) of Article 8 of the Constitution uses the word 'inconsistent' purposely, regarding any law which was promulgated in the past or is in existence presently. Whereas, sub-Article 2 of Article 8 of the Constitution debars the State not to make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void. So, inconsistency or contravention of a law passed, or the existing law, shall be examined to the extent of violation of fundamental rights and such laws are not void for other purposes.

The word 'void' may be used in what is variously referred to as tits literal, absolute, primary, precise, strict, and strictly accurate sense, and in this sense it means absolutely null and incapable of confirmation or ratification; of no effect and incapable of

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confirmation; of no force and effect; having no legal force or binding effect, having no legal or binding force; incapable of being enforced by law; of no legal force or effect whatever; that which has no force and effect; without legal efficacy, without vitality or legal effect; ineffectual; nugatory; unable in law to support the purpose for which it was intended.

"Term 'void' signifies something absolutely null, incapable of ratification or confirmation and, thus, having no legal effect whatsoever". Similarly, the word 'void *ab initio*' has been defined as "null from the beginning". [PLD 2010 S.C. 265] Supreme Court under Article 8 of the Constitution is empowered to declare void any law or any custom or usage having the force of law if the same is inconsistent with, or is in derogation of any of the Fundamental Rights. [PLD 2012 S.C. 1] Scheme of the Constitution makes its obligatory on the part of Superior Courts to interpret Constitution, law and enforce Fundamental Rights. Ultimate arbiter is the Court which is the custodian of the Constitution. [PLD 2011 S.C. 963]