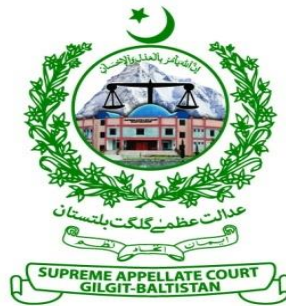


# **OCTENNIAL LAW DIGEST 2010 to 2017**

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**Gilgit-Baltistan Supreme Appellate Court  
GILGIT**

## **INTRODUCTORY NOTE**

The decisions of this Court are being published in a law report under the name of GBLR (Gilgit-Baltistan Law Reports) right from the year 2010. But due to having no periodic law digests it was difficult to find out these judgments topic/law wise for courts and lawyers. Being the highest court of Gilgit-Baltistan the *ratio* of the decisions of this court are binding on all courts in Gilgit-Baltistan under Article 78 of Government of Gilgit-Baltistan Order, 2018 and prior thereto under Article 63 of Gilgit-Baltistan (Empowerment and Self Governance Order), 2009 and Article 32 of the Northern Areas Governance Order, 1994. But the courts and legal fraternity faced difficulty throughout this period in locating judgments of this court for the purpose of reference and following the *ratio* therein. This Octennial Digest of Decisions of Supreme Appellate Court was conceived with this background in mind. The print and publications branch of this court worked hard for completing the task for which they deserve appreciation. The judgments from 2018 onward are in the process of publication in GBLR in two editions and after new editions another law digest would be published by this court. With the hope that this work would facilitate the courts, lawyers and law researchers in finding the decisions of this court readily and with ease.

Niaz Muhammad Khan  
Registrar  
Supreme Appellate Court  
Gilgit-Baltistan, Gilgit

# **OCTENNIAL LAW DIGEST 2010 to 2017**

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# OCTENNIAL LAW DIGEST

## 2010 to 2017

### A

#### **Abstention, doctrine of---**

----Applicability--- Scope. [2011 GBLR (d) 1]

#### **Accession Deed of Darail/Tangir, 1952---**

----Forest Rules, 1975---Accession Deed of Darail/Tangir, 1952--- Forest Act (XVI of 1927), Preamble---Gilgit-Baltistan. (Empowerment and Self-Governance)Order, 2009, Art. 61--- Private forests, ownership of---Recognized rights of people of Chilas, Darail, Tangir of District Diamer---Supreme Appellate Court declared that village proprietary bodies were exclusive owners in private forests of Chilas, Darail, Tangir of District Diamer under Accession Deed, 1952 with entitlement of recognized rights of the area---Owners of other private forests in Gilgit-Baltistan. which are governed by Private Forest Regulations, 1970 read with rules framed thereunder and Forest Act, 1927 are also subject to any exception entitled to rights recognized under law---Supreme Appellate Court, in circumstances, held that: (i) the Malikan (private owners) of the local tribes shall have absolute ownership in private forests in the respective areas. (ii) the Government shall spend more than one third share in sale proceed of private forest whereas remaining income shall be the collective right of private owners which shall be distributed amongst them as per their

entitlement by the concerned official agency; (iii) there shall be right of cutting of waste and fire wood from private forest and also right of cutting standing trees for use of private house, religious purposes, charity and welfare project or for any other private and official use with the permission of Forest Department. This right shall not be abridged or curtailed. (iv) the right of animal grassing except in restricted, areas shall be operative throughout the year; (v) the right of sale of standing trees in a compartment of private forest shall be subject to the approval of Government under a proper scheme prepared by the Government under Private Forest Regulations, 1970 and rules framed thereunder; (vi) the private sale agreement without approval of Government shall not create any legal right in favour of parties; (vii) the Government shall establish public welfare projects in the area such as construction of schools, colleges, hospitals, play grounds, community centers, mosques, libraries, animal husbandry, drinking water, electricity, supply handicraft, technical centers and also women vocational center etc from the share of government in the income of private forest; (viii) the transportation of already cut timber under a Scheme with the approval of Forest Department will be allowed so that private owners may get their share in the sale proceed. The unnecessary restriction shall be avoided and (ix) the future Working Plan for cutting of private forest on the basis of commercial activity shall be made in the interest and for the benefit of the area, with the consent of Malikan of the private Forests of the area and prior approval of the competent authority---Management of forest shall be the liability of Government in the manner that (a) the framing of policy for cutting of private forest and transportation of cut timber in accordance with the law on the subject; (b) the preservation, protection and generation of forest and also improvement of private forests as future natural assets of the area; (c) the regular maximum sessional generation of private forest in each area to improve the forest and cover the deficiency caused by cutting of standing trees; (d) the vigilance teams to be deputed to check the overall performance of Forest Department and also of individual officials of Forest Department and (e) the strict enforcement of misconduct rules in case of negligence of any forest official in performance of his duty. [2011 GBLR 186]

#### **Accommodation Allocation Rules, 2002---**

---Rr. 2(b), 7, 10 & 11---Allotment of accommodation to Government Officer---Cancellation of allotment---Petitioner, who was a Government Officer, claimed that he was entitled to occupy a Government residence at any station subject to availability of an alternate Government residence at his place of posting---Petitioner,



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alleged that official accommodation allotted to him, was cancelled and allotted to respondent illegally and unlawfully and that cancellation order and judgment passed by the Chief Court in the matter, was result of misconception of law and rules; misreading and non-reading of material on record---Validity---Government servant who owned a house in his own name or his spouse or dependant children, was not allowed Government accommodation as provided under Accommodation Allocation Rules, 2002---Petitioner had two kanals of land having constructed triple storey house, which was rented out at Rs. 30,000 per month---Impugned judgment passed by Chief Court was well reasoned and well founded--- Petitioner could not point out any illegality and infirmity in the impugned judgment---Petition for leave to appeal was converted into an appeal by Supreme Appellate Court and was dismissed--- Impugned judgment of Chief Court was maintained---Petitioner was directed to vacate the Government residence provided to him. **[2015 GBLR 358]**

**Administration of justice---**

---Concept---Administration of justice was not only confined to the statutory or constitutional law alone, but in general sense, the judicial precedents laid down by the superior courts, were also treated as part of the administration of justice---Courts were duty bound to advance the cause of justice accordingly--- Judicial authority was a sacred trust which was exercised in the Command of Almighty Allah; and the court in discharge of such sacred duty must apply independent judicious mind to the facts of the case before it, and must do substantial justice in accordance with the concept of justice in law. **[2011 GBLR (e) 486]**

---Fact not brought before the Court of first instance; cannot be allowed to make part of record before next forum or final court. **[2010 GBLR (a) 100]**

---For convicting and sentencing accused, there must be legal evidence available on record---Court was bound to administer justice according to law, rather than enforcing moral conviction, howsoever strong that could be--- Crime was to be proved through cogent, tangible, direct and strong evidence produced in court---Prosecution had to stand on its own legs and prove its case beyond reasonable doubt---Evidence brought on record was to be unambiguous and inspiring confidence. **[2017 GBLR (b) 154]**

---Law would come to rescue of those persons having approached court of law with clean hands. **[2011 GBLR (b) 223]**

---Litigant public and the Government departments, were equal before the courts of law---Courts were not supposed, to protect the rights of Government, or the authorities, unless the Government would come before the court to protect the interest of the Government. **[2015 GBLR (b) 269]**

---Litigants who bring their dispute to the law courts with incidental hardships and expenses involved, would expect a patient and judicious treatment of their cases; and their determination by proper orders---Judicial order must be a speaking order, would manifest that court had applied its mind to the resolution of the issue involved for their proper adjudication; and the ultimate result may be arrived at by a laborious effort. **[2010 GBLR (a) 356]**

---Litigants who bring their disputes to the law courts with incidental hardships and expenses involved, do expect a patient and judicious treatment of their cases; and their determination by proper orders---Judicial order must be a speaking order would manifest that the court had applied mind to the resolution of the issues involved for their proper adjudication and the ultimate result could be arrived at by a laborious effort--- Findings in appealable cases, should be given after framing issues, even though it could be unnecessary to decide the same for the purpose of the decision arrived at. **[2010 GBLR (b) 336]**

---“No Objection Certificate”, issuance of---Validity---Issuance of such certificate being a policy matter of Government could not be challenged in courts in absence of commission of gross violation of a law or infringement of any fundamental right of a citizen while making such policy. **[2011 GBLR (c) 290]**

---No right exists without a remedy. **[2010 GBLR (h) 1]**

---Obedience of a lawful order passed by a court is essential and disobedience of such an order must have penal consequences to maintain the authority of court and law. **[2010 GBLR (j) 160]**

---Principles of natural justice and scheme of law would demand that instead of dealing with matters on technical grounds and slipshod manner, preference should be made to disposal of matters on merits. **[2011 GBLR (d) 308].**

---Proper place of procedure in any system of administration of justice, was to help and not to thwart the grant to the people of their rights---All technicalities had to be avoided, unless it was essential to comply with them on grounds of Public Policy---All rule of courts were nothing, but provisions intended to secure the proper

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administration of justice, so that full power of amendment must be enjoyed and should be liberally exercised. [2010 GBLR (c) 356]

---When one was vested with a power under law to do a certain thing in a certain manner, it must be done in such manner or it should not have been done at all---All other methods of performance of such act were necessarily forbidden. [2015 GBLR (f) 252]

### **Administrative law---**

---Action by administrative authorities---Scope and extent---‘Administrative’ and ‘quasi judicial power’---Distinction. [2010 GBLR (g) 467]

### **Adoption---**

---Adoption of deserted, parentless and abandoned child---Petitioners, husband and wife, who were childless, filed application seeking issuance of guardianship certificate of minor adopted from Health and Welfare Center---Request of petitioners, was turned down by the Guardian Judge and Chief Court, in view of directions laid down in judgment, of Supreme Appellate Court---Validity---Mandatory requirements for adoption of deserted, parentless and abandoned children and their custody had been laid down by the Supreme Appellate Court in 2011 GBLR 373--- Petitioners, husband and wife, who were issueless and Muslim by faith and desirous to adopt a child, had sound financial position and had flawless background and belonged to highly respectable family of the area---Both husband and wife had dual nationality of Pakistan and United States of America---Guardian Judge had not thoroughly perused the judgment of the Supreme Appellate Court while giving his judgment---Impugned order did not disclose any specific condition of adoption (as per Supreme Appellate Court judgment) which was not fulfilled or followed by the petitioners---Guardian Judge had not appreciated the mandatory provisions, which had already been fulfilled by the petitioners--- Chief Court, had not applied its judicious mind’ to the matter and had not given any genuine reason for dismissing appeal, and upholding the findings of the Guardian Judge--Both courts, had not given reasons for their findings, nor had passed self-explanatory judgments---Supreme Appellate Court observed that deserted, parentless child had right to be adopted by genuine adoptive parents, who could provide the facility of good up-bringing, good education and fruitful life---Any individual who could be in a good financial position to provide the facility to a child, should be encouraged instead of creating hurdles and problems or discouragement---Institutions, that take care of deserted children,

would also be relieved of burden, which was being shouldered by any individual---Society would also prosper, if genuine sound individual would share .the burden of providing home, shelter and education to the needy children to make them honourable member of the Society, instead of keeping as deserted soul for the whole life Petitioner, being sound party, could give a better life as compared to that of the Institution they were living in---Petition was converted into appeal, and was allowed---Petitioners were issued a guardianship certificate with regard to parentless child adopted by them. **[2012-14 GBLR 81]**

**Anti-Terrorism Act (XXVII of 1997)---**

---Ss. 6/7---See Penal Code (XLV of 1860), S.302 (b). **[2010 GBLR (a) 550]**

----Ss. 6 & 7---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. **[2011 GBLR 541]**

----Ss. 6/7---See Penal Code (XLV of 1860), S.302/34. **[2011 GBLR (a) 486]**

----Ss. 6 & 7---See Criminal Procedure Code (V of 1898), S.497(1)(5). **[2012-14 GBLR 185]**

----Ss. 6 & 7---See Criminal Procedure Code (V of 1898), S. 497(5). **[2012-14 GBLR 199]**

----Ss. 6 & 7---See Criminal Procedure Code (V of 1908), S. 526. **[2012-14 GBLR 207]**

----Ss. 6 & 7---See Penal Code (XLV of 1860), S.302. **[2012-14 GBLR 61]**

----Ss. 6 & 7---See Criminal Procedure Code (V of 1898), s. 345. **[2015 GBLR 190]**

----Ss. 6 & 7---See Penal Code (XLV of 1860), S. 302. **[2015 GBLR 330]**

----Ss. 6, 7 & 27---See Penal Code (XLV of 1860), S. 302. **[2015 GBLR 247]**

---Ss. 6 & 7---Act of terrorism---Reappraisal of evidence---Accused were tried and convicted by Field General Court Martial---All accused were awarded death sentence, except one, who was awarded 10 years rigorous imprisonment---Accused persons being aggrieved and dissatisfied with the said order, filed appeal before Military Court of Appeal, which was dismissed---Accused filed writ petition before.

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Chief Court, which was dismissed---Validity---Counsel for accused, could not point out any infirmity or illegality in the impugned judgment---Impugned judgment passed by the Chief Court, being well reasoned and well founded, no interference was warranted---Petitions for leave to appeal were converted into appeals and were dismissed---Judgment passed by the Chief Court, was affirmed in circumstances. **[2017 GBLR 326]**

---Ss. 6 & 7---See Pakistan Arms Ordinance (XX of 1965), S. 13. **[2017 GBLR 143]**

---Ss. 6 & 7---See Penal Code (XLV of 1860), S. 302. **[2017 GBLR 71]**

---Ss. 6 & 7---See Penal Code (XLV of 1860), S. 302. **[2017 GBLR 240]**

---Ss. 6 & 7---See Penal Code (XLV of 1860), S. 302. **[2017 GBLR 307]**

---Ss. 6 & 7---See Penal Code (XLV of 1860), S. 324. **[2017 GBLR 358]**

---Ss. 6 & 7---See Penal Code (XLV of 1860), S. 351. **[2017 GBLR 188]**

---Ss. 6, 7 & 12---See Penal Code (XLV of 1860), S. 302. **[2017 GBLR 266]**

---Ss. 6, 7 & 21-H---Act of terrorism---Appeal against acquittal---Reappraisal of evidence---No evidence was on record against accused persons, except their statements recorded under S.21-H of Anti-Terrorism Act, 1997---Prosecution witness, did not charge accused persons---No corroborative piece of evidence existed which connected accused persons in commission of alleged offence Scope of interference in appeal against acquittal, was narrow and limited---Accused could be presumed to be innocent until proved guilty---Presumption of innocence was double after acquittal of accused---Heavy burden lay on the prosecution to rebut the presumption of innocence which accused persons had attained on their acquittal in the Trial Court as well as from appellate court---Advocate General, could not point out mis-reading or non-reading of evidence or any illegality and infirmity in the impugned judgment---Concurrent findings of both the courts below, were well reasoned and well founded; no interference was warranted---Petition for leave to appeal was converted into appeal and same was dismissed---Judgment passed by Anti-Terrorism Court/Trial Court was maintained. **[2017 GBLR 280]**

---Ss. 6, 7 & 21-L---See Explosive Substances Act (VI of 1908), S. 3 [2017 GBLR 219]

---Ss. 6, 7 \* 21-L---See Penal Code (XLV of 1860), s. 203 [2017 GBLR 183]

---Ss. 6, 21-L & 19(12)---See Penal Code (XLV of 1860), s. 436. [2017 GBLR 52]

---S. 7---See Criminal Procedure Code (V of 1898), S.164 [2010 GBLR 295]

---S.7(a)---Penal Code (XLV of 1860), S. 302(b)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Terrorism and Qatl-e-amd---Leave to appeal was granted by Supreme Appellate Court to re-appraise the evidence in a case of death penalty. [2011 GBLR (a) 366]

---S. 7(a)---Penal Code (XLV of 1860), S. 302(b)---Terrorism and Qatl-e-Amd---Re-appraisal of evidence---Sentence, reduction in---Old age of accused---Effect---Related witnesses--- Complainant's uncle was a doctor who was murdered in daylight by accused who was of old age on a public street in presence of other prosecution witnesses--- Death sentence awarded to accused by Trial Court was maintained by Chief Court---Plea raised by accused was that all the prosecution witnesses were closely related to the deceased---Validity---Mere relationship of witnesses with deceased was no criteria to discard their testimony, which was trustworthy and had come from unimpeachable source---Medical evidence, evidence of motive, evidence of positive report of expert and testimony of ocular witnesses left no room for doubt about accused who was guilty of offence with which he was charged and convicted by Trial Court--- Supreme Appellate Court maintained the conviction under S. 302(b) P.P.C. but as accused was of 90 years of age and was suffering from different diseases with falling health, therefore, sentence of death was converted into imprisonment of life---Appeal was partly allowed. [2011 GBLR (b) 366]

---S.7(a)---See Penal Code (XLV of 1860), S.302(b)/34. [2011 GBLR (a) 475]

---S.7(c)---See Penal Code (XLV of 1860), S.324. [2011 GBLR 527]

---Ss. 7 & 14---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. [2015 GBLR 221]

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----S. 7(c)---See Criminal Procedure Code (V of 1898), S. 345. [**2015 GBLR 130**]

----S. 7(A)---See Penal Code (XLV of 1860), s. 302(b). [**2017 GBLR 108**]

----Ss. 8, 9 & 25--- See Penal Code (XLV of 1860), S.153-A. [2012-14 **GBLR (c) 137**]

----S. 12--- See Criminal Procedure Code (V of 1908), S. 526 [**2012-14 GBLR 207**]

----S. 19---See See Criminal Procedure Code (V of 1908), S.526. [**2012-14 GBLR 207**]

----S.21(H)---See Qanun-e-Shahadat (10 of 1984), Art. 38. [**2011 GBLR (c) 475**]

#### **Appeal against acquittal---**

----See Anti-Terrorism Act (XXVII of 1997), S. 6. [**2017 GBLR 280**]

----See Penal Code (XLV of 1860), S. 302. [**2017 GBLR 136**]

----See Penal Code (XLV of 1860), S. 302(b). [**2017 GBLR 108**]

## **B**

#### **Bail---**

----Benefit of doubt---Scope---Question of benefit of reasonable doubt, was necessary to be determined, not only while deciding the question of guilt of an accused, but also while considering the question of bail, because there was a wide difference between the jail life and free life. [**2015 GBLR (c) 95**]

## **C**

#### **Chief Court Establishment Order (1998)---**

----Art. 8---Northern Areas Governance Order, 1994, Preamble--Gilgit-Balistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)---Judges of Chief Court---Entitlements---Judges of Chief Court sought declaration that they were entitled to same salary and

allowances which was admissible to Judges of High Court of A J & K--Validity---Northern Areas Governance Order, 1994, was of the status of fundamental law and Chief Court was established thereunder read with Chief Court Establishment Order, 1998, as the highest judicial forum in Northern Areas---Chairman and Members of Chief Court, by virtue of amendment made in year, 2007 in Northern Areas Governance Order, 1994, were awarded status of Chief Judge and Judges of High Court of AJ&K for the purpose of pay and allowances and other privileges---Notwithstanding the issue of formal notification from a subsequent date, Judges of Chief Court would be entitled to same salary and allowances from the date of change of their nomenclature through the amendment in Northern Areas Governance Order, 1994---Supreme Appellate Court directed Law Department to accordingly initiate process for approval of judicial allowance from the date on which Chairman and Members of Chief Court joined service and salary admissible to them as Chief Judge and Judges of Chief Court from the date of amendment in Northern Areas Governance Order, 1994 in year, 2007---Petition allowed accordingly. [2010 GBLR 322]

#### **Civil Procedure Code (V of 1908)---**

---S. 2(9), O. XX, R. 4 & O. XLI, R. 31---‘Judgment’, meaning and scope---‘Judgment’, would mean, judicial decision of a court or judge, it need not necessarily dealt with all matters in issue in a suit but determine only those issues, decision of which had the effect of adjudicating all the matters in controversy resulting into final disposal of lis--- Essential element of the “judgment”, was that there should be statement of grounds of decision and not recapitulates of arguments of the parties; it must show evolution of evidence led by both the parties and conscious effort of courts to reach a certain conclusion---Most important ingredient of a valid “judgment” was reasons or grounds for decision, because validity of the judgment in higher forums, was to be seen from reasoning--- Conclusion arrived at by the court, could not be binding without reasoning---Even in ex parte judgment, reasoning should be given very clearly---Justice should not only be done, but should be seen to have been done---Reasoning was also necessary to satisfy the most important principle of dispensation of justice---Court would act with material irregularity and illegality, if would fail to record reasons in support of its decision---If the reasoning was missing, it could hardly fall within purview of the definition of “judgment”--- Accumulated effect of S.2(9), O.XX, R.4, C.P.C., would be that decision by a court to be termed as a “judgment”, must be based on reasoning and failure to comply with the requirement of the provision of law would render the judgment nullity and



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unsustainable---Not only the Trial Court was required under the law to give reasons for its conclusion, even Appellate Court was also bound to give detailed reasoning in support of judgment---Order XLI, R.31, C.P.C., clearly mandated that judgment of the Appellate Court, should be in writing and would state (i) points for determination (ii) decision thereon; (iii) reasons for decision and (iv) as to whether the decree applied from, was reversed or varied and the relief which the appellant was entitled---Disposal of cases through arbitrary exercise of power without application of judicious mind, was least permissible at law---Even if counsel defending the cause of litigant public showed not a proper performance in rendering assistance to the court, Chief Court and subordinate judiciary, was not absolved of his duties to apply the same law on the basis of factual matrix or marshalling facts. **[2012-14 GBLR (b) 128]**

---S. 9---See Specific Relief Act (I of 1877). S. 42. **[2015 GBLR 346]**

---s. 12(2)---Allegation of fraud and misrepresentation---Petitioners contended that impugned judgment passed by the Chief Court being incorrect, baseless, arbitrary, against the principles of natural justice and equity, was liable to be set aside. Contention of the respondent was that no infirmity and illegality was pointed out in the impugned judgment passed by the Chief Court---Petition under S.12(2), C.P.C., was filed by respondent when petitioner under the umbrella of ex parte decree tried to take possession of the land---Counsel for respondent, contended that Chief Court, after considering facts and law had rightly set aside order of the First Appellate Court and that of the Trial Court---Case was rightly remanded to the Trial Court with directions to start the same from the stage where it was stopped/given up---Validity---Contentions of counsel for the respondent were right---Impugned judgment passed by Chief Court, could not be interfered with---Petition was converted into appeal and was dismissed by the Supreme Appellate Court, in circumstances. **[2015 GBLR 291]**

---S. 12(2)---See Land Acquisition Act (I of 1894), S. 4. **[2017 GBLR 120]**

---S. 12(2)---See Specific Relief Act (I of 1877), S. 8. **[2017 GBLR 354]**

---S.20---See Northern Areas Governance Order, 1994, Art. 28(3). **[2010 GBLR 88]**

---S. 24---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Transfer of case---Valid ground---

Petitioner had assailed the order whereby application filed by the petitioner for transfer of civil suit from one court to another was dismissed by the Chief Court--Grounds urged for transfer of case were that respondent in the case using filthy language, misbehaved with him in open court, but Civil Judge did not take any notice of the conduct of respondent in the court; that attitude of the Presiding Officer of silent spectator not only encouraged the respondent, but also disgraced the Court; that petitioner had lost confidence in the independence of the Trial Judge in circumstances and that after dismissal of the transfer application, by the Chief Court, Trial Judge had developed bias against the petitioner and issued non-bailable warrants of his arrest for his absence---Petitioner had alleged that act of the Presiding Officer had seriously reflected upon his independence and fair treatment---Held, that it was correct that a reasonable apprehension in the mind of a litigant about the unfairness or bias of the Presiding Officer of the court was considered a valid ground for transfer of the case, but mere apprehension was not sufficient to doubt the independence of the Presiding Officer of the court---Misbehaviour of a party in the court could render such party liable to be proceeded against for appropriate action in accordance with law, but could not be a good or valid ground for transfer of case from one court to another court---Such was not an ordinary practice in civil proceedings to issue bailable or non-bailable warrants to secure the attendance of a person, unless there was legal compulsion to use the coercive measures for the attendance of a person---Nothing was on record to show that as to for what reason non-bailable warrants of the petitioner were issued---Ground related to the period subsequent to the dismissal of transfer application of the petitioner by the Chief Court, was such that no comments could be offered without examination of the record---Supreme Appellate Court disposed of the petition with observation that petitioner, may if so advised, approach the Chief Court afresh. [2010 GBLR 377]

---S. 47---Specific Relief Act (I of 1877), S. 42--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Suit for declaration---Execution of decree--- Evidence of the plaintiff was recorded, but defendant having failed to appear and produce evidence on the fixed date, matter proceeded and ex parte decree was finally passed---Defendant resisted the execution proceedings filed by the plaintiff in the executing court by filing objections to the said execution under S.47, C.P.C.---Objections filed by the defendant were turned down by the executing court and decree was executed---Both objections raised by the defendant had already been properly discussed and dilated upon in the impugned judgment by the Division Bench of

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Chief Court---No reason was found, in circumstances, to interfere and disturb the finding recorded in the impugned judgment---Petition for leave to appeal was dismissed. **[2011 GBLR 229]**

---Ss. 47 & 12(2)---Execution of decree---Questions to be determined by the court executing the decree---Scope of S.47, C.P.C.---Section 47, C.P.C., was meant to regulate and determine the question raised before the Executing Court---Any or all questions, relating to execution, discharge or satisfaction of the decree, would be determined by the Executing Court and not through separate suit---Executing Court, could not go beyond the decree and its prime function was to execute the decree in stricto sensu---Executing Court, could neither go outside the decree passed by the court of competent jurisdiction, nor could allow its validity to be impugned in executing , proceedings---Executing Court in the executing proceedings, could not determine the question as to whether the view of the court which passed the decree, was right or wrong, same being not open for adjudication by the Executing Court---Executing Court was required to execute the decree as it was--- When the decree had attained finality, Executing Court was not competent at all to rectify any mistake in the decree---Decree was only required to be executed in its letter and spirit, otherwise, it would tantamount to go beyond the decree---When the decree was unambiguous, the Executing Court was bound to execute the same as such---If, some factual objections were raised before the Executing Court at the time of execution of decree, the Executing Court was not under legal obligation to resolve the same during execution proceedings which could only be raised before passing of the decree---Executing Court could not re-determine the rights and liabilities of the parties and once decree was passed, it had to be executed in its terms---Points of attack or defence, which were never agitated at the time of trial, could never be raised at the stage of execution of the decree by filing an independent application under S.47, C.P.C.---If at all the defendants were aggrieved of the judgment under execution, with reservation that same was outcome of exercise of fraud and misrepresentation, then they were at liberty to move an independent application under S.12(2), C.P.C.---Defendants were restrained, under the law from raising such question when the execution proceedings were in progress. **[2012-14 GBLR 148]**

----S. 47---See Specific Relief Act (I of 1877), S. 8. **[2017 GBLR 57]**

----S. 47 & O. XXI, R. 10---Execution petition---Trial Court disposed of execution petition being barred by time---Appellate court below reversed the judgment of Trial Court which order was upheld by the Chief Court---Petitioner contended that execution petition filed by the

respondents was barred by time as same had been filed after lapse of prescribed period of 3 years; that Trial Court had rightly dismissed the said petition; which judgment was wrongly reversed by the appellate court below and upheld by the Chief Court---Respondents, who supported the impugned judgment passed by the Chief Court, had contended that, decree sheet in the case was prepared after more than five and half years of passing of judgment in the suit; that execution petition was filed within 13 days after obtaining certified copy of the decree; that limitation had to be counted from date of issuance of decree and not date of announcement of judgment---Judgment of the Chief Court was well founded, as no infirmity was pointed out by counsel for the petitioner---Appeal was dismissed---Consequently judgment passed by the Chief Court, was affirmed. **[2017 GBLR 233]**

---S. 94 & O. XXXIX, Rr. 1, 2---Temporary injunction grant or refusal of---Factors requiring consideration by court stated. **[2011 GBLR (c) 276]**

---S. 107(2) & O. VII, R. 10---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Return of petition---Scope---Petitioners submitted that they had inadvertently filed petition before Supreme Appellate Court instead of filing the same before the Chief Court---Petitioners requested to return the petition so that the same could be filed before the right forum in order to proceed with the matter in accordance with law---Respondents had strongly opposed the contention of the petitioners and submitted that case could not be returned to the petitioners as there was no provision for returning the petition to the petitioners---Validity---Order VII, R.10, C.P.C., dealing with the return of plaint, had provided the procedure to be followed at the time of returning of plaint; whereas S. 107(2), C.P.C., laid down that appellate court would have the same powers and would perform the same duties as were conferred by C.P.C. on the courts of original jurisdiction in respect of suits instituted therein---Petitioners had successfully established that appeal was filed in wrong forum---If the request of petitioners was not allowed, petitioners/legal heirs of the deceased would seriously prejudiced and would suffer an irreparable loss and injury---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was allowed---Original petition for leave to appeal was ordered to be returned to the petitioners enabling them to file the same in the competent court of law. **[2016 GBLR 100]**

---S. 114---Limitation Act (IX of 1908), Arts. 173 & 181---Review petition---Limitation---Impugned order, if being illegal and void,

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could be challenged within a period of three (3) years under Art. 181 of Limitation Act, 1908. **[2011 GBLR (c) 308]**

----S. 114---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **[2012-14 GBLR 163]**

----S. 114---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **[2012-14 GBLR 100]**

----S. 114 & O. XLVII, R. 1---Gilgit-Baltistan (Empowerment v and Self-Governance) Order, 2009, Art. 65---Review of Supreme Appellate Court Judgment---Scope---Mere filing of a review petition, could not be taken as granted---Scope of review was very limited and review jurisdiction could not be called upon as a matter of routine---Applicant, who sought review of an order, must show that an error or mistake was apparent on the face of record---Review could not be an alternate for an appeal, nor it could akin to the rehearing of the whole matter---Review of an order could only be exercised, when an error or mistake had been shown floating on the surface of record and it was so patent that, if permitted to stay intact, would result in illegality and gross injustice--- In addition to a patent error or mistake, applicant had to show that an important matter of evidence had been discovered, which after exercise of due diligence, was left without the knowledge of the court, or was not produced at the time when the order was made---In the present case, no such illegality,, irregularity, mistake or error had been shown to be floating on the face of record---Order under review transpired that same did not suffer from any infirmity warranting interference of the Supreme Appellate Court---No ground having been made out for review of order, review application was dismissed. **[2012-14 GBLR 200]**

----S. 115---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Revision petition---Withdrawal of power of attorney by petitioner's counsel--- Dismissal of revision petition as withdrawn by Chief Court---Validity---Supreme Appellate Court granted leave to appeal to consider as to whether on withdrawal of Power of Attorney by Counsel, Chief Court was required to issue notice to petitioner instead of straight away passing impugned order. **[2011 GBLR (a) 308]**

----S. 115---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60(13) & 71(1)---Revision petition---Application by counsel of first petitioner for withdrawal of Power of Attorney--- Counsel's plea was that after his engagement, first petitioner remained absent despite issuance of notice to him---Statement of co-petitioner made in court on even date that he did not want to pursue the case---

Dismissal of revision petition as withdrawn by Chief Court---Validity--Impugned order was silent regarding grant of permission to withdraw Power of Attorney or dismissal of revision petition to the extent of first petitioner on such ground---Chief Court after being satisfied with such statement of co-petitioner had dismissed revision petition---After waiver of his right by co-petitioner, Chief Court instead of dismissing the whole revision petition should have issued notice to first petitioner after withdrawal of Power of Attorney by his counsel---Non-serving of notice upon first petitioner amounted to condemn him unheard---Principles of natural justice, and scheme of law demanded that preference must be made to disposal of matters on merits instead of dealing with same on technical grounds and slipshod manner---Supreme Appellate Court set aside impugned order and remanded case to Chief Court for its decision on merits after notice to first petitioner. **[2011 GBLR (b) 308]**

---S. 115---Revision petition against a dead person---Maintainability---Petitioner's plea that non-impleading of legal heirs of deceased respondent was a procedural mistake; and that dismissal of revision on basis of a technical ground or procedural error would not be justified---Validity---Legal heirs of deceased respondent were available on record and petitioner was in knowledge thereof---Petitioner in memo, of revision petition had shown deceased as respondent, but had not added names of his legal heirs---Revision for being incompetent was dismissed in circumstances. **[2011 GBLR 299]**

---S. 151---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13). **[2011 GBLR 374]**

---Ss. 151 & 152---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Correction of typing/clerical mistake arising out of an order---Chief Court corrected Typing/Clerical mistake in the order on application under Ss. 151 & 152, C.P.C.---Validity---Advocate General was unable to point out as to how the impugned order was against the interest of the petitioners; and what right of the petitioners had been infringed---No mistake, error or illegality was found in impugned order---Section 152, C.P.C. had empowered the courts to correct any clerical, arithmetical, typing mistake or error in a judgment, decree or order arising therein from any accidental slip or omission on its own motion or on the application of any party---State Counsel had not been able to point out any factual or legal error or mistake in the impugned order warranting interference of Supreme Appellate Court---Petition was dismissed. **[2011 GBLR 263]**

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S. 151---See Civil Procedure Code (V of 1908), O. VI, R. 17. **[2012-14 GBLR 63]**

---S. 151---See Civil Procedure Code (V of 1908), O. IX, R. 13. **[2012-14 GBLR (a) 172]**

---Ss. 151 & 152---Supreme Appellate Court Rules, O. 33(5)--- Typing mistake in the judgment of Supreme Appellate Court--- Correction of---Scope---Suit filed by the petitioners/plaintiffs, was decreed by the. Trial Court in favour of the plaintiffs, but, while writing reasons of the short order, inadvertently and due to typing mistake, instead of typing “decreeing the suit”, it was typed that “the judgment/decreed of the Trial Court was set aside”---Office, raised objections for filing belatedly application under S. 151, C. P. C., read with O. 33(5) of Supreme Appellate Court Rules to correct the judgment---Counsel for the plaintiffs submitted that where correction in typing mistake was sought under S.152, C.P.C., no limitation existed for filing such application---Application as prayed was allowed---Last paragraph of the judgment, was corrected accordingly. **[2017 GBLR 70]**

---O. I, R. 10(2)---See Specific Relief Act (I of 1877), S. 8. **[2015 GBLR 322].**

---O. III, R. 2---See Limitation Act (IX of 1908), S. 5. **[2011 GBLR 382].**

---O. V, Rr. 17 & 20--- See Civil Procedure Code (V of 1908), O. IX, R. 13. **[2012-14 GBLR 92].**

---O. VI, R.2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Money suit---Suit for recovery of money filed by the plaintiff was dismissed by the Trial Court as time-barred---Chief Court, on appeal set aside judgment of the Trial Court and remanded the case to the Trial Court to frame proper issues after revisiting the pleadings and adjudicate the matter afresh---Plaintiff filed petition for leave to appeal against judgment of the Chief Court on the ground that Chief Court instead of deciding the appeal on merits and considering the question of limitation in proper manner, was not justified to remand the case to the Trial Court---Validity---Trial Court as well as Chief Court had not properly attended the controversial question of fact of law arising out of the pleadings of the parties---Trial Court without framing proper issues, made meaningless finding on some issues---Chief Court also without framing additional issues or indicating the defect in the issues already framed, remanded the case---Held, in view of nature of dispute

between the parties and character of suit, court instead of dilating upon factual controversy, directed that the Trial Court could reframe the issues or frame additional issues, if necessary, or if so proposed by counsel for the parties, could also permit the parties to adduce further evidence, if so required Supreme Appellate Court directed that present was an old case therefore trial Court while proceeding expeditiously and without granting unnecessary adjournment to either party will conclude the proceedings before winter vacation and decide all issues in the Suit on the question of law and fact including the question of limitation on merits in accordance with law. **[2010 GBLR 351]**

---O. VI, R. 10---Mala fide asserted in plaint---Validity---Mere such assertion would not be sufficient to prove element of mala fides in absence of solid and concrete proof. **[2011 GBLR (b) 276]**

---O. VI, R.17---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Amendment of plaint---Language used in O. VI, R.17, C.P.C. to the effect that “all such amendments would be made as could be necessary for purpose of determining the real question in controversy”, was mandatory in nature---Once the court decided that amendment was necessary for the purpose of determining the real question, the court was required by law, not only to allow an amendment application made by a party in that behalf, but was also bound to direct the amendment for the said purpose---Full power of amendment must be enjoyed and should always be liberally exercised---When allowing the amendment in the plaint, the defendant’s right should also be kept in view---Nature of the suit, insofar as its cause of action was concerned, was not to be changed by the amendment, because when the cause of action was changed, the suit itself would become different from the one initially filed---Dismissal of application for amendment of plaint on technical grounds, without touching merits and without determining right to amend the pleadings, was no bar for maintaining second application for the same purpose--- Second application should only be barred, when earlier was decided on merits---Once a decision was given on an application under O. VI, R.17, C.P.C. regarding the same subject matter, similar application could not be filed again on the same ground---Plaintiff having proved a genuine case for amendment, which was permissible, amendment should be liberally allowed in view of the grounds high-lighted in the amendment application---Petition for leave to appeal was converted into appeal and was allowed by Supreme Appellate Court, in circumstances. **[2010 GBLR (b) 356]**

Revision petition before Chief Court and the same was dismissed---Validity--- Petitioner had neither questioned validity of allotment of



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respondents at an early stage nor pleaded in the suit that it was a case of double allotment, therefore, he could not be allowed to set up a new case with change of character of suit at such stage--- Supreme Appellate Court did not find any substantial ground or reason for interference in judgment of Chief Court---Leave to appeal was refused [2010 GBLR 299]

---O. VI, R. 17---Specific Relief Act (I of 1877), Ss. 8 & 42--- Suit for possession and declaration---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---

Amendment of pleadings---Inheritance---Plaintiffs (petitioners) sought amendment of the suit with the contention that if proposed amendment was not allowed the decree might not be executable against all the defendants collectively which might result in a second round of litigation between the parties--- Validity---Amendment was entirely of formal nature which would neither have any effect on the right of the parties in the inherited property nor would it change the character of the suit, instead if the suit in its present form was decreed, the parties might face another round of litigation and proposed amendment might save them from further litigation---Petition for leave to appeal, in circumstances, was allowed and converted into appeal and the judgment of the Chief Court was reversed and that of the District Judge was restored. [2011 GBLR (a) 571]

---O. VI, R. 17 & S. 151---Gilgit-Baltistan Pre-emption Act (VII of 2010), S. 5---Oaths Act (X of 1873), S. 6---Pre-emption suit--- Amendment of pleadings---Scope---Trial Court dismissed suit on merits, but Appellate Court below decreed the same--- Appellant/Vendee challenged decree granted by Appellate Court below in favour of pre-emptor by filing revision before Chief Court--- Pending disposal of said revision, vendee/appellant submitted an application under O. VI, R.17, C.P.C., read with S.151, C.P.C. for amendment of the joint written Statement---Chief Court refused to allow the amendment---Validity--- Pleadings submitted by both the parties to the suit had been verified on oath---Chief Court had properly refused to exercise jurisdiction in refusing the amendment of pleadings, as the amendment was meant to establish absolutely a new case of defence totally inconsistent to the admission made in the written statement on oath---Written statement had been submitted jointly by both the defendants and had admitted the subject matter to be ancestral property which was held by respondent/vendor as his share, but respondent did not join the new plea made by the appellant/vendee through the application for amendment of pleadings-

--Revision petition, sub judice before the Chief Court was directed to be decided on merits (GBLR-2012-14, P/6)

---Order. VI, R 17--- Amendment of plaint pending revision--- Procedure---Gift---Ingredients of a valid gift---Non-following of Islamic Law of gift---Effect---Both courts below had dismissed suit, plaintiffs filed revision petition against judgments of courts below, before the Chief Court, which was dismissed---Pending revision before the Chief Court, plaintiffs had submitted application under O. VI, R.17, C.P.C., for amendment of plaint, which was allowed--- Plaintiffs filed amended plaint and defendants/respondents filed amended written statement---Plaintiffs/petitioners having raised factual points in the amended application, Chief Court was legally bound to frame additional issues in the light of amended plaint, which was not done and without resolving issues and giving an opportunity to the plaintiffs/petitioners enabling them to prove their case in the light of amendments, revision was dismissed--- Defendants/respondents had alleged that disputed property was gifted to them by the father of the plaintiffs/petitioners, but the defendants failed to prove the factual position of the gift in accordance with law--- Chief Court had not followed the provisions of Islamic Law regarding gift---Ingredients of a valid gift. Declaration of gift by the donor, as expressed or implied; acceptance of gift by the donee and delivery of possession of subject of gift by the donor to the donee were not established---Defendants failed to adduce cogent and convincing evidence Appeal, was allowed by the Supreme Appellate Court and judgments/decrees passed by the three courts below were set aside. **[2015 GBLR 141]**

---O. VI, R. 17---See Specific Relief Act (I of 1877), S. 8. **[2015 GBLR 322]**

---O. VI, R- 17---See Specific Relief Act (I of 1877), S. 42. **[2015 GBLR 346].**

---O. VI, R. 17 & S. 151---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Amendment in plaint---Scope--- Trial Court allowed amendment in the plaint, which having been upheld by appellate court below in civil revision, plaintiff had filed writ petition, which was also dismissed in limine without giving any reason by the Chief Court---Impugned order of Chief Court was not a speaking order as no reason had been given while dismissing writ petition in limine---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed---Order of Chief

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Court was set aside and remanded with direction to hear the parties afresh, and decide the same on its merits. **[2016 GBLR 248]**

---O. VI, R. 17--- Application for amendment in written statement--- Dismissal of application--- Petitioners during the course of proceedings, filed application under O. VI, R. 17, C.P.C, for amendment in the written statement---Trial Court, dismissed said application and said order was upheld by the Chief Court--- Petitioners, contended that amendment in the written statement sought was necessary for just decision of the case as application under O. VI, R.17, C.P.C., was supported through revenue record---Counsel for the petitioners, could not point out any illegality and infirmity in the impugned judgments of the courts below---Petition for leave to appeal was dismissed. **[2017 GBLR 217]**

---O. VI, R. 17---Suit for declaration and permanent injunction--- Amendment of pleadings, application for--- Pending suit, plaintiff/petitioner filed application under O. VI, R. 17, C.P.C. for amendment of plaint which application was allowed and case was adjourned for filing of amended plaint---Petitioner, on the adjourned date failed to file amended plaint and Trial Court struck off the right of filing the plaint---Said order was upheld up to the Chief Court--- Validity---Counsel for the petitioner, could not point out any illegality and infirmity in the impugned orders---Impugned order passed by Chief Court, was well reasoned and well founded, no indulgence, was warranted by Supreme Appellate Court. **[2017 GBLR 172]**

---O. VII, R.2--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)--- Suit for recovery of money-- - Concurrent findings of fact by the courts below--- Judgment and decree passed by Trial Court was maintained by High Court in exercise of its appellate jurisdiction---Validity--- Plaintiff could neither prove any additional work done by him nor any oral agreement between the parties regarding alleged additional work carried out by plaintiff---Concurrent findings of two courts below on material issue were fully supported by evidence on record, therefore, such findings on question of fact were not a result of gross misreading and non-reading of evidence---Both the courts below had rightly dismissed the suit and appeal filed by plaintiff---Leave to appeal was refused. **[2010 GBLR 281]**

---O. VII, R.2 & O. IX, R. 13---Limitation Act (IX of 1908), S.5 & Art. 164---Gilgit-Baltistan (Empowerment and Self- Governance) Order, 2009, Art. 60(13)---Suit for recovery of amount---Application for setting aside ex parte decree--- Limitation---Condonation of delay-

--Suit having been decreed ex parte, defendant filed application for setting aside said decree after more than four months from passing of the same, which was to be filed within thirty days according to Art. 164 of Limitation Act, 1908---Counsel for defendant who was in attendance when the ex parte decree was passed, despite the knowledge filed an application under O. IX, R.13, C.P.C. along with application under S.5, Limitation Act, 1908 for condonation of four months' delay after lapse of prescribed limitation---Defendant seeking condonation of delay was required to explain delay of each day beyond period of limitation---General and vague statement in support of condonation of delay would not be sufficient---Grounds advanced by counsel for setting aside ex parte decree were neither bona fide nor tenable at the law---Courts below and Chief Court, in circumstances, had rightly dismissed application for condonation of delay. **[2010 GBLR 242]**

---O. VII, R.2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for recovery of amount---Territorial jurisdiction---Transaction of purchase of land was executed at Rawalpindi and Trial Court at Astore (Gilgit-Baltistan) decreed the suit filed by the plaintiff--- Question of territorial jurisdiction was involved---Chief Court in appeal held that judgment of Trial Court Astore (Gilgit- Baltistan) was without jurisdiction and lawful authority--- Validity---Defendant had suffered irreparable loss because of uncalled for prolonged litigation by the plaintiffs and the judgment passed by the Trial/Civil Court was without jurisdiction---Supreme Appellate Court observed that administration of justice demanded that defendants be compensated; plaintiff was directed to pay cost of Rs. 50,000 to the defendants within 15 days---No infirmity/illegality could be pointed out in the impugned judgment passed by the Chief Court in First Appeal---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Judgment passed by the Chief Court, being well founded and well reasoned, was upheld, whereas judgment/decreed passed by the Trial Court, being without jurisdiction, was set aside, in circumstances---Defendants, however, could claim damages against the plaintiff in accordance with law. **[2016 GBLR 258]**

---O. VII, R. 2 & O. IX, Rr. 6, 7, 13--- Specific Relief Act (I of 1877), Ss. 8 & 42--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60--- Suit for possession, declaration and recovery of amount---Ex parte judgment and decree, setting aside of---Petition for leave to appeal---On the date when case was fixed for recording statements of the witnesses of the plaintiff, defendant and his counsel remained absent and case was proceeded ex parte---Trial Court after

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recording the statements of the witnesses of the plaintiff, announced its judgment/decreed ex parte with detailed discussion on each and every issue--Revision filed by defendant against the judgment of the Trial Court was dismissed by the appellate court and writ petition filed by the defendant therefore having also been dismissed by Chief Court--Defendant had filed petition for leave to appeal before Supreme Appellate Court--Contention of the defendant was that ex parte judgment and decree had been passed against him due to intentional and mala fide advice of his counsel---Validity---Ill-advice of the counsel was no ground for setting aside ex parte decree---Procedure adopted by the counsel of defendant, was not in consonance with law and prescribed procedure---Law would come to rescue those persons who approached the court as per procedure and law---Defendant could not even append the detail of documents about his alleged ailment with the petition for leave to appeal to Supreme Appellate Court---Division Bench of Chief Court and courts below had exhaustively dealt with each and every point argued before it---No ground was available to interfere with the well founded judgment---Leave to appeal was refused, in circumstances. **[2016 GBLR 1]**.

---O. VII, R. 2---Suit for recovery of money---Petition, had arisen out of impugned order passed by Chief Court, wherein revision petition filed by the petitioner was accepted and case was remanded to appellate court for re-writing the judgment after hearing the parties---Appellate Court below, partially allowed the appeal and petitioner was not declared entitled for recovery of money from the respondents---Contention of the petitioner that revision petition of the respondents dismissed by the Chief Court, directing them to join the proceedings before appellate court was not tenable in law---Counsel for the petitioner, could not point out any illegality/infirmity in the impugned judgment/order---Leave to appeal was refused. **[2017 GBLR 43]**

---O. VII, R.2---Suit for recovery of money---Respondent filed suit for recovery of Rs. 400,000 on the basis of alleged dishonoured Bank cheque---Said suit was decreed ex parte--- Validity---Office had pointed out that though petition for leave to appeal was filed in time, however, certain objections raised by the office, were removed belatedly after a delay of 2 months---Counsel for the petitioner, could not point out any infirmity and illegality in the impugned order---Leave to appeal could not be granted. **[2017 GBLR 186]**

---O. VII, R. 2 & O. XVIII, R. 17---Suit for recovery of amount---Recalling witnesses for cross-examination---Suit was sub judice, petitioner/defendant filed application before the Trial Court, contending that at the time of recording statements of plaintiff

witnesses before the Trial Court, said witnesses were not cross-examined by the defendants, due to absence of District Attorney---Petitioner/defendant requested that he be allowed to cross-examine plaintiff witnesses, as that was his right--- Application of the defendant was concurrently dismissed by the courts below---Counsel for plaintiffs/respondents opposed arguments advanced by Advocate General and contended that District Attorney on behalf of the defendant was present in the court when evidence of the plaintiff witnesses was recorded; that all the proceedings were in the knowledge of District Attorney; that defendants could not recall the witnesses at belated stage---All plaintiff witnesses were Government Officers and had retired and it was not possible to produce them---Right to put question at any stage of trial of suit or to call any witness, was given to the court only---Court could put questions to the recalled witnesses---Parties could not be allowed to call the witnesses to fill the lacunae of the case---Provisions of O. XVIII, R. 17, C.P.C., were meant to meet special circumstances, there could be no warrant to recall witnesses, where there was no question of any ambiguity---To recall the witnesses at belated stage in the present case was only to fill lacunae of the case---Judgments/orders of courts below, were well reasoned and no infirmity and illegality was pointed out by the Advocate-General---Petition for leave to appeal was converted into appeal and was dismissed. **[2017 GBLR 64]**

---O. VII, R. 2 & O. XXXVIII, R. 5---Suit for recovery of money along with an application under O. XXXVIII, R. 5, C.P.C., for attachment of property before judgment---Trial Court decreed the suit, but appellate court below set aside judgment and decree of the Trial Court---Revision against judgment and decree by the appellate court below was set aside by the Chief Court---Validity---Contention of the petitioner/defendant was that suit filed by the plaintiff was not maintainable because plaintiff had asked two reliefs in the same suit---Respondent/plaintiff supported the impugned order with contention that Chief Court had rightly accepted his revision petition as appellate court below lacked pecuniary jurisdiction to entertain and decide the appeal--- Validity---Appellate court below had no pecuniary jurisdiction to entertain the suit---Impugned judgment of the Chief Court, was well reasoned, as no infirmity or illegality was pointed out by counsel for the petitioner---Petition for leave to appeal was converted into appeal and same was dismissed---Judgment of the Chief Court, was affirmed, in circumstances. **[2017 GBLR 347]**

---O. VII, Rr. 2 & 11---Suit for rendition of account---Rejection of plaint---Suit having been dismissed under O. VII, R.11, C.P.C., plaintiff filed first appeal before appellate court below, which was

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returned back to the plaintiff due to lack of jurisdiction---Revision petition filed by the plaintiff before Chief Court, was dismissed, being meritless---Validity---Counsel for the petitioner/plaintiff, could not point out any infirmity in the judgment of the Chief Court which was well reasoned and passed in accordance with law and facts of the case---No interference was warranted, in circumstances---Appeal was dismissed and impugned judgment passed by the Chief Court, was upheld. [2017 GBLR 193].

---O. VII, R. 11---See Specific Relief Act (I of 1877), S.42. [2010 GBLR 314]

---O. VII, R. 11---See Specific Relief Act (I of 1877), S.42. [2010 GBLR 317 ]

---O. VII, R. 11---See Gilgit-Baltistan Pre-emption Act (VII of 2010), S. 34. [2015 GBLR (b) 284]

---O. VII, R. 11---See Specific Relief Act (I of 1877), S. 42. [2015 GBLR 346]

---O. VII, Rr. 11 & 13---Rejection of plaint---Scope--- Interpretation of O. VII, R. 11, C.P.C.---Order VII, R. 11, C.P.C., enabled the court to reject a plaint, when the court would come to the conclusion; (i) that; a plaint did not disclose a cause of action; (ii) that where the relief claimed was under valued and despite the court had given time to correct the valuation, failed to comply; (iii) that where the suit was properly valued, but the plaint was written upon paper insufficiently stamped and the plaintiff failed to cure the legal deficiency, despite the court granted time to cure the same; and (iv) that where the suit appeared from the statement of the plaint to be barred by any law---Order VII, R.11, C.P.C., envisaged rejection of plaint and did not deal with the dismissal of the suit---Order VII, R. 11, C.P.C., read with O. VII, R.13, C.P.C., would show that rejection of plaint would not preclude the plaintiff from filing fresh plaint on the same cause of action, unless the earlier suit was disposed of by an order which in substance, was dismissal---Dismissal order of a suit would debar fresh suit on the same cause of action under the principle of res judicata---Order VII, R. 11(d); C.P.C., containing the word statement in the plaint, signified, that to exercise power under Cl. (d) of the Rule, it would require the court to look into the statement in the plaint and if it was apparent from the plain reading of the averments of the plaint, that the plaint was barred by any law, then the court would reject the same, meaning thereby that, the plaint was prima facie barred by law---Term ‘any law’ in the said clause, was a statutory term. [2015 GBLR (a) 284]

---O. VII, R. 11--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Rejection of plaint--- Scope--- Petition for leave to appeal---Where the plaint would not disclose cause of action, same had to be rejected and for that purpose only the plaint was to be looked and nothing else--- Written statement also could not be looked---In the present case, plaint showed that plaintiff had disclosed cause of action in the plaint and defendant had filed application under O. VII, R. 11, C.P.C., for rejection of plaint urging that plaintiff had no locus standi to file the suit---Validity---Plaintiff in fact having disclosed cause of action in the suit, petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was allowed---Impugned orders/judgments of the courts below were set aside and case was remitted to the Trial Court to decide the matter on merits. **[2016 GBLR 103]**

---O. VII, R. 11---Rejection of plaint---Petitioners/defendants filed application under O. VII, R. 11, C.P.C., for rejection of plaint, which was allowed by the Trial Court and upheld by the appellate court---Chief Court accepted revision setting aside the orders of the courts below and remanded the matter to the Trial Court for adjudication on merits---Validity---Plaint could be rejected under O. VII, R. 11, C.P.C., in case it did not disclose a cause of action or the relief claimed was undervalued---Plaintiffs on being required by the court, corrected the value within the time fixed by the court---If the relief claimed was properly valued, but the plaint was written upon insufficient stamped paper and the plaintiff on being required by the court to supply the requisite stamp paper, within time fixed by the court, would fail to do so, the plaint could be rejected---Chief Court had rightly accepted the revision and correctly interpreted the provisions of O. VII, R. 11, C.P.C.---Findings of the Chief Court were well reasoned--- Petitioners/defendants failed to point out any infirmity or illegality in the judgment---No interference of Supreme Appellate Court was warranted into the judgment of the Chief Court and was maintained. **[2017 GBLR 372]**

Court---Defendant was present in Trial Court on 22-9-2005, in execution petition and having been informed of passing of ex parte decree, he filed application under O. IX, R. 13 C.P.C. on 25-11-2005, i.e. after lapse of two months and three days--- Application for setting aside ex parte decree was time barred and was hit by Art. 164 of Limitation Act, 1908, as the same had been filed after expiry of period provided by law i.e. 30 days---Supreme Appellate Court declined to interfere in concurrent judgments and decrees passed by the courts below--- Leave to appeal was refused. **[2011 GBLR (b) 334]**



---O. IX, R. 6 (1) (a)---Words “may proceed ex parte and pass decree without recording of evidence” in R.6(l)(a), O. IX, C.P.C.---Scope---Where Court proceeds ex parte, the court has to further decide, in exercise of its discretion, whether it should decree the claim against defendant, after recording of evidence or without recording of evidence---Like all discretions vested in the court, such discretion must be exercised judiciously. [2011 GBLR (a) 334]

---O. IX, R. 8 & O. XVII, R. 2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60, 69 & 71---Dismissal of suit in default---Suit was concurrently dismissed by the Trial Court and appellate court below for non-prosecution---Chief Court dismissed, concurrent findings of courts below---Validity---Order sheets maintained in the case, were very short, ambiguous, which revealed that Presiding Officer of the Trial Court was in a hurry and not in a state of mind to maintain the justice in accordance with law---Presiding Officer as well as the Reader of the court, were unaware of the importance of the order sheet in judicial matters and they acted like “Administrative Officers”---Presiding Officer had used the words “suit called for hearing” in the order sheet dated 20-9-2008 whereby, suit had been dismissed for non-prosecution---Suit had not been fixed, either for framing of issues or for adducing of evidence---Neither the case was fixed for final arguments, nor for “hearing” of the suit---Order sheet was maintained by the Reader of the court and the Reader under the law was authorized just to adjourn the case in absence of the Presiding Officer and to fix the case for “hearing”---District Judge/appellate court below, instead of curing the legal error committed by the Trial Court, agreed with the Trial Court---Order whereby the Trial Court, dismissed the suit, was without jurisdiction and void ab initio; it could not be allowed to stand---Chief Court, had very rightly recalled the orders passed by the courts below---Supreme Appellate Court, agreed with the Chief Court, petition for leave to appeal was declined and the impugned order was maintained---Case was remitted to the Trial Court with the direction to issue notice to the parties to attend the court, fixing any date in the summons and proceed the suit to adjudicate the same on merits. [2015 GBLR (a) 24]

---O. IX, R.8 & O. XVII, R.2---Procedure “where defendant only appeared” and “where parties failed to appear on the day fixed for hearing”---Order IX, R.8, C.P.C., would apply, where none of the plaintiffs appeared on the first date of hearing, while O. XVII, R.2, C.P.C., would apply to the day to which hearing of the suit was adjourned---Order XVII, R.2, C.P.C., provided the action of the court under O. IX, C.P.C.--- Order IX, R.8, C.P.C., was mandatory in its nature, while O. XVII, R.2, C.P.C., gave a discretion to the court to

take any action under O. IX, C.P.C., or otherwise to make any order, the court thinks fit in exercise of its discretion. **[2015 GBLR (b) 24]**

---O. IX, R.13---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Ex parte decree, setting aside of---Administration of justice---Ex parte decree passed against defendant was set aside by Trial Court but Lower Appellate Court in exercise of revisional jurisdiction maintained the same---Chief Court restored the order passed by Trial Court---Validity---Person might not be non-suited on the basis of technicalities of law, rather efforts should be made to decide the matter on merits in the interest of justice---Non-appearance of defendants on the date on which ex parte order was passed was not considered a valid ground to pass ex parte decree and consequently Chief Court rightly reversed the order---Chief Court having discussed all aspects of the matter in detail remanded the case to Trial Court for decision on merits and Supreme Appellate Court did not find any valid ground for interference in the order of Chief Court--Leave to appeal was refused. **[2010 GBLR 132]**

---O. IX, R.13---See Civil Procedure Code (V of 1908), O. VII, R.2. **[2010 GBLR 242]**

---O. IX, R.13 & S.151---Limitation Act (IX of 1908), Art. 181---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)--- Ex parte decree, setting aside of--- Limitation---Date on which ex parte proceedings were initiated was fixed for disposal of an interlocutory application i.e. for setting aside of ex parte proceedings--Trial Court was required to have decided the fate of said application first; and then to proceed onwards, but instead of dealing with said application, Trial Court ordered ex parte proceedings and consequently passed ex parte decree against the defendant---Date fixed being not the date for hearing, ex parte proceedings and all subsequent orders including ex parte decree in consequence thereof passed by the Trial Court was of no effect, void and liable to be set aside---Application for setting aside ex parte proceedings which was filed within a period of 30 days was within time---Ex parte decree having been passed on a date which was fixed for hearing of an interlocutory application; and was not of hearing no limitation would run against it and same could be set aside by invoking inherent powers under S.151, C.P.C.---Accordingly period of limitation would be regulated by residuary Art. 181 of Limitation Act, 1908, providing three years limitation period for setting aside of ex parte decree---In the present case, ex parte decree was passed on 23-6-2005 and appeal was filed on 24-8-2005, against ex parte decree, same was not time-barred---Chief Court had rightly set aside the same---Findings recorded by the Chief

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Court were based on cogent and plausible reasons, warranting no interference. [2010 GBLR 463]

---O. IX, R.13 & O. XVII, R.3---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Ex parte decree, setting aside of---Opportunity to produce evidence--- Defendant failed to produce his evidence, therefore, Trial Court passed ex-parte decree against him---Chief Court, in exercise of revisional jurisdiction set aside ex parte decree and provided one opportunity to defendant to produce his evidence--- Validity---Supreme Appellate Court, with the consent of parties, directed Trial Court that if defendant failed to produce evidence on the date fixed by Trial Court in terms of order passed by Chief Court, the ex parte decree passed by Trial Court would hold the field---Order passed by Chief Court was modified--- Petition was disposed of accordingly. [2010 GBLR 112]

---O. IX, R. 13, O. V, Rr. 17 & 20---Limitation Act (IX of 1908), Art. 164---Specific Relief Act (I of 1877), Ss. 42 & 54--- Suit For declaration and permanent injunction---Ex parte decree, setting aside of---Limitation---Defendants/petitioners having remained absent and failed to appear on any date of hearing despite proper service of summons---Ex parte decree, was passed against defendants--- Application filed by the defendants under O. IX, R.13, C.P.C. for setting aside ex parte decree having rightly been dismissed by the Trial Court and Appellate Court below, defendants had filed revision petition in the Chief Court---Chief Court declined to set aside ex parte decree--- Validity---Application for setting aside ex parte decree and restoration of suit, under O. IX, R. 13, C.P.C. was filed after lapse of a period of about 3 years, 2 months and 22 days--- Limitation for filing of appeal and application under O. IX, R.13, C.P.C., was 30 days as provided under Art. 164 of Limitation Act, 1908---Substituted service was effected by publication of notice through a Daily newspaper not locally published, and not in any of the local newspapers--- Application of the petitioners/defendants, being time-barred, both courts below and Chief Court had correctly dismissed application for setting aside ex parte decree---Impugned judgment/order being not suffering from any illegality, no exception could be taken by Supreme Appellate Court, in circumstances. [2012-14 GBLR 92]

---O. IX, R. 13, O. XVII, Rr. 2, 4 & S. 151---Specific Relief Act (I of 1877), Ss. 39 & 54---Suit for cancellation of power- of-attorney and perpetual injunction---Date fixed was holiday--- Effect---Ex parte decree, setting aside of---Trial Court, issued the process to ensure the attendance of the defendants and despite exhausting all measures, necessary for appearance of the defendants i.e. issue of summons;

issuance of substituted summons and publication in the newspaper, defendants failed to defend the suit---Trial Court passed ex parte decree and defendants filed application under O. IX, R. 13, C.P.C. for setting aside the same, which application was dismissed and order of setting aside ex parte decree, was maintained by Appellate Court---Validity---Under O. XVII, R. 4, C.P.C., parties were bound to attend the court, on the date fixed for proceedings, on the following working day after holiday---Said provision had been introduced to avoid delay in proceedings of the case---Order XVII, R.2, C.P.C., had provided that when a party would make himself absent from the court on the adjourned date of hearing, court was vested with the discretion to dispose of the suit in one of the modes prescribed under O. IX, C.P.C., or make such other order as the court would deem fit---Date, in the present case, was fixed for appearance of the defendants before the court, and not for hearing the case---Ex parte decree passed on said date was passed without application of judicious mind, which had rendered the same void ab initio in law and could be set aside even in exercise of inherent powers of the court under S. 151, C.P.C---Petition being meritless, was dismissed, in circumstances. **[2012-14 GBLR (a) 172]**

---O. IX, R. 13---Limitation Act (IX of 1908), S. 5 & Art. 164---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art 60(13)-- Recovery suit---Ex parte decree, setting aside of---Limitation---Suit was decreed ex parte in favour of plaintiff on 2-10-2004 and application for setting aside ex parte decree was filed 63 days after having knowledge of ex parte decree--- Contention of defendant was that he had shifted his permanent residence from place "S", therefore, he could not be served with the process---Validity---Defendant was a permanent resident of place "S", his landed property as well as his residential house were still situated at place "S"---Defendant was a government contractor, carrying on his business in Gilgit- Baltistan, he might have purchased a house in place "R" but it could not be construed as a permanent shifting from place "S" to place "R"---Defendant held permanent residence in place "S" and had deliberately avoided service of summons issued by Trial Court---All methods including publication in newspaper to procure attendance of defendant were exercised by Trial status quo be maintained by the parties till the case fixed and application under O. XXXIX, Rr. 1, 2 read with S.151, C.P.C., filed by the petitioners was heard and decided by the Chief Court. **[2016 GBLR 243]**

---O. IX, R. 13--- Ex parte judgment and decree---Setting aside of---Suit filed by respondent/plaintiff was dismissed by the Trial Court---Appellate court below, having upheld judgment passed by the Trial

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Court, respondent/plaintiff filed revision petition before Chief Court, which was allowed while reversing the impugned orders of both the courts below by proceeding against the petitioner ex parte---Validity--- Impugned order had been passed ex parte and no opportunity of hearing had been given to the petitioner, which was against the principles of natural justice--- Petition for leave to appeal was converted into appeal and allowed---Case was remanded to the Chief Court to hear and decide the revision petition afresh on its merits in accordance with law. [2017 GBLR 80]

---O. IX, R. 13---Ex parte decree, setting aside of---Suit filed by respondents/plaintiffs, having been decreed ex parte, petitioners/defendants filed application in the Trial Court for setting aside said decree and Trial Court while setting aside ex parte decree restored the case subject to payment of cost of Rs. 7000 by the defendants--- Respondents, feeling aggrieved, filed civil revision petition which was allowed---Petitioners/defendants filed writ petition before the Chief Court, which was dismissed---Validity---Proceedings of the suit had almost been completed by the Trial Court and suit property was in possession of petitioners/defendants who were intentionally using delaying tactics in order to prolong their possession over the disputed property---Case had to be decided on its merits, rather on technical grounds---Petition for leave to appeal was converted into appeal and was allowed---Impugned order passed by the Chief Court, as well as judgment in revision by appellate court below, were set aside and order passed by the Trial Court, was maintained and cost of Rs. 7000 imposed, was remitted---Suit filed by the respondents was directed to be treated as pending adjudication---Case was remanded to the Trial Court to hear and decide the same afresh on merits---Parties were directed to maintain status quo till cognizance by the Trial Court. [2017 GBLR 13]

---O. IX, R. 13---Limitation Act (IX of 1908), S. 5---Suit for specific performance---Limitation---Ex parte decree---Respondents had also filed cross suit in the same court---Subject matter in both the suits being common, both suits, were consolidated and heard together--- Evidence of petitioners/plaintiffs was recorded in their suit, which was closed---When suit of the respondents was fixed for evidence, plaintiffs were called absent and after hearing ex parte arguments, said suit was decreed---Plaintiffs, filed application under O. IX, R.13, C.P.C., with application under S.5 of Limitation Act, 1908 for condonation of delay and reversal of ex parte decree, which was dismissed by the Trial Court, and dismissal order passed by the Trial Court was upheld up to the Chief Court---Judgment of the Chief Court was well founded as no infirmity in the said judgment was pointed out

by counsel for the petitioners---Appeal was dismissed. **[2017 GBLR 256]**

---O. XIV, Rr. 3 & 5--- See Specific Relief Act (I of 1877), s. 42. **[2010 GBLR 582]**

---O. XIV, R. 1--- See Gilgit-Baltistan Pre-emption Act (VII of 2010), s. 34. **[2010 GBLR (b) 282]**

---O. XV, R. 3--- See land Acquisition Act (I of 1894), S. 4. **[2010 GBLR 107]**

---O. XVI, R. 1(2)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Application for summoning the witness---Application under O. XVI, R. 1(2), C.P.C. neither disclosed any reason for not including the name of witnesses mentioned in the list of witnesses nor that evidence of those witnesses was necessary for just decision of the case--- Complete particulars of the witnesses were not mentioned in the application; it appeared that petitioner by moving such an incomplete and vague application, intended to prolong the proceedings in the suit---Counsel for the petitioner had not been able to point out any jurisdictional error or illegality in the order calling for interference of the Supreme Appellate Court--- Petition for leave to appeal was dismissed. **[2010 GBLR 326]**

---O. XVII, R.3---See Civil Procedure Code (V of 1908), O. IX, R.13. **[2010 GBLR 112]**

---O. XVII---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 75. **[2010 GBLR 425]**

---O. XVIII, R. 17--- See Civil Procedure Code (V of 1908), O. VII, R. 2. **[2017 GBLR 64]**

---O. XX, R. 4--- See Civil Procedure Code (V of 1908), S. 2(9). **[2012-14 GBLR (b) 128]**

---O. XXI, R. 10--- See Civil Procedure Code (V of 1908), S. 47. **[2017 GBLR 233]**

---O. XXI, R.15 & S. 115---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Execution of decree by joint decree-holders, application for---Petitioners had sought execution of the compromise decree passed in a representative suit involving the dispute in respect of shamlat land---Contention of the petitioners was that decree in such a suit would be deemed to have been passed in favour of all co-owners/co-sharers in the propriety body of the village;

and since the suit land was shamlat land which was joint propriety of all the owners in the village, the decree was joint for their ownership in the village had I question seeking execution of decree passed in a suit in which petitioners were not party---Counsel for the petitioners when was pointed out that a stranger in the suit without determination of his right in the suit property, would have no locus standi to claim such right in execution proceedings; and in any case, the decree in question could not fall within the definition of 'joint decree' in terms of O. XVI, R.15, C.P.C. for the purpose of execution, he without further pressing the petition, submitted that they would avail the appropriate remedy before the proper forum for the possession of land of their share---Petition for leave to appeal was dismissed as \not pressed.[**2010 GBLR 333**]

----O. XXI, Rr. 54 & 55---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Execution of decree---Removal of attachment---Bank guarantee, furnishing of---Judgment debtor contended that payment of decretal amount would be made within three months---Validity Execution proceedings before Executing Court continued which would be concluded within three months and subject to furnishing of bank guarantee of scheduled bank, equal to decretal amount by defendants, within fifteen days to the satisfaction of Executing Court, the attachment order would remain suspended, failing which attachment order would become operative automatically---Petition was disposed of accordingly. [**2010 GBLR 148**]

----O. XXII, Rr. 3, 4 & 6---Appeal---Death of one of appellants and one of respondents during pendency of appeal--- Filing of applications for impleading legal heirs of deceased appellant and respondent--- Disposal of appeal by Appellate Court without impleading legal heirs of deceased appellant and respondent--- petitioner's plea that no order or decree could be passed against a dead person---Validity---By virtue of O. XXII, R. 6, C.P.C. decree could be passed against or in favour of a party, who died during pendency of suit or appeal---List of legal heirs of deceased appellant and respondent were available on record of Appellate Court---Judge of Appellate Court had endorsed both such applications with his remarks "PLACE ON FILE"---.Legal heirs of deceased appellant and respondent would be deemed to have been brought on record conceptually and impliedly---Plea of petitioner was repelled in circumstances.[**2011 GBLR (a) 299**]

----O. XXIII---Petition for implementation of order---Counsel for the petitioner when confronted that petition was not maintainable, he without pressing the same stated that he would file an application for

the contempt of Court---Petition was dismissed accordingly. [2010 GBLR 266(1)]

---O. XXIII, R. 1---See Specific Relief Act (I of 1877), S.42. [2010 GBLR 84]

---O. XXVI---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65---Civil Procedure Code (V of 1908), S.114 & O. XLVII, R. 1---Review of Supreme Appellate Court judgment---Scope--Petitioner sought review of the judgment passed by Supreme Appellate Court whereby appeal was allowed and case was remanded to Trial Court--- Validity---Scope of review was very limited and party could not be permitted to invoke the provisions as a matter of routine-- - Review could be invoked in extraordinary situation where a decree/order for which no appeal was allowed and secondly on discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of party--- Petitioner was unable to point out new and important facts/law or evidence, which could be considered for admission of the review petition---Entire evidence and all issues relating to subject matter of the suit had been thoroughly discussed by Full Bench of Supreme Appellate Court---No mistake or error apparent on the face of record had been .found by Supreme Appellate Court and the court could not sit as a Court of appeal upon its own judgment under review, merely on the ground that petitioner was aggrieved of the decision---Supreme Appellate Court declined to review its judgment---Review petition was dismissed. [2010 GBLR 114]

--- O. XXVI, R. 1---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. [2010 GBLR 32]

---O. XXVI, R. 1---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. [2010 GBLR 147]

---O. XXVII--- See (Gilgit-Baltistan (Empower and Self-Governance) Order, 2009, Art. 65. [2010 GBLR 291]

---O. XVII, R. 2--- See Civil Procedure Code (V of 1908). [2015 GBLR (a) &b) 24]

---O. XVII, Rr. 2, 4---See Civil Procedure Code (V of 1908), O. IX, R. 13. [2012-14 GBLR (a) 172]

---O. XXVII--- See (Gilgit-Baltistan (Empower and Self-Governance) Order, 2009, Art. 65. [2010 GBLR 291]



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----O. XXVII--- See (Gilgit-Baltistan (Empower and Self-Governance) Order, 2009, Art. 65. [**2010 GBLR 325**]

----O. XXVII--- See (Gilgit-Baltistan (Empower and Self-Governance) Order, 2009, Art. 65. [**2010 GBLR 413**]

----O. XXXI--- See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. [**(2010 GBLR (b) 424**]

----O. XXXIII--- See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. [**2010 GBLR 417**]

----O. XXXVIII, R. 5--- See Civil Procedure Code (V of 1908), O. VII, R. 2. [**2017 GBLR 347**]

----O. XXXIX, Rr. 1 & 2--- See Civil Servants Act (LXXI of 1973), S. 10. [**2010 GBLR 95**]

----O. XXXIX, Rr. 1 & 2--- See Specific Relief Act (I of 1877), S. 42. [**GBLR 2010 138**].

----O. XXXIX--- Rr. 1 & 2--- See Civil Procedure Code (V of 1908), S. 94. [**2011 GBLR (c) 276**]

----O. XXXIX--- Rr. 1 & 2--- See Specific Relief Act (I of 1877), S. 12. [**2011 GBLR (a) 235**]

----O. XXXIX--- Rr. 1 & 2--- See Specific Relief Act (I of 1877), S. 39. [**2011 GBLR (a) 276**]

----O. XXXIX--- Rr. 1 & 2--- See Specific Relief Act (I of 1877), S. 42. [**2011 GBLR 288**]

----O. XXXIX--- Rr. 1 & 2--- See Specific Relief Act (I of 1877), S. 42. [**2011 GBLR 320**]

----O. XXXIX, R. 1, 2--- See Specific Relief Act (I of 1877), S. 12. [**2012-14 GBLR 183**].

----O. XXXIX, R. 1, 2--- See Specific Relief Act (I of 1877), S. 54. [**2012-14 GBLR 158**].

----O. XXXIX, Rr. 1, 2 & S. 151--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60- Application for grant of interim injunction---Petitioners agreed to pay cost, so fixed by the Chief Court if the case was remanded to the Chief Court---Request of the petitioners was allowed by the Supreme Appellate Court in the interest of justice and petitioners were directed to pay the cost--- Case was remanded to the Chief Court to hear and decide the same on its

merits---Supreme Appellate Court observed that status quo be maintained by the parties till the case fixed and application under O. XXXIX, Rr. 1, 2 read with S. 151, C.P.C, filed by the petitioners was heard and decided by the Chief Court. **[2016 GBLR 243]**.

---O. XXXIX, Rr. 2 & 3---See Specific Relief Act (I of 1877), S. 42. **[2015 GBLR 249]**.

---O. XXXIX, Rr. 1 & 2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60 & 65---Consent order ---impugned of---Application for temporary injunction was dismissed by the Trial Court which order was upheld by the appellate court and petitioners moved revision petition in the Chief Court---Pending hearing of said revision petition, both parties with their counsel unanimously agreed to maintain the status quo of the suit land as prevailed at the time of filing suit---Revision petition was disposed of accordingly---Validity--Judgment of the Chief Court, was passed with the consent of the respective parties---No indulgence of Supreme Appellate Court was warranted in circumstances---Counsel for the petitioners, could not point out any infirmity in the impugned judgment---Leave to appeal was refused. **[2017 GBLR 294]**

---O. XXXIX, Rr. 1 & 2---See Specific Relief Act (I of 1877), S. 42. **[2017 GBLR 185]**.

---O. XXXIX, R. 1---Suit for declaration and consequential relief---Application for grant of interim injunction---Application under O. XXXIX, R. 1, C.P.C., for interim injunction was filed during pendency of suit---Said application was dismissed by the Trial Court, and dismissal of application was upheld by appellate court below---Chief Court granted interim injunction---Validity--- Suit being pending adjudication in the Trial Court, case was remanded to the Trial Court by the Supreme Appellate Court to hear and decide the same on its merits in accordance with law status quo was to be maintained by the parties till the final decision of the case by the Trial Court. **[2017 GBLR 177]**

---O. XXXIX, Rr. 1, 2 & S. 151---Suit for declaration and permanent injunction---Application for grant of temporary injunction---Petitioner, filed suit for declaration and permanent injunction claiming to be the owner of land in dispute with an application under O. XXXIX, Rr. 1, 2, C.P.C. and S. 151, C.P.C.---Said application was dismissed by the Trial Court and judgment of the Trial Court was upheld by the Chief Court--- Impugned order having been passed with consent of the respective parties, no indulgence was warranted by Supreme Appellate

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Court, when counsel for the petitioner also could not point out any infirmity in the impugned order. [2017 GBLR 164]

---O. XXXIX, Rr. 1 & 2---Suit for possession, declaration and injunction---Interim injunction, grant of---Trial Court/partially decreed the suit in favour of the respondents/plaintiffs, holding that they were in possession of suit land---Chief Court, granted interim injunction in favour of the respondents/plaintiffs, whereby petitioners/defendants were directed not to dispossess the respondents/plaintiffs till the final decision of civil revisions---Order of interim injunction was an interim order which was . well reasoned and no interference was warranted by the Supreme Appellate Court---Order passed by the Chief Court, was affirmed. [2017 GBLR 343]

---O. XXXIX, Rr. 1, 2---Suit for declaration with consequential relief---Application for temporary injunction---Trial Court dismissed application for temporary injunction which order was upheld by appellate court below, but Chief Court, allowed revision against concurrent judgments of the courts below---Petitioners, had not only been adversely affected, but also the academic activities of the school had been disturbed due to non-availability of teachers on account of reversal of order passed by the Chief Court--- Government functionaries, could not be stopped to pass the administrative orders in order to run the affairs of school in public interest---Petition for leave to appeal was converted into appeal and was allowed---Order passed by the Chief Court was set aside, maintaining findings of two courts below. [2017 GBLR 134]

---O. XXXIX, Rr. 1, 2 & S. 151--- Interim injunction---During pendency of writ petition before the Chief Court, an application under O. XXXIX, Rr. 1, 2 and S.151, C.P.C., was moved for grant of status quo---Said application was turned down---Validity--- Advocate-General and Attorney-General, had contended that pending writ petition, adjudication before the Chief Court for grant of interim injunction would amount to encroach the power and jurisdiction of the Chief Court---Both the law officers further contended that directions be given to the Chief Court by the Supreme Appellate Court to expeditiously dispose of the writ petition on merits in accordance with law---Petition for leave to appeal was converted into appeal and Chief Court was directed to decide the writ petition on merits expeditiously within a period of one month. [2017 GBLR 48]

---O. XXXIX, Rr. 1, 2 & S. 151---Suit for declaration--- Application for temporary injunction---Respondent/plaintiff filed suit along with application for grant of temporary injunction---Trial Court, dismissed

application for temporary injunction, however, plaintiff was declared entitled for half inch radius water connection vide order; which order was reversed by the appellate court below---Respondent/plaintiff being aggrieved, filed revision in the Chief Court, which was partially accepted by setting aside order of appellate court below---Counsel for the petitioners could not point out any illegality and infirmity in the said impugned judgment---Judgment of the Chief Court being well reasoned, no indulgence of Supreme Appellate Court was warranted---Appeal was dismissed by maintaining the judgment of Chief Court. **[2017 GBLR 274]**

---O. XXXIX, Rr. 1, 2 & S. 151---Suit for declaration and permanent injunction---Application for grant of temporary injunction---Petitioner/plaintiff, filed suit with application for temporary injunction, restraining the respondents to eject the petitioner from the disputed Medical Store---During hearing of the said suit, parties were directed to maintain status quo---Trial Court allowed the petition with the observation that status quo was in field, petitioner would be put in the same position---Respondents, being aggrieved filed revision before Chief Court, instead of filing first appeal in the appellate court below-- -Chief Court allowed said revision petition of the respondents vide impugned order---Validity---Impugned order was not maintainable, as the forum of first appellate court had not been exhausted by the respondents and they had wrongly rushed to the revisional court---impugned order was liable to be set aside being illegal and without jurisdiction---Order having been passed without jurisdiction was set aside by the Supreme Appellate Court by maintaining the order passed by the Trial Court. **[2017 GBLR 258]**

---O. XLI, R. 19---Limitation Act (IX of. 1908), S. 12 & Art. 168---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Application for re-admission of appeal dismissed for non-prosecution---Dismissal of appeal vide order dated 23-6-2007, certified copy whereof applied on same date was supplied on 9-10-2007---Application for re-admission of appeal filed on 11-10-2007---Order of Appellate Court dismissing such application for being time barred was upheld in revision by Chief Court---Appellant's plea that such copy prepared on 23-6-2007 was delivered to him on 9-10-2007 as he was not issued a slip/chit showing date of its delivery nor was he duly intimated about its preparation, thus, limitation was liable to be computed from date of its delivery---Validity---No separate Copying Branch in District Courts and Subordinate Courts of Gilgit-Baltistan existed and copies were being issued by Record Keeper or Reader of Court---No practice existed of issuing a slip/chit finding mention date for supply of copy--- Appellant had applied for grant of certified copy

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within prescribed period of limitation and had not wasted any time--- Delay in filing appeal was not due to an act, omission or negligence of appellant---Supreme Appellate Court emphasized on establishing separate Copy Branches in each District and Sessions Court and all Subordinate Courts within a reasonable time---Supreme Appellate Court set aside impugned orders and remanded case to Appellate Court for deciding appeal on merits. **[2011 GBLR (a) 283]**

---O. XLI, R. 19---See Limitation Act (IX of 1908), S.5. **[2011 GBLR 382]**

---O. XLI, R. 19--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Dismissal of case for non-prosecution---Submission of the petitioner was that he appeared before the Chief Court and made a request for an adjournment as his counsel could not appear being busy in another court, but Chief Court dismissed the case of the petitioner for non- prosecution---Petitioner being aggrieved filed application under O. XLI, R.19, C.P.C., well within time and sufficient grounds were also presented for restoration of the case, but same was also dismissed---Validity---Case could not be dismissed for non-appearance when petitioner was present in the court--- Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed---Case was remanded to the Chief Court to hear and decide the same on merits within a period of two months. **[2016 GBLR 264]**

---O. XLI, R. 23--- Remand of case---Framing of additional issues--- Technicalities--- Parties agreed to the proposition of law that rights of parties should not be defeated on technical grounds and had consented for framing of material issues and remand of case to Trial Court for determination of bone of contention between the parties to the petition---Effect--- Supreme Appellate Court framed additional issues and remanded the case to Trial Court for determination of questions in accordance with law---Supreme Appellate Court directed the Trial Court to provide proper opportunity to parties to bring on record evidence in support of their respective claim and to decide the issues in the light thereof---Findings of remaining points were not in contest---Appeal was allowed. **[2010 GBLR 86]**

---O. XLI, R. 31--- See Civil Procedure Code (V of 1908), S. 2(9). **[2012-14 GBLR (b) 128]**

---O. XLVII--- See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **[2012-14 GBLR 100]**

----O. XLVII, R. 1--- See Civil Procedure Code (V of 1908), S. 114. **[2012-14 GBLR 200]**.

----O. XLVII, R. 1---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **[2010 GBLR 147]**

----O. XLVII, R. 1---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **[2010 GBLR 325]**

----O. XLVII, R. 1---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **[2010 GBLR 413]**

----O. XLVII, R. 1---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **[2010 GBLR (b) 424]**

#### **Civil Servants Act (LXXI of 1973)---**

----S.8---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60(13) & 71---Seniority of civil servants--- Factual controversy---Petitioners and respondent were appointed in year, 1985, on different dates---Qualifying of diploma within one year of the appointment was made a condition for regularization of their service at the time of their appointment--Respondent assailed seniority list before Chief Court in writ jurisdiction---Chief Court allowed the petition with the direction to place respondent at serial No. 1 in seniority list---Validity---During pendency of writ petition before Chief Court, authorities did not issue any seniority list but a memorandum was issued by authorities wherein it had been opined that seniority would take effect from the date of regular appointment and not from the date of passing of diploma---Respondent failed to establish whether his service had been brought on regular footing or he was still discharging his duties as a temporary employee----Judgment of Chief Court was also silent in that regard and the court should have discussed such aspect of the case before arriving at final conclusion but no pain was taken in that regard---Judgment passed by Chief Court was also silent about applicability of seniority rules whether department had their own seniority rules or the seniority was governed under S.8 of Civil Servants Act, 1973--- As such the same should have been examined and discussed in the judgment passed by Chief Court but the same had not been done so---Chief Court had accepted writ petition and granted relief in favour of respondent and maintained / validated the seniority list which favoured the respondent---Chief Court had not appreciated the real controversy and had not given a well reasoned verdict without dilating upon merits of the case--- Supreme Appellate Court remanded the case to Chief Court for

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decision afresh in accordance with law after providing proper opportunity of hearing to all parties. [2010 GBLR 46]

---S. 10---Specific Relief Act (I of 1877), Ss. 42 & 54---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1 & 2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Interim injunction, grant of---Civil Service---Transfer of civil servant--  
-Plaintiff was appointed as lady teacher at place 'D' and managed to get herself posted at place 'G' but later on authorities directed her to report at place 'D' --- Plaintiff assailed direction of authorities in civil suit but Trial Court as well as Lower Appellate Court dismissed the suit and appeal filed by her---Chief Court, in exercise of revisional jurisdiction, set aside the orders passed by two Courts below and granted interim injunction against order of transfer---Validity---Judgment passed by Chief Court was not well reasoned and was not supported by any law---Concession was extended to plaintiff merely on humanitarian grounds without support of any law---Interest of one individual could not be preferred over the interest of general public, especially female students for whose interest plaintiff was appointed---Civil Court could not interfere in posting / transfer cases as a routine---Chief Court could interfere in such matters when acts of authorities found to be based on mala fide---Plaintiff neither alleged any mala fide nor proved the same---Supreme Appellate Court set aside the order passed by Chief Court and those of Trial Court and Lower Appellate Court were restored---Appeal was allowed. [2010 GBLR 95]

---S. 11---See Supreme Appellate Court, Service Structure (Modified/Re-enacted) Rules, 2009, R. 3. [2015 GBLR 167]

### **Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---**

---R. 3---General Clauses Act (X of 1897), Ss. 21 & 24-A--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 81--  
-Appointment---Corrigendum/modification of appointment order---Respondent, initially was appointed Administrative Officer in a project running under the supervision of Provincial administration---When project came to an end, fifty-two employees, including the respondent, Were declared surplus---Review Board, adjusted said surplus employees in other relevant departments---Respondent was adjusted against Post of Development Officer (BPS-16) with immediate effect--- Authorities thereafter issued corrigendum/modification order and converted regular appointment of the respondent into contractual service---Writ petition of respondent

against such said order was accepted by the Chief Court---Advocate General, endeavored to fortify the corrigendum/order with three points; (i) mistake committed in the adjustment order; (ii) adjustment order was the result of collusion with official and (iii) regular appointment against post of grade-16 could only be made after recommendations of the Public Service Commission---Validity---Adjustment order, was not result of an accidental error, but same was deliberate as order stated probation period of the employee---Respondent submitted his joining report as regular servant; was transferred from one place of service to another and he was paid salary without objection---Plea of alleged collusion, neither had taken in the written comments submitted by the authorities before the Chief Court nor had been established---Incumbents were adjusted in departments as per recommendations of the Review Board headed by Chief Secretary---Corrigendum order lacked reason about conversion of the regular service of the respondent into contract service---Said order had been passed in violation of legal dictum laid down in S.24-A of the General Clauses Act, 1897---Corrigendum order was in violation of legal principle of “audi alteram partem” as it was issued to the respondent without issuance of show-cause notice to explain his position---Said corrigendum/order, had defeated the legal philosophy behind S. 21 of the General Clauses Act, 1897 and did not fall within the four corners of the principle of “locus poenitentiae”---Adjustment order had been acted upon as respondent had joined the service, had received salary---Respondent had been included in the approved seniority list---Since the adjustment order was acted upon, a right had accrued to the respondent---Authorities had become functus officio to make the corrigendum/order---Petition for leave to appeal was converted into-appeal by Supreme Appellate Court and was dismissed accordingly. **[2015 GBLR 148]**

---R. 21(2)(3)(4)---See Supreme Appellate Court, Service Structure (Modified/Re-enacted) Rules, 2009, R. 3. **[2015 GBLR 167]**

---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 17. **[2011 GBLR 318]**

---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2012-14 GBLR 125]**

### **Civil service---**

---Appointment---Candidate, in response to advertisement for appointment of vacant post of EST Teacher in BPS-14, was first in the merit list---Case of the candidate was finally recommended for appointment against vacant post, but appointing authority did not issue



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appointment orders---Chief Court accepting writ petition of the candidate, directed the authorities to appoint her against the said post--  
-Validity---Said petition having been filed with delay of three days, was time barred---No application for condonation of delay had been filed by the authorities---Advocate-General had urged that since candidate had committed fraud in collusion with the then Deputy Director and Director of Education, no limitation would run against the authorities---No plea of fraud had been taken in written comments, rather all the grounds taken, had been admitted and the written comments were filed by the petitioners/authorities---Point of fraud raised by the Advocate-General, was devoid of substance, in circumstances---Petition for leave to appeal being time-barred, was dismissed in circumstances. **[2015 GBLR 328]**

----Appointment---Department had advertised various posts including posts of Assistant Civil Supply Inspector BPS-5 and only one post was filled---Respondent/Candidate got second position in the test and interview---Subsequently two more posts of Assistant Civil Supply Inspector were created/sanctioned and another person (respondent) was selected---Chief Court allowed petition of the candidate-respondent in writ jurisdiction and-directed the Authorities to appoint him for the post applied for as he got second position in the merit list--  
-Counsel for respondent-candidate contended that Chief Court had passed the order which was based on misconception and same was liable to be set aside---Said two posts which subsequently were created were not advertised in the newspapers and against one of these posts respondent was appointed by the Authorities as he got third position in the test/interview whereas candidate-respondent in question was ignored in spite of the fact that he got second position in the test/interview, as per merit list--- Ignoring the candidate-respondent was contrary to the Fundamental Rights guaranteed under/Art. 71(2) of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 and against principles of natural justice and equity---Advocate-General, could not point out any infirmity and illegality in the impugned judgment passed by the Chief Court---Petition for leave to appeal was converted into appeal by Supreme Appellate Court and partially allowed with the modification that respondent candidate be appointed as Assistant Civil Supply Inspector in BPS-5 with prospective effect i.e. from the date of issuance of appointment letter to the respondent---Conditions laid down by the Chief Court in the impugned order were ordered to be deleted by the Supreme Appellate Court. **[2015 GBLR 132]**

----Appointment---Petitioner, claimed that according to the agreement arrived at between Government of Pakistan and the local affectees of

‘Diamer Basha Dam’, local affectees would be preferred for appointment in the project, subject to non-availability of the individuals of special qualification for the posts---Petitioner alleged that he, being a foreign qualified and experienced engineer, deserved the post, but he had been ignored by the authority and prayed that he be accommodated against any one of the posts---No question of public importance being involved, leave to appeal to Supreme Appellate Court was refused. [2015 GBLR 348]

---Appointment--- Regularisation of service--- Petitioner/ appellant, who served the University as Contract Lecturer (BPS-17) in Computer Science Department from 2006 to 2009; after obtaining leave without pay to get Higher Education abroad; got admission in a foreign university and succeeded to get degree of (M. Phil)---Directives, were issued by the Supreme Appellate Bench to the university to regularize the contractual service of Lecturers as a matter of right on the basis of their contractual appointments---University regularized services of eleven lecturers in compliance of said orders/directives, without fresh interview/test on the basis of their contractual employment--- University had shown discriminatory attitude in cases of appellant refusing the right accrued to him at par with other petitioners--- University declined regular appointment of the petitioner/appellant on the pretext of his failure in the fresh interview conducted by Selection Board---Writ petition by petitioner against the order of the university before the Division Bench of the Chief Court, was dismissed---Eleven contract Lecturers had been regularized without any test/interview on the basis of their contract service; diversity was seen in the attitude of the university, when they refused to adjust some contractual Lecturers including petitioner without assigning any reason; despite, the right of contract Lecturers had been recognized to be adjusted against the regular posts on the basis of their contract service--- Selection Board, had deviated from ratio decidendi laid down by the Judgments of Superior Courts---Division Bench of Chief Court in the impugned judgment, had not only taken altogether a new view than that of its previous view, but took divergent view as taken by the Supreme Appellate Court---Impugned judgment, was set aside by the Supreme Appellate Court and the university was directed to adjust appellant on the basis of his contractual service, in circumstances. [2015 GBLR 98]

---Appointment---University advertised two posts, one post of Assistant Professor (BPS-19) on regular basis and other on contract basis---Appellant was appointed against the contract post, while respondent was appointed against the regular post--- Selection Board, on appeal from the appellant, instead of deciding appeal on merits issued termination of contract of service of the appellant before expiry

of the last extended contractual period, along with a permanent restriction to the effect that, the appellant was debarred for all kinds of employments arising from time to time at the University; for conduct and behaviour of appellant---Division Bench of the Chief Court under writ jurisdiction concluded that termination order and the restriction imposed therein, was not tenable in the eyes of law, but at the same time, it erred in law by dismissing the writ petition and by refusing the legal remedies sought--- Authorities, instead of going into merits of the matter, deprived the petitioner/appellant from his Fundamental Right to apply against any post to which, he otherwise was qualified, without bringing any cogent reasons on record---Even the State, could not deny the protection and safeguard against the discrimination without reasons---Authorities imposed perpetual restriction against petitioner/appellant without any proof---Petitioner/ appellant, had been appointed on contract basis, though against a leave vacancy, but in a prescribed manner--- Appellant, was short listed and he qualified the test/interview---Contract service of the appellant, was extended from time to time and he was not terminated on the ground that incumbent against the leave vacancy had rejoined the post, but was terminated without mentioning any reason in the termination order---One regular post was vacant at the time, when appellant had qualified after going through the prescribed manner---Appeal was accepted; termination order was declared null and void and the restriction imposed in the termination order was set aside---Authorities were directed by the Supreme Appellate Court to appoint the appellant against the vacant and regular post, giving the appellant benefits of the principles laid down by the Supreme Appellate Court. **[2015 GBLR (a) 107]**

---Appointment--- Writ petition of candidates was allowed by the Chief Court and authorities were directed to adjust the petitioners against the posts of Nursing Assistants in the Health Department according to the recruitment policy---Authorities were directed by the Supreme Appellate Court to decide the case in accordance with the “recruitment policy” and law on merits within a period of three months. **[2015 GBLR 361]**

---Termination of service---Department, vide office order, terminated the services of the employee, in addition to recovery of amount as arrears of land revenue on the charge of shortage of commodities and for not depositing sale price of said commodities with the Government treasury---Appellant had deposited partial amount and remaining due had not been deposited in terms of the said order of the department---Employee had filed suit in the civil court challenging his termination order---Trial Court partially decreed the suit in favour of the employee to the extent that he be reinstated in service with all back benefits,

subject to his depositing the outstanding amount in the Treasury--- Cross appeal filed by the department against said order of the Trial Court was dismissed by the appellate court below maintaining the judgment of the Trial Court---Employee impugned judgments of the two courts I below before the Chief Court, which not only reversed both the judgments of the courts below, but maintained the office order passed by the department---Impugned judgment of the Chief Court, was well reasoned as no illegality and infirmity had been pointed out by the employee---Appeal of the employee was dismissed---Judgment passed by the Chief Court was upheld; and that of Civil Judge/Trial Court to the extent of outstanding amount recoverable from the employee, was maintained. **[2015 GBLR 350]**

---Incentive package/health professional allowance---Entitlement--- Appeal filed by officers of Administrative Cadre Health Department was accepted by Service Tribunal and were held entitled to receive incentive package/health professional allowance---Authorities being aggrieved and dissatisfied with impugned judgment, filed petition for leave to appeal, contending that incentive package was given to the senior Medical Consultants/Specialists while the officers of administrator cadre were not entitled to the said package No infirmity and illegality had been pointed out in the impugned judgment by the Advocate-General---Leave to appeal was refused---Impugned judgment passed by Service Tribunal being well reasoned, was maintained. **[2016 GBLR 54]**

---Judicial allowance and special judicial allowance---Entitlement to---Writ petition by the employees in various categories in BPS-1 to 16 of the Customs and Banking Court, with contentions that they were entitled to all the benefits i.e. Judicial Allowance and Special Judicial Allowance; equal to three time of their substantive pay scale was allowed by the Chief Court---Validity---Advocate-General, could not point out any infirmity and illegality in the impugned judgment--- Claimed Judicial/Special Judicial Allowance was paid to all the court staff and officials in all the Provinces of Pakistan, Islamabad Capital; as well as to the staff of officers of Supreme Appellate Court and Supreme Court of Pakistan but the government of Gilgit-Baltistan, in the present case failed to treat equally among equals---Leave to appeal was dismissed by the Supreme Appellate Court and judgment passed by the Chief Court was maintained---Authorities were directed to pay/release all back benefits in shape of arrears. **[2016 GBLR 37]**

---Petition for leave to appeal to the Supreme Appellate Court---Writ petition of civil servant was dismissed by the Chief Court as time barred---Contention of Civil Servant was that time was consumed due

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to administrative orders passed by the Registrar of the Chief Court and the Service Tribunal, which could not be counted against the petitioner---Advocate-General conceded that Chief Court was to hear the case and decide the same on merits in accordance with law and also supported the contentions raised by the petitioner/civil servant---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed---Case was remanded to the Chief Court for its de novo consideration by hearing afresh and decided the same on its merits within two months. **[2016 GBLR 53]**

---Allotment of government residence to employee---Chief Court, in a writ petition by the employee had directed the authorities to allot and handover the government residence to the employee of his choice on urgent and priority basis---Authorities contended that no government residence was available for allotment to the said employee in compliance to the order of the Chief Court---Pending implementation application of the employee to the authorities, it was brought to the knowledge of the authorities, that a government residence was going to be vacated, which could be allotted and handed over to the employee---Said residence was not vacated by its occupant and authorities were unable to handover said house to the employee---Available government residence was allotted to the employee in compliance of the order of the Chief Court, but he refused to occupy the same and demanded a house of his choice, which was under the possession of its previous allottee---Held, government residence, was allotted to the employee, keeping in view his entitlement subject to availability under the permissible rules---Government residence could not be got vacated and allotted to any employee on his choice---Petition for leave to appeal was converted into appeal and was allowed---Order by the Chief Court, was set aside. **[2017 GBLR 199]**

---Appointment---Cancellation of appointment order---Non-filing of departmental appeal---Effect---Employees, filed appeal before the Service Tribunal challenging the order of the authorities--- Authorities had cancelled the office order vide which employees were appointed/adjusted against the regular vacant posts in BPS-5--- Employees were performing their duties against the same posts on contract basis---Service Tribunal, partially allowed the appeal by setting aside the order of the authorities---Employees were reinstated, however, second part of the appeal of employees viz. to stop the inquiry against them was dismissed---Petition for leave to appeal filed by the authorities having been dismissed by the Supreme Appellate Court review petition was moved before the Supreme Appellate Court---Appeal by the employees before Service Tribunal was not maintainable, as no departmental appeal was filed by them---

Employees were appointed without fulfilling the codal formalities i.e. advertisement and test/interview by constituting Departmental Selection Committee (DSC)---Review petition was allowed by the Supreme Appellate Court by setting aside the short order passed by the Supreme Appellate Court and order passed by the Service Tribunal---Employees, however, could continue in their present posts as contingent employees till further orders of the competent authorities within permissible Service Rules. **[2017 GBLR 284]**

---Appointment---Contempt petition had been filed by petitioner against Secretary Education contending that Supreme Appellate Court had directed the Secretary Education, upon assurance, for making appointment of candidates including the petitioner; that he was at serial No. 8 of the merit list issued by the authorities; that despite the said assurance and specific direction, issued by Supreme Appellate Court, authorities had failed to issue appointment letter to the petitioner and that authorities had appointed such candidates, who neither qualified the test nor their names were included in the merit list---Advocate General contended that petitioner appeared in written test but could not qualify the said test; that petitioner obtained only 4 marks out of 15, while the minimum marks for passing the test, were 5 marks---Held, petitioner having not qualified the test, his contempt petition was baseless, unfounded and without any cause of action; which warranted no interference. **[2017 GBLR 11]**

---Appointment---Employee was appointed as Lower Division Clerk BPS-7 on contract basis against a vacant post for a period of six months---Employee appeared before the Special Recruitment Committee duly constituted and was declared fit for the said post---Subsequently the post on which petitioner was appointed, was advertised--- Employee feeling aggrieved with the advertisement filed appeal before the Service Tribunal, which was accepted---Validity---Judgment of the Service Tribunal, was well reasoned and no infirmity or illegality could be pointed out therein---Petition for leave to appeal was converted into appeal, and was dismissed and judgment of the Service Tribunal was maintained with some modifications. **[2017 GBLR 288]**

---Appointment--- Non-payment of salary--- Petitioners were appointed as regular teachers in Education Department and had been paid their salaries from their appointment up to 2013; later on authorities discontinued the payment of the salaries of the petitioners, on the ground that the posts of the petitioners, had not been included in the 'NIS'---Petitioners, moved writ petition before the Chief Court, praying that the authorities be directed to include the post of the

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petitioners in the NIS of the Finance Department---Chief Court dismissed the petition---Validity---Petitioners, were appointed illegally, unlawfully and without fulfilling the required codal formalities by the authorities--- Petitioners, in circumstances, could not be considered as the employees of Education Department--- Impugned order was well founded as no infirmity had been pointed out by the counsel for the petitioners---Petition for leave to appeal was converted into appeal and was dismissed---Impugned order by the Chief Court, was affirmed, in circumstances. **[2017 GBLR 206]**

---Appointment---Petitioner contended that she was initially appointed as Teacher on contingent paid employee, at the rate of Rs. 5000 fixed pay per month; later on, services of the petitioner were regularized against the vacant post and petitioner joined her duties, but no salary was paid to her---Show-cause notice was served upon the petitioner to explain her appointment against non-existing post--- Authorities issued order of discontinuation of services of the petitioner---Petitioner, filed departmental appeal to the Chief Minister and Secretary Education, which remained Unattended---Petitioner then filed appeal to the Service Tribunal which was dismissed---Validity---Petitioner instead of filing departmental appeal within prescribed period of limitation before competent authority, filed application to Minister after lapse of 690 days, who was not the competent authority--Appeal before Service Tribunal was filed after delay of 746 days, which was time barred---Impugned order passed by Service Tribunal, was well reasoned which warranted no indulgence---Counsel for the petitioner could not point out any infirmity in the order of Service Tribunal---Leave to appeal was refused. **[2017 GBLR 272]**

---Appointment---Petitioner was initially appointed on contract basis as teacher in Education Department---Later on her services were regularized by the authorities on recommendation of Departmental Committee---Appointment order, subsequently was withdrawn on the ground that the petitioner, was appointed against a non-existing post without fulfilling the codal formalities i.e. advertisement, test/interview etc. by Constituting Departmental Selection Committee--Appeal by the petitioner before Service Tribunal was dismissed---Validity---Petitioner, admittedly was appointed without fulfilling the codal formalities; consequently a Special Recruitment Committee was constituted to determine the suitability and eligibility of the teachers who were appointed without sanctioned posts---Said Committee after scrutiny of the academic testimonies of the candidates and conducting test and interviews recommended withdrawal of appointment order of teachers, including the petitioner with immediate effect---No departmental appeal was filed by the petitioner before approaching the

Service Tribunal---Appeal before Service Tribunal by the petitioner, was time barred by two years, four months and four days, and no application for condonation of delay was filed--- Impugned order, was well founded as no infirmity had been pointed out by the counsel for the petitioner---Petition for leave to appeal was converted into appeal and same was dismissed and impugned order of the Service Tribunal, was affirmed. **[2017 GBLR 189]**

---Appointment---Petitioner was working as driver in BPS-4 in the office of the Secretary Finance as contingent employee---Later on, the services of the petitioner, were regularized; consequently he got himself medically examined for joining services but, his joining was not accepted on the ground of non-availability of permanent post--- Appeal before Service Tribunal was dismissed declaring the same as not maintainable---Validity---Petitioner, was appointed on non-existing post by the authorities without fulfilling the requisite codal formalities---No departmental appeal was filed by the petitioner before filing appeal before Service Tribunal, which was mandatory and its violation was not condonable--- Impugned order was well founded as no infirmity had been pointed out by the counsel for the petitioner---Petition for leave to appeal was converted into appeal and same was dismissed---Impugned order of Service Tribunal was affirmed, in circumstances. **[2017 GBLR 231]**

---Appointment---Termination of service---Appellant/employee, was appointed as Laboratory Assistant/Teacher for a stipulated period of one year; later on, he was appointed and adjusted against the clear vacant post of Laboratory Assistant (BPS-7)---Appellant, thereafter was adjusted/regularized in Elementary School in BPS-14 against vacant post on approval of competent authority--- Appellant, joined his duties at respective place of appointment and rendered services--- Services of the appellant were terminated--- Appeal filed by appellant was dismissed by the Service Tribunal---Validity---Appellant was at Serial No. 24 in the list of 43 candidates, whose services were terminated---Appellant had not filed departmental appeal before competent authority---Appellant who accepted the findings of Government authority, could not prove his ability before the Recruitment Committee; he did not possess the required professional and educational qualification--- .Impugned judgment passed by Service Tribunal was well reasoned---Service Tribunal had rightly applied judicious mind while dispensing judgment/order, which needed no interference. **[2017 GBLR 77]**

---Appointment and regularization of service---Appellants, had been working as contingent paid staff against various posts at the strength



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of Governor-Baltistan since 2010---Petitioner, contended that they were entitled to be regularized against the posts held by them in view of their satisfactory services as contingent employees in line to the office memorandum issued by Cabinet Secretariat Establishment Division---Advocate General contended that petitioners were working purely on contingent basis and there was no policy to regularize the contingent service and that petitioners, had no vested right to claim for conversion of their posts into regular service---Chief Court, dismissed writ petition of appellants being meritless---Validity---Counsel for the appellants could not point out any infirmity in the impugned order---No interference was warranted in the judgment of the Chief Court---Impugned order of the Chief Court was upheld by the Supreme Appellate Court. [2017 GBLR 165]

---Appointment on contract basis---Regularization of service---withdrawal of order of appointment---Respondent was initially appointed as foot constable, BPS-5, on contract basis for a period of 4 years; whereafter the services of the respondent were regularized against a clear vacant post of Reserve Police Force-Said order was withdrawn, after more than two years, being against the procedure/rules, and respondent was reverted back to the Security Force---Validity---Advocate-General, could not point out any illegality and infirmity in impugned judgment---No interference was warranted---Judgment of the Chief Court was affirmed---Appeal was dismissed. [2017 GBLR 50]

---Contract appointment---Regularization of service---Petitioners were appointed on various posts and scales on contract basis---Petitioners contended that they were entitled for regularization of services against the posts held by them for the last five years; that earlier the contract services of more than fifty employees had been regularized by the department---Petitioners filed department appeal for regularization of their services, but instead of regularizing their services, authorities advertised the said posts for filling the same through advertisement---Authorities had bound themselves by said advertisement to give preference to the contract/contingent employees already serving in the department---Petitioners, instead of applying for the said posts in response to the advertisement, filed writ petition before the Chief Court calling in question the advertisement which was dismissed---Validity---Petitioners were appointed on contract basis without fulfilling the requisite criteria and relevant codal formalities---Neither the posts were advertised nor any test/interview was conducted by the Departmental Selection Committee---Authorities had already pledged through the advertisement to give preference to the petitioners', in case they would apply for the

advertised posts and found eligible--- Counsel for the petitioners, could not point out any infirmity in the impugned judgment--- Judgment of the Chief Court, was affirmed. **[2017 GBLR 253]**

---Contract appointment---Regularization of service---Respondent/employee, was appointed as teacher on contract basis for a period of one year; whereafter his contractual appointment had been extended from time to time and he completed his five years in contract employment---Later on, the post held by the respondent was advertised by the department and feeling aggrieved, he filed writ petition before the Chief Court; contending that his services be regularized keeping in view the length of his service---Chief Court allowed writ petition, directing the department to regularize the respondent with all back benefits---Validity---Respondent who was appointed on contingent basis against the post of teacher had no vested right to get his contractual service regularized---Writ was not maintainable as alternate remedy was available to the respondent to seek remedy, from the competent forum---Supreme Appellate Court, allowed the appeal of department and set aside the order of the Chief Court. **[2017 GBLR 238]**

---Contractual services, termination of---Petitioner, was working as Lecturer in BPS-18 on contract basis---Services of the petitioner, were extended periodically; thereafter, authorities, terminated the services of the petitioner, while blacklisting him, due to his alleged misbehaviour with Superintendent of Examination---Departmental appeal filed by the petitioner, having been turned down, he filed writ petition before the Chief Court, which was dismissed---Validity---Petitioner was appointed purely on contract basis and authorities could refuse further extension of the contract period or to discontinue contractual service of employee as per their requirement and need---Judgment by the Chief Court was well reasoned warranting and no interference by the Supreme Appellate Court was warranted---Petition for leave to appeal was converted into appeal and was dismissed---Judgment by the Chief Court was affirmed. **[2017 GBLR 215]**

---Date of birth of employee---Determination of---Employee filed writ petition before the Chief Court and contended that his date of birth being 25-12-1957, his actual date of retirement was 25-12-2017, as per his Matriculation Certificate, CNIC and Service Book, etc. and prayed that department be directed to allow him to continue his service till his date of retirement---Chief Court allowed the writ petition---Validity---Contention on behalf of the authorities was that actual date of birth of the employee was 25-12-1955, which had initially been entered in his service book, but said service book was tampered with

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by the employee as he himself was its custodian---Counsel for the employee supported the order of the Chief Court---Order of the Chief Court was well reasoned and well founded---No illegality or infirmity could be pointed out in the said judgment---Interference by the Supreme Appellate Court was not warranted---Petition for leave to appeal was converted into appeal and dismissed. **[2017 GBLR 299]**

---Date of birth of employee, determination of---Stoppage of employee's salary---Date of birth of the petitioner as per Matriculation Certificate was 1-1-1958 and the same was incorporated in his Service Book---Petitioner continued his service uninterruptedly till 2013; whereafter authorities stopped salary of the petitioner on the basis of erroneous entry of date of birth in the CNIC as 1-1-1952, which allegedly was a clerical mistake of NADRA authorities---Petitioner urged to remove said clerical mistake and prayed to declare his correct date of birth as 1-1-1958, but NADRA authorities were not ready to rectify said mistake---Appeal filed by petitioner was dismissed by Service Tribunal being not maintainable---Validity---Date of birth of the petitioner mentioned in the Matriculation Certificate as 1-1-1958 was correct, which was entered in his Service Book---Allowing appeal, judgment passed by Service Tribunal, was set aside by the Supreme Appellate Court---Authorities were directed to allow petitioner to join his service, forthwith and his salaries etc. paid as per permissible Service Rules. **[2017 GBLR 149]**

---Order for absorption of employee in service, withdrawal of---Supreme Appellate Court, had declared the absorption order illegal, and the services of the petitioner was directed to be taken back with consequential benefits by the employer Authority--- Employee had already been directed to report to the concerned department on pointed date in compliance of the order of the Supreme Appellate Court---Petition for leave to appeal, therefore, stood infructuous---Supreme Appellate Court directed that during the period, which the employee had not served was to be treated as leave without pay---Petitioner, would be entitled for his salary and other benefits from the day he would join the duty---Order accordingly. **[2017 GBLR 385]**

---Petition for leave to appeal against judgment of Service Tribunal had been filed after delay of four months and twenty days---Reasons/grounds given by the petitioners for condonation of delay in their application were not plausible therefore, the delay could not be condoned---Advocate General, could not point out any illegality and infirmity in judgment of the Service Tribunal---Judgment of Service Tribunal being well reasoned and well founded no indulgence of

Supreme Appellate Court was warranted---Delay of even one day could not be condoned, if not plausibly explained. [2017 GBLR 353]

---Petitioners were contract employees in a project, and their services had been terminated by the authorities after completion of said project---Termination of service---Chief Court dismissed writ petition against the order of dismissal---Validity---Services being temporary in nature, petitioners could not claim conversion of their temporary posts into regular service as a right---Counsel for the petitioners, could not point out any infirmity in the impugned order passed in writ petition against termination of their services---Petition for leave to appeal was converted into appeal and same was dismissed---Impugned order passed by the Chief Court in writ petition, was affirmed. [2017 GBLR 304]

---Posting and transfer---Respondent, who was serving as Elementary School Teacher in BPS-14 was posted in a School, she was temporarily attached to the school on medical ground, whereafter attachment order was recalled by the department--- Respondent moved Service Tribunal where her appeal was accepted on medical ground--- Validity---No illegality or infirmity could be pointed out in the judgment of Service Tribunal--- Interference by the Supreme Appellate Court was not warranted--- Petition for leave to appeal was converted into appeal and was dismissed---Judgment by Service Tribunal, was affirmed in circumstances. [2017 GBLR 377]

---Promotion---Authorities had been directed by the Chief Court to promote the respondent---Respondent was not promoted while petitioner was redesignated and promoted---Writ petition moved by the respondent against such redesignation and promotion of the petitioner was allowed by the Chief Court---Validity---Counsel for the petitioner, could not point out any illegality and infirmity in the judgment of the Chief Court---Petition for leave to appeal was converted into appeal; and was dismissed---Judgment of Chief Court was affirmed. [2017 GBLR 31]

---Promotion---Both, petitioner and respondent applied for the post of Executive in “People’s Primary Healthcare Initiative (PPHI)”--- Respondent was offered contract appointment, while the name of the petitioner was kept in waiting’ list---Subsequently, the petitioner was also appointed as contract employee against said post---Later on, when the post of District Support Manager was held vacant, respondent preferred an application for his promotion against said vacant post, but he was given acting charge vide the impugned order---Being aggrieved, respondent filed writ petition before the Chief Court---

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Board of Directors of “People’s Primary Healthcare Initiative (PPHI)”,: was Controlling Authority of the company and under Article of Association of the company, the Board was empowered to see the service matters of the company---Public limited companies established under a statute, were subject to the control of respective Government; whereas affairs of private limited companies, were controlled by the Board of Directors---Rules of a Public Limited Company, established under a statute were statutory rules; whereas the rules of private limited company were non-statutory rules---Employees of “People’s Primary Healthcare Initiative (PPHI)”, were neither civil servants, nor their service were governed by statutory rules; in that, the issue relating to the service of company, could not be adjudicated by the Chief Court in writ jurisdiction---Mere fact that company was a legal person, could not necessarily be subject to the jurisdiction of writ petition of Chief Court in respect of its internal affairs, rather an aggrieved person could avail the appropriate remedy before a court of general jurisdiction in respect of his grievance against the company---Petition for leave to appeal, was converted into appeal and was allowed, consequently judgment passed in writ petition by the Chief Court, was set aside. **[2017 GBLR 330]**

---Promotion---Chief Court accepted writ petition of respondent with the direction to the authorities to discontinue the current charge or acting charge to the petitioner on the said post and to ensure the enforcement of the recruitment rules---Validity---Contention of the respondent was that the post in question was to be filled up by the Storage Officer BPS-9, and he was entitled for the promotion against the post in question being senior most Storage Officer---Contention of Advocate General was that respondent had different cadre; whereas the post had to be filled from the Management Cadre---Respondent, supported the impugned judgment passed by the Chief Court, contending that he being the senior most Storage Officer BPS-9, was entitled for promotion against the post of CSO BPS-16; whereas the petitioner had wrongly been granted the acting charge of the said post---impugned judgment was well founded as no infirmity was pointed out by the Advocate General---Petition for leave to appeal was converted into appeal and was dismissed and judgment of the Chief Court was affirmed. **[2017 GBLR 251]**

---Promotion---Employees were initially appointed on contract basis as teachers in the year 1992---Later on, their contractual service was regularized in BPS-9 in the year 1995 and were appointed as Trained Graduate Teachers in BPS-16 through Federal Public Service Commission in the year 2001--- Department prepared working paper of eligible teachers working in BPS-16 for promotion in BPS-17---

Promotion of the said employees could not be approved while their batch mates were promoted---Departmental appeal of aggrieved employees failed, however Service Tribunal allowed the appeal---Validity---Non-promotion of the employees was a discriminatory action---Employees had fulfilled all the codal formalities, and were recommended by the department for promotion thrice---Judgment by Service Tribunal was well-reasoned having been passed in accordance with law and facts of the case---No illegality/infirmity warranting indulgence of Supreme Appellate Court could be pointed out---Petition for leave to appeal was converted into appeal, and was dismissed---Judgment by Service Tribunal, was affirmed, in circumstances. **[2017 GBLR 369]**

---Promotion---Entitlement---Petition for leave to appeal had been directed by petitioners/Government authorities against impugned judgment passed by Service Tribunal, whereby appeal of respondents/employees was allowed with direction that employees were entitled for promotion and its monetary benefits---Employees, who were performing their duties in BS-19 w.e.f. 29-12-2004 till date of their retirement, approached Higher authorities for promotion to BS-20, but authorities adjourned the promotion process for want of recruitment rules---Recruitment Rules for BPS-20 were approved on 6-11-2009, but despite that, employees were not promoted---Pro forma promotion case of the employees was prepared under service structure by the Secretary and submitted to service department along with working papers with their complete ACRs of five years; which transpired that authorities did not want redress the grievance of employees---No reason existed for interference in the impugned judgment of Service Tribunal, which did not suffer from any legal or factual infirmity---Petition for leave to appeal was converted into appeal, and dismissed. **[2017 GBLR 130]**

---Promotion---Entitlement---Respondent, was appointed as ASCI (BPS-5) and later on he was granted move-over in BPS-9; whereafter the department sought willingness from the respondent along with others as Storage Officer in BPS-9 which was given by the respondent, but department ignoring the respondent granted officiating charge of Civil Supply (BPS-16) to another employee---Respondent being aggrieved filed departmental appeal, which was accepted and the respondent was promoted---Subsequently post of an officer (BPS-16) was created, and post held by the respondent. was abolished and respondent was given the charge of newly created post (BPS-16) with all benefits---Respondent joined said position and since then he was drawing pay against the said post, but no proper promotion was notified by the Department despite repeated requests of the

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respondent---Respondent filed appeal to Service Tribunal, which was allowed---Judgment passed by Service Tribunal, was well reasoned and well founded---No illegality or infirmity could be pointed out in the judgment of Service Tribunal---Interference of Supreme Appellate Court was not warranted---Petition for leave to appeal was converted into appeal and was dismissed---Judgment passed by Service Tribunal was affirmed. [2017 GBLR 361]

---Promotion---Petitioner, who was appointed as Sub-Engineer/overseer (BPS-09), was promoted in BPS-16---Petitioner was further promoted as Assistant Executive Engineer in BPS-17; whereafter he was assigned additional charge of Executive Engineer in BPS-18, but said order was not materialized--- Provincial Government, withdrew the order regarding promotion of the petitioner as Executive Engineer---Petitioner being aggrieved, filed appeal before Service Tribunal, which was dismissed declaring the same as not maintainable---Petitioner was a diploma holder engineer who did not fulfil the requisite criteria for promotion as Executive Engineer in BPS-18---Petitioner also lacked the requisite length of service for his promotion against said post---Impugned judgment passed in appeal by Service Tribunal was well reasoned and well founded---No interference was warranted---Appeal was dismissed and order of Service Tribunal, was affirmed. [2017 GBLR 33]

---Promotion---Respondent was appointed as Sub-Engineer BPS-11 on 30-5-1996; whereas the petitioner was appointed on 30-11-1993 as Machinist in BPS-7 on work charge basis on non-cadre post--- Subsequently, the petitioner was also appointed as Sub-Engineer BPS-11 on 16-4-2003---Respondent obtained B. Tech (Hons) degree on 10-6-2010, and the petitioner obtained the same degree on 20-8-2008--- As per averments of the respondent, he was senior to the petitioner as Sub-Engineer; whereas the petitioner was promoted as Assistant Executive Engineer BPS-17 on 31-7-2012 by depriving him from his due right of promotion--- Departmental appeal filed by the respondent was not responded, he filed appeal before Service Tribunal which was accepted by setting aside impugned notification and seniority list--- Validity---Respondent being 7 years senior to the petitioner as Sub-Engineer BPS-11 was entitled for promotion against the post of Assistant Executive Engineer BPS-17---Length of service of 10 years of the petitioner as Machinist in BPS-17 on work charge basis, could not be considered and included for promotion as an Assistant Executive Engineer (BPS-17)---Respondent was directly appointed on 10-5-1996 as Sub-Engineer BPS-11, whereas the petitioner (Machinist on work charge BPS-7), was adjusted/appointed on 16-4-2003 as Sub-Engineer in BPS-11---Department had no lawful authority to include

the petitioner's non-cadre 10 years service, as Machinist on work charge basis, while considering his promotion in BPS-17 as Assistant Executive Engineer---As per service rules, the permanent line cadre service could be added in the service for a feeding post, which was rightly held by Service Tribunal---Impugned judgment of the Service Tribunal, was well reasoned as no infirmity or illegality was pointed out by counsel for the petitioner---No interference of Supreme Appellate Court was warranted---Petition for leave to appeal was converted into appeal and same was dismissed---Judgment of Service Tribunal, was affirmed, in circumstances. **[2017 GBLR 178]**

---Promotion, right of---Non-filing of departmental appeal--- Effect--- Petitioner/employee, was appointed as Store Supervisor in BPS-16--- Predecessor of the petitioner, who was Admin Officer in BPS-17 retired on 28-12-2009, and due to his retirement, post of Admin Officer had fallen vacant---Petitioner moved application for his promotion against said post as a matter of right---Summary of the promotion of the petitioner, was moved, which was approved after about 2 years---Petitioner who was promoted as Admin Officer on 9-8-2011 instead of 28-12-2009. had submitted that due o the delay in promotion he suffered financial loss for a period of 1 year and 8 months---Promotion, was not a vested right of the petitioner---No provision existed in the Service Rules to give retrospectively promotion, rather it could be given with prospective effect under S.8(3) of the Gilgit-Baltistan Civil Servants Act, 2011---Petitioner, did not file departmental appeal before filing appeal before the Service Tribunal, which was mandatory in nature---Judgment of Service Tribunal, was well reasoned and counsel for the petitioner, could not point out any infirmity or illegality in the same---Leave to appeal was declined by the Supreme Appellate Court in circumstances. **[2017 GBLR 223]**

---Regularization of service--- Respondent, was initially appointed as DSP (BPS-17) on contract basis for a period of six months, which was extended from time to time---Service of the respondent were terminated by the competent authority on the recommendation and advice of the Inspector General of Police---Respondent did not challenge said termination order before any forum/court of law which attained finality and held field---Respondent was terminated from contract service about eight months prior to the promulgation of the Regularization of Service of the Contract Employees Act, 2014; he was not in contractual service of the department, prior to or at the time of promulgation of the Act and therefore was not entitled to get benefit of said Act---Post of DSP (BPS-17) was not advertised by Public Service Commission, for either through direct induction or through



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promotion---Chief Court had misinterpreted the relevant law---Judgment of Chief Court was not tenable and was set aside. [2017 **GBLR 317**]

---Service Tribunal accepted appeal directing the authorities to prepare working paper for promotion of respondent to BPS-19 and place before the Departmental Promotion Committee as per his entitlement in accordance with law and complete the process within three months---Authorities contended that impugned judgment of the Service Tribunal was without jurisdiction and contrary to the law and facts of the case, which could be set aside---Employer was senior most Executive Engineer (BPS-18) and post of Superintending Engineer (BPS-19), was also vacant, but he had not been promoted to the said post on the basis of some allegations--- Employee was exonerated from the said allegations by the authorities---Employee, had also been given additional charge of the post of Superintending Engineer; he was wrongly prevented from promotion to the post of Superintending Engineer (BPS-19) without any fault--- Employee had rendered his services in (BPS-19) as Superintending Engineer in his own pay and scale till his retirement---Employee, in circumstances, was fit for promotion against the post in question being the senior most--- Advocate General, could not point out any infirmity in the impugned judgment---Petition for leave to appeal was converted into appeal and same was dismissed and judgment passed by Service Tribunal was affirmed. [2017 **GBLR 100**]

---Special pay and technical allowances---Petitioners, employees of Police Department, were working in Central Police Office-President of Pakistan in 1990, accorded sanction of special pay and technical allowance to the employees of Police Department working in conduct police office---Petitioners had received said special pay and allowance, till 30-11-2001, thereafter payment was stopped due to misinterpretation of an Office Memorandum and on clarification, said benefit was again granted to the petitioners on regular basis and arrears were also released---Deputy Accountant General Pakistan Revenue, Gilgit, on 22.7.2003 issued instruction to stop payment of 20% special pay and technical allowance--- Deputy Inspector General of Police, issued letter to refund/recovery of the arrears of said pay and allowances--- Petitioner challenged said order before the Chief Court by filing writ petition, which was dismissed---Validity---Advocate General and Deputy Attorney General, supported the judgment of the Chief Court contending that the case of the petitioners, did not fall within the ambit of para-15 of the Office Memorandum, rather fell within the purview of para. 9 of the Finance Division's Office Memorandum No. F-1(5) IMP/2001, dated 4-9-2001---Judgment by

the Chief Court being well reasoned indulgence of Supreme Appellate Court was not warranted--- Petition for leave to appeal was converted into appeal and Was dismissed--- Judgment of the Chief Court was affirmed. **[2017 GBLR 323]**

---Stoppage of salary of employee by the department---Chief Court, in writ petition directed the authorities to release salary of the employee from date of its stoppage, declaring him as regular employee---Advocate General had contended that, post of the employee was neither advertised nor any test/interview was conducted by constituting a Selection Committee by the authorities and that impugned office order regarding appointment of employee was not issued by authorities and same was fake, fabricated and bogus--- Factual controversies existed , in the case, as the authorities, disowned the impugned office order; whereas employee claimed that it had been validly issued by the authorities--- Services of the employee had reportedly been regularized---Petition for leave to appeal was converted into appeal and was allowed---Impugned order in writ petition, passed by Chief Court, was set aside---Employee could approach the competent court of law for redressal of his grievance. **[2017 GBLR 162]**

---Suspension of service on allegation of malpractices, corruption and misconduct---Commutation of pension---Respondent and two other senior officials, were suspended---Respondent during his suspension period applied for commutation of his pension after attaining the age of superannuation, which application was not entertained by the petitioners as respondent was under suspension---Respondent being aggrieved, filed writ petition before the Chief Court which was allowed, vide the impugned judgment--- Petitioners contended that judgment of the Chief Court was result of misconception of law, misreading and non-reading of the facts of the case, hence was not maintainable---Advocate General could not point out any illegality/infirmary in the impugned judgment passed by the Chief Court---Leave to appeal was refused, in circumstances. **[2017 GBLR 36]**

---Termination of services---Excise and Taxation Department in year 2009-10, had engaged the petitioners under the contingency head to run the business of newly created department of Excise and Taxation--Petitioners performed their duties under the supervision of the relevant contingency head in various districts---Department, in the year 2012, adjusted/appointed the petitioners by regularizing their, contingent services and obtained sanction thereto from the Secretary Finance---After issuing the permanent and regular orders, concerned

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Excise and Taxation Officers refused to accept their joining service--- Petitioners alleged that despite acknowledging the services rendered by the petitioners, Secretary Excise and Taxation, issued termination orders of the petitioners--- Petitioners, being aggrieved, filed departmental appeal to the Chief Secretary, but no action or decision had been taken---Writ Petition filed by petitioners before the Chief Court, was dismissed directing the petitioners to seek remedy from proper forum---Validity-Counsel for the petitioners, could not point out any illegality and infirmity in the impugned judgments/orders--- Judgment of the Chief Court was well reasoned and well founded--- Leave to appeal was refused--- Impugned judgment of the Chief Court, was affirmed. **[2017 GBLR 7]**

---Termination of service---Jurisdiction of Chief Court to entertain writ petition--- Scope--- Master and servant, principle of--- Applicability---Respondent was appointed as District Coordinator under ‘Aurat Foundation Waseela Taleem’ at gross salary of Rs. 50,000 per month for a period of 2 years---Later on, services of the employee were terminated---Employee being aggrieved, filed writ petition before Chief Court, which was allowed---Contention of petitioner was that “Aurat Foundation” was a Non-Government Organization and employee was appointed purely on contract basis for a period of two years; that employee had no locus standi to file writ petition being employee of a Non-Government Organization, similarly Chief Court had no jurisdiction to entertain such writ petition--- Validity---Writ jurisdiction, could not be invoked against any private organization---Case of employee fell under the principle of “Master and Servant” rules---Petition for leave to appeal was converted into appeal and was allowed---Impugned judgment by Chief Court in writ petition was set aside---Employee was at liberty to seek legal remedy from appropriate forum. **[2017 GBLR 152]**

---Termination of services---Re-instatement---Respondent, who was appointed as Lady Health Visitor had rendered about 22 years service to the department---Services of the respondent were terminated after completion of inquiry, declaring her solely responsible for the said untoward incident---Writ petition before the Chief Court by the respondent against her termination order was allowed---Validity--- Untoward incident happened due to the contributory negligence of the staff, particularly the Doctors on duty---No illegality or infirmity was pointed out in the judgment of the Chief Court interference of Supreme Appellate Court was not warranted---Petition for leave to appeal was converted into appeal and was dismissed---Judgment of Chief Court was affirmed. **[2017 GBLR 263]**

---Termination of service--- Respondents, were appointed as Drivers, Clerks and Warders on contingent basis without fulfilling the codal formalities---Subsequently, office orders for appointment were recalled and their services were terminated---Departmental appeal filed by the respondents having not been decided, respondents approached Service Tribunal---Service Tribunal, instated the respondents, with all back benefits---Validity--- Respondents continued their services as regular employees and were receiving monthly salaries---Respondents performed their duties at their best and due diligently---Services of the respondents has been regularized, which had been cancelled, without showing any cause, which was against equity and natural justice--- Allegations of misconduct had not been elaborated against the respondents---No illegality and infirmity was found in the judgment passed by Service Tribunal which was upheld by the Supreme Appellate Court---Appeal filed by the petitioner was dismissed, in the circumstances. [2017 GBLR 95]

**Companies Ordinance (XLVII of 1984) [as amended by Companies Ordinance (Amendment) Act (C of 2002)]--**

---Ss. 290 & 170---Companies Act (VII of 1913), Preamble--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60 & 71---Application for prevention of oppression and mismanagement of company---Powers of Registrar, Joint Stock Companies/Security Exchange Commission to call meetings of Board of Directors of the Company---Registrar Joint Stock Companies on the direction of the Chief Court, convened meeting of the Board of Directors of the company; petitioners had challenged the holding of said meeting, contending that after promulgation of Companies Ordinance Amendment Act, 2002 all the powers enjoyed by the Registrar of Companies had been assigned to the Securities and Exchange Commission and that the acts done by the Registrar in that regard were without authority---Validity---Convening of meeting of Board of Directors by the Registrar was not at his sweet will or an act under the influence of other respondents; rather the same was implementation of court order and due to non-establishment of Securities and Exchange Commission in Gilgit-Baltistan---Registrar Joint Stock Companies Gilgit-Baltistan exercised all powers including registration of companies and other corporate issues in Gilgit-Baltistan--- Contention of counsel for the petitioners was that vide Companies Ordinance, 1984, as amended by Amendment Act, 2002, the Registrar of Joint Stock Companies Gilgit-Baltistan, had seized to exercise powers given under S.170 of the Companies Ordinance, 1984, as the same had been vested with the Security Exchange Commission---Validity--- Companies Ordinance, 1984 was not applicable to Gilgit-Baltistan in

the year 2002 rather the Companies Act, 1913 was in operation and neither the Gilgit-Baltistan Council nor Government of Gilgit-Baltistan established the Securities and Exchange Commission; as a result, the Registrar of the companies was still exercising the powers including the registration of companies---If there was mismanagement or complaint to the effect that the affairs of the company were not being properly conducted; or were likely to be conducted in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, then the responsibility would shift on the petitioners exclusively being the responsible managers and responsible for conducting all affairs of the company---Purpose of S.290 of the Companies Ordinance, 1984, appeared to keep company going well; while at the same time securing the interest of minor share holders from acts of oppression and mismanagement---Proceedings under S.290 of the Companies Ordinance, 1984, were to be resorted to when it was complained that affairs of the company were being conducted in an unlawful or fraudulent manner; or in a manner not provided for in memorandum and articles of association---Submission of present application by the petitioners, being the Directors and Managers of the company, before the Chief Court under S.290 of the Companies Ordinance, 1984 was against the spirit of the provision of law---Under S. 290 of the Companies Ordinance, 1984 only the members, creditors and the Registrar, were entitled to submit application before the Chief Court in case of any complaint against the management of the company---Section 290 of the Companies Ordinance, 1984, did not provide any statutory right to any Director, Board of Directors or the persons in management responsible for running affairs of the company, to file an application before the court; who himself was responsible for the management and administrative affairs of the company---Any member of Board of Directors, Director or Chief Executive of a company, did not fall under the scope of S.290 of the Companies Ordinance, 1984. **[2016 GBLR 266]**

---Ss. 305 & 309---Winding-up of company---Appeal to Supreme Appellate Court---Appeal had been directed against impugned judgment passed by the Chief Court, whereby appeal filed by respondent was accepted with direction to wind-up the appellant company---Respondent filed petition in the Chief Court under Ss. 305 & 309 of the Companies Ordinance, 1984 for winding-up of company---Petitioners failed to submit statutory reports to the Registrar Joint Stock Companies with regard to the Annual General Meetings---Unanimous resolution was passed by the General Body, recommending to close the business activities of the company---Counsel for the petitioners, could not point out any infirmity or

illegality in the impugned judgment---No interference of Supreme Appellate Court was warranted in circumstances---Appeal was dismissed and impugned judgment passed by the Chief Court, was maintained---Petitioners, however, could approach any legal forum for redressal of their grievances. [2017 GBLR 195]

### **Constitution of Pakistan (1973) ---**

---Arts. 1, 189 & 258---Republic and its territories---Gilgit-Baltistan by virtue of Art. 1(2)(d) of the Constitution, for all intents and purposes is part of Pakistan---Judgments of Supreme Court of Pakistan have more than persuasive value in Gilgit-Baltistan and also are followed with full effect---Principles. [2010 GBLR (c) 160]

---Art. 1(2)(d)---See Constitution of Pakistan, Art. 258. [2010 GBLR (i) 467]

---Arts. 4, 17 & 25---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13). [2010 GBLR (e) 1]

---Arts. 4 & 25---Northern Areas Governance Order, 1994, Art. 19-A--Equal protection of law---Scope---Reasonable classifications, determination of---Test stated. [2010 GBLR (i) 1]

---Arts. 4 & 25---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 3 to 19. [2010 GBLR (a), (b) 1]

---Art. 9---See Penal Code (XLV of 1860), S.489-F. [2010 GBLR (a) 567]

---Art. 9---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. [2010 GBLR (a) 25]

---Art. 17---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 19. [2011 GBLR 105]

---Art. 22---See Gilgit Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 14(3) & (5). [2011 GBLR (a) 413]

---Art. 24---See Land Acquisition Act (I of 1894), S.4. [2011 GBLR (a) 383]

---Art. 25---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 19. [2011 GBLR 103]

---Art. 25---See Gilgit-Baltistan. (Empowerment and Self-Governance) Order, 2009, Art. 17. [2011 GBLR 451]

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----Art. 25---See Penal Code (XLV of 1860), S.489-F. [**2010 GBLR (e) 567**]

----Art. 89---Promulgation of Ordinance---Validation---Ordinance promulgated by President of Pakistan in exercise of his power under Art. 89 of the Constitution of Pakistan, if was not placed before the Parliament within the prescribed period of four months for approval, same would stand expired; and if no further Ordinance in continuation of the repealed Ordinance was promulgated or enforced by the President, the repealed Ordinance would no more be a law of the land. [**2010 GBLR (d) 567**]

----Art. 157---See Constitution of Pakistan Art. 161(2). [**2011 GBLR (s)1**]

----Art. 161(2)---See Constitution of Pakistan, Art. 1(2)(d). [**2011 GBLR (b)1**]

----Art. 161(2)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009, Art. 61. [**2011 GBLR (p)1**]

----Arts. 161(2) & 157---Construction of Diamer Bhasha Dam in the territory of Gilgit-Baltistan---Principle of territorial nexus---Applicability---Scope---Matter pertaining to royalty of the Dam would essentially require decision on the basis of principle of equity and natural justice---Principles. [**2011 GBLR (s)1**]

----Art. 175---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. [**2010 GBLR (p) 160**]

----Art. 175(3)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. [**2010 GBLR (d) 160**]

----Art. 184(3)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. [**2010 GBLR (f) 1**]

----Art. 184(3), Part-II, Chap. 1, (Arts. 8 to 28)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. [**2010 GBLR (d) 1**]

----Art. 184(1)---See Constitution of Pakistan, Art. 1(2)(d). [**2011 GBLR (b)1**]

----Art. 189---See Constitution of Pakistan (1973), Art. 1. [**2010 GBLR (c) 160**]

----Art. 204---See Gilgit-Baltistan (Empowerment Governance) Order, 2009, Art. 75. [**2012-14 GBLR 161**]

---Art. 205---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(10). [2011 GBLR (a) & (b) 388]

---Art. 258---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(10). [2011 GBLR (a) 388]

---Art. 258---See Constitution of Pakistan (1973), Art. 1. [2010 GBLR (c) 160]

---Arts. 258 & 1(2)(d)---Government of territories outside Provinces--Gilgit-Baltistan---Status of. [2010 GBLR (i) 467]

---Fifth Sched.---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(10). [2011 GBLR (a) & (b) 388]

### **Contempt of Court---**

---Initiation of contempt proceedings against a judge of superior Court may lower the dignity and honour not only of the office of judge but also the institution of judiciary--- Principles. [2010 GBLR (h) 160]

---Limitations and qualifications detailed. [2010 GBLR (l) 160]

---Scope---Spoken or printed criticism on the conduct of Judges in dealing with the judicial matters concerning with the rights of people may not abstract the administration of justice, and a healthy and fair criticism based on truth is not prohibited, under the law and Constitution ---What is essential to determine is as to whether alleged contemptuous publication or act was openly dangerous to administration of justice and criticism of the conduct of court in the matter was substantive evil which necessitated the action for misuse of right of free expression--- Act which is made basis of contempt proceedings if does not qualify such test or does not amount interference in administration of justice and also it is not clear that the order of the court which was allegedly disobeyed or criticized was a lawful order or the violation was not an act of disrupting the authority of court, may not constitute contempt of court--- Publication of articles in the newspapers and expression of views on electronic media with reference to the court proceedings and conduct of a Judge in a matter is not contempt of court unless publication is based on contemptuous material--- Contempt proceedings in such a matter may be abuse of authority of law. [2011 GBLR (p) 121]

---Threat to administration of justice---Scope. [2011 GBLR (1) 121]



**Contempt of Court Act (LXIV of 1976)---**

----Ss. 3 & 4---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 75---Contempt of court--- Proceedings for contempt of court were initiated against all the accused persons (appellants) but charge was framed only against 'E' and 'T' whereas neither a proper show-cause notice was issued to 'H' and 'A' nor a formal charge was framed against them, rather they on the basis of their statement recorded by the court during the contempt proceedings had been convicted--- Contentions of the accused persons were that they had contested the show-cause notice, instead of tendering unqualified apology before the Chief Court due to lack of proper legal advice; that they had made the statement before the court due to lack of knowledge and fair comments, made in good faith, but having realized their mistake, they repented and were now placing themselves at the mercy of the Supreme Appellate Court with an unconditional apology--- Validity---Accused 'H' and 'A' were not given proper show-cause notice and also formal charge was not framed against them whereas charge was framed against accused 'E' and 'T' after giving them proper show-cause notice and they had in their statement before the court replied to the charge in detail---Supreme Appellate Court disposed of the appeal with observations that accused persons instead of tendering apology, before the Supreme Appellate Court could avail the remedy of review petition before the Chief Court, and if so desired, could also tender an unconditional apology---Limitation for filing of review petition before the Chief Court having not yet expired, accused persons were released on bail till final disposal of the review petitions before the Chief Court---Order accordingly. [2011 GBLR 530]

**Contempt of Court Ordinance (IV of 2003)---**

----Ss. 3 & 4--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Contempt of court--- Unconditional apology--- Both respondents had wilfully contumaciously acted in disobedience of the direction passed by Supreme Appellate Court and acted in order to obstruct the process of justice, to lower the honour and dignity of the court---Both said officials colluded to frustrate the order passed by the court which was tantamount to contempt of court---Act of both said persons seemed to be deliberate and intentional---Said officials tendered unconditional apology before the Supreme Appellate Court and showed their remorse and compunction; they assured the court that in future, they would remain careful with regard to the cases of their department pending before the courts---Unconditional apology tendered by both the officials seemed to be genuine and from core of

their hearts---No further action was required in the matter and show-cause notices issued were discharged by the Supreme Appellate Court. **[2012-14 GBLR 225]**

---Ss. 3 & 4 --- Gilgit-Baltistan(Empowerment & Self Governance) Order, 2009, Art. 75**[2010 GBLR 425]**

---Ss. 3 & 4---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 75. **[2012-14 GBLR 169]**

---Ss. 3 & 5---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 75. **[2012-14 GBLR 161]**

#### **Contract Act (IX of 1872)---**

---S.2---See Specific Relief Act (I of 1877), S. 12. **[2011 GBLR (a) 235]**

#### **Control of Narcotic Substances Act (XXV of 1997)---**

---S. 9(c)--- See Criminal Procedure Code (V of 1898), S.497. **[2012-14 GBLR 194]**

---S. 9(c)---Possessing and trafficking narcotics---Appreciation of evidence---Sentence, reduction in---Accused did not press his appeal against his conviction and prayed for reduction in his sentences with contention that he was a young man having large family responsibilities and that due to his detention in jail, he and his family had morally and mentally suffered a lot and financially crippled; that he had learnt a lesson and had shown remorse and penitence and he wanted to unburden his conscious; that during serving his sentence in jail, he had improved himself and realized his mistake by committing such shameful offence which had given bad name to his religious family; that he undertook not to repeat such an offence in future; that he wanted to reform and rehabilitate himself as a responsible citizen; and that ends of justice had already been served--- Validity--- Accused who was in custody since 30-1-2013, was the first offender, who had shown his remorse and penitence during serving the sentence in jail--- Accused had already served upon more than 3 years in jail and as per record his conduct was found satisfactory---Accused wanted to reform and rehabilitate himself as a responsible citizen in the society in future---Supreme Appellate Court observed that accused deserved leniency as prayed for, conviction of accused was maintained, but his sentence was reduced from 8 years' R.I. to 5 years' R.I. and fine of Rs. 100,000 was also reduced to Rs. 50,000. **[2016 GBLR 166]**

---Ss. 9(c), 21 & 22---S.R.O. No. 656(I)/2004, dated 2-8-2004--- Criminal Procedure Code (V of 1898), S. 156(2)--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60 & 71--- Possessing and trafficking of narcotics---Appraisal of evidence---Re-opening of investigation by Anti-Narcotic Force---Scope---Chief Court had passed the order whereby the Trial Court was directed to return the challan, if the same was presented by the local Police and Anti-Narcotic Force was directed to re-open the investigation--- Advocate-General contended that Ss. 21 & 22 of the Control of Narcotic Substances Act, 1997, had empowered the Police to take cognizance of the said offence and to investigate the same; that investigation conducted by the Police could not be questioned; that Chief court fell in error by directing the Anti-Narcotic Force for re-opening the investigation of the case and that the investigation of the said case had already been conducted by the local Police and nothing remained for re-investigation in that case---Validity---Police Officer, in pursuance of S.R.O. No. 656(I)/2004, dated 20-08-2004, had powers to take cognizance and investigate the offence falling under the Control of Narcotic Substances Act, 1997---Order passed by the Chief Court was set aside by the Supreme Appellate Court and case was remitted to the Special Judge for trial of the accused---Trial Court was directed to hear and decide the Case expeditiously within a period of six months. [2016 GBLR 406]

### **Cooperative Societies Act (VII of 1925)---**

S. 54---See Specific Relief Act (I of 1877), S. 42. [2015 GBLR 346]

---S. 70---See Specific Relief Act (I of 1877), S. 42. [2015 GBLR 346]

---S. 70-A---See Specific Relief Act (I of 1877), S. 42. [2015 GBLR 346]

### **Criminal Procedure Code (V of 1898)---**

---S. 22-A---See Penal Code (XLV of 1860), S. 302. [2017 GBLR 71]

---S. 132---See Penal Code (XLV of 1860), S. 302. [2015 GBLR 330]

---Ss. 145 & 146---Dispute concerning property creating serious apprehension of breach of peace---Attachment of property---Local Commission after inspection of spot had submitted the report, which had shown that presently at the spot none of the party was in physical possession; and that there was serious apprehension of breach of peace

as both the parties were in struggle of getting forcible possession of property--- Parties, in view of report of Local Commission, had agreed for the attachment of the property pending disposal of the suit--- Supreme Appellate Court, in view of the nature of dispute and attending circumstances, directed that property in question would remain attached till final disposal of the suit to avoid any unpleasant situation---Court would pass a formal order for attachment of the property in accordance with law and would also make efforts to dispose of die suit within a period of six months. **[2011 GBLR 265]**

----S. 154---See Penal Code (XLV of 1860), S. 337-A. **[2012-14 GBLR 73]**

----Ss. 154, 156 & 157--- Information in cognizable cases--- Investigation---Every information pertaining to the commission of a cognizable, offence, either given orally to an officer incharge of a Police Station, would be reduced in writing by him---Information given in writing or reduced in writing, would be read over to the informant, and would be entered in a book to be kept in Police Station---Section 156, Cr.P.C., had conferred power on the officer incharge of the Police Station to investigate any cognizable offence within the local limits of his area---Under provisions of S.157, Cr.P.C., if any information was received, or if Police Officer had reason to suspect the commission of an offence, he, on receipt of information, would forthwith send a report to the Magistrate, having jurisdiction to take cognizance of that offence upon a Police report---Police Officer, thereafter would proceed to the place of occurrence, or he would depute one of his subordinates to inspect the spot in order to investigate facts and circumstances of the case. **[2012-14 GBLR (b) 137]**

----S. 155---See Penal Code (XLV of 1860), S.337-A. **[2012-14 GBLR 73]**

----S. 156--- See Criminal Procedure Code (V of 1898), S.154. **[2012-14 (b) 137]**

----S. 157---See Criminal Procedure Code (V of 1898), S.154. **[2012-14 GBLR (b) 137]**

----S. 164---Confessional statement----Jurisdiction to record--- Magistrate second class is not permitted under S.164, Cr.P.C. to record confessional statement. **[2010 GBLR (d) 256]**

----S.164---See Penal Code (XLV of 1860), S.302. **[2010 GBLR (a) 256]**

---Ss. 164 & 364---Qanun-e-Shahadat (10 of 1984), Arts. 41 & 43---  
Confessional statement---Object and scope---Judicial insistence---  
Object behind legal and judicial insistence which is empathetic and  
firm in meticulous observance of all essential prescribed formalities  
and pre-courses before recording confession is to provide to  
confessing accused an environment of absolute freedom from all  
inside and outside hostile factors which cause or endue fearful  
consequences in his mind---In case such accused refuses to make  
confession, unless all signs of such fear as shaded from his mind, the  
only inference to be drawn would be that confession was not made  
voluntary, therefore, such confession would be irrelevant and  
inadmissible in evidence and cannot be made the sole basis for  
conviction for a capital charge---Combined effect of Ss. 164 and 364  
Cr.P.C. read with Arts. 41 and 43 of Qanun-e-Shahadat, 1984, are that  
before relying on confession of accused two essential requirements  
must be fully and objectively satisfied firstly that confession is made  
voluntary and is true and secondly that the same must be proved at the  
trial---In absence of legal requirements such confession cannot be  
considered as legal piece of evidence. **[2010 GBLR (c) 256]**

---Ss. 164 & 497(2) ---Penal Code (XLV of 1860), Ss. 302/324/34---  
Anti-Terrorism Act (XXVII of 1997), S.7--- Qatl-e-amd and attempt  
to commit qatl-e-amd---Bail, grant of--- Further inquiry---Rule of  
consistency---Failure to hold identification parade---Prosecution  
witnesses in their statements under S. 164 Cr.P.C. ascribed an identical  
role to all accused but Trial Court enlarged others, except the accused---  
---Recovery of weapon of offence was made from co-accused who  
was directly charged in the F.I.R.---Prosecution also recorded  
statement of injured witness who was a natural witness of the  
occurrence but he did not identify any person while opening fire---  
Injured prosecution witness in his statement under S.161, Cr.P.C.  
claimed that he was in a position to identify assailants if they were  
produced before him but prosecution did not bother to hold  
identification parade to bring the real truth on record---Effect---Case  
against the accused called for further inquiry as contemplated in  
S.497(2), Cr.P.C.---Bail was allowed. **[2010 GBLR 295]**

---S. 164(3)---Confessional statement---Questions to be asked from  
deponent were that for how long have you been with police; that has  
any pressure been brought to bear upon you to make confession; that  
have you been threatened to make confession; that has any inducement  
been given to you; that why are you making this confession and that  
have you been maltreated by police---After recording answers of  
accused to the questions, if Magistrate is satisfied that he is making

confession voluntary, then he should proceed to record his confession in verbatim. [2010 GBLR (b) 256]

---S.164---Qanun-e-Shahadat (10 of 1984), Arts. 38 & 39-Confession---Conviction on confession---Accused was an innocent child of, law, unless he was proved guilty---Said., principle was based upon the concept of Justice in Islam--- Conviction could alone sustain on the basis of even a retracted confession made by an accused before a Judicial Officer, if it was found truthful and confidence inspiring; and since no sanctity was attached with the confession of guilt before a Police Officer, such confession could not be considered at par with the judicial Confession, and was not admissible in evidence to be made basis of conviction. [2011 GBLR (b) 475]

---S.164---See Criminal Procedure Code (V of 1898), S.497(5). [2011 GBLR 380]

---S.164---See Qanun-e-Shahadat (10 of 1984), Art. 38. [2011 GBLR (b) 475]

---S. 164--- Confessional statement--- Admissibility, rule of 'Confession' and 'retracted confession'--- Distinction--- Rule of admissibility of confessional statement, prescribed no time as to the recording of the confession of accused---Simpliciter delay in recording of the confession of accused, could not be fatal to the case of the prosecution, but the court was under legal obligation to examine the same, keeping in view the circumstances of the case---Court was to satisfy itself as to whether the confession was voluntary, true, and was recorded in accordance with law, and whether it could be relied upon--  
-Generally, delay in recording a confession would make the confession doubtful--- Statement under S.164, Cr.P.C., recorded after keeping the accused in long detention in the Police custody, was always viewed with suspicion, and was unsafe to rely upon for conviction, particularly, when same was retracted much before the commencement of trial---If the confessional statement was recorded with a nominal delay after the arrest of accused, it should not be ruled out of consideration; and if there was an unexplained delay for a considerable period, same should not be taken into consideration without any independent corroboration---No basic difference existed between confession and retracted confession, what was required to be seen, was that element of truth should have not been missed---If confessional statement of accused was found voluntary, conviction could be recorded, but rule of caution required that a retracted confession must be supported by some other independent evidence connecting accused with the crime---Retracted confession, was always

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open to suspicion, and could not be acted upon, unless it was corroborated by independent, trustworthy and thorough truthful witnesses---Confessional statement could be relied upon, where supportive evidence of recoveries, effected at the instance of. accused, had been proved on record as well as medical evidence---Evidentiary value of a confessional statement heavily depended upon its voluntary character, which was of great importance. **[2012-14 GBLR (c) 106]**

---S. 164---See Penal Code (XLV of 1860), S. 302. **[2012-14 GBLR (b) 106]**

---S. 164---See Penal Code (XLV of 1860), S. 302(b). **[2012-14 GBLR 48]**

---S. 173---See Penal Code (XLV of 1860), S. 337-A. **[2012-14 GBLR 73]**

---S. 173---See Penal Code (XLV of 1860), s. 322. **[2015 GBLR 234]**

---S. 197---See Penal Code (XLV of 1860), S. 302 **[2015 GBLR 320]**

---S. 196---See Penal Code (XLV of 1860), S. 153-A. **[2012-14 GBLR (c) 137]**

---S. 249-A---Power of the Magistrate to acquit accused---Magistrate was empowered to acquit accused at any stage of the case, if after hearing the prosecutor and accused, Magistrate considered that the charge against accused was groundless, or there was no probability of accused being convicted of any offence---Trial Court was under legal obligation to see, before making acquittal orders, that as to whether the prosecution failed to produce the witnesses for an inordinate delay and it should have been established on the record that the summonses were duly issued---Issuance of summonses, was not enough, it should have been ascertained that same had also been served upon the witnesses and the witnesses including the complainant were intentionally not coming ahead to appear in response to the process issued by the court--All the coercive measures were also to be adopted to ensure their presence---If it had been done in accordance with law, and even then the witnesses did not appear before the court and the prosecution did not take any interest in the case, court could proceed under S.249-A, Cr.P.C. and acquit accused for non-production of evidence. **[2012-14 GBLR (b) 153]**

---S. 249-A---See Penal Code (XLV of 1860), S. 427. **[2012-14 GBLR (a) 153]**

----Ss. 260 & 491---Illegal hunting---Accused against whom complaint was filed regarding illegal hunting of “Markhor” was summarily tried by Magistrate and was awarded 6 months imprisonment and fine of Rs. 100,000-Petition under S. 491, Cr.P.C. against the order of the Magistrate was allowed by the Appellate Court and accused was ordered to be released from jail---Chief Court dismissed appeal against order of the lower Appellate Court---Prosecution could not point out any illegality and infirmity in the impugned judgment passed by the Chief Court---Leave to appeal was refused and judgment of Chief Court was maintained, in circumstances. **[2017 GBLR 93]**

----S. 342--- Examination of accused--- Principles---Fundamental principle of criminal administration of justice was that statement of an accused under S.342, Cr.P.C., containing admission/confession of guilt, was to be accepted or rejected as a whole; and court was not supposed to exclude the exculpatory portion of statement from consideration and rely only on inculpatory portion of statement--- Court had to consider the whole statement and decide the fact of case accordingly---Said rule was based on the principle that prosecution must stand on its own legs; and conviction, if was based solely on the statement of accused under S.342, Cr.P.C. it was to be accepted as a whole---Said principle was subject to certain exceptions, and could not have mandatory force in the normal circumstances in the case wherein the version was introduced in the statement under S.342, Cr.P.C.--- Confession for the purpose of conviction must be independent to the defence version---Admission of occurrence containing defence version, neither could be treated as confession, nor a sole evidence of guilt, rather, such admission could at the most, was relevant for the purpose of corroboration and could not be used as an independent evidence of guilt. **[2017 GBLR (a) 1]**

----S. 342---See Penal Code (XLV of 1860), S. 302(b). **[2017 GBLR (b) 1]**

----S. 345---See Penal Code (XLV of 1860), S. 302. **[2017 GBLR 61]**

----S. 345---See Penal Code (XLV of 1860), S. 302(b). **[2017 GBLR 72]**

----S. 345---Penal Code (XLV of 1860), Ss. 302 & 34--- Pakistan Arms Ordinance (XX of 1965), S.13---Qatl-i-amd, common intention, possessing unlicensed arms---Appreciation of evidence--- Compromise---Parties had patched up the matter through the Elders and Notables of the area and an application had been moved in that regard---Trial Court had confirmed the genuineness of the compromise arrived at between the parties; complainant party had pardoned



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accused for the sake of Almighty Allah---Complainant party had no objection, if convicted person was acquitted on the basis of said compromise---Accused was also convicted under S. 13 of Pakistan Arms Ordinance, 1965 and was sentenced for 7 years R.I. with fine--- Accused had spent 5 years and 8 months in the judicial lock-up, said period was enough time spent behind the bars, remaining period, was deemed to have been undergone--- Fine of Rs. 5000 would stand as it was and would be deposited in the Government treasury---Accused was acquitted of the charge of murder under S.302/34, P.P.C.--- Conviction of accused under S.13 of Pakistan Arms Ordinance, 1965, would be deemed to have served in circumstances. **[2015 GBLR 157]**

---S. 345---Penal Code (XLV of 1860), Ss. 302, 324, 337-A & 34--- Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7--- Pakistan Arms Ordinance (XX of 1965), S.13---Qatl-i-amd, attempt to commit qatl-i-amd, causing Shajjah, common intention, act of terrorism, possessing unlicensed arms--- Compromise---Compromise was arrived at between, accused persons and legal heirs of the deceased during pendency of appeal---Trial Court gave report regarding the genuineness of said compromise---Statements of legal heirs of deceased were recorded wherein they all had pardoned the accused persons---Case of compromise having been made out, accused were acquitted from the charges levelled against them. **[2015 GBLR 190]**

---S. 345---Penal Code (XLV of 1860), Ss. 324, 34 & 337-D--- Anti-Terrorism Act (XXVII of 1997), S. 7(c)---Pakistan Arms Ordinance (XX of 1965), S.13---Attempt to commit qatl-i-amd, common intention, causing Jaifa, act of terrorism, possessing unlicensed arms--- Appreciation of evidence---Compromise--- Compromise was effected between the parties---Trial Court in its report authenticated that the injured had forgiven accused for his criminal act---Trial Court had also recorded the statement of injured along with Jirga Members who had verified that a genuine compromise had been effected between the parties outside the court---Accused, who had been given benefit of S. 382-B, Cr.P.C., had spent a period of 4 years and 6 months behind the bars---Compromise arrived at between the parties, being genuine and effective, accused was acquitted from the charge under Ss. 324, 337-D, 34, P.P.C. and Ss. 6, 7 of Anti-Terrorism Act, 1997---Sufficient evidence was not available on record regarding charge under S.13 of Pakistan Arms Ordinance, 1965 and Ss. 6, 7 of Anti-Terrorism Act, 1997--- Accused was acquitted and was ordered to be released forthwith, in circumstances. **[2015 GBLR 130]**

---S. 345---See Penal Code (XLV of 1860), S. 302. **[2017 GBLR 183]**

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---S. 345---See Penal Code (XLV of 1860). S. 351. [2017 GBLR 188]

---S. 364---See Criminal Procedure Code (V of 1898), S.164. [2010 GBLR (c) 256]

---S. 364---See Penal Code (XLV of 1860). S. 302(b). [2012-14 GBLR 48]

---S. 367(2)---See Penal Code (XLV of 1860), S. 302. [2012-14 GBLR (a) 106]

---Ss. 410 & 417---Appeal against conviction and appeal against acquittal---Scope---Remarkable difference existed between appraisal of evidence in an appeal against acquittal and in an appeal against conviction---Principles of appraisal of evidence on record, was required to be carried out very consciously and with application of judicious mind strictly in an appeal against conviction, but same method could not be applied in appeal against acquittal, as there was already a decision of acquittal rendered by the court of competent jurisdiction--- While appraising the evidence different inference, could only be drawn, when it appeared so apparently that there had been a gross misreading of the evidence, or a very essential part of the evidence had not been taken into consideration, which if would have been read, the conclusion could have been different, particularly, if it led to miscarriage of justice---Supreme Appellate Court ordinarily, did not interfere with the case of acquittal, rather a due weight was given to the findings of court acquitting accused--- Reappraisal of the evidence, was to be done very carefully and consciously as accused had already earned acquittal. [2012-14 GBLR (a) 137]

---S. 417--- See Criminal Procedure Code (V of 1898), S. 410. [2012-14 GBLR (a) 137]

---S. 417(2)---See Penal Code (XLV of 1860), S. 153-A. [2012-14 GBLR (c) 137]

---S. 417(2-A)---See Penal Code (XLV of 1860), S. 427. [2012-14 GBLR (a) 153]

---S. 491---See Criminal Procedure Code (V of 1898), S. 260. [2017 GBLR 93]

---S 497---Bail, grant or refusal of---Principles---Provisions of S. 497. Cr.P.C. were not punitive, in nature, as there was no concept of punishment before judgment---Question of grant or refusal of bail was

to be determined judiciously having regard to the facts and circumstances of each case---Where the prosecution would satisfy the court, that there were reasonable grounds to believe that accused had committed the crime falling in prohibitory clause of S.497, Cr.P.C., court must refuse bail---Where accused would satisfy the court that there were no reasonable grounds to believe that he was guilty of such offence, then the court must release him on bail---For arriving at the conclusion as to whether or not there were reasonable grounds to believe that accused was guilty of offence punishable with death, imprisonment for life or imprisonment for ten years, court would not conduct a preliminary trial/inquiry, but would only make a tentative assessment i.e. would look at the material collected by the Police for and against accused prima facie satisfying that some tangible evidence could be offered which, if left un-rebutted, could lead to the inference of guilt---Deeper appreciation of evidence and circumstances appeared in the case, was neither desirable nor permissible at bail stage---Court would not minutely examine the merits of the case or plea of defence at bail stage. **[2017 GBLR (a) 167]**

---S. 497---Bail---Grant or refusal of---Principles---Provisions of S.497, Cr.P.C., were not punitive in nature---Grant or refusal of bail, was to be determined judiciously having regard to the facts and circumstances of the case---Where the prosecution had satisfied the court, that there were reasonable grounds to believe that accused had committed the crime punishable with death, life imprisonment or imprisonment for 10 years, court must refuse bail---Where accused had satisfied the court that there were no reasonable grounds to believe that he was not guilty of such offence, then he be released on bail---Court, arriving at any such conclusion, was not to conduct a preliminary trial/inquiry, but would only make a tentative assessment--Deeper appreciation of the evidence and circumstances appearing in the case, was neither desirable nor permissible at bail stage---Court would not minutely examine the merits of the case or plea of defence at bail Stage Court had to look at the material collected by Police for and against accused, prima facie, satisfying the court that some tangible evidence could be offered, which, if left unrebutted, could lead to the inference of guilt---Order for bail must be carefully balanced at the scale of justice and requirement of relevant law. **[2017 GBLR (b) 124]**

---S. 497---Bail---Counsel for the petitioners had submitted that trial was ripe for conclusion as except 2, 3 formal witnesses all other witnesses had been examined, but the District Attorney for the last six dates had not appeared in the court; as a result of which conclusion of trial was stuck off--- Counsel had stated that instead of asking for the

bail of the petitioner, he would request for a direction of conclusion of trial on priority---District Attorney for no good reason absented from the court and caused unnecessary delay in the conclusion of trial--- Trial Court had also not taken any pains in conclusion of trial within reasonable time, as per direction of Supreme Appellate Court in Jail Reforms case---Prosecution could not be allowed latitude to prolong the trial at the cost of agony of accused who were in jail since the date of registration of case against them---Trial Court was required to examine using coercive measures for the attendance of the witnesses, to conclude the trial on priority---Request of the counsel for the petitioner for early disposal of the case by the Trial Court being genuine, Supreme Appellate Court directed accordingly. **[2010 GBLR 375]**

---S. 497---Bail in non-bailable offences---Principles---Bail in non-bailable cases is discretionary and court must exercise such discretionary jurisdiction according to the settled principles for grant of bail in such cases---Bail cannot be claimed as of right in non-bailable cases punishable with death or imprisonment for life, unless the same fall within the ambit of S.497(2), Cr.P.C., and if the case is not covered by the said provision of law, bail may not be granted as a matter of grace. **[2010 GBLR (b) 54]**

---S. 497---Bail petition---Counsel for the petitioner during the course of hearing pointed out that petition for bail before the Chief Court was not decided on merits, but was dismissed as /withdrawn---Petition before Supreme Appellate Court was not maintainable in circumstances, petitioner could move a fresh bail application before Chief Court or before the Trial Court. **[2010 GBLR 422]**

---S.497---Penal Code (XLV of 1860), S.302/34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Qatl-e-amd---Bail, grant of---Accused had been assigned general role of firing along with his co-accused--- Statements of eye-witnesses recorded under S.161, Cr.P.C. did not show that as to who out of the two assailants was exclusively responsible for causing the death of the deceased--- Reason for discharge of co-accused in the case was not apparent on record---Post-mortem of the deceased was not conducted to ascertain the cause of his death---Weapon of offence recovered from accused was not sent to Ballistic Expert for opinion--- Despite issue of bailable and non-bailable warrants, prosecution had failed to produce evidence and early conclusion of trial was not in sight--- Detention of accused in jail without trial was not fair---Accused was admitted to bail in circumstances. **[2010 GBLR 129]**

---S.497---Penal Code (XLV of 1860), S.302/34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)---Qatl-e-amd---Bail, refusal of---Common intention--- Determination--- Accused contended that S.34, P.P.C. would not attract, as accused had no common intention to commit offence of Qatl-e-Amd and even if allegation against them were proved by prosecution at trial, there was no possibility of their ultimate conviction under S.302 P.P.C.--- Validity---Tentative assessment of evidence available on record would suggest active participation of accused in the occurrence---Question of common intention would be determined at trial in the light of evidence and the same could not be decided at bail stage---Leave to appeal was refused. **[2010 GBLR 35]**

---S.497---Penal Code (XLV of 1860), S.302/34---Qatl-e-amd Bail--- Counsel for the petitioner had contended that statements of all the eye-witnesses had been recorded and only formal witnesses were left for examination---Counsel had also pointed out that as a result of baseless transfer application moved by the complainant before the Chief Court, the proceedings in the trial before the Trial Court had been struck off and the conclusion of trial had been un-necessarily delayed---Held, Expeditious disposal of a criminal case involving capital punishment was right of accused and the prosecution or complainant, must not be allowed to use delaying tactics to prolong the trial at the cost of agony of detention of accused in jail---Chief Court in exercise of its power of superintendence and the supervision of subordinate courts, must take notice of such matters to avoid unnecessary delay in the disposal of criminal cases; and could decide the transfer application on priority basis to avoid any further delay in conclusion of trial---Trial Court on decision of the transfer application would proceed in the trial day to day and conclude the proceedings within a month. **[2010 GBLR (a) 353]**

---S.497---Penal Code (XLV of 1860), Ss. 302/118/212/216--- Anti-Terrorism Act (XXVII of 1997), Ss. 6/7---Qatl-e-amd and terrorism--- Bail---Heinousness of offence---Principle---Concession of bail cannot be withheld on the plea of heinousness of the offence, if the accused is otherwise found entitled to the same. **[2010 GBLR (b) 149]**

---S. 497---Penal Code (XLV of 1860), Ss. 302/324/427/431/353/34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)---Qatl-e-amd and attempt to commit qatl-e-amd---Bail, refusal of---Delay in conclusion of trial---Rule of consistency---Applicability---Accused persons were directly charged in promptly lodged F.I.R.; occurrence had taken place in broad daylight; recovery of weapon of offence was made soon after the

occurrence; motive of commission of offence was established and occurrence was seen by three witnesses including two injured persons whose statements had been recorded without any inordinate delay--- Accused raised the plea of delay in conclusion of trial and principle of consistency---Validity---Challan was submitted on 24-9-2008 and thereafter case could not proceed either due to non-availability of defence counsel, District Attorney or due to absence of Presiding Officer---Such delay could not be attributed to the prosecution solely and the same could not be a good ground for grant of bail in absence of any specific provision---Order granting bail to co-accused was under challenge and was sub judice---Tentative assessment of available material showed that a prima facie case was made out against accused, therefore, Supreme Appellate Court declined to grant bail to accused persons---Leave to appeal was refused. **[2010 GBLR 288]**

---S.497---Penal Code (XLV of 1860), S.324/34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)--- Attempt to commit qatl-e-amd---Bail, grant of--- Benefit of doubt--- Recovery of crime weapon from the accused was doubtful---No specific role was attributed to accused--- Record did not disclose as to out of two accused who was the main culprit who had caused injuries to the prosecution witness---No medical report had been provided by the prosecution to show the number, locale and the nature of the injuries caused to the injured witness---Prosecution witnesses had made contradictory statements---Irregular and partial investigation in the case had made the same highly doubtful--- Accused was entitled to benefit of doubt even at bail stage--- Guilt of accused needed further inquiry---Bail was allowed to accused in circumstances. **[2010 GBLR 120]**

---S.497---Penal Code (XLV of 1860), Ss. 392/397/398/402/ 34--- Offences against Property (Enforcement of Hudood) Ordinance (VI of 1979), S.17---West Pakistan Arms Ordinance (XX of 1965), S.13--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Robbery or dacoity with attempt to cause death or grievous hurt assembling for committing dacoity, haraabah and unlicensed sale or possession of arms and ammunition etc.---Bail, grant of---Role assigned to accused was not distinguishable from that of his five co-accused, who had been allowed bail by Supreme Appellate Court---Accused was also entitled to the same relief and discussion of the case in detail was not needed---Petition for leave to appeal was, consequently, converted into appeal and the accused was allowed bail accordingly. **[2010 GBLR 116]**

---S.497---Penal Code (XLV of 1860), Ss. 395/34/506---Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979), S.20---Dacoity, criminal intimidation and Haraabah liable to Tazir---Bail---Serious and anti-social nature of the offence---Principle---Bail cannot be withheld merely due to the serious and anti-social nature of the offence, if the accused is, otherwise, found entitled to grant of concession of bail. **[2010 GBLR (b) 62]**

---S.497---Penal Code (XLV of 1860), Ss. 395/34/506--- Offences against Property (Enforcement of Hudood) Ordinance (VI of 1979), S.20---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Dacoity, criminal intimidation haraabah liable to Tazir---Bail, grant of---Question of holding identification parade did not arise as accused admittedly had muffled their faces at the time of occurrence---Delay of 23 hours in lodging the F.I.R. had made the prosecution case doubtful---No one had been nominated in the F.I.R.--Belated recovery of the un-described looted amount and Mobile sets without associating independent witnesses in the proceedings in a non-transparent manner, was not credible--- Complainant had failed to identify the accused---Case against accused, thus, called for further inquiry---Bail could not be withheld merely on the plea of serious and anti-social nature of the offence, if the accused were, otherwise, found entitled to bail---Accused were admitted to bail in circumstances. **[2010 GBLR (a) 62]**

---S.497---Penal Code (XLV of 1860), S.457---Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979), S.9/14--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---House breaking by night, theft liable to Hadd or Tazir---Bail, grant of---Accused was nominated in the F.I.R. as suspect--- Complainant and other employees though present at the spot as guards of the godown had neither caught the accused and his co-accused red handed, nor informed the police, especially when a considerable time had been spent in opening the door of godown and loading the wheat bags in the vehicle---Prosecution case, thus, was doubtful, rather it showed the indulgence and abetment of the guards in the commission of the crime---Nothing incriminating had been recovered from the accused---Prosecution had even failed to recover the original key of the godown---Investigation in the case had been conducted by the police in a capricious and irregular manner---Bail was allowed to accused in circumstances. **[2010 GBLR 33]**

---S. 497---Penal Code (XLV of 1860), S.489-F---Dishonestly issuing a cheque---Bail, grant of---Sentence under S.489-F-, P.P.C., was three years and offence under said section did not fall within the prohibitory

clause of S.497, Cr.P.C.--- Withholding of bail in such cases would amount to pre-trial punishment. **[2010 GBLR (b) 567]**

---S. 497(2)--- Penal Code (XLV of 1860), S.302---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)--- Qatl-e-amd---Bail, grant of---Further inquiry--- Accused sought bail on the plea of his innocence and doubt in his guilt---Validity--- Question of guilt and innocence of accused would be decided in the light of evidence---Supreme Appellate Court, did not find it proper to dilate upon the merits at bail stage, lest it might prejudice the accused or prosecution and directed that after recording of material evidence by Trial Court, accused might, if so advised repeat his request before Trial Court---Bail was refused. **[2010 GBLR 83]**

---S. 497---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Petition for leave to appeal---Bail--- Counsel for the accused (petitioner) had consented to disposal of petition for leave to appeal with the direction to the Trial Court for conclusion of the trial within one month on re-opening of the court after summer vacations, and if the trial was not concluded within the said period of time, the accused might be allowed to file fresh application for bail before the Trial Court---Validity---Request made by the counsel for the accused was genuine---Supreme Appellate Court directed that the trial should be concluded within one month; that the prosecution would be responsible for production of evidence, failing which the court might use coercive measures for attendance of the witnesses; that if the trial was not concluded within one month, without, any fault of the accused, he might file a fresh bail application before the Trial Court which should be considered on its own merits---Petition for leave to appeal was disposed of accordingly. **[2011 GBLR 535]**

---S.497---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Penal Code (XLV of 1860), Ss. 302/ 34/ 147/ 148/ 337-A---West Pakistan Arms Ordinance (XX of 1965), S. 13---Qatl-e-amd and causing hurt---Bail, refusal of---Rule of consistency---Applicability---Scope-Role attributed to petitioner was distinguishable from that of other accused, who was granted bail---To establish the rule of consistency, it was necessary that role of all accused roped in a criminal case was same, identical and not distinguishable from each other---Bail could not be granted as a matter of course in a simple sentence that rule of consistency was applicable--Rule of consistency could not be applied in each and every case---In the present case, from tentative assessment of available record it transpired that the fatal fire shot had been attributed to the petitioner---



Recovery of weapon of offence had been secured from possession of the petitioner who was directly charged in F.I.R. as well as in statements recorded under S.161, Cr.P.C. Bail was rightly refused to petitioner, in circumstances. **[2011 GBLR 79]**

---S. 497--- Grant/refusal of bail--- Principles--- Question of grant/refusal of bail, was to be determined judiciously, having regard to the facts and circumstances of each case---Where the prosecution would satisfy the court, that there were reasonable grounds to believe that accused had committed the crime falling under the category of offences punishable with death or imprisonment for life, or imprisonment for ten years, the court must refuse bail---Where accused would satisfy the court that there were no reasonable grounds to believe that he was guilty of such offence, then the court must release accused on bail---For arriving at the conclusion as to whether or not there were reasonable grounds to believe that accused was guilty of offence punishable with death, imprisonment for life or imprisonment for ten years, the court would not conduct a preliminary trial/inquiry, but would only make tentative assessment i.e. would look at the material collected by the Police for and against accused and prima facie be satisfied that some tangible evidence, could be offered; which if left un-rebutted, could lead to the inference of guilt---Deeper appreciation of evidence and circumstances appearing in the case was neither desirable nor permissible at bail stage---Court would not minutely examine the merits of the case or pleas of defence at bail stage---Bail order must be carefully balanced and weighed in scale of justice and requirement of relevant law. **[2015 GBLR (b) 95]**

---S. 497---Penal Code (XLV of 1860), Ss. 324, 336, 337-A(iii) & 34--Attempt to commit qatl-i-amd, Itlaf-i-Salahiyyat-i-Udw, Causing Shajjah-i-Hashimah, common intention---Bail, grant of---Inordinate delay in lodging FIR and delay regarding recovery of articles had not been explained---No reason for not associating any independent private witness, was given---Civil disputes between the parties, were pending before civil court---Statements of the prosecution witnesses were also recorded after unexplained delay of 24 days of the occurrence, which had created serious doubts in prosecution case, benefit of such delay could be given to accused persons at bail stage---Petition for leave to appeal was converted into appeal and accused persons were granted bail by Supreme Appellate Court, in circumstances. **[2015 GBLR (a) 95]**

---S. 497---Bail, grant/refusal of---Principles---Provisions of S.497, Cr.P.C., were not punitive in nature as there was no concept of punishment before judgment---Question of grant/refusal of bail, was to

be determined judiciously, having regard to the facts and circumstances of each case---Where the prosecution would satisfy the court that there were reasonable grounds to believe that accused had committed the offence falling under prohibitory clause of S.497, Cr.P.C., the court must refuse bail---Where, however, accused would satisfy the court that there were no reasonable grounds to believe that accused was guilty of such offence, court must release him on bail---Court, for arriving at the conclusion as to whether or not there were reasonable grounds to believe that accused was guilty of offence, punishable with death, imprisonment for life or imprisonment for ten years, it would not conduct a preliminary trial/inquiry, but would only make a tentative assessment, i.e. would look at the material collected by the Police for and against accused and prima facie satisfied that some tangible evidence could be offered which, if left un-rebutted, could lead to the inference of guilt---Deeper appreciation of evidence and circumstances appearing in the case were neither desirable nor permissible at bail stage---Court would not minutely examine the merits of the case or plea of defence at bail stage. [2016 GBLR (b) 390]

---S. 497---Grant or refusal of bail---Principles---Provisions of S.497, Cr.P.C., were not punitive in nature as there was no concept of punishment before judgment---Question of grant/refusal of bail was to be determined judiciously leaving regard to the facts and circumstances of each case---Where the prosecution would satisfy the court, that there were reasonable grounds to believe that accused had committed the crime falling in prohibitory clause of S.497, Cr.P.C., the court must refuse bail---Where accused would satisfy the court that there were no reasonable grounds to believe that he was guilty of such offence; the court must release him on bail---For arriving at the conclusion as to whether or not there were reasonable grounds to believe that accused was guilty of offence punishable with death, imprisonment for life or imprisonment for ten years, the court would not conduct a preliminary trial/inquiry, but would only make a tentative assessment i.e. would look at the material collected by the Police for and against accused and prima facie satisfied that some tangible evidence could be offered which, if left un-rebutted, could lead to the inference of guilt---Deeper appreciation of the evidence and circumstances appearing in the case was neither desirable nor permissible at bail stage---Court would not minutely examine the merits of the case or plea of defence at bail stage. [2016 GBLR (b) 418]

---S. 497--- Control of Narcotic Substances Act (XXV of 1997), S.9(C)---Possessing and trafficking narcotics---Bail, refusal of---

Information regarding the possession of drugs by accused was given by another accused who had been arrested for possession of drugs in another FIR---Recovery of the drugs had taken place in broad daylight---Prima facie case, against accused being available, bail was declined to accused, in circumstances. **[2012-14 GBLR 194]**

----S. 497---Penal Code (XLV of 1860), Ss. 302, 34 & 109--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Qatl-i-amd, common intention, abetment---Bail, refusal of---FIR, clearly disclosed the presence of the witnesses at the spot, as well as the direct nomination of accused---Accused, had been alleged to have opened the fatal fire shot at the deceased, and his role in the commission of offence was not at par with the role played by co-accused---Statement of the prosecution witnesses, as well as the recovery of other articles, had not been constructed after any fatal delay, which could raise doubts in the manner in which the occurrence had taken place---Bail was not granted, as there was a prima facie case existing against the accused. **[2012-14 GBLR 98]**

----S. 497---Penal Code (XLV of 1860), Ss. 302 & 324---Qatl-i-amd, attempt to commit qatl-i-amd---Bail granting order, recalling of---FIR, in the case had been lodged well within time, and the factual manner of the cause and the background of the matter and the incident had been lodged in detail---Dispute between the parties was a result of water rights---Both the parties claimed the right to water their fields---Matter was being resolved in the house of complainant, but the issue could not be settled---Petitioners, being present in the vicinity of the house of the complainant opened fire, resulting in the death of one female, and fire shot injuries sustained by three injured persons---Lalkara for the opening of the fire shots, was attributed to one of the accused persons, thereby indiscriminate fire shots were opened---Injured had clearly named accused persons/petitioners for opening of fire shots, who were identified in the light of electric bulb---All three petitioners, were directly implicated for opening the fire shots---Prima facie case against accused persons having been made out concession of bail could not be extended in their favour---Petition of petitioners/accused persons was declined---Case itself having been charge sheeted and fixed for adducing of evidence, Trial Court could speed-up the matter and conclude the trial at the earliest. **[2012-14 GBLR 231]**

----S. 497(5)--- Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7--- Explosive Substances Act (VI of 1908), Ss. 4 & 5---Act of terrorism, recovery of explosive substances--- Bail, grant of--- Chief Court granted bail to accused---Validity---Prosecution failed to show that

accused had misused the concession of bail granted to him, or he had attempted to tamper with the prosecution evidence---No ground was agitated for withdrawal of concession of bail granted to accused---State counsel had submitted that no documentary evidence was available to the effect that material (explosive substance) allegedly recovered at the instance of accused, was ever sent to concerned laboratory for test---Petition for cancellation of bail was dismissed, in circumstances. **[2012-14 GBLR 199]**

---S. 497(1)(5)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60(13) & 71---Bail, grant/cancellation of---Trial Court accepted bail application of co-accused on the ground of his minority whereas, bail application of accused was dismissed---Being aggrieved and dissatisfied with order of the Trial Court, accused filed bail application before the Chief Court--- Chief Court dismissed said application, and observed that co-accused who was caught at the spot was granted bail without adhering to the legal provisions---State did not move any application for cancellation of bail to the co-accused by Trial Court---No notice for cancellation of bail to co-accused was issued--- Accused filed petition for leave to appeal against order of Chief Court---Supreme Appellate Court dismissed the petition and issued notice to co-accused, to the effect that as to why bail already allowed to him by the Trial Court was not recalled--- Trial was in progress, evidence of the prosecution witnesses had almost been recorded by the Trial Court---Accused was to be examined under S.342, Cr.P.C. and the trial was likely to be concluded very soon--- Supreme Appellate Court observed that no further action was left to be taken; notice already issued by Supreme Appellate Court, stood discharged and petition was disposed of accordingly. **[2012-14 GBLR 69]**

---S. 497(1)(5)---Penal Code (XLV of 1860), Ss. 147, 149, 341, 504, 506 & 353---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Rioting, common object, wrongful restraint, intentional insult with intent to provoke breach of peace, criminal intimidation, assault or criminal force to deter public servant from discharge of his duty, act of terrorism---Bail, grant of---Trial Court declined bail to accused, but, Chief Court allowed bail, and accused were ordered to be released on bail---Validity---Chief Court had taken note of all the legal provisions; and thereafter passed speaking order--- Accused persons remained in jail lock-up for about two months---Challan had been submitted; and the charge had also been framed---Trial was in progress, and evidence was being recorded---No complaint was on record to the effect that accused persons had made any attempt to tamper with the evidence of the prosecution, nor they had misused the concession of bail granted to

them--- No useful purpose would be served while sending accused persons in the judicial lock-up, particularly when they were not causing any hindrance in the process of the trial---Petition for leave to appeal being meritless and without any substance, was dismissed. **[2012-14 GBLR 185]**

----S. 497(2)---Penal Code (XLV of 1860), S.302/34---West Pakistan Arms Ordinance (XX of 1965), S. 13---Northern Areas Council Legal Framework Order, 1991, Art. 19-A---Bail, grant of---Further inquiry---In the present case apart from direct evidence of eye-witnesses, the abscondence of accused persons and recovery of the arms allegedly used by them in the occurrence had been brought on record---Medical evidence was not available to ascertain the cause of death---Fire-arm Expert's opinion regarding the recovered weapon was not part of record, whereas the eye-witnesses had assigned to all accused persons, the same role of combined firing at the deceased--- Tentative assessment of evidence in the hand of prosecution would show that the case against accused persons was not distinguishable from that of their co-accused who had since been discharged--- Case of accused, in circumstances, would squarely fall within the ambit of S.497(2), Cr.P.C. for the purpose of further inquiry---Investigation of the case was not conducted in fair manner and the element of dishonesty was apparent on the face of record as co-accused on the same set of evidence were declared innocent, whereas accused persons were challaned to face the trial---Petition for leave to appeal was converted into appeal and was disposed of in terms of short order granting bail to accused persons. **[2010 GBLR (b) 75]**

----S.497(2)---Penal Code (XLV of 1860), Ss. 302/34/109---Qatl-e-amd---Bail, grant of---Further inquiry---Recovery on joint pointation---Fire-arms Expert report, absence of---Soon after firing, the person who was seen by prosecution witness at place of occurrence, holding pistol in his hand, neither pistol was recovered from that person nor he was figured in challan--- Recovery of pistol was shown to have been effected on the pointation of two accused persons---No Fire-arms Expert report was available with prosecution to ascertain as to whether the fire had been made by the pistol recovered from the accused or not---Effect---Case against accused was one of further inquiry into his guilt within the purview of S.497(2), Cr.P.C.---Bail was granted. **[2010 GBLR 277]**

----S.497(2)---Penal Code (XLV of 1860), Ss. 302/118/212/216---Anti-Terrorism Act (XXVII of 1997), Ss. 6/7---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Qatl-e-amd, concealing the offence, harbouring offender and causing

terrorism---Bail, grant of---Occurrence was one of dark night--- Prosecution had no eye-witness--- Delayed recovery of weapons of offence did not connect the accused with the crime, particularly when the same, though handled by the accused, were not stated to have been used by them in the commission of the offence---Confessional statements of accused if believed to be true and correctly recorded, even then the same could not be made a basis for their conviction in the absence of any direct evidence against them on record--- Concession of bail could not be withheld merely on the plea of heinousness of the offence, if the accused were otherwise entitled to grant of bail---Senior police officials had failed to conduct a fair, transparent and untainted investigation in the case---Guilt of accused needed further probe within the purview of S.497(2), Cr.P.C.--- Accused were admitted to bail in circumstances. **[2010 GBLR (a) 149]**

---S.497(2)---Penal Code (XLV of 1860), Ss. 324/34---Attempt to commit qatl-e-amd---Bail, grant of---Further inquiry---Fatal shot--- Determination---Fire-arms expert's report, absence of---Name of accused was mentioned in the F.I.R. lodged by complainant--- Recovery of weapon of offence was allegedly made on the pointation of accused---Validity---Tentative assessment of material available on record showed that there was no direct evidence to connect the accused with the crime; it was still to be ascertained that as to whose shot hit the injured persons and there was no firearms expert report with prosecution to ascertain whether fire had been made by the pistol recovered from the accused or not---Such facts had brought the case of accused within the domain of further inquiry within the meaning of S.497(2), Cr.P.C.---Bail was allowed. **[2010 GBLR 263]**

---S.497(2)---Penal Code (XLV of 1860), S.324/34---West Pakistan Arms Ordinance (XX of 1965), S.13---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)-- Attempt to commit qatl-e-amd and keeping unlicensed arms--- Bail grant of---Further inquiry---F.I.R. showed that four persons including the present two accused had fired at each other, but none out of the two parties had sustained any firearm injury---Two co-accused had been released by the police under S.169, Cr.P.C.---Role of firing assigned to all accused was identical in nature---No crime empty having been recovered from the spot, recovery of pistol from the accused had no value--- Prosecution had challaned only the present two accused treating them with discrimination---Case of accused, thus, fell within the domain of further inquiry as envisaged by S.497(2), Cr.P.C. and they were allowed bail in circumstances. **[2010 GBLR 134]**

---S.497(2)---Penal Code (XLV of 1860), S.377/34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Sodomy---Bail, grant of---Investigating Officer had submitted the challan without collecting the medical report from the Doctor, recording the statement of the victim and holding the identification parade---Evidence had been destroyed by the negligence and inefficiency of the Investigating Officer, which had a direct effect on the prosecution case---Medical Officer had also not prepared his final report, who had initially examined the victim---Version of F.I.R. was not supported by any evidence on record against the accused---Case against accused squarely fell under S. 497(2), Cr.P.C. and they were allowed bail in circumstances. **[2010 GBLR 122]**

---S. 497(2)---Scope and applicability of S.497(2), Cr.P.C.---Considerations for grant of bail in cases not falling within the prohibitory clause of S.497, Cr.P.C., were different from that of the cases falling under said clause---Bail in cases involving punishment of death or imprisonment for life or for a term of 10 years, was not ordinarily granted, unless the court, on the basis of tentative assessment of the evidence in the hand of prosecution, formed an opinion that the guilt of accused would require further inquiry in terms of subsection (2) of S.497, Cr.P.C.---No general rule existed for grant of bail on the ground of further inquiry, rather the scope of further inquiry in each case depended upon the facts and circumstances of that case. Provision of subsection (2) of S.497, Cr.P.C. could attract in the case of no evidence or the evidence direct or circumstantial was not confidence inspiring or the evidence was not of the standard to sustain conviction, or there was no possibility of ultimate conviction on the basis of evidence brought on Police file or the case was of doubtful nature or on such other ground which could be considered sufficient for further inquiry into the guilt of an accused. **[2010 GBLR (a) 75]**

---S.497(2)---See Criminal Procedure Code (V of 1898), S.164. **[2010 GBLR 295]**

---S. 497(5)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 63-A---Bail---Counsel for the petitioner, during the course of argument when pointed out that instead of seeking cancellation of bail, the petitioner could concentrate for earlier conclusion of trial, he did not further press the petition which was dismissed as not pressed. **[2010 GBLR 430(1)]**

---S.497(5)--- Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979), S.10---Penal Code (XLV of 1860), Ss. 376/450---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009,

Art. 60(13)---Rape, house-trespass---Bail, cancellation of---Accused had been nominated in the F.I.R.---Victim girl had fully implicated the accused in the offence in her statement made under S. 161, Cr.P.C., which was fully corroborated by her medico-legal report---Sufficient material was available on record to connect the accused with the commission of offence falling within the prohibitory clause of S.497(1), Cr.P.C.---Bail could not be claimed as of right in non-bailable cases and the same would not be granted as a matter of grace---Supreme Appellate Court, held, would not hesitate to interfere with the order passed by lower court on improper exercise of discretionary jurisdiction in the spirit of law---Accused was directly charged by the minor victim girl for having committed “zina” with her along with his co-accused, which was an offence under S.10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, punishable with death---Bail granted to accused by Chief Court was cancelled in circumstances. **[2010 GBLR (a) 54]**

---S. 497(5)---Penal Code (XLV of 1860), S.302/34---Qatl-e-amd---Bail, cancellation of---State had filed petition for cancellation of bail of accused in case of murder of her husband---Respondent/accused was allowed bail by the Chief Court with observation that no direct evidence existed; and circumstantial evidence was yet to be scrutinized to ascertain the question of guilt or innocence at the trial---Advocate General had submitted that son of accused, a student of sixth class in his statement under S.161, Cr.P.C. had clearly stated that his mother having illicit relation with co-accused conspired the commission of offence---Occurrence was unseen in which no direct evidence was available and indirect evidence could not be substituted for direct evidence---Mere suspicion of son of accused of her illicit relation with co-accused, would not be sufficient to withhold the bail---No interference could be made in the order of Chief Court granting bail. **[2010 GBLR 412]**

---S. 497(5)---Penal Code (XLV of 1860), Ss. 302/324/34--- Anti-Terrorism Act (XXVII of 1997), S.6/7---Qatl-e-amd, attempt to commit qatl-e-amd causing terrorism---Gilgit-Baltistan (Empowerment, and Self-Governance) Order, 2009, Art. 60(13)---Bail, cancellation of---Parties had agreed on not arguing the application on merits, if Trial Court was directed to conclude the trial within two months---Charge in the case had been framed without any delay, but trial could not be concluded due to some unavoidable circumstances and ultimately bail had been granted to accused---Prolonged delay in conclusion of trial was misuse of process of law and courts and also injustice to the parties---Trial Court was directed to conduct day to day trial, avoid adjournment without compelling



reason, adopt coercive measures for attendance of witnesses and conclude the trial within two months---In case of default, complainant or the State could move a fresh application for cancellation of bail against the accused before the Trial Court for decision on merits---Petition was disposed of accordingly. **[2010 GBLR 118]**

---S.497(5)--- Penal Code (XLV of 1860), Ss. 319 & 316 --- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Qatl-e-Khata, qatl shibh-e-amd---Bail, cancellation of---Challan was submitted in the court under S.319, P.P.C.---Bail had been granted to accused on the ground that offence under S.319, P.P.C. was bailable---Trial Court, however, framed charge against the accused under S.316, P.P.C. which was punishable with Diyat and imprisonment for a term of fourteen years as Tazir---Bail was sought to be cancelled on the ground that offence under S.316, P.P.C. fell within the prohibitory clause of S.497(1), Cr.P.C. and as such accused did not deserve bail---Trial Court was yet to determine on the basis of evidence whether the offence against the accused would be made out under S.319, P.P.C. or S.316, P.P.C. and it was not proper for Supreme Appellate Court to comment upon the nature of offence at the present stage, which might prejudice either side at the trial---Counsel for complainant realizing such situation did not press the present petition and requested for permission to file fresh petition before the Trial Court after material evidence was recorded in the case--- Request being reasonable was accepted and the petition was disposed of accordingly. **[2010 GBLR 124]**

---S.497(5)---Penal Code (XLV of 1860), Ss. 337-A(i), 337-A(iii), 147 & 148---Shajjah-i-Khafifa and Shajjah-i-Hashmah---Cancellation of bail, petition for---Accused allegedly caused grievous injuries on the person of injured with iron rod---Bail had been granted to accused for the consideration whether in view of nature of injuries the case would fall within the ambit of S.337-A(i), P.P.C. or S.337-A(iii), P.P.C.---Petition was disposed of with observation that in case of misuse of bail by accused in any manner, the State or the complainant, could invoke the provision of S.497(5), Cr.P.C. for cancellation of bail before the Trial Court. **[2010 GBLR 276]**

---S.497(5)---Penal Code (XLV of 1860), Ss. 337-A(v) & 336--Shajjah-i-ammah and itlaf-i-salahiyyat-i-udw---Bail, cancellation of---Head injury.---Medical report showed that skull of injured girl was fractured due to severe head injury---Offence committed by accused, prima facie, fell within the mischief of Ss. 336 and 337-A(v) P.P.C. which provided maximum sentence of ten and fourteen years imprisonment respectively and fell within the prohibitory clause of

S.497, Cr.P.C.---Chief Court had wrongly found that accused was entitled to grant of bail on the ground of further inquiry as the case of accused was not a case of further inquiry as contemplated under S.497(2), Cr.P.C.---Order passed by Chief Court was set aside and bail granted to accused was cancelled---Appeal was allowed. **[2010 GBLR 301]**

---S. 497(2)---Penal Code (XLV of 1860), Ss. 302 & 34---Qatl-i-amd, common intention--- Bail, grant of---Further inquiry--- Accused and co-accused were not nominated in the FIR--- Statements of the prosecution witnesses were recorded after an unexplained delay of 5 days---No eye-witness of murder was on record except the last seen evidence---Recovery of alleged crime weapon was effected on the pointation of co-accused after unexplained delay of 11 days---No independent person of the locality was associated to witness the search---No explanation was provided for not associating the witnesses of locality for search of the house of co-accused on his pointation---Chief Court had rightly held that case of accused persons had become a case of further inquiry---No infirmity and illegality had been pointed out in the impugned order passed by the Chief Court--- Accused was granted bail---No interference being warranted in the impugned judgment passed by the Chief Court, leave to appeal was refused. **[2015 GBLR 272]**

---S.497(5)---Penal Code (XLV of 1860), Ss. 302, 114 & 429--- Qatl-i-amd, abetter present when offence was committed, mischief by killing---Petition for cancellation of bail---Petition was filed before Supreme Appellate Court against the order of the Chief Court, whereby application filed under S.497, Cr.P.C., for grant of post arrest bail was accepted and accused was ordered to be released on bail--- Accused had not misused the concession of bail and no ground, was made out to cancel the bail, already granted to him---Accused remained in attendance before the court on each and every date of hearing--- Accused had been declared juvenile by the court of competent jurisdiction---Case was time barred by 14 days and no application was moved for condonation of such delay---Valuable right had accrued in favour of accused, which could not be taken away without any cogent reason---Case having been concluded before the Trial Court, and judgment was likely to be given within the shortest possible time, no case for cancellation of bail was made out--- Impugned judgment/order, did not suffer from any illegality or infirmity---Cancellation of bail was declined by Supreme Appellate Court. **[2015 GBLR 165]**

---Ss. 497(5) & 561-A---Penal Code (XLV of 1860), Ss. 302, 311 & 324---Qatl-i-amd, Tazir after waiving or compounding of right of qisas in qatl-i-amd, attempt to commit qatl-i-amd--- Bail, cancellation of--- Bail application filed by accused was accepted by the Magistrate--- Sessions Judge on appeal reversed the order of Magistrate and accused was remanded to judicial lock-up---Accused filed application under S.561-A, Cr.P.C., for quashing of order of Sessions Judge---Said application was allowed and order of Sessions Judge was set aside and accused was ordered to be released on bail---Validity---Present case was triable by Court of Session---Bail granted in the case by Magistrate was without jurisdiction---Sessions Judge, on appeal, rightly reversed the order passed by Magistrate--- Order/judgment passed by Sessions Judge was upheld---Bail granted to accused by the Chief Court, was cancelled, in circumstances. **[2015 GBLR 214]**

---S. 497(2)(5)---Penal Code (XLV of 1860), Ss. 324, 337-F(v), 337-A, 353, 147 & 148---Arms Ordinance (XX of 1965), S. 13---Attempt to commit qatl-i-amd, causing hashimah, shajjah, assault or criminal force to deter public servant from discharging of his duty, rioting, possessing unlicensed arm--- Bail, grant of---Trial Court granted bail to accused, but Chief Court cancelled the bail granted to accused--- Bail was granted to accused by the Trial Court on the ground that accused was minor, school going, and the role assigned to the accused was on the basis of misstatement of the rival party and that the case of accused was that of further inquiry---Contentions of accused were that order granting bail to accused passed by the Trial Court was in accordance with law and facts; whereas order cancelling bail, passed by the Chief Court was the result of misconception of law and misreading/non-reading of the record of the case file; which was not tenable and was liable to be set aside to meet the ends of justice and equity---Validity---Prima facie, case of accused was of further inquiry---Accused who was juvenile, could not be kept in jail for indefinite period; law permitted him to release on bail-Order cancelling bail passed by the Chief Court was set aside and that of the Trial Court granting bail was maintained being well reasoned and well founded--- Appeal was allowed. **[2016 GBLR 163]**

---S. 497(5)---Penal Code (XLV of 1860), Ss. 365-B, 34, 494, 420, 493-A, 471 & 468---Kidnapping, abducting or inducing woman to compel for marriage, common intention, marrying again during the life time of a husband or wife, cheating and dishonestly inducing delivery of property, cohabitation caused by a man deceitfully inducing a belief of lawful marriage using as genuine a forged document, forgery for the purpose of cheating-Bail, cancellation of--- Trial Court dismissed bail application on the basis of material on

record---Prima facie accused was involved in the commission of alleged offence--- Punishment provided in the offence was life imprisonment and case of accused fell within prohibitory clause of S.497(1), Cr.P.C.---Chief Court granted bail to accused---Validity Prima facie, case was made out against accused which disentitled him from the grant of bail---Impugned order passed by Chief Court was not sustainable as accused was caught red handed---Bail granted to accused, was cancelled---Impugned order passed by the Chief Court was set aside; whereas order passed by the Trial Court, was maintained. **[2016 GBLR 127]**

---S.497(5)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Penal Code (XLV of 1860), S. 302/34---Qatl-e-amd---Cancellation of bail---Petition for---Chief Court allowed bail to respondent/accused; petitioner/complainant, dissatisfied with the order of Chief Court had filed petition for cancellation of bail granted to accused---Accused had not been assigned any overt and specific role leading to the murder of deceased---F.I.R. did not allege causing any injury to the deceased or even making any aerial, or ineffective firing by accused and no allegation of abetment had been levelled---Accused had been charged by two witnesses, at a later stage in their statements under S.161, Cr.P.C. for making a Lalkara from the last corner of a street---Role attributed to co-accused was more specific in nature than that of accused, but he had already been granted bail---No evidence was on record against accused regarding abetment or conspiracy; and mere mentioning .name of accused in the FIR, would not disentitle him for grant of bail whose case was one of further inquiry within mischief of S.497(2), Cr.P.C.---Chief Court, in circumstances had rightly and logically granted bail to accused--Once a bail was granted to an accused by a court of competent jurisdiction, then very strong and exceptional grounds were required to snatch the liberty of person who was already granted bail---Court was to see whether the bail granting order was capricious, patently illegal, factually incorrect; and whether accused had misused his concession of bail by tampering evidence---Record had shown no allegation of misuse of concession of bail, tampering with the evidence and repetition of crime, which were essential grounds for cancellation--- of bail---Cancellation of bail was declined. **[2011 GBLR 183]**

---S. 497(5) Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Penal Code (XLV of 1860), S.302/34---Qatl-e-amd---Cancellation of bail---Petition for---Trial being at advance stage, petitioner without further pressing petition for cancellation of bail, submitted that if a direction was given to Trial Court for early conclusion of trial, he would be satisfied---Request

being genuine, petition was disposed of with direction that the Trial Court while proceeding expeditiously would conclude the trial within a period of three months positively; and meanwhile in case of misuse of concession of bail by accused, the petitioner could on that ground or any other ground, move the Trial Court under S. 497(5), Cr.P.C. for cancellation of bail of accused. **[2011 GBLR 241]**

---S. 497(5)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Penal Code (XLV of 1860), Ss. 320/324/34/109-Qatl-e-amd and attempt to commit qatl-e-amd---Bail, refusal of---Contention of the petitioner was that except the confessional statement of petitioner before the Police Officer which was not admissible, other evidence, direct or circumstantial was on record to connect him with the commission of offence---Submission of Advocate General was that out of 60 prosecution witnesses 54 already been examined, whereas 2 witnesses had been taken up that statement of Doctor and two Police Officials could be recorded on next date of hearing and that coercive measures had been adopted for attendance of said witnesses---Trial Court was directed by Supreme Appellate Court to ensure the recording of statements of said remaining witnesses on next date of hearing, in circumstances---Order accordingly. **[2011 GBLR 246]**

---S. 497(5)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Penal Code (XLV of 1860), Ss. 409/420/34---Criminal breach of trust by public servant, cheating and dishonestly inducing delivery of property, common intention---Petition for cancellation of bail---Expunction of observations made by the Chief Court in bail granting order---Accused (respondent) was a Government authorized flour (ata) dealer and allegation against him was that instead of delivering the subsidized government supply of flour at the specified place for public consumption, he sold the same to one 'M'---Bail was granted to the accused by the Chief Court for the reason that 'M', who was the star prosecution witness resiled from his statement under S. 161, Cr.P.C and supported the version of the accused that the flour was unloaded at M's shop as both the tires of the flour-loaded vehicle got punctured in front of his shop---Contention of the prosecution was that observations of the Chief Court on the merits of the case might cause serious prejudice to the prosecution case at the trial and the impugned bail order was virtually an order of acquittal at pre-trial stage---Contentions of the accused were that cancellation of bail without any complaint of misuse of concession of bail might not be justified; that dealership of the accused had already been Cancelled, and that his detention in jail would be of no useful purpose---Validity--Unauthorized sale of subsidized flour of government supply for

public consumption by a flour dealer or his carrier would squarely fall Within the ambit of Ss. 409, 420 & 34, P.P.C---Authorized flour agents were trustees of Government property and sale of flour in breach of trust was misappropriation of Government property to deprive the poor from their right of supply of flour at a controlled price---Supreme Appellate Court without further commenting upon the matter or recalling the bail order, expunged the observations of the Chief Court which might have prejudiced the prosecution case on merits at the trial, and directed the Trial Court to decide the matter on basis of evidence to be brought on record without being influenced by the said observations---Petition for cancellation of bail was disposed of accordingly. **[2011 GBLR 533]**

---Ss. 497(5) & 164---Penal Code (XLV of 1860), S. 365-B--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)~Kidnapping---Bail, cancellation 'of---Statement of abductee---Victim minor girl about 13 years of age was recovered by police from vehicle of accused along with a 30 bore pistol on the pointation of which the victim was kidnapped---Victim girl in her statement under S.164, Cr.P.C. also directly charged the accused for his involvement in the crime---Effect---Prima facie case existed against accused and Chief Court had rightly cancelled the bail of accused---Supreme Appellate Court declined to interfere in the judgment passed by Chief Court---Leave to appeal was refused. **[2011 GBLR 380]**

---S 497(2)---Penal Code (XLV of 1860), Ss. 324, 337-A & 34 Attempt to commit qatl-i-amd, causing shajjah, common intention---Bail, grant of---Further inquiry---Civil dispute was pending between the complainant and accused---Role assigned to accused, was almost similar as that of co-accused, who had been granted bail by the -Chief Court---Case of accused being one of further inquiry, he was also entitled to bail on the principle of consistency---Petition for leave to appeal was converted into appeal and bail was granted to accused, in circumstances. **[2017 GBLR 175]**

---S. 497(5)---Control of Narcotic Substances Act (XXV of 1997), Ss. 9(c) & 51(1)---Possessing and trafficking narcotics---Bail, cancellation of--- Further enquiry---Scope---Accused was apprehended at the spot while carrying and transporting 10 kilograms of heroin powder---Chief Court had observed that accused was not found in the exclusive possession of the narcotic which was not correct and thus failed to apply judicial mind in holding that the news clippings of the newspaper regarding the false implication of accused had not been contradicted by the Anti-Narcotic Force Authorities---Accused was prima facie, involved in an offence falling within the prohibition

contained in S.497(1), Cr.P.C. and was not entitled for the concession of bail---Bail granted to accused on the ground of further inquiry had no legal force in the given circumstances of the case---Possibility of further inquiry did exist in every case, but it was not possible to release accused on bail notwithstanding his involvement in the heinous criminal case, particularly in which considerable numbers of members of the society including children, boys and girls, men and women fell prey of drug addiction---Huge quantity of heroin having been recovered from the possession of accused, he was, prima facie, involved in an offence punishable with death or life imprisonment as minimum sentence as provided under S.9(c) of the Control of Narcotic Substances Act, 1997---Nothing was on record to show that the complainant party had any ill-will, grudge or hostility with accused to implicate him in the case by thrusting upon him huge quantity of heroin---Chemical Expert report was also positive which corroborated the version of Complainant-Reasonable grounds, therefore, existed to believe that accused had committed non-bailable offence, which disentitled him to concession of bail---Impugned order passed by the Chief Court, being not well reasoned, was not sustainable in law---Petition for leave to appeal was converted into appeal and same was accepted--- Bail granted to accused was cancelled, in circumstances. **[2017 GBLR (a) 124]**

---S. 497(5)---Penal Code (XLV of 1860), Ss. 302, 324, 337-D & 34---Qatl-i-amd, attempt to commit qatl-I-amd, jaifah---Bail, cancellation of---Tentative assessment of the material on record and on going through the statements of injured person and other eye-witnesses recorded under S. 161, Cr.P.C., and specific roles attributed to accused persons in committing the alleged murder, prima facie, there were sufficient grounds to believe that accused were involved in the commission of alleged offence---Bail granted to accused, was cancelled, in circumstances. **[2017 GBLR (b) 167]**

---S. 497(5)---See National Accountability Ordinance (XVIII of 1999), S. 9. **[2017 GBLR 82]**

---S. 497(5)---Penal Code (XLV of 1860), Ss. 365-B, 376 & 34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Kidnapping, abducting or inducing woman to compel for marriage etc., rape, common intention---Bail cancellation of---Chief Court having granted bail to accused persons, complainant had filed petition for cancellation of bail---Tentative perusal of the record of the case file, had transpired that accused persons had not been attributed any specific role in the commission of alleged offence---Counsel for the complainant, could not point out any illegality or infirmity in the

impugned order passed by the Chief Court---Leave to appeal was refused by the Supreme Appellate Bench, order passed by the Chief Court was affirmed, in circumstances. **[2017 GBLR 351]**

---S. 497(5)---See National Accountability Ordinance (XVIII of 1999), S. 9(a). **[2017 GBLR 345]**

---Ss. 497(5) & 498---Penal Code (XLV of 1860), Ss. 406, 409, 420 & 427---Criminal breach of trust, criminal breach of trust by public servant, cheating and dishonestly inducing delivery of property, mischief causing damage---Pre-arrest bail, confirmation of---Bail before arrest, granted to accused by Vacation Sessions Judge, was confirmed---Challan of the case was submitted before the committing Magistrate, who forwarded the same to Trial Court which issued non-bailable warrants of arrest for production of accused by cancelling the pre-arrest bail---Accused being aggrieved by said order of Trial Court, filed revision before the Chief Court, which was dismissed---Validity---After granting bail by Trial Court, same could not be cancelled, unless accused misused the same---Bail which held field, was wrongly cancelled by the Trial Court---Impugned orders being result of misconception of law and misreading/non-reading of the facts of the case, were not tenable---Order passed by Chief Court and Trial Court, were set aside and order passed by Vacation Sessions Judge, was maintained. **[2017 GBLR 28]**

---Ss. 497(5) & 498---Penal Code (XLV of 1860), Ss. 406, 409, 420 & 427---Criminal breach of trust, criminal breach of trust by public servant, cheating and dishonestly inducing delivery of property, mischief causing damage---Pre-arrest bail, cancellation of---Petition for cancellation of pre-arrest bail, granted to accused had been dismissed by the Chief Court---Validity---Dispute between the parties was of civil nature and impugned orders passed by Trial Court and the Chief Court, were well reasoned--- Advocate General, could not point out any illegality and infirmity in the impugned orders which could not be interfered with--- Petition for leave to appeal was converted into appeal and was dismissed and orders of the Chief Court were maintained. **[2017 GBLR 17]**

---S. 498---Ad interim transit bail, grant of---Scope---Accused, who was A.I.G. Police, did not appear before the Trial Court, despite notices were served upon him---Petitioner, who was female complainant, had submitted that accused was a high ranking Police Officer and all his colleagues, who were serving in FIA, had not arrested him, rather they facilitated the accused to get ad interim bail and were providing accused opportunity enabling him to get the FIR



cancelled---Accused had not joined investigation--- Complainant was kept in dark regarding ad interim bail to the accused---Complainant had further submitted that extra ordinary concession of “ad interim transit bail” for “five weeks” given by the Chief Court to accused was unprecedented and not tenable in law and there was no provision in law to grant ad interim transit bail---Protected pre-arrest bail, could also be granted under S.498, Cr.P.C., enabling accused to surrender before the competent court of law---Accused had neither prayed for pre-arrest or protected bail nor Chief Court had converted his petition into a petition for protective or pre-arrest bail---Complainant had prayed that impugned order passed by the Chief Court, which was not sustainable, be set aside---Petition for leave to appeal was converted into appeal and same was allowed---Ad-interim transit bail, granted to the accused was cancelled and order of the Chief Court was set aside, in circumstances. **[2017 GBLR 334]**

---S.516-A---See Customs Act (IV of 1969), S.156(l)(8)(89). (a) 545 S. 526---Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009, Art. 60(13)-Transfer of criminal case---Conversion of petition into appeal---Petition for leave to appeal had been directed against the order passed by the Chief Court, whereby Chief Court had transferred the sessions case from court at place ‘D’ to that of court at place ‘G’-only ground for transfer of the case was that of inconvenience of the complainant and danger to his life at the hands of accused who was stated to be an influential person of the locality---Since both the parties were not residents of the city where the case was under trial the reasons for transfer of the case were of no substance---Order transferring case passed by the Chief Court was neither speaking nor based on any reasons---Chief Court having not exercised its jurisdiction judiciously impugned order was set aside by converting petition for leave to appeal into appeal and allowed. **[2010 GBLR 328]**

---S. 526---Penal Code (XLV of 1860), Ss. 295-A & 34---Anti-Terrorism Act (XXVII of 1997), Ss. 6, 7, 12 & 19---Criminal Procedure Code (V of 1898), S. 526---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Deliberation and malicious acts intended to outrage religious feeling of any class by insulting its religion or religious beliefs, common intention, act of terrorism---Transfer of case--- Criminal case was registered against accused person, on allegation that accused person by visible representation through wide spoken words used derogatory remarks against holy person of the higher degree i.e. Ummal Momineen and other members of the Holy family of Ahl-e-Bait on TV---Said program was watched by the public in general in which something of

the nature of disrespect to Hazrat Ali (R.A.) Fatima-Tu-Zahra (R.A.), Khulfa-e-Rashideen and other companions of the Holy Prophet (Peace be upon him), was articulated---Accused did not associate with Joint Investigating Team and remained absconding and did not surrender to the jurisdiction of Investigating Authority---Trial Court after completion of legal formalities declared the accused person as absconder and proceeded with the case in his absence---Accused person filed application under S.526, Cr.P.C., for transfer of case to another court alleging that Trial Court was in a hurry to conclude the trial, and proceeded with the matter in such a haste that Trial Judge, did not even bother to comply with certain legal provisions; and acted in violation of mandatory legal provisions of law--Accused person contended that he had lost confidence in the Trial Judge---Chief Court dismissed application for transfer of case to another court, being not maintainable---Validity---While making an application for transfer of the case from one court to another, it must be established that genuine apprehension had arisen in the mind of accused and that fair and impartial trial was not possible at the hands of the Trial Judge---Even before the Supreme Appellate Court, no pertinent reason had been advanced or put forward by accused---Applicant of transfer application should not be illusory or ill-founded---Mere fact that Trial Court was proceeding with the case in hasty manner, by no means, would provide any justification to invoke the jurisdiction of the supervisory court to transfer the case---Anti-Terrorism Act, 1997, itself provided a speedy disposal of the trial and it had been made imperative upon the Trial Judge to conclude the case within the period of seven days---No motive or malice could be attributed to Judge of the Trial Court---Transfer of case was declined by Supreme Appellate Court. [2012-14 GBLR 207]

---S. 526---Transfer of case---Principles---Main ground for transfer of case, was that due to friendly terms of relative of accused with the Sessions Judge concerned, there was a reasonable apprehension that Trial Court would not act fairly and impartially---Said ground for transfer of case was not Sufficient---Transfer of case could not be claimed as a matter of routine, and at the wishes of any litigant, unless it was apparent on the face of record that party seeking transfer of the case, could not get fair and just treatment at the hands of Judge from whose court the transfer of the case was sought---Applicant seeking transfer of case, should seek transfer of case with cogent and plausible reasons---Self-procured mistrust and expression of having no trust, or losing confidence in the court, merely based on general and vague allegations, was hardly sufficient to invoke the jurisdiction of the court under S.526, Cr.P.C.---Petitioner having not been able to point out any

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justification for interference of Supreme Appellate Court in the impugned order passed by Chief Court, whereby application for transfer of case was dismissed. **[2012-14 GBLR 59]**

---Ss. 526 & 561-A---Penal Code (XLV of 1860), Ss. 409, 417, 420/34 & 489-F---Criminal breach of trust, cheating and dishonestly issuing a cheque---Transfer of case---Petition for---Petitioner had sought transfer of case from court at place 'S' to another court, alleging that Judicial Magistrate at place 'S' was not only the cousin of the complainant, but vehicle in question was also being purchased for said Judicial Magistrate--- Apprehension of the petitioner who was surety in the case that he would not get fair treatment at place 'S', was not unfounded, but was a valid reason for transfer of case---Serious allegations were levelled by the petitioner against Judicial Magistrate; that he having direct interest in the matter, by misuse of Judicial Office, put pressure on the petitioner for obtaining cheque from him for complainant who was his cousin and that by influence he managed withholding of bail of the petitioner for a considerable period, in an offence which was punishable with maximum sentence of three years---Judicial Office was a sacred trust and a Judicial Officer at the cost of dignity of Judicial Office must not indulge in such matters---Conduct of Judicial Magistrate, was unbecoming of a gentleman and a Judicial Officer---Criminal cases registered against the petitioner and others pending before Magistrate at place 'S' were ordered to be transferred to court at place 'G' for trial by Sessions Judge , at place 'G'. **[2010 GBLR (f) 567]**

---S. 537---See Penal Code (XLV of 1860), S. 302(b). **[2012-14 GBLR 48]**

---S.544-A---See Penal code (XLV OF 1860), s. 322. **[2011 GBLR (a) 340]**

---S.544-A---See Penal Code (XLV of 1860), S.316. **[2011 GBLR 352]**

---S. 561-A---See Criminal Procedure Code (V of 1898), S. 497(5). **[2015 GBLR 214]**

---S.561-A---Powers of Chief Court under S.561-A, Cr.P.C.---Scope--  
-Scope of powers of Chief Court under S. 561-A, Cr.P.C could not be enlarged to the police investigation or to the cases, which were not pending in inquiry or trial before the court of competent jurisdiction. **[2010 GBLR (b) 545]**

---S.561-A---See Criminal Procedure Code (V of 1898), S. 526. **[2010 GBLR (f) 567]**

---S.561-A---See Customs Act (IV of 1969), S.156(1)(8)(89). **[2010 GBLR (a) 545]**

---S.561-A---See Customs Act (IV of 1969), Ss. 156(9)(70)(90). **[2011 GBLR 231]**

---S. 561-A---See Penal Code (XLV of 1860), S. 365-B. **[2012-14 GBLR 203]**

---S. 561-A---See Mining Rules, 1948, R. 79. **[2015 GBLR 114]**

---S. 561-A---See Penal Code (XLV of 1860), S. 302. **[2017 GBLR 266]**

#### **Customs Act (IV of 1969)---**

---Preamble---Extension of Customs Act, 1969 to the territory of Gilgit-Baltistan and exemption in payment of customs duty on the goods on which such duty is chargeable---Scope---Principles. **[2011 GBLR (c) 81]**

---Ss 2(S) 16 & 17---Seizure and confiscation of goods---Petitioner, a non-government organization facilitating Pakistan's artisans especially women artisans to open stores displaying products and networking with national/international buyers was invited to participate in the exhibition to establish its stalls of artisan--- While representatives of the organisation were taking the products for attending exhibition; Police intercepted them and took the material in possession---Neither memos of the seizure nor any recovery proceedings of said items was prepared--- Police after taking into possession said articles did not register criminal case against the organisation---Petitioner being aggrieved with the illegal seizure of said items, filed with petition in the Chief Court which was dismissed-Validity---Advocate General contended that petitioner with the pretext of the exhibition, was trying to smuggle out the precious stones from Gilgit-Baltistan to down country---None came forward to claim the ownership of said articles-- -Organisation had no licence of mining to excavate gem stones in the region-Judgment of the Chief Court was well reasoned and counsel for the petitioner could no point out any infirmity in the said judgment--- Appeal was dismissed and judgment of the Chief Court was affirmed, in circumstances. **[2017 GBLR 301]**

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---S. 2(s) & (i)---"Smuggling"---Import of motor vehicles into Gilgit-Baltistan without payment of customs duty directly or indirectly is "smuggling"---Principles. **[2011 GBLR (d) 81]**

---S. 16---See Customs Act (IV of 1969), S. 2(s). **[2017 GBLR 301]**

---Ss. 18 & 19---Goods dutiable---Exemption---Scope---Unless the payment of customs duty leviable under S. 18(1) of the Customs Act, 1969 and regulatory duty under S. 18(3) of the aid Act is specifically exempted under S.19 of the Act, the duty is chargeable on the goods---Principles. **[2011 GBLR (3) 81]**

---Ss. 19 & 18---Imports and Exports (Control) Act (XXXIX of 1950), S.3(1)---Gilgit Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61---Suo motu notice by Supreme Appellate Court of a news item about illegal import and registration of non-customs paid vehicles in Gilgit-Baltistan---Supreme Appellate Court, in circumstances, desired that Federal Government of Pakistan keeping in view the peculiar circumstances of Gilgit-Baltistan, in exercise of power under Section 19 of Customs Act, 1969 may as special case grant exemption as a concession in the customs duty leviable under section 18 of Customs Act, 1969 on the import of used/reconditioned vehicles in Gilgit-Baltistan---Such special concession for Gilgit-Baltistan on one hand will close the door of illegal import of vehicles to the territory and on the other hand will add in the source of Government revenue---Hardship of the area and gravity of the circumstances may lead to the perpetuation of evasion of customs duty on illegal import of non-customs paid vehicles in Gilgit-Baltistan, therefore the introduction of policy of import of used/reconditioned vehicles (Cars and Jeeps) on concessional duty will not only be a facility to the common people belonging to the lower income groups, including Civil and Military officials serving in this area, who cannot afford import of new vehicles on payment of full duty for their private use, but also the Government Department instead of engaging second hand vehicles on higher purchase basis for official use will be able to import their own vehicles--- Policy of regularization of non-customs paid vehicles into the territory of Gilgit-Baltistan notwithstanding the indexation/ registration with Excise and Taxation Department must be made applicable to all non-customs paid vehicles without any distinction to avoid any discrimination and Complication---Supreme Appellate Court recommended that Chairman F.B.R. may initiate the process for framing of uniform policy/rules for regularization of all Non-Customs paid vehicles in Gilgit-Baltistan without any distinction and for import of used/ reconditioned Cars/Jeeps on the basis of concessional customs duty for approval of the Federal Government in

exercise of power conferred under section. 19 of the Customs Act, 1969 read with Section 3(1) of the Imports and Exports (Control) Act, 1950 and import policy of the Federal Government for specified territory of Gilgit-Baltistan as a special case on basis of eligibility criteria to the effect that (a) bona fide residents of Gilgit-Baltistan; (b) the Civil and Military officials/Government servants posted from down country in Gilgit-Baltistan for private use (c) the Government Department and official agencies/institutions for official use (d) the minimum period of posting of Civil and Military officials in Gilgit-Baltistan, not less than one year, and (e) the maximum age for importation of used/reconditioned vehicles (Jeeps and Cars etc.) which is, beneficial to low income groups and Civil and Military officials in Gilgit-Baltistan---Chairman F.B.R. may direct for completion of process of preparation of the policy in question on priority for final approval by the Government of Pakistan before the next annual budget. **[2011 GBLR (f) 81]**

----Ss. 156(9)(70)(90) & 168---Imports and Exports (Control) Act (XXXIX of 1950), S.3(1)(3)---Criminal Procedure Code (V of 1898), S.561-A---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Seizure and release of imported goods---Petition for quashing of proceedings---Maintainability---Adjudication proceedings on original side before the Customs Authorities under Customs Act, 1969 were not subject to the jurisdiction of criminal courts and provision of S.561-A, Cr.P.C. was not applicable to the proceedings before the Departmental Authorities, rather those provisions could be invoked in exceptional circumstances in criminal cases pending before the. criminal courts to prevent the abuse of law---Adjudication proceedings before Departmental Authorities under Customs Act, 1969 on the basis of seizure memo and show-cause notice under the said Act for the purpose of confiscation of seized goods was a quasi judicial function which could end with the result of penal action, but it was not a criminal prosecution for interference of the. Chief Court tinder S.561-A, Cr.P.C.,---Petition under S.561-A, Cr.P.C. for quashing of seizure memo and show-cause notice under Customs Act, 1969, was not maintainable before the Chief Court. **[2011 GBLR 231]**

----Ss. 156(1)(8)(89) & 168---Foreign Exchange Regulation Act (VII of 1947), S.8---Criminal Procedure Code (V of 1898), Ss. 516-A & 561-A---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Seizure and confiscation of smuggled currency---Custody of seized currency to respondent on superadari by Chief Court under S.561-A, Cr.P.C.---Powers of Chief Court under S.561-A, Cr.P.C.--- Scope---Chief Court could exercise power under S.561-A,

Cr.P.C.; and pass an order for real substantial justice, but the provisions of S.561-A, Cr.P.C. could not be used as an alternate or additional remedy to divert the ordinary course of criminal procedure; or in departure to the normal remedies provided under the law---No extraordinary jurisdiction was available to the Chief Court under S.561-A, Cr.P.C. in cases pending with Investigating Agencies---Such power . was exercisable in rare cases pending before the courts in the interest of substantial justice---Such extraordinary power under S.561-A, Cr.P.C. was not extendable to the criminal matters in investigation or to the cases in which the final report/challan had not been submitted before the court of competent jurisdiction; or no court had yet taken cognizance in the case--- Final report, in the present case, was required to be submitted in the court of special Judge Customs established under Customs Act, 1969 read with Anti-Smuggling Act, 1977, but was submitted in the court of Sessions Judge with the impression that said court was competent to take cognizance in the matter, whereas no such power was available with the Sessions Judge to act as Special Judge Customs---Chief Court was also not supposed to deal with the case property for the purpose of custody under S.516-A, Cr.P.C. in exercise of powers under S.561-A, Cr.P.C.---No court of general jurisdiction or the Chief Court in original or revisional jurisdiction, could pass any order in respect of custody of property subject matter of the case registered under Customs Act, 1969, before taking cognizance of the case by the court of competent jurisdiction for the purpose of inquiry or trial---Petition for leave to appeal was converted into appeal by Supreme Appellate Court and order passed by the Chief Court under S.561-A, Cr.P.C. regarding the custody of seized currency was set aside. **[2010 GBLR (a) 545]**

---S.168---See Customs Act (IV of 1969), S.156(1)(8)(89). **[2010 GBLR (a) 545]**

---S. 168---See Customs Act (IV of 1969), S.156(9)(70)(90). **[2011 GBLR 231]**

## **D**

### **Defamation---**

---Initiation of an action for defamation under civil and criminal law---Scope---Classification of cases with reference to common law and special remedy under statutory law stated. **[2011 GBLR (g) 121]**

---See Suit for damages. **[2017 GBLR 286]**

**Defamation Ordinance (LVI of 2002)---**

---Preamble---Defamation Ordinance, 2002 is a special law and overrides the general law---Principles. [2011 GBLR (d) 121]

---Preamble---Penal Code (XLV of 1860), Ss. 499 & 500---Notwithstanding the provisions of sections 499 and 500, P.P.C., the Defamation Ordinance, 2002 provides a special remedy for prosecution of the Pressman on criminal charge of libel defamation without express or implied debar of the remedy of civil suit for damages as a civil liability on a defamatory or malicious publication, if the same has injured the honour, dignity or reputation of a person---Principles. [2011 GBLR (e) 121]

---Preamble---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 11. [2011 GBLR (b), (bb) & (cc) 121]

---Preamble---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. [2011 GBLR (a) 121]

---S. 3---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 11. [2011 GBLR (m), (o), (r), (s), (t) & (u) 121]

**Discretion---**

---Administrative discretion---Meaning and Scope---Presumption of undue favour---Inference. [2010 GBLR (p) 467]

---Exercise of---Scope---Legal discretion, was not a sweet will, it must be exercised with reason and keeping in view the logic of the rules and law which vested the authority with the discretion. [2015 GBLR (b) 107]

**Duty of court---**

---See Criminal trial. [2011 GBLR (C) 322]

# E

**Easements Act (V of 1882)---**

---S. 7---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)---Right of way---Proof---Private land---Concurrent findings of fact by courts below--- “Mis-appreciation”, “non-reading” and “misreading of evidence” --- Distinction--- Plaintiffs filed suit seeking enforcement of their right of easement with



regard to the path passing through private land of defendants---Trial Court decreed the suit in favour of plaintiffs but Lower Appellate Court and Chief Court dismissed the suit---Plea raised by plaintiffs was that courts below had mis-appreciated the evidence---Validity---Mis-appreciation of evidence was not non-reading and mis-reading of evidence---Concurrent findings of fact were not questionable on the ground of mis-appreciation of evidence and it was not a valid ground for interference in findings on question of fact--- Defendants who were two brothers, paved a private path on their private land which was also being used by others and was not as such, a common path of villagers to create right of easement---Plaintiffs did not bring on record any Other evidence to establish existence of common path and they also failed to show any other evidence in proof of the fact that path in question had been a regular common path since time immemorial establishing right of easement---Plaintiffs might with the help of respectables of the area, had entered into negotiation with defendants for use of way with their consent and understanding without claiming any easement of way as of right---Supreme Appellate Court declined to interfere in concurrent findings of two courts below on the question of fact and in consequence thereto---Leave to appeal was refused. **[2011 GBLR 343]**

#### **Educational Institution----**

---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2011 GBLR 503]**

---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. **[2011 GBLR 507]**

---Admission in Medical College---Candidate, was nominated against medical seat reserved for District Diamir being domiciled resident of said District and having obtained higher marks than the respondent---Respondent challenged the bona fide residency of the petitioner through the suit which was sub-judice before the Civil Judge, but the interim matter travelled from civil court to Supreme Appellate Court--If the matter was allowed to go through procedural formalities of the courts, then reserved seat of Medical College, would be lost and none of the parties would be able to avail the reserved seat in said Medical College as a short span of time was left to get admission therein---Said loss would not be only of the parties to the suit, but would affect the Gilgit-Baltistan at-large---Secretary Education Gilgit-Baltistan had proposed to accommodate both the candidates, by formula that one candidate to be nominated this year and the other in the next session---Said proposal was plausible and the parties had also consented to the

same--- Petitioner having already been nominated against the reserved seat for District Diamir in the Medical College, nomination of the petitioner was allowed in the said Medical College against reserved seat of District Diamir for current year---Respondent would be entitled to get admission against a reserved seat for Diamir District in the next year---Order accordingly. [2015 GBLR 397]

----Admission in Medical College---Respondent, despite having failed in the “Entry Test” and placed at serial No. 286 in the “Gilgit-Baltistan level merit list”, had been nominated against the reserved seat available at the Medical College, while petitioner besides scoring highest marks (69.78%) had been deprived of nomination for admission---Respondent who scored 53.35% marks and failed in the “Entry Test” had been nominated---Petitioner having scored highest marks had accrued legal and vested right to be nominated against the seat available in the Medical College---Provincial Secretary Education and Principal of the Medical College, were directed to adjust and accommodate the petitioner and give admission either in that particular College where the test was held, or any, other College in the Province. [2015 GBLR 399]

----Admission in Medical College---Petitioner applied nomination against the reserved seats in the medical colleges of Punjab, Azad Kashmir and Khyber Pakhtunkhwa for the relevant academic year--- Authorities vide provisional selection list nominated the name of the petitioner in Azad Jammu and Kashmir, but subsequently his name was dropped from the list---Petitioner had qualified on merit amongst 11 other candidates, said 11 candidates were adjusted against the allocation quotas of Punjab, Azad Jammu and Kashmir and Khyber Pakhtunkhwa, whereas the petitioner was deprived of admission in though he was placed equally among equals--- Supreme Appellate Court observed that since the matter pertained to the career of a Student, petition was partially allowed, with the direction that the Government of Gilgit-Baltistan, without affecting the reserved seats quota of Medical Colleges for the relevant year the petitioner be accommodated in any of the Universities of the Punjab--- Order accordingly. [2016 GBLR 250]

#### **Election petition---**

----Counsel for petitioners and respondents, had submitted that impugned order passed by the Chief Court in election petition was not sustainable as same had not been decided on merits, and both the parties were condemned unheard and that they would be satisfied, if the case was remanded to the Election Tribunal to hear and decide the

matter afresh on merits---Case was remanded to Election Tribunal by the Supreme Appellate Court to hear the same afresh keeping in view all the legal questions raised by the petitioners and respondents and decide the same on merits. [2017 GBLR 20]

#### **Explosive Substances Act (VI of 1908)---**

---Ss. 3, 4 & 5-A---Anti-Terrorism Act (XXVII of 1997). Ss. 6, 7 & 21-L---Penal Code (XLV of 1860), Ss. 337-A 337-D, 337-F& 427---Possessing explosive material, causing Shajjah, Ghayr-Jaifah mischief act of terrorism---Reappraisal of evidence---Eyewitnesses had not supported the prosecution case---Prosecution, had failed to prove its case against accused beyond reasonable doubt---Advocate General could not point out any infirmity and mis-appreciation of evidence in the impugned judgment--- Impugned judgment passed by the Chief Court, whereby appeal of accused against his conviction and sentence was allowed was well reasoned and well founded which warranted no interference---Appeal was dismissed and impugned judgment was maintained, in circumstances. [2017 GBLR 219]

#### **Expunction of observations from judgment----**

---Observations of Chief Court appearing to be out of the context were ordered to be expunged by the Supreme Appellate Court. [2010 GBLR (b) 353]

## **F**

#### **Fatal Accidents Act (XIII of 1855)---**

---S. 1---See Northern Areas Governance Order, 1994, Art. 19-A. [2010 GBLR(a) 36]

---S. 1---See Gilgit-Baltistan (Empowerment . and Self-Governance) Order, 2009, Art. 61. [2011 GBLR (a) 252]

#### **Financial Institutions (Recovery of Finances) Adaptation and Enforcement Order, 2001----**

---S. 2---See Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001), S. 5(1)(2). [2015 GBLR 123]

#### **Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---**

---Ss. 5, 7 & 9---Suit for recovery of loan---Jurisdiction of Banking Court---Scope---Chief Court vide the impugned judgment accepted review petitions partially and set aside its judgment, holding that Banking Judge, was appointed in consonance with S. 5 of Financial Institutions (Recovery of Finances) Ordinance, 2001 and proceedings and orders by Banking Judge, were in accordance with prevailing law-- Petitioners/judgment debtors contended that, Banking Court was not vested with jurisdiction under the mandatory provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001, therefore, order of the Banking Court, was void ab initio and arbitrary in the eyes of law; that Chief Court had not appreciated that District Judge had no jurisdiction in the matter and judgment/decrees passed by said court were coram non judge and that both the District Court and Banking Court were not established in accordance with law, and their Presiding Officers having not been appointed by the Federal Government in pursuance of the mandatory provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001, therefore, orders/judgments rendered by said courts were coram non judge, not sustainable and were liable to be set aside--- Petitioners had prayed that impugned order passed by Chief Court be set aside---Contention of counsel for respondent/Bank was that orders/judgments passed by the Chief Court were well reasoned and according to law and that Banking Court was established in accordance with law and its Presiding Officer was also competently appointed; as after promulgation of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 authority for the appointment rested with the Gilgit-Baltistan council under serials 5, 13 & 50 of the Third Schedule of the order---No illegality and infirmity had been found in the judgment passed by the Chief Court---Petitions for leave to appeal were converted into appeals and were dismissed, in circumstances. **[2015 GBLR 159]**

---S. 5(1)(2)---Financial Institutions (Recovery of Finances) Adaptation and Enforcement Order, 2001, S.2--Recovery of finances-- -Establishment of Banking Court---Competent authority---Chief Judge, Chief Court, nominated a Judge of Chief Court, to act as Banking Judge to take cognizance of all Banking cases, exceeding amount of Rs. 50 million, under the provisions of Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 [since repealed]--- Petitioner challenged said order as totally illegal, unlawful and void ab initio in the eyes of law---Contention of the petitioner was that Judge, Banking Court had not been appointed by the Government of Gilgit-Baltistan being competent authority in terms of subsection (4) of S.5 of the Financial Institutions (Recovery of Finances)

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Ordinance, 2001, read with S.2 of the Financial Institutions (Recovery of Finances) Adaptation and Enforcement Order, 2001 --- Submission of counsel for respondent was, that the Government of Gilgit-Baltistan, being the competent authority, after consultation with the Chief Judge, Chief Court had established the Banking Court in terms of subsections (1), (2) of S. 5 of the Financial Institutions (Recovery of Finances) Adaptation and Enforcement Order, 2001, which was lawful and in accordance with law and procedure---No illegality and infirmity had been pointed out by the counsel for the petitioner in the impugned judgment passed by the Chief Court---Case-law cited by counsel for respondent Bank, was applicable; whereas case-law cited by the counsel for the petitioner, was distinguishable---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court, and was dismissed being meritless having no substance---Impugned judgment passed in writ petition by Chief Court was maintained, in circumstances. **[2015 GBLR 123]**

---S. 5---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Judge of Banking Court-Appointment---Additional District Judge was appointed as Judge in Banking Court---Validity---Defect in appointment of Banking Judge was legal and Additional District Judge was not competent to discharge function of Banking Judge---Supreme Appellate Court restrained the Judge to exercise powers of Banking Judge under Financial Institutions (Recovery of Finances) Ordinance, 2001---Supreme Appellate Court, in view of the importance of the matter, directed Chief Judge of Chief Court to send a reference to Federal Government at an early date, with his recommendation for appointment of Banking Judge in accordance with the provision of S.5 of Financial Institutions (Recovery of Finances) Ordinance, 2001, so that cases pending before Banking Court could be decided by competent court in accordance with law---Appeal was disposed of accordingly. **[2010 GBLR 152]**

#### **Foreigners Act (XXXI of 1946)----**

---Ss. 3 & 4---See Pakistan Arms Ordinance (XX of 1965), S. 13. **[2015 GBLR 143]**

#### **Foreign Exchange Regulation Act (VII of 1947)----**

---S. 8---See Customs Act (IV of 1969), Ss. 156(1)(8)(89). **[2010 GBLR (a) 545]**

#### **Forest Act (XVI of 1927)----**

---Preamble---See Gilgit Private Forest Regulations, 1970. [2011 GBLR 186]

#### **Forest Rules, 1975----**

---See Gilgit Private Forest Regulations, 1970. [2011 GBLR 186]

## G

#### **General Clauses Act (X of 1897)----**

---S. 21---Power of government to rescind order---By virtue of S. 21 General Clauses Act, 1897, the power of rescinding an order was available to the government till decisive step was taken and authority competent to pass an order was also empowered to undo such an order-Such power, however could not be exercised in respect of an order which having taken legal effect, had created rights in favour of an individual, unless it was shown that it was void or an illegal order or had been passed without jurisdiction. [2010 GBLR (a) 92]

---S 21---Locus poenitentiae, principle of---Scope---Authority which has power to issue notification/order has also the power to recall/withdraw /rescind the notification/order until it has taken effect and has created a right in favour of person once an order or notification lawfully issued has taken effect and right has created in favour of a person, the issuing authority may not be able to recall/withdraw or rescind the same in normal circumstances. [2011 GBLR (b) 451]

---S. 23---Publication of rules---‘Ejusdem generis’, principles of---Applicability---General Clauses Act, 1897 was applicable to the statutory law and the phraseology used therein would apply to the statutes only in a situation which was not covered by the relevant statute---Principle of ‘ejusdem generis’ could permit consideration of words used in a statute with reference to the words used in another statute in a situation where use of general words would follow the particular and specific words---In the light of the principle of ejusdem generis the previous publication of statutory rules, was mandatory under S.23 of General Clauses Act, 1897, but said principle could not be applied to non-statutory rules---Procedural irregularities, even in the statutory rules after publication and having taken effect, would have the presumption of conclusiveness and could not be declared ultra vires on the basis of such technical objection--- Non-statutory rules framed by the (Board of Directors of a private limited company

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registered under Companies Ordinance, 1984, were not governed by the General Clauses Act, 1897. [2011 GBLR (c) 515]

---S. 24---Locus poenitentiae, principle of---Applicability---Pay and allowances, withdrawal of---Appellants were Federal Government employees serving in Gilgit-Baltistan and they had been getting Special Pay and Hard Area Allowance sanctioned by the Federal Government in the year, 1992--- Grievance of employees was that the authorities had discontinued payment of Special Pay and Hard Area Allowance---Validity---Authority which had power to pass an order or issue a notification had also power to recall, withdraw or rescind the order or notification---Special Pay was allowed to employees of the Federal Government serving in Northern Areas by competent authority in the Federal Government---Such order could be withdrawn/recalled or rescinded by the same authority in the Federal Government till the order had not taken effect and had not created a legitimate right in favour of employees---Order, after taking effect, could not possibly be withdrawn or rescinded even by the authority which had issued the same, what to speak of any other authority subordinate to that authority---If any order itself was not a lawful order to create any right in favour of a person the same could be withdrawn / rescinded at any stage---Supreme Appellate Court directed the authorities to issue necessary instructions to AGPR for payment of Special Pay and Hard Area Allowance for the period for which the payment had not been made to the employees of the Federal Government serving in Gilgit-Baltistan including those who had been retired as per their entitlement without any discrimination of local and non-local or domicile---Supreme Appellate Court further directed the authorities that payment of Special pay and Hard Area Allowance would continue to be paid unless the same was withdrawn by competent authority in accordance with law---Appeal was allowed. [2011 GBLR 438]

----S. 21---See Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, R. 3. [2015 GBLR 148]

----S. 24-A---See Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, R. 3. [2015 GBLR 148]

#### **Gilgit-Baltistan Civil Servants Act (V of 2011)----**

----S. 4--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Appointment---Post of EST teacher in BPS-14 was lying vacant, whereupon respondent approached Deputy Director Education for her appointment, who recommended the case of the respondent to Director Education---Director Education further recommended the case to Secretary Education, who referred the matter

to District Recruitment Committee/(DRC) to examine and issuing order of appointment---Four members of District Recruitment Committee/(DRC) recommended the respondent for appointment against said vacant post---Writ petition filed against said order was dismissed by the Chief Court---Validity---Advocate-General could not point out any illegality and infirmity in the impugned judgment passed by the Chief Court in writ petition---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was dismissed---Impugned judgment passed by the Chief Court was maintained--- Petitioners/Authorities were directed to appoint the respondent in the light of the recommendation of District Recruitment Committee (DRC). **[2016 GBLR 62]**

----S. 4---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Appointment---Non-payment of salary---Petition for leave to appeal---Employee, initially was appointed as M.T. teacher on contingent basis---Services of the employee were regularized/adjusted against the vacant post of teacher BPS-09, but authorities had not paid salary of the employee on the ground that employee was not a regular appointee and her contingent order was also illegal and incorrect--- Appeal filed by the employee was accepted by the Service Tribunal, directing the authorities to release the pay of the employee from the date of her appointment order--- Authorities challenged said order alleging the same as result of misconception of law and facts and not tenable---Advocate-General could not point out any infirmity and illegality in the judgment of the Service Tribunal---Leave to appeal was refused. **[2016 GBLR 33]**

----S. 4--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Appointment, cancellation of---Petition for leave to appeal---Chief Court in writ petition had passed order whereby cancellation of appointment was set aside declaring the same as illegal and without lawful authority--- Advocate-General, could not show any illegality and infirmity in the judgment/order by the Chief Court---Petition for leave to appeal was converted into appeal by Supreme Appellate Bench and was dismissed---Judgment/order passed by the Chief Court was maintained. **[2016 GBLR 5]**

----Ss. 4, 5 & 10---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Civil service---Appointment---Termination of service---Petition for leave to appeal---Conversion of petition into appeal---Present petition had been directed against the impugned judgment passed by Chief Court in writ petition, whereby, respondent/employee had been declared entitled to continue his service in accordance with law with all back benefits and authorities



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were directed to reinstate the services of the employee and the termination order issued by the authorities, was set aside---Employee was terminated from his service without assigning any reason or issuing any show-cause notice; which was violation of the terms and conditions provided in the appointment order---Deputy Attorney-General, could not point out any illegality and infirmity in the judgment of Chief Court---Interference in the impugned judgment was not warranted---Petition was converted into appeal and same was dismissed and judgment of Chief Court was maintained, in circumstances. **[2016 GBLR 24]**

---Ss. 4 & 6--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Appointment---Petition for leave to appeal---Petitioner who was appointed as Chowkidar BPS-1 on continent basis at a fixed pay, was performing his duties against said post---Respondent/District Health Officer, converted the contingent service of the petitioner into contract service for a period of one year---Request of the petitioner to convert his service into permanent one in line with the other contingent/contract employees, was refused by the respondent/ Authority---Petitioner, being aggrieved, filed writ petition which was dismisses in limine by the Chief Court---Validity---Petitioner had no locus standi to file writ petition---Civil suit filed by the petitioner against the subject matter was decided by the court of competent jurisdiction, and same was upheld by the first Appellate Court---Since, no revision was filed by the petitioner, judgment of the Trial Court held field---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was dismissed---Order passed in writ petition by the Chief Court, was maintained, in circumstances. **[2016 GBLR 59]**

---Ss. 4 & 6---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Regularization of service--- Petition for leave to appeal---Writ petition filed by the petitioners, having been dismissed by the Chief Court, petitioners had filed petition for leave to appeal---Petitioners who were appointed as Assistant Executive Engineer BPS-17 on contract basis; joined their duties and continued their job for about one and half years---Summary for-regularization of the services of the petitioners had been withdrawn vide an office order---Chief Court dismissed the writ petition against withdrawal of summary for regularization---Validity---Petitioners were appointed purely on the contract basis and on completion of the period of the project, their services could not be regularized without the recommendation of the Authority which had appointed the petitioners---Petitioners could not point out any illegality and infirmity in the said order---Petition for leave to appeal was converted into appeal by the Supreme Appellate

Court and dismissed---Judgment passed by Chief Court in writ petition, was maintained. **[2016 GBLR 39]**

---Ss. 4 & 6---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Regularization of service--- Writ petition before Chief Court---Petitioners had contended that their services be regularized in line and cadre of other employees and back benefits also be allowed accordingly--- Chief Court partially allowed the petition to the extent of adjustment of petitioners and declined the grant of back benefits---Validity---Petitioner could not point out any illegality/infirmity in the judgment of Chief Court---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Order passed by the Chief Court was maintained, in circumstances. **[2016 GBLR 41]**

---Ss. 4 & 10---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Termination of service---Petition for leave to appeal---Employee who was appointed on regular basis as Assistant Admin Officer Authorities stopped him to continue his services and his salary was stopped--- Employee against said action filed writ petition before the Chief Court which was allowed---Authorities had filed petition for leave to appeal with contention that writ petition was not maintainable for the reason that employee had not exhausted remedies at the departmental forum against discontinuation/termination of his service---Validity---Employee had not exhausted the departmental appeal against his termination--- Factual controversies were involved in the case of the employee and he had claimed that he had been appointed by the competent authority while authorities had contended that said appointment order was factitious and bogus as the post against which the employee was appointed was neither created nor vacated/ available---Where alternate remedy was available and/or in the case factual controversies were involved writ petition would not lie---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed---Impugned judgment passed in writ petition by Chief Court, was set aside, in circumstances. **[2016 GBLR 46]**

---Ss. 4 & 10---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Termination of service--- Petition for leave to appeal---Petitioner, employee was appointed as Assistant/Store keeper (BPS-9) on contract basis vide office order under certain terms and conditions---Services of the employee were terminated, due to non-availability of funds etc---Employee being not a graduate, was not eligible for the post of Assistant/Store keeper---Rules and Regulations of the department did not permit to appoint a non-graduate against the

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post of Assistant-cum-Store keeper---Employee could not point out any infirmity and illegality in the impugned judgment---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Judgment in writ petition by Chief Court was maintained, in circumstances. **[2016 GBLR 43]**

---Ss. 4 & 10---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Termination of service--- Petition for leave to appeal---Petitioner, who was appointed as teacher had successfully rendered 31 years long service in the institution---Petitioner, during his service had availed professional training from recognized educational institutions in order to improve his teaching skills---Authorities terminated the services of the petitioner in line with the Human Resources Policy and Procedure Manual, meanwhile ‘Voluntary Early Retirement Scheme (VERS) was introduced for the employees/teachers---Said package extended financial benefits to all the employees/teachers, except to the petitioner---Writ petition by the petitioner was dismissed by the Chief Court---Validity--- Petitioner was nearing retirement at the time of his termination---Authorities were supposed to include the petitioner in the said retirement package at par with other employees/teachers instead of termination of his 31 years service---Petitioner should have been treated equally amongst equals---Petitioner was condemned unheard, which was against the principles of natural justice---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed--- Judgment passed by the Chief Court in writ petition, as well as termination letter of petitioner were set aside--- Authorities were directed to extend the benefits of “Voluntary Early Retirement Scheme” in favour of the petitioner as given to other teachers. **[2016 GBLR 56]**

---Ss. 4 & 10---Termination of service---Petitioner who was initially appointed as M.T. teacher BPS-09, her services were regularized being found satisfactory---Petitioner performed her duties for approximately three and half years to the entire satisfaction of authorities--- Authorities, after lapse of considerable period, constituted, Special Recruitment Committee and in the light of the recommendation of said Committee services of the petitioner were terminated--- Validity--- Service Tribunal dismissed appeal of the petitioner on the sole ground the no departmental appeal was filed by the petitioner---Appointment of the petitioner having been regularized on merit, her services could not be terminated, except her being proven guilty of misconduct, as she had acquired legitimate expectancy after her services were regularized---Once the right of the petitioner accrued, same could not be taken away by subsequent administrative order-impugned judgment

of the Service Tribunal, as well, as order issued by the authorities were set aside---Authorities were directed by the Supreme Appellate Court to reinstate the petitioner from the date, her services were terminated and to pay/release all the back benefits to the petitioner from the date of her regularization in service within three months. **[2016 GBLR 49]**

----S. 8---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Pro forma promotion---Civil servant who retired from Police Department as Superintendent of Police on 10-7-2009, filed writ petition before the Chief Court seeking ante-dated pro forma promotion on 18-4-2011 as Assistant Inspector General BPS-19, after two years of his retirement but during pendency of writ petition he died---Case of Civil Servant, on establishment of Service Tribunal in Gilgit-Baltistan was transferred to the Tribunal---Service Tribunal allowed the appeal of Civil Servant---Validity---Advocate-General, could not point out any infirmity and illegality in the impugned judgment---Post of S.P., BPS-18 i.e. the Assistant Inspector General BPS-19 was vacant at the relevant time against which the Civil Servant was required to be promoted; as it was to be filled in through promotion from amongst the S.S.P./S.Ps. of Police---Working paper for promotion of the Civil Servant as A.I.G. was also prepared and forwarded---Leave to appeal against order of Service Tribunal was refused by the Supreme Appellate Court and judgment passed in appeal by Service Tribunal, was maintained, in circumstances. **[2016 GBLR 35]**

----S. 8---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Pro forma promotion---Petition for leave to appeal---Employee had claimed pro forma promotion against the post of Director Animal Husbandry (Live Stocks) BPS-19 and appealed to the Service Tribunal which was accepted--- Validity---Employee was assigned the duty of Director Animal Husbandry on current charge basis and he retired after about 1 year from said assignment on attaining the age of superannuation in the post of Deputy Director---Service Tribunal while accepting appeal of the employee directed the department to prepare working paper for promotion of the employee from date of assigning the duty of Director Animal Husbandry to the date of his retirement along with all back benefits including pensionary benefits---Judgment by the Service Tribunal was well reasoned and well founded---No interference was warranted in the said judgment---Advocate-General could not point out any illegality and infirmity in the impugned judgment---Petition for leave to appeal was converted into appeal and was dismissed, in circumstances. **[2016 GBLR 106]**

----S. 8--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60--- Promotion--- Entitlement to---Petitioners, who were performing their duties in the department of Fisheries as Assistant Wardens, having been promoted in BPS-11 against the vacant posts, respondent feeling aggrieved by said promotion filed writ petition which was allowed by Chief Court and orders were set aside---Review petition filed by the petitioners, was also dismissed being barred by time--- Validity---Respondent, who being senior to the petitioners on the seniority list, fulfilled all the codal formalities for the promotion against the post in BPS-11---Respondent, therefore, was rightly promoted---Petitioners, could not point out any illegality/infirmary in the impugned orders/judgments---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was dismissed. **[2016 GBLR 252]**

----S. 8--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Promotion---Respondent performing his duties as Additional Registrar (Administration) BPS-19 was not considered for promotion to next grade by the Selection Board, despite he being at Serial No. 1 of the seniority list--- Allegations against the respondent were misuse of power and nepotism---Junior colleagues of the respondent had been considered and promoted to next higher grade i.e. BPS-20--- Inquiry Committee submitted its report and declared the respondent not guilty for nepotism---Inquiry Committee was again constituted, who recommended minor penalty for the respondent, but authorities imposed penalty of withholding of promotion of the respondent till his retirement---Writ petition of the respondent against such action of the authorities was allowed---Validity---Three inquiry Committees were constituted to probe into the alleged allegations against the respondent; out of said three Committees, the two had exonerated the respondent from the charges, whereas the third “one Member Committee” had imposed minor penalty for the respondent, but contrary to the facts and rules, authorities penalized the respondent by awarding him major punishment i.e. withholding of the promotion of the respondent---On conclusion of one inquiry against an Officer, no second or third inquiry was allowed as per relevant rules/law--- Authorities could not point out any illegality/infirmary in the impugned judgment---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed. **[2016 GBLR 225]**

----S. 8(4)(5)---Pro forma promotion (after retirement)--- Entitlement---Scope---Service Tribunal had directed the authorities to prepare working paper for promotion of the employee (Chief Consultant BS-20) to be placed before Departmental Promotion Committee for consideration with effect from due date with

pensionary benefits of the higher grade after retirement and complete the process within three months with compliance report to the Registrar of the Tribunal---Advocate-General on behalf of the authorities had sought reversal of order of Service Tribunal---Employee defended impugned judgment by submitting that he was entitled to get promotion on the basis of fitness-cum-seniority basis---Employee was appointed as Medical Officer in BPS-17 in 1983, and was promoted as Senior Medical Officer in BPS-18 in the year 1990; after doing post graduation in 1995, he served as Child Specialist against a temporary post---Case for promotion of the employee along with cases of other Specialist Cadre doctors was submitted to the Departmental Promotion Committee, but he was not considered for promotion due to faulty presentation of working paper by the department--- Promotion cases of three junior Colleague Doctors were considered for promotion in the Specialist Cadre, resultantly they became senior to the employee due to negligent/wilful act of the concerned authorities---Concept or right of promotion of a civil servant after retirement existed all over the world--- Employee had a fundamental right to be promoted even after retirement through pro forma promotion, provided his right of promotion had accrued during service and his case for promotion could not be considered for promotion for no fault of his own and retired on attaining age of superannuation--- Employee being qualified and senior most specialist, could not be penalized for departmental lapses and wrongs of the concerned Officials in respect of delay in deciding the seniority dispute and failure of holding Departmental Promotion Committee meeting till his retirement---Decision of Service Tribunal passed in appeal was right---Appeal against order of Service Tribunal was dismissed by the Supreme Appellate Court with direction to the authorities to implement the judgment of Service Tribunal to complete the process of consideration of the case of pro forma promotion of the employee with back benefits within the specified period of three months. **[2016 GBLR 108]**

----S. 10---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Deputationist---Posting and transfer---Absorption of deputationist---Services of employee who was serving as Inspector (BPS-16) in Airport Security Force were placed at disposal of the Gilgit-Baltistan Police as Deputy Superintendent of Police on deputation for a period of three years on standard terms and conditions---Said deputationist, after thirty nine (39) days, was absorbed in Gilgit-Baltistan Police---Validity---According to Service Rules, a deputationist could not be absorbed during deputation period---Deputationist, could not be given another deputation before

expiry of the first deputation period---Government would refrain from issuing posting orders of any non-Cadre Officer to a Cadre post by transfer under S.10 of the Gilgit-Baltistan Civil Servants Act, 2011, nor would it depute by transfer any officer from occupational group in the Government, except in exigency, unless the deputationist would meet the criteria of matching qualifications, eligibility and experience to the proposed post---Absorption of employee within thirty nine (39) days after assuming charge on deputation, would not only be unconstitutional, without undertaking competitive and transparent process, but would also deprive the seniority and progression of career of the meritorious Police Inspectors/petitioners---Illegal absorption, was not a perpetual right of the employee gained on the basis of an illegal order--- Absorption of employee, was illegal, without lawful authority and ultra vires of the service laws and rules---Impugned orders were set aside by Supreme Appellate Court---Employee was directed to report to his parent department/Airport Security Force--- Appeal was accepted. [2016 GBLR 82]

---S. 10---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Termination of service---Service of the petitioner was terminated on the allegation of misappropriation of 771 bags of wheat---Civil suit filed by the petitioner, was partially decreed by the Trial Court in favour of the petitioner---Judgment of the Trial Court was upheld by the appellate court below---Concurrent findings of both the courts below were set aside by the Chief Court in revision-- Validity---Petitioner had passed away while leaving behind eight legal heirs and five of them were minors; one widow and two daughters who were also reliant, could not be deprived from the monetary benefits as their father/petitioner had rendered service for a considerable period of 15 years 3 months and 19 days and he had died during pendency of the petition--- No show-cause notice was served to the deceased petitioner, no inquiry was conducted and no opportunity was provided to him to defend the allegation---Mandatory provisions of law had been violated and petitioner was condemned unheard--- Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed---Order passed by the Chief Court in revision was set aside, while judgments passed by two courts below were maintained being well reasoned---Legal heirs of the petitioner were entitled to all pensionary/monetary benefits including the back benefits accordingly. [2016 GBLR 120]

**Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009---**

----Art. 1 ---Northern Areas Government Order, 1994, Art. 1 --- Constitution of Pakistan (1973), Art. 1(d)---Northern Areas, constitutional status of---History stated. **[2010 GBLR (c) 1]**

----Art. 2(n)---See Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009, Art. 95. **[2011 GBLR (b) 81]**

----Arts. 3 to 19, 60(13) & 61---Northern Areas Governance Order, 1994, Arts. 8, 15, 16, 17, 19-A & 27---Constitution of Pakistan (1973), Arts. 4 & 25---Industrial Relations Act (IV of 2008), Preamble--- Constitutional petition before Supreme Appellate Court by Gilgit Baltistan Workers Federation---Non-extension of application of Industrial Relations Act, 2008 and other labour related laws to Northern Areas by Government of Pakistan---Petitioner's plea was that people of the Northern Areas being citizens of Pakistan were equally entitled to benefit of Labour Laws enforced in Pakistan and without application thereof in such Areas, labour class and trade unions of such Areas were deprived of their fundamental right of access to justice, equal treatment and protection of law in terms of Arts. 4 and 25 of the Constitution of Pakistan---Validity---Such questions relating to fundamental rights of people of the Northern Areas were of public importance---Supreme Appellate Court granted leave to consider questions raised in the petition. **[2010 GBLR (a) 1]**

----Arts. 3 to 19, 60(13) & 61--- Northern Areas Governance Order, 1994, Arts. 8, 15, 16, 17, 19-A & 27---Constitution of Pakistan (1973), Arts. 4 & 25--- Industrial Relations Act (IV of 2008), Preamble--- Constitutional petition before Supreme Appellate Court by Gilgit Baltistan Workers Federation in representative capacity---Prayer in the petition was that Government of Pakistan be directed to extend application of Industrial Relations Act, 2008 and other labour related laws in the Northern Areas---Validity---Petitioner had filed direct petition in representative capacity, as it was not possible for individual workers of the Areas to raise common grievance through separate petition---Supreme Appellate Court permitted the petitioner (Workers Federation) to represent the workers in representative capacity without prejudice to right of respondents to raise objection as to maintainability of such petition. **[2010 GBLR (b)1]**

----Arts. 3 to 19, 60(13) & 61---Northern Areas Governance Order, 1994, Arts. 8, 15, 16, 17, 19-A & 27---Industrial Relations Act (IV of 2008), Preamble---Constitutional petition before Supreme Court by Gilgit Baltistan Workers Federation in representative capacity--- Withholding of application of Industrial Relations Act, 2008 and other labour related laws to Northern Areas by Government of Pakistan---



Plea of petitioner that labour class of such Areas being citizens of Pakistan were equally entitled to benefit of Labour Laws enforced in Pakistan and without application thereof in such Areas, labour class and trade unions of such Areas were deprived of their fundamental rights of access to justice, equal treatment and protection of law in terms of Arts. 4 and 25 of the Constitution of Pakistan read with Art. 19-A of Northern Areas Governance Order, 1994---Validity---Initially Industrial Relations Ordinance, 1969 was made applicable to such Areas, but subsequently operation thereof from such areas was withdrawn by Government of Pakistan---Exclusion of application of provisions of Industrial Relations Ordinance, 1969 or non-application of Industrial Relations Act, 2008 being violative of Art. 17(1) of the Constitution of Pakistan and Art. 19-A of Northern Areas Governance Order, 1994 was without any constitutional or legal justification---Industrial Relations Ordinance, 1969 or Industrial Relations Act, 2008 provided mechanism of registration and operation of union and recognition of collective bargaining agent to raise charter of demands and manner of settlement of dispute between employers and employees through negotiation--- No such statute was available in such areas, resultantly the right of formation of unions as a legitimate representative body of workers could not be effectively exercised for welfare of labour class---Registered union having legal recognition could perform all acts permissible under law and could also enter into a binding contract with employer on behalf of employees---Right of freedom of association and forming of union in terms of Art. 17(1) of the Constitution of Pakistan read with Art. 19-A of Northern Areas Governance Order, 1994 was a constitutional right, which could not be denied---Fundamental duty of Government would-be to provide statutory machinery for implementation and enforcement of rights recognized under Art. 17(1) of the Constitution, failing which such right could deem to have been denied---Federal Government, subject to reasonable restrictions on functioning of unions by making suitable amendments in Industrial Relations Act, 2008 might extend same to such areas until an alternate statutory law was framed for enforcement of right of association of union in such areas in terms of Art. 17(1) of the Constitution of Pakistan read with Art. 19-A of Northern Areas Governance Order, 1994--- Any restriction on enforcement of legal or constitutional right impliedly or expressly or directly or indirectly would amount curtailment of such right---Northern Areas were under direct control of Federal Government---People of such areas were citizens of Pakistan---Federal Government by making Ch. I, Part-II of the Constitution of Pakistan relating to fundamental rights as part of Northern Areas Governance Order, 1994 had recognized right of forming of labour union by labour class, but withholding of machinery

of law for enforcement of such right in such area was discriminatory---Laws would be presumed to be valid, unless proved to have been enacted in violation of constitutional principles---Legislative presumption would be in favour of beneficial interpretation of provision---Industrial Relations Act, 2008 applicable to whole of Pakistan would impliedly be extended to Northern Areas, though not defined as territory of Pakistan in the Constitution, but was an integral part of Federation of Pakistan for all practical purposes and directly governed by Federal Government---Duty of Government of Pakistan either to extend federal laws beneficial to such areas by issuing a formal notification or enact law for public welfare and interest---Withholding of remedy would amount to infringement of right---Rights of labour class provided in different labour laws could not be enforced add protected without providing appropriate forum for their enforcement---Forming of union being fundamental right of labour class and withholding application of law for enforcement of such right would amount to infringement of fundamental right---Supreme Appellate Court accepted the petition in terms of prayer made therein. **[2010 GBLR (g) 1]**

---Art. 3---See Penal Code (XLV of 1860), S.302. **[2012-14 GBLR (c) 10]**

---Arts. 9 & 61---Petitioner had sought direction to the effect that Industrial Relations Act, 2008 and other labour related laws be immediately extended to Northern Areas---Validity---Trade or a Labour Union could not effectively function as a representative body in the industrial disputes between the workers and employees for protection of the rights of workers, merely on the basis of Art. 17(1) of the Constitution of Pakistan, read with Art. 19-A of Northern Areas Governance Order, 1994 substituted by Art. 9 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, without statutory recognition---Laws on the industrial relations for effective enforcement of fundamental right of formation of union in Gilgit Baltistan and for regulating the industrial relations, in circumstances was to be provided with application of labour laws---Petition was allowed by Supreme Appellate Court with direction that subject to all just exceptions, until a permanent law regulating the industrial relations for protection of labour rights with reasonable restriction was made for Gilgit Baltistan, Industrial Relations Act, 2008 a temporary legislation with related labour laws would be enforced in Gilgit Baltistan (Northern Areas) which would deem to have been extended to Gilgit Baltistan (Northern Areas)---Federal Government would accordingly issue the formal notification for enforcement of said laws. **[2010 GBLR 56]**

---Arts. 9, 61 & 76---Upgradation of Judicial Officers of the subordinate judiciary---Petitioners had prayed for upgradation of Judicial Officers, Staff and Allowances---Gilgit-Baltistan, was part of Pakistan and by following Judicial Policy enforced in Pakistan, judiciary of Gilgit-Baltistan would certainly be benefited and the disparity in the standard of Judicial Service of Gilgit-Baltistan would certainly be removed which would advance the cause of independent judiciary---Concept of independence of judiciary was not confined only to the person of judicial officers, rather judicial independence mostly depended on administrative and financial independence---Interference of executive in the affairs of judiciary with respect to the prospect of their service and terms and conditions of service directly or indirectly could affect the independence of judiciary---Better service status with better terms and conditions, could ensure the independence of judicial officer to the expectation of a common man--Under Northern Areas Governance Order, 1994 and now under Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, the superior Judiciary of Gilgit-Baltistan had been placed at par to the superior Judiciary of Pakistan and on the basis of same principle, the subordinate judiciary in Gilgit-Baltistan must be treated at par to that of the subordinate Judiciary in the Provinces of Pakistan and it would be fair to follow the Policy of the High Courts in the Provinces of Pakistan regarding upgradation of Judicial Officers in the subordinate Judiciary--- With a view to remove the disparity in the status and standard of Judicial Service in Gilgit-Baltistan and to bring at par to the judicial service in the Provinces of Pakistan in the light of principle of fair and equal treatment, Supreme Appellate Court held that Judicial Officers of subordinate Judiciary of Gilgit-Baltistan, would be entitled to the benefit of upgradation---Chief Court Gilgit-Baltistan, in exercise of powers conferred to it under Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009, would initiate the process of upgradation of Judicial Officers of the subordinate Judiciary in the same manner as had been done by the High Court in the Provinces of Pakistan within specified period. [2010 GBLR 64]

---Arts. 10 & 60(13)---Right of freedom of trade and business--Scope---Policy matters---Fixing of price---Subsidy on Ata---Administrative function---Interference of Courts---Petitioners were mill owners and depot holders and were aggrieved of wheat quota provided to them for the purposes of supply of Ata to the people of Gilgit-Baltistan---Validity---Scheme of subsidy on Ata was framed for the benefit of public in general, therefore, mill owners, depot holders and other persons engaged in the process for supply of wheat and Ata to people of Gilgit-Baltistan under the scheme were only entitled to

labour and service charges etc. without any profit on the price of Ata to be fixed by government---Every person was free to enter into lawful business with margin of reasonable profit but subsidy scheme of wheat supply in Gilgit-Baltistan was not commercial activity of the nature which created a vested right in favour of mill owners to sell Ata directly in market after grinding wheat which was supplied to them by government under the scheme--- Condition of sale of Ata to government by mill owners and Chokar in local market at fixed rate was based on the policy of supply of wheat and Ata to people, therefore, courts were not supposed to interfere in such policy matters and fix price of food items or other commodities---Interference of court in such functions of government would amount to encroach upon the policy decision of government and disturb the concept of independent and good governance---Supreme Appellate Court directed Food department to consider grievance of persons engaged in the business regarding reasonable margin of profit--- Supreme Appellate Court, without taking any exception to the direction contained in the judgment passed by Chief Court, directed the government to constitute a committee for ascertainment of the question relating to increase of quota, fair-price of wheat, Ata and Chokar in local market with some margin of profit of mill owners and depot holders---Judgment passed by Chief Court was maintained---Leave to appeal was refused. [2010 GBLR 245]

---Art. 10---Right of every citizen to choose any business or trade not absolute, but being subject to certain limitations--- Principles. [2011 GBLR (f) 290]

---Arts. 10, 60(13) & 71---Writ petition---Issuance of No Objection Certificate (NOC) by Government for Establishment of Flour Mills with the name of a National Hero, holder of Nishan-i-Haider---Raising of construction by original NOC holder---Transfer of ownership rights in land along with incomplete structure by original NOC holder in favour of petitioner---Subsequent imposition of ban on establishment of Flour Mills by order of Chief Court---Petitioner's prayer to permit him to complete remaining construction work of Flour Mills allowed by Chief Court---Validity---Petitioner was claiming to be owner of Flour Mills on basis of NOC, which was not issued in his name, but was issued in name of original NOC holder---Petitioner in writ petition had concealed material facts regarding issuance of NOC---Petitioner was not entitled to extraordinary relief for having approached Chief Court with unclean hands---Petitioner had no cause of action to invoke extraordinary jurisdiction of Chief Court---Original NOC holder was not party to writ petition, which was not maintainable in eyes of law---According to such order of Chief Court, for completion of remaining

‘work, grant of NOC by Chief Secretary was pre-requisite and that too when area was in dire need of a Flour Mills---Right of every citizen to choose any business or trade was not absolute, but was subject to certain limitations---Petitioner had invoked jurisdiction of Chief Court without approaching competent authority for getting NOC--- NOC holder not having any proprietary rights in respect of NOC could not transfer same---Original NOC holder could not transfer NOC in favour of petitioner without approval of competent authority---Exploitation of names of National Heroes for private business purposes and display of their names in shops, Flour Mills etc. to attract customers would give a bad impression and amount to disgrace dignity of National Heroes and Prestigious Awards---Supreme Appellate Court set aside impugned judgment while directed Government not to allow anyone to exploit names of National Heroes for flourishing of their business etc. and formulate a firm policy in such regard. [2011 GBLR (b) 290]

---Art. 11--- Constitution of. Pakistan, Arts. 19 & T9-A---Freedom of press/media---Sacred duty of press to create awareness in the society must be discharged in most fair and independent manner and information regarding performance of institutions or individuals in public life for the good of the people and in the national interest is responsibility of press but the projection of individuals in preference to national or institutional interest or, the interest of society or in a manner which may cause damage to the honour, dignity and reputation of others is absolutely beyond the right of freedom of press within the ambit of Article 11 of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 read with Articles 19 and 19-A of the Constitution of Pakistan--- Publication in violation of reasonable restriction imposed by law may render the concerned press people liable to appropriate civil and also criminal action under the law--- Constitutional guarantee does not even licence to the press to publish any material which may harm or cause damage to the reputation of a person and such freedom of press is subject to such restrictions as could be legitimately imposed under the law---Print and electronic media instead of only commercial consideration and interest for providing news as a popular source of publicity, must also acknowledge the great responsibility of discharging their function in accordance with the principles of decency, moral values and spirit of law which is not calculable in terms of money---Publication in departure to the prohibition of law and morality is an irresponsible attitude which is entirely against the concept of the right of information and free press--- Principles. [2011 GBLR (v) 121]

---Art. 11---Defamation Ordinance (LVI of 2002), S.3--- Freedom of Press---Honest and fair report on a matter of public interest in a

civilized manner is not actionable even if it is not wholly true and in view of the protection of qualified privilege under the law to the newspaper, the action for libel in relation to the news items may not be in accordance with law---Press and the media has very important role of exposing fearlessly the evils in the society for the purpose of reformation and welfare of the people but bad use of such role and power by the press collectively or individually may damage the trust of people on press and media as source of information---Publishing of news items without taking care to ascertain the truth of the news item before its publication or to be absolutely sure about the correctness of the news item, and realizing that it may cause irreparable loss to the person to which it is related is misuse of the right of freedom of press---Exposure of the public character of a person especially the public office holders in respect of their credibility is good scene of press in the society, but the character assassination of any person in the society even if it is based on truth is prohibited by law, morality and code of good conduct---Freedom of Press in Muslim society is subject to the glory of Islam and in Islam personal character assassination is strictly disallowed, therefore, no one can take advantage of the Constitution and legal guarantee of freedom of press to disgrace any person in the society, and law may not tolerate the publication of material derogatory to the honour, dignity and respect of a person in an official or private capacity---Principles. **[2011 GBLR (u) 121]**

----Art. 11---Defamation Ordinance (LVI of 2002), S.3--- Freedom of Press---Right of Press to publish news items in relation to the personal matters and affairs of a life of a person---Scope---Duty of Press. **[2011 GBLR (t) 121]**

----Art. 11---Defamation Ordinance (LVI of 2002), S.3--- Freedom of press and speech---Libel claim---Scope. **[2011 GBLR (k) 121]**

----Art. 11---Defamation Ordinance (LVI of 2002), S. 3--- Freedom of speech---Libel---Contempt---Publication in critical manner of extra judicial conduct of Judges not to make public comments about a judicial matter, and also may not engage in quasi judicial activities, if such activities reflect upon their impartiality in respect of judicial function or political affiliation, with a political party or a judicial act of a Judge was against the public opinion or a Judge has implied sympathy with a Government or a political party is not prohibited but publication of such conduct of a Judge in a derogatory and contemptuous manner with actual malice and motive to disgrace and dishonour his person under the shadow of right of free speech and

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press is not justified and may bring it within the ambit of contempt and also libel. **[2011 GBLR (o) 121]**

----Art. 11---Defamation Ordinance (LVI of 2002), S.3--- Freedom of speech---Speech on political issues---Defamatory and false allegation against the opponents---Effect. **[2011 GBLR (s) 121]**

----Art. 11---Defamation Ordinance (LVI of 2002), S.3---Penal Code (XLV of 1860), Ss. 499, 500, 501, 502 & 502-A--- Freedom of speech---Fighting words (speech) derogatory, to personal and private affairs, the national and international interest, the religious feelings, the integrity and security of the State or contemptuous to the institution and such other matters including decency, morality, and sexually derogatory which may result in breach of the peace may create unrest in the public and such expression may constitute a criminal offence--- Principles. **[2011 GBLR (m) 121]**

----Art. 11---Free press and speech---Essential function of free press and speech is to enhance the potential of individual contribution to the social welfare of the people in the society and prevention of the abuse of power by public officials---Free press is a safety valve in the society and suppression of free press and speech by punishment may discourage public stability but may not suppress the concept of independent press as the free speech is the ally and not enemy in the battle for good public order---Principles. **[2011 GBLR (h) 121]**

----Art. 11---Freedom of Press---Press to render effective service of bringing the performance of the persons in the public life or who have been part of executive, legislature and judiciary, or being responsible to frame a national policy for development of country and betterment of public in general, failed to discharge their duty---Principles. **[2011 GBLR (w) 121]**

----Art. 11---Freedom of Press---Scope---Legal right of a person to have access to every information in control of the government and publication of an information, the disclosure of which to the press and media is against the public interest or policy of law amounts to defeat the concept of right of free press---Publication of secret information without disclosure of source or prior approval of the relevant quarters may not be protected by the right of information and freedom of press--Government may place restriction on the disclosure and publication of official informations which are not for public consumption and may also issue preventive orders of expression of view on a particular matter to promote and protect the substantial and important government interest if it is considered necessary for protection of such interest---Right of information is subject to

reasonable restriction of law and press can neither claim immunity from disclosing the source of information nor such is a privilege of the press, to release the confidential source of information on the excuse that flow of information available to press would be impeded. [2011 GBLR (aa) 121]

---Art. 11---Freedom of Press/Media---Obscenity in utterance or in any form is not protected by the Constitution and law---Principles. [2011 GBLR (x) 121]

---Art. 11---Freedom of Press is a fundamental right with legal and constitutional guarantee and all instrumentalities of the State are supposed to act in a manner which may be conducive to the promotion of object of such valuable right---Such is not only a right but also duty of Press to circulate views and opinions in the public which are in the national interest and are not against integrity, and solidarity of the country and are also not contemptuous to a person or institution or against the glory of Islam---Principles. [2011 GBLR (y) 121]

---Art. 11---Liberty of speech and free press---Prior restraint---Scope. [2011 GBLR (i) 121]

---Art. 11---Penal Code (XLV of 1860), Ss. 295-B & 295-C---Defamation Ordinance (LVI of 2002), S.3---Freedom of speech---Blasphemy---Concept---Blasphemy is the malicious revilement of God and religion or religious icon or a sacred person or thing---Propaganda of anti Islamic' thoughts with a view to cause injury to the feelings of a Muslim sect or any slander made in writing or in spoken words insulting to the Holy Prophets or to be critical with use of derogatory language in respect of the religious thoughts or to speak in favour of blasphemy or against the law of blasphemy in insulting manner to the honour of last Holy Prophet Muhammad (P.B.U.H.) is prohibited by law and also by code of moral conduct--- Publication of objectionable material on such matters is certainly beyond the right of free expression and the person responsible for such publication directly or indirectly and also a person who in any manner acts in aid of such activity, may be guilty of offence of blasphemy and is equally liable for prosecution under the law of blasphemy in addition to the prosecution for libel and defamation---Publication of objectionable material on blasphemy in any context or publication of obscenity and slanderous material which may injure the religious feelings of a person or constitute an offence under the law is prohibited and no person including press can claim any immunity for such speech, writing or publication-principles. [2011 GBLR (r) 121]



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----Art. 11--- Press, Newspapers, News Agencies and Books Registration Ordinance (XCVIII of 2002), Preamble-Defamation Ordinance (LVI of 2002), Preamble---Freedom of Press---Scope---Free press does not mean to publish any news, as per the choice of the publisher or reporter rather the freedom of press is subject to the restrictions imposed by law and also the moral and legal values in the society---Such, is the right of every individual in the society to avail the special and general remedy for civil and criminal liability provided in law for publication of a libel defamation news item concerning to an individual which may cause damage to his person or property or bring bad name to him in the society. **[2011 GBLR (bb) 121]**

----Art. 11---Right of access to press has direct nexus with the right of freedom of press and the electronic and print media is the main source of access to press which is subject to the Code of Conduct based upon the moral values of society, the dignity of man, the decency and morality, the security of State, the ideology of State, the respect for the institutions of Judiciary and Armed Forces, the Parliament and other constitutional and legal institutions---Principles. **[2011 GBLR (j) 121]**

----Art. 11---Right of association to bring information on a matter relating to the public interest not only provides guarantee and freedom of speech but also ensures and comprehends the right of association to receive information regarding matters of public concern. **[2011 GBLR (z) 121]**

----Arts. 11 & 8---Constitution of Pakistan, Arts. 19 & 16-Right of speech and press or peaceful assembly is subordinate to the interest of society---Principles. **[2011 GBLR (i) 121]**

----Arts. 11 & 9---Right of expression---Freedom of association---Scope---Associational right of political parties and social organization, labour unions, student organizations and group activity may not constitute any criminal or civil liability, if the regulation of such association is not in conflict to the State law, but an offensive publication and speech pertaining to the object and motive of organization, derogatory to the law of State is prohibited---Associations, and organizations established under law which are not controlled by the government, subject to law have the same constitutional right and legal protection to the free speech and activities for the interest of members of association, but such protection of free speech and freedom of expression is always subject to legitimate language and action--- Notwithstanding the constitutional and legal right of expression a publication of a classified or restricted material prejudicial to the national security, is not permissible without

proper authorization and similarly, publication of contemptuous and derogatory remarks against the Judiciary and Armed Forces may have no legal and constitutional protection within the scope of right of expression. **[2011 GBLR (n) 121]**

---Arts. 11 & 61---Press, Newspapers, News Agencies and Books Registration Ordinance (XCVIII of 2002), Preamble--- Defamation Ordinance (LVI of 2002), Preamble---Press Council of Pakistan Ordinance (XCVII of 2002), Fourth Sched. (Code of Conduct)---Right of freedom of speech and free press is subject to reasonable restrictions imposed by law and in addition to the general law of tort and penal laws, such right is also governed by special laws namely the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 and Defamation Ordinance, 2002 which recognize the constitutional right of press, speech and expression, with prohibition of publication of libel, defamation and defamatory material, as contained therein and subject to the Code of Conduct provided in 4th Schedule to the Press Council of Pakistan Ordinance, 2002---Principles. **[2011 GBLR (b) 121]**

---Arts. 11 & 61---Press, Newspapers, News Agencies and Books Registration Ordinance, (XCVIII of 2002), Preamble---Defamation Ordinance (LVI of 2002), Preamble---Right of freedom of speech and free Press---Restrictions by an executive order or legislation---Scope--Official authorities and public functionaries, except in accordance with law, cannot place any restriction on the press by an executive or administrative order, and similarly, the legislature cannot enact a law abridging free press except to prevent abuse of right of expression and speech and the right of press which may suppress the right of expression of an individual---Judicial review---Scope. **[2011 GBLR (cc) 121]**

---Art. 14(3) & (5)---Constitution of Pakistan, Art. 22---Right of education---Scope---Admission in medical college---Right of education is a Fundamental Right which has been recognized under Art. 14(3) and (5) of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 and Art. 22 of the Constitution of Pakistan---People of Gilgit-Baltistan are citizens of Pakistan by virtue of (Pakistan) Citizenship Act, 1951, and notwithstanding the special status of Gilgit-Baltistan, said territory for all intents and purposes is sovereign part of Pakistan--No medical college was established in Gilgit-Baltistan and in the light of Education Policy of Government of Pakistan, students of Gilgit-Baltistan who intend to get admission in any college, university or institution of any Province of Pakistan, are entitled to get admission subject to admission policy of this institution

of their choice or of the respective province---Provinces of Pakistan have policy of special allocation of seats in their medical and engineering colleges for the students of Gilgit-Baltistan for admission on the basis of nomination to be made by Government of Gilgit-Baltistan subject to fulfilment of prescribed criteria of passing entry test for admission in medical colleges of a province---Government of Gilgit-Baltistan is not supposed to nominate a candidate for admission against reserved seats in departure to the criteria of the province for admission in medical and engineering colleges of that province. [2011 GBLR (a) 413]

---Art. 14(3) & (5)---Right of education---Scope---Admission in medical college---Weightage formula---Scope---Nomination Board, role of---Petitioner was candidate for admission in medical college and assailed weightage formula applied, by Nomination Board---Plea raised by petitioner was that her nomination for admission in medical college of one province, on the basis of entry test for admission in another province was in disregard to admission policy of the respective provinces--- Validity---Nomination of candidates against reserved seats for admission in medical colleges on the basis of weightage formula would be in departure to admission policy of the provinces--- Method of nomination on the basis of result of entry test of one province against reserved seat of another province might deprive candidates from their legitimate right of admission against reserved seats for Gilgit-Baltistan---Nomination in medical colleges against reserved seats of Gilgit-Baltistan was a valuable right of a candidate subject to his merit in entry test and fulfilment of other conditions for admission prescribed in the criteria for admission in medical college of a province--- Aggregate formula of entry tests of two provinces or nomination of a candidate in medical college of one province On the basis of result of entry test of another province might infringe right of admission of individual candidates, therefore, weightage or aggregate formula could not be considered a fair method of nomination for admission and also was not in accordance with policy of law---Supreme Appellate Court directed that authorities to accommodate the petitioner preferably in current session as per her entitlement to save her academic year and in case no seat would be made available to Gilgit-Baltistan for her accommodation in current year, her admission in any private medical college would be arranged and petitioner would also have first right of nomination in the next session on the basis of her entry test of current year and entitlement of nomination in any medical college in the provinces of Punjab and Khyber Pakhtunkhwa---Appeal was allowed accordingly. [2011 GBLR (b) 413]

---Arts. 16, 60(13) & 71---See Land Acquisition Act (I of 1894), S.4. [2011 GBLR (c) 383]

---Arts. 16 & 60(13)---Infringement of property rights---Report submitted by the Local Commissioner, would show that road was being constructed without feasibility or survey report or layout plan---Department, on the basis of site plan started the construction and the road was diverted through the land of the petitioner---Prima facie, property rights of the petitioner had been infringed for which compensation could not be Sufficient-Supreme Appellate Court, without commenting upon the merits of the case directed that Trial Court after framing specific issue on the layout plan of the road, would decide the main suit within a period of three months to avoid delay in the construction of the road and meanwhile the status quo would be maintained---Parties, however, could settle the dispute amicably to avoid unnecessary litigation in the construction of public road---Petition for leave to appeal was converted into appeal and disposed of accordingly. [2010 GBLR 345]

---Art. 17---See Penal Code (XLV of 1860), S.489-F. [2010 GBLR (e) 567]

---Arts. 17, 60(13) & 71---Equality of citizens---Principle of reasonable classification---Grievance of petitioners was that they were not appointed in Basic Pay Scale-14 despite the fact there were vacancies and they had the requisite qualification---Plea raised by petitioners was that they had been discriminated---Validity---Person placed in same position in alike circumstances was entitled to the same treatment but there was no rule to claim a right to which a person was not otherwise entitled---Parties could not claim initial appointment in Basic Pay Scale-14 merely on the basis of qualification of graduation and no legitimate right accrued to them for invoking Constitutional jurisdiction of Chief Court---Department without prejudice to the right of any other person might consider the parties in their own right for adjustment in Basic Pay Scale-14 subject to their qualification and availability of vacancies--- Supreme Appellate Court directed the government to constitute a committee for scrutiny of qualification and merits of each teacher and in exercise of powers as competent authority might consider them for appointment in Basic Pay Scale-14 against vacant post---Appeal was allowed. [2010 GBLR 347]

---Art. 17---Equality and equal protection of law---Enactment of laws---Reasonable classification---Scope---Different laws could validly be enacted for different persons in the society; and particularly for heinous crimes, but the test of reasonableness of the classification

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must be based on rational nexus, as in a particular set of circumstances a reasonable thing could be unreasonable in other set of circumstances--- Law applying to a particular crime, such as terrorism and sectarian killing or other heinous offences could be constitutionally valid, if it had a reasonable and rational nexus for classification, but if it was not found on any rational basis, it would be violative of the principles of equality and equal protection of law. **[2011 GBLR 475]**

---Arts. 17, 60(13) & 71(2)---Civil service---Adjustment of contract employees---Equality of citizens---Petition had been directed against order of Chief Court whereby petition filed by the respondents/ employees under Art. 71(2) of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 seeking direction for their adjustment in the manner in which other contract employees of the project in similar circumstances had been adjusted---Advocate General had conceded that in all other Districts, contract employees of the project had been adjusted and vacancies were also created for the adjustment of employees in the District concerned, but due to the financial constraint they had not been adjusted---Reason of financial constraint had been applied only in case of respondents, whereas their colleagues in other districts in the same circumstances and financial position had been adjusted---classification in the matter of adjustment without any legal justification was not fair; and was an open discrimination in terms of Art. 17 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009. **[2011 GBLR 318]**

---Arts. 17 & 61(1)---Constitution of Pakistan, Art. 25--- Equality of citizens---Reasonable classification---Applicability--Pay and allowances---Federal Government employees serving in Gilgit-Baltistan claimed Special Pay and Hard Area Allowance sanctioned by Federal Government--- Grievance of the employees was that they were equally entitled to the benefit of 25% Special Pay and 50% Hard Area Allowance in terms of letter dated 29-9-1992 read with letter dated 3-1-2006--- Validity---Principle of equality as envisaged in Art. 25 of the Constitution read with Art. 17 of Gilgit-Baltistan, (Empowerment and Self-Governance) Order, 2009, was based on the concept of equality and equal protection of law in Islam--Principle of equality, in Constitution of Pakistan and Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, was subject to the rule of reasonable classification---Equal protection of law did not envisage that every citizen was to be treated alike in all circumstances, rather persons placed in similar, situation in like circumstances were to be treated alike--Reasonable classification must be founded on reasonable distinction and basis---Equal protection of law meant that all persons equally placed should be treated alike both in privileges and in

liabilities and reasonable classification should be based on an intelligible differentia without distinguishing persons or groups together from those left out and differentiation should have rational nexus to the object sought to be achieved by classification under the statute or statutory rule---Hard Area Allowance at the rate of 50% on running basic pay allowed to employees of the Federal Government would be equally admissible to the employees of all other organizations & departments serving in Gilgit-Baltistan including civil employees paid out of defence budget irrespective of their domicile with effect from the date of sanction vide notification dated 3-1-2006 read with letter dated 2-4-2007 of Finance Division of Government of Pakistan---Supreme Appellate Court directed the authorities for payment of 25% Special Pay and 50% Hard Area Allowance with arrears of Special Pay and Hard Area Allowance if any to the employees of organizations paid out of defence budget serving in Gilgit-Baltistan---Case was disposed of accordingly. [2011 GBLR (a) 451]

---Arts. 19, 25 & 27---Constitution of Pakistan, Arts. 17, 19, 25 & 27---Safeguard against discrimination in service---Equality of citizens--Petitioners, who were performing as Advocate General; Additional Advocate General; Deputy Advocate General and Assistant Advocate General, respectively, filed writ petitions in Chief Court; contending therein that they were entitled for the perks and privileges and other monetary benefits at par with their counterparts of the 4 Provinces of Pakistan as well as Azad Jammu and Kashmir---Petitioners, had earlier filed departmental appeal to the competent Authority, but said Authority granted Rs. 50,000 per month to the Advocate-General, Rs. 25,000 to Additional Advocate-General, Rs. 20,000 to Deputy and Assistant Advocates-General as non-practicing allowance---Petitioners, filed writ petition in the Chief Court for equal treatment under the Constitution---Said writ petition was allowed partially with prospective effect, but said perks and privileges, had not been granted retrospectively---Submission of the petitioners was that after promulgation of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Government of Pakistan had upgraded and equated all the Government organizations in Gilgit-Baltistan at par with their counterparts in all the four Provinces of Pakistan including Azad Jammu and Kashmir, but the petitioners had been discriminated--Counsel for the petitioners, had submitted that there was no financial constraints as mentioned in the impugned judgment; that Government of Gilgit-Baltistan, had all the resources to pay the said monetary benefits to the petitioners---Counsel appearing on behalf of the Government of Gilgit-Baltistan, could not point out any infirmity or

illegality, except the financial constraints---Validity---Petitioners, were not treated equally amongst equals i.e. at par with their counterparts in other four Provinces---Petition for leave to appeal was converted into appeal and was disposed of with certain modifications--  
-Appeal filed by the Government of Gilgit-Baltistan, was dismissed---  
Impugned judgment passed by the Chief Court, was maintained with modifications, in circumstances. **[2017 GBLR 103]**

---Arts. 37(2)(g) & 60(13)---Election---Disqualification of candidate--  
Bank defaulter---Determination---Aggrieved person---Scope---  
Financial institution, locus standi of---Nomination papers of respondents were rejected by Returning Officer on the basis of record provided by financial institution---Chief Court set aside the order passed by Returning Officer and declared the respondents to be qualified to contest the election---Financial institution assailed the order passed by Chief Court on the plea of respondents being bank defaulter---Validity---Objection regarding disqualification of respondents as candidates in election on the basis of their financial liability was not raised either by their opposing candidate or any other person from their respective constituency, therefore, financial institution had no right under election laws to challenge their candidature---Any person who was not directly or indirectly affected by any order passed by an authority, was not an aggrieved person to have any right or locus standi to challenge such order--- Financial liability of a person of public organization might provide a ground for disqualification of such person to hold public office if that person was adjudicated “defaulter” under law and in absence of such evidence of default the declaration regarding qualification of that person to contest election by a court might not infringe right of financial institution / organization to avail the remedy for recovery of loan from defaulters--  
-Financial institution on the basis of financial liability of respondents might have no personal right to raise objection before the election authorities regarding their qualification to become candidates in election and were not aggrieved person against order of acceptance of nomination papers of respondents---Supreme Appellate Court declined to interfere in the order passed by Chief Court---Leave to appeal was refused. **[2010 GBLR 305]**

---Arts. 38(4) & 60(13)---Bye-election---Petition had been directed against short order passed by Division Bench of the Chief Court, whereby notification of schedule of bye-election in the terms of Art. 38(4) of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 was published whereby scheduled date of polling was fixed---  
Chief Election Commissioner on the request of Chief Secretary postponed said fixed date vide notification and said notification was

challenged by the respondent candidate in writ petition before High Court, which was accepted and impugned notification was set aside--- Election authority being aggrieved of order passed in writ petition contended that order had been passed without notice and hearing them; and that law and order situation would not permit holding of polls on fixed date---Counsel for respondent/candidate during course of hearing, had conceded that with the short margin of time in the prevailing situation the holding of polls, according to notified schedule was not possible; and agreed that Chief Election Commissioner could in consultation with the Chief Secretary and other concerned authorities, fix a fresh date convenient to all for holding the polls--- Impugned order of Chief Court was recalled and petition was disposed of with direction that impugned notification would not take effect and instead the Chief Secretary would hold a meeting with all contesting candidates for fixation of a fresh date of polls. **[2011 GBLR 305]**

---Art. 49---Article 49, Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 fully assures the governance in accordance with the principles of Islam---Principles. **[2010 GBLR (i) 160]**

---Art. 60---Leave to appeal was granted for reappraisal of evidence to meet the ends of justice; with observation that benefit of every reasonable doubt, was to be extended to accused. **[2012-14 GBLR (d) 137]**

---Art. 60--- Petition for leave to appeal--- Correction in judgment/order---Petition had been preferred for correction of the word “petitioners” instead of affectees in the judgment/order passed by the Supreme Appellate Court--- Petitioners, could not succeed to convince the Court with regard to the amendment/correction in the judgment in question--- Petition was refused. **[2012-14 GBLR 227]**

---Arts. 60, 61, 63 & 69---Independence of judiciary---Supreme Appellate Court, in the interest of independence of judiciary in Gilgit-Baltistan, issued directions to be complied with by the Government of Gilgit-Baltistan. **[2010 GBLR (s) 160]**

---Arts. 60 & 61---Ordinary or extraordinary jurisdiction of Supreme Appellate Court---Administrative order---Presumption of male fide and doubting the fairness of an order passed by public authority--- Scope. **[2010 GBLR (r) 467]**

---Arts. 60, 66, & 76---Rules of Business (Gilgit-Baltistan), 2009, Sched. I, Col.3---Constitution of Pakistan (1973), Art. 175(3)---Gilgit-Baltistan Supreme Court Appellate Court, Supreme Judicial Council and Chief Court---Status---Nature and Scope---Role assigned to the



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Law Department of Gilgit-Baltistan, in Rules of Business of Gilgit-Baltistan (2009), in respect of Supreme Appellate Court and Chief Court is in conflict with the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009--- Supreme Appellate Court directed that entry “Supreme Appellate Court and Chief Court Gilgit-Baltistan” in Column 3, Sched. I of the Rules of Business, 2009 be omitted to bring the said rules at par with the Rules of Business (Pakistan), 1973. **[2010 GBLR (d) 160]**

---Arts. 60 & 69---Constitution of Pakistan (1973), Art. 175--- Appointment of Judges of superior Judiciary in Gilgit-Baltistan--- Supreme Appellate Court observed that Law Department, Government of Gilgit-Baltistan, was required to take up the matter with the concerned quarters for suitable amendments in the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, to bring the relevant provisions relating to the appointment of judges of Chief Court in consonance to the concept of the independence of judiciary as envisaged in the Constitution of Pakistan in terms of Art. 175 thereof. **[2010 GBLR (p) 161]**

---Arts. 60 & 69---Rules of Business (Gilgit-Baltistan), 2009, Sched. I, Column 3---Institutions of Supreme Appellate Court and Chief Court as mentioned in the Judicature Chapter of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 were entirely independent with separate entity and had no direct or indirect concern in relation to their functions with any administrative department, consequently the law department except playing the role of a liaison office could not in any manner interfere in the affairs of the judiciary-- Ambiguity and conflict appearing in Col. 3 of Sched. I in the Rules of Business (Gilgit-Baltistan), 2009, with the provisions of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 relating to the Supreme Appellate Court and Chief Court was against the concept of independence of judiciary therefore, entry “Supreme Appellate Court and Chief Court Gilgit-Baltistan” in Col. 3 of Sched. I of the Rules of Business, Gilgit-Baltistan, (2009) was required to be omitted to bring the said Rules at par with the Rules of Business of Federal Government of Pakistan--- Principles. **[2010 GBLR (r) 160]**

---Art. 60(3)---Petition for leave to appeal was not entertainable and deserved to be dismissed with heavy cost--- Department having not been properly advised, petition was dismissed without cost. **[2010 GBLR 423]**

---Art. 60(13)--- Administration of justice---Annual Development programme---Alternate proposal---Dispute was with regard to

construction of school at land in question--- Government realizing the situation stated that instead of disturbing construction of school building at the site in question, it would also upgrade primary school in question to Middle standard in Annual Development Programme of the current financial year and required funds would accordingly be allocated for construction of Middle School---Authorities had no objection to up-gradation of school and its inclusion in Annual Development Programme for construction of building--- Petitioner was satisfied with the proposal and agreed for disposal of petition in-terms thereof---Petition was disposed of accordingly. **[2010 GBLR 98]**

---Art. 60(13)---Administration of justice---Distribution of water--- Parties sought disposal of petition in the light of report of Revenue Officer as permanent settlement and respondents agreed to the disposal of the matter accordingly---Supreme Appellate Court directed the respondents to pay Hashmat (revenue) for the use of water from Nullah (drain) in question in the same manner as other beneficiaries of the Nullah (drain) in the village paid---Petition was disposed of accordingly. **[2010 GBLR 73]**

---Art. 60(13)---Administration of justice---Principles of natural justice---Ex parte order for cancellation of registration book of vehicle in question was set aside by Chief Court---Validity---Despite written request to Motor Registration Authority that respondent would appear before him after Eid-ul-Fitr, without giving opportunity to respondent to meet frivolous and concocted allegations levelled by petitioner and before expiry of stipulated period mentioned in final notice, the Authority illegally cancelled duplicate copy of registration book, which act of the Authority was ex parte, unheard and against the precious rights of respondent---Chief Court had rightly set aside the order passed by Motor Registration Authority---Supreme Appellate Court declined to interfere in the order passed by Chief Court---Leave to appeal was refused. **[2010 GBLR 311]**

---Art. 60(13)--- Awarding of contract---Pre-qualification--- Allegation raised by petitioner was that respondents who were awarded contracts at enhanced rates were not pre-qualified being not registered with concerned Authority---Effect---In view of nature of allegation contained in the application in question in which order had already been passed for inquiry, the inquiry officer in addition to transparency, should also look into the question of grant of contract at enhanced rate and payment of mobilization advance, despite restraining order was passed by Supreme Appellate Court in another case pending decision before it---Requirement of registration of

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contractor for pre-qualification with concerned Authority, might also be seen and inquiry should be completed within a fortnight--- Supreme Appellate Court declined to interfere in the judgment passed by Chief Court---Leave to appeal was refused. **[2010 GBLR 343]**

---Art. 60(13)---Civil service---Termination of service--- Contract employee---Initial appointment of respondent on contract was made in year 2005, which continued till termination of last extended period of contract---Chief Court directed the authorities to reinstate respondent in service--- Validity---Evidently orders regarding extension of contract of respondent passed from time to time created an impression that competent authority intended to absorb him as regular employee but due to intervention of Advisor, Health of Northern Areas neither order of his continuation in service was passed nor he was informed about termination of his contract---Supreme Appellate Court directed competent authority, without prejudice to the right of respondent, to proceed in the light of departmental practice and procedure strictly in accordance with law---Petition was disposed of accordingly. **[2010 GBLR 106]**

---Art. 60(13)---Leave to appeal was granted by Supreme Appellate Court to consider the contention that University (Employer) in its discretion might or might not appoint a person after his selection against a vacant post and a selectee had no vested right to claim appointment. **[2010 GBLR (a) 27]**

---Art. 60(13)---Order passed by the Chief Court for furnishing bank guarantee had not been complied with and in consequence Trial Judge attached 10% retention amount of the bond deposited by the petitioner with the department---Counsel for the respondent placing copy of that order on record had submitted that petition could be dismissed--- Counsel for the petitioner conceding the order passed by the Trial Court, submitted that he would not further press the petition, rather would avail the remedy in due course of time---Petition for leave to appeal was dismissed as not pressed. **[2010 GBLR 331]**

---Art. 60(13)---Partition of property---Both parties through Musalihatnama had agreed for partition of their ancestral, including the gifted and other lands through Revenue Staff--- Musalihatnama was directed to be made rule of the court and Deputy Commissioner concerned was also directed to partition the landed property in terms of Musalihatnama through Revenue Staff within a period of 3 months. **[2010 GBLR 330]**

---Art. 60(13)---Petition for leave to appeal---Advocate-General during the course of arguments, when confronted that the case before

the Chief Court was still in adjudication and that the petitioner could raise all issues at the final stage before the Chief Court, he, without further pressing the petition, requested for withdrawal of the same reserving the right of raising the point taken in the petition before the Chief Court---Petition for leave to appeal was accordingly disposed of as withdrawn. **[2010 GBLR 335]**

----Art. 60(13)---Petition for leave to appeal---Civil service--- Director Education, appearing in person stated that due to misunderstanding, he had instructed the Advocate General that court could pass any order; and with regret submitted that the petitioner was contingent employee and for the time being he would be adjusted/restored to his job accordingly--- Director Education, however, stated that subject to the policy and financial position, petitioner would be adjusted against the regular vacancy in due course of time in his own right--- Petition for leave to appeal was disposed of accordingly. **[2010 GBLR 429]**

----Art. 60(13)---Petition for leave to appeal---Controversial questions of fact---Raising of new plea---Respondent was candidate for the post of Lecturer and he was aggrieved of the result of final selection made by Selection Board of the University---Chief Court in exercise of constitutional jurisdiction directed the authorities to appoint respondent against the post in question---Validity---Chief Court in the light of material before it having elaborately dealt with the controversial question of facts and considering the merits of respondent in written test gave verdict in his favour---University/employer failed to point out any misreading or non-reading of evidence by Chief Court or any error of law in the judgment---Finding of fact could not be interfered with even if it was erroneous or was based on misappropriation of evidence--Legality of judgment could not be challenged before higher court on the basis of facts which were not available on record before the lower court and in the light thereof, Supreme Appellate Court did not entertain and dilate upon new facts and pleas not raised before Chief Court---Supreme Appellate Court did not find any legal or factual infirmity in the judgment of Chief Court and declined to take any exception to the same--- Leave to appeal was refused. **[2010 GBLR (b) 100]**

----Art. 60(13)---Petition for leave to appeal---Counsel for the petitioner sought permission for withdrawal of petition to file a petition on fresh cause of action in the Chief Court---Request was allowed and petition was dismissed as withdrawn. **[2010 GBLR 332]**

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----Art. 60(13)---Petition for leave to appeal---Non-prosecution of petition---No one having appeared on behalf of the petitioners, petition was dismissed for non-prosecution. **[2010 GBLR 329]**

----Art. 60(13)---Petition for leave to appeal---Scope---No jurisdictional error or legal defect was in the order of Chief Court or the Departmental orders regarding recall of tenders--- Supreme Appellate Court was not supposed to interfere in the matter in which there was no material illegality in the order of Chief Court or the action taken by the administrative authorities in good faith in public interest. **[2010 GBLR 340]**

----Art. 60(13)---Petition for leave to appeal---Writ jurisdiction before Chief Court---Scope---After dismissal of review petition before Chief Court, petitioner could not invoke writ jurisdiction before the same court on the same subject; notwithstanding the fact that full judgment was not written, short order would be treated judgment in the case--- Counsel for petitioner realizing the legal position, instead of further agitating the matter before Supreme Appellate Court, had submitted that petitioner would raise all questions of law and facts before the court concerned in due course of time at proper stage; and would not further press the petition before Supreme Appellate Court---Petition was disposed of. **[2010 GBLR 426]**

----Art. 60(13)---See Civil Procedure Code (V of 1908), O. VI, R.2. **[2010 GBLR 351]**

----Art. 60(13)---See Civil Procedure Code (V of 1908), O. VI, R. 17. **[2010 GBLR (b) 356]**

----Art. 60(13)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 10. **[2010 GBLR 245]**

----Art. 60(13)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 16. **[2010 GBLR 345]**

----Art. 60(13)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 17. **[2010 GBLR 347]**

----Art. 60(13)---See Land Acquisition Act (I of 1894), S.4. **[2010 GBLR 370]**

----Art. 60(13)---Writ petition---Civil service---Transfer from one place of working to another---Respondents (School Teachers) who were transferred from one city to different places outside the city, sought declaration to the effect that the order of transfer of respondents was illegal---Chief Court declared the order of transfers

illegal---Validity---Posting and transfer of a civil servant was an administrative function of Government and civil servant could not claim posting at a particular place or post, unless he had a claim of posting against such a post or at a particular place as of right under terms and conditions of his service---Authorities instead of making fresh appointments against the vacant posts, transferred the respondents who were quite satisfactorily discharging their functions at their place of working on the basis of an order which had no nexus with the reason of transfer of respondents--Shifting of low paid teachers from one place to another place, without a valid reason, could not be in proper exercise of power, which could not only be against the Education Policy and public interest, but also be the result of Victimization---Competent authority in the Education department in the light of Education Policy, could make general or individual transfer of the teachers as per requirement of their service in the public interest---In the present case, the Chief Court having considered the order of transfer of respondents, not in consonance with the Education Policy in good faith, declared the same illegal---Order of the Chief Court passed in discretionary jurisdiction, was not interfered by Supreme Appellate Court. **[2010 GBLR (a) 460]**

---Art. 60(13) & 61---Northern Areas Governance Order, 1994, Arts. 17(1), 19-A & 27---Industrial Relations Act (IV of 2008), Preamble---Constitution of Pakistan (1973), Arts. 4, 17 & 25 --- Direct constitutional petition before Supreme Appellate Court by Gilgit Baltistan Workers Federation in representative capacity---Prayer for directing Government of Pakistan to extend application of Industrial Relations Act, 2008 and other labour related laws to Northern Areas---Objection of respondents that petitioner was not a recognized agent or representative body of labour class, thus, could not maintain -such petition---Validity---Such ground would be a rigid interpretation to recognize fundamental right of formation of labour union of people of such Areas under Art. 17(1) of Constitution of Pakistan read with Art. 19-A of Northern Areas Governance Order, 1994---Such petition with reference to enforcement of fundamental rights of public importance guaranteed under Constitution or law could be brought by any person and question of locus standi of a person, whether he was directly aggrieved or not would be of no significance--- Fundamental rights in terms of Art. 17(1) of the Constitution without machinery of law for its enforcement would be of no significance---Question as to whether Industrial Relations Act, 2008 should be extended to such Areas was a question of great public importance for being directly related to fundamental rights of such Areas---Such question would require decision on touchstone of fundamental right of formation of union for

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collective benefit of labour class---Supreme Appellate Court overruled the objection in circumstances. **[2010 GBLR (e) 1]**

---Arts. 60(13) & 71---See Civil Servants Act (LXXI of 1973), S.8. **[2010 GBLR 46]**

---Art. 60--- Delay in filing petition for leave to appeal---Condonation---Petition for leave to appeal was barred by time for a period of more than 70 days---No reasonable grounds had been given in the petition for condonation---Even one day's unexplained delay could not be condoned without sufficient grounds---Petition for condonation of delay was dismissed and leave to appeal was refused by Supreme Appellate Court. **[2016 GBLR 12]**

---Art. 60---Petition for leave to appeal---Present petition had arisen out of impugned order passed by Chief Court in civil revision, whereby the concurrent findings of the courts below were set and case was remanded to the Trial Court---Order of the Chief Court, was well reasoned and well founded; no interference was warranted as the same had been passed in accordance with law and the facts of the case-Said order of the Chief Court was affirmed by the Supreme Appellate Court. **[2016 GBLR 427]**

---Art. 60---Revision petition by the petitioners was dismissed by the Chief Court on the basis of their non-appearance---Petition for leave to appeal by the petitioners was converted into appeal and same was conditionally allowed subject to the payment of Rs. 50,000 was cost to be paid to the respondent within the period of fifteen days---Case was remand to the Chief Court to hear and decide the same afresh on its merits and disposal in accordance with law---Order passed by the Chief Court was set aside. **[2016 GBLR 10]**

---Art. 60---See Contempt of Court Ordinance (IV of 2003), S. 3. **[2011 GBLR 225]**

---Art. 60---See Penal Code (XLV of 1860), S. 302. **[2011 GBLR (c) 10]**

---Art. 60---See Penal Code (XLV of 1860), S. 427. **[2011 GBLR (a) 153]**

---Art. 60---See Qanun-e-Shahadat (10 of 1984), Art. 114. **[2011 GBLR 177]**

---Art. 60---See Specific Relief Act (I of 1877), S.12. **[2011 GBLR 183]**

---Arts. 60 & 71--- Civil service--- Dismissal from service--- Reinstatement with back benefits---Implementation of order--- Service of the respondent who was foot constable, was terminated by the competent Authority on the charge of having been involved in a criminal case registered against him--- Departmental appeal against termination order, having been dismissed, respondent approached the Chief Court by filing writ petition for the redressal of his grievance which petition was accepted with direction to reinstate the respondent with back benefits for the period during which he had not remained gainfully employed elsewhere---Application for implementation of order passed by the Chief Court was allowed with direction to pay back benefits to the respondent---Authority feeling aggrieved, assailed the said order of Chief Court before Supreme Appellate Court contending that matter of payment of back benefits having been left to the discretion of competent Authority (by the Supreme Appellate Court in an earlier order), Chief Court could not take up the matter and thereafter direct the payment of back benefits---Held, order earlier passed by the Supreme Appellate Court reflected that Authority was only given the mandate to hold regular inquiry and the Court nowhere dealt with postponement of payment of back benefits till conclusion of inquiry, if so initiated against respondent---Respondent, in view of said judgment of Supreme Appellate Court, was entitled to recover back benefits as per orders of the Supreme Appellate Court, and no exception could be taken to the same---Interference was declined by the Supreme Appellate Court---Petition for leave to appeal was dismissed. **[2011 GBLR 125]**

---Arts. 60 & 71---See Penal Code (XLV of 1860), S. 308. **[2011 GBLR (a) 10]**

---Arts. 60, 78 & 81---Writ petition before Chief Court--- Maintainability---Civil service---Wedlock Policy of posting and transfer---Transfer in violation of Transfer Policy---Writ petition to Chief Court---Interim relief, grant of---Scope---Husband and wife would be posted at one place under Wedlock Policy---In the present case, wives, who were transferred in sheer violation of the transfer Policy, filed writ petition against transfer order passed by Competent Authority before the Chief Court---Chief Court, suspended operation of transfer order passed by Competent Authority---Contention of petitioner/authorities, was that impugned transfer orders had been passed in exigency of service by the Competent Authority, under the law and that writ petition by respondents was not competent as once the Tribunal was established, jurisdiction of all other courts, including Chief Court, would be ousted--- Validity---No doubt, matters which fell within the ambit of Administrative Court or Tribunal set up under



Art. 78 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, exclusive jurisdiction would remain with the Court/Tribunal, but in Gilgit-Baltistan no Tribunal had so far been established--- When one was left with no remedy, in appropriate cases, the jurisdiction of the Chief Court could be invoked for the entertainment of disputes, even those were related to terms and conditions of service---Fragmentary decision should not be challenged, as same was not a final decision, but that rule would not operate as barrier in every case, exceptions were always available--- Interference, could be made at the ad interim stage, where, order so passed would involve public interest--- Chief Court, in many cases, granted injunction and adjourned the cases sine die without fixation of dates, which could take years in making final disposal---No doubt, weight could be given to the Wedlock Policy in public interest, but only where posts were available for adjustment of civil servants--- Civil servants had no conceivable right to invoke the jurisdiction of Chief Court and get administrative orders corrected on the anvil of jurisdiction of judicial review---Discretionary power of the Superior Court was fundamentally designed to correct errors but in case of some practical difficulty, relief being discretionary, court would refuse to interfere, where grant of interim relief would result injustice---Civil servant was bound to serve anywhere in compliance with the orders of departmental authority---Even the remedy by way of filing a reference in the next higher authority was available to the aggrieved civil servant and by refusing discretionary relief, no injustice was likely to be caused to such aggrieved civil servant---Petition for leave to appeal was converted into appeal by Supreme Appellate Court, and after setting aside impugned order, case was remitted (Chief Court for decision afresh after hearing the respective parties preferably within two months. **[2011 GBLR 101]**

---Art. 60(13)---Limitation Act (IX of 1908), S.5---Petition for leave to appeal---Limitation---Delay, condonation of---Petition for leave to appeal filed by the government was time barred by 23 days---Said delay was sought to be condoned on the ground that delay had been caused because of adaptation of the self-created procedure to seek permission from higher authorities---Validity---Limitation Act, 1908 did not recognize said method which was used by the Government Department---No concession in that regard had been given by the law to any Government or its department---Section 5 of Limitation Act, 1908, demanded from the parties seeking condonation, to account for each and every day of the delay, and to prove circumstances inevitable and beyond human control--- Advocate General having failed to submit any cogent ground for condonation of delay in filing petition

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for leave to appeal, petition was dismissed as time-barred. [2011 GBLR 196]

---Art. 60(13)---Supreme Appellate Court Rules, 2008, O. V, R. 1(7)---Time barred petition for leave to appeal against acquittal---Delay, condonation of---Trial Court acquitted all Accused persons, and appeal against acquittal was dismissed by the Chief Court---Validity---Petition was time-barred by about seventeen days---Application for condonation of delay was filed---Office of Supreme Appellate Court, raised certain objections---Said petition, after removal of the objections by the office, was required to be resubmitted within period not exceeding six weeks as contemplated under O. V, R. 1(7) of Supreme Appellate Court Rules, 2008, but same was resubmitted with the delay of about two months and twenty six days---Advocate-on-Record, did not adhere to the relevant legal provisions---Resubmission of the petition as well as the submission of petition itself was delayed by seventeen days--- Petition being leave to appeal against acquittal, valuable right had accrued to the accused persons, which could not be taken away, because of the lapse on part of the State---Application for condonation-of delay, had no ground for condonation---Petition and application for condonation of delay were dismissed, in circumstances. [2011 GBLR 180]

---Art. 60(13)---Supreme Appellate Court Rules, 2008, O. XIII, .1---Petition for special leave to appeal to Supreme Appellate Court---Limitation---Delay, condonation of---Suit filed, by respondent Bank against the petitioner having been decreed by the Banking Court, petitioners had filed writ petition before the Chief Court against judgment of the Banking Court which was dismissed---Validity---Petition for leave to appeal which under O. XIII, R. 1 of Supreme Appellate Court Rules, 2008, was required to be filed within 60 days, excluding the necessary period consumed in obtaining the copy of order; was filed with a delay of about 41 days, without explaining such delay---Petitioners, did not, even file any application for condonation of said delay--- If any aggrieved party would not file the case within the prescribed period of law, it would create a valuable legal right in favour of the other party, which could not be taken away casually--- Present petition being time barred, a valuable right had accrued to the other party---Petition for leave to appeal was dismissed, in circumstances. [2011 GBLR 123]

---Arts. 60(13) & 71---See Criminal Procedure Code (V of 1898), S. 497(1)(5). [2011 GBLR 69]

----Arts. 60 & 71---Infringement of Fundamental Rights---Petition for leave to appeal without first seeking remedy of writ petition in the Chief Court---Counsel for the petitioner sought permission to withdraw the petition in order to approach the Chief Court for availing remedy in accordance with law---Petitioner was allowed to withdraw the petition which was disposed of accordingly---Supreme Appellate Court observed that petitioner, could approach the Chief Court for seeking remedy in accordance with law. **[2016 GBLR 18]**

----Arts. 60 & 71---Writ petition before Chief Court---Competency---Chief Court dismissed the writ petition holding that matter was of civil nature---Petitioners, who were contractors were awarded contract of transportation of wheat to various Districts and Tehsils as per agreed terms of contract---Contention of the petitioners was that government had paid the escalation amount for the year 2008-2009 in line with the agreement, but had not paid said amount for the years 2009-2010 and onward---Writ petition by the petitioners was dismissed by the Chief Court holding that petitioners should have filed civil suit for claiming escalation amount instead of filing writ petition---Validity---Writ, did not lie where alternate remedy was available to the petitioner---Where factual controversy was involved, writ jurisdiction could not be invoked---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Order passed in writ petition by the Chief Court was maintained---Supreme Appellate Court observed that petitioners, would be at liberty to seek alternate remedy available to them in accordance with law before the competent court of jurisdiction. **[2016 GBLR 235]**

----Art. 60---Names of National Heroes holding Highest National Awards being used by private persons for flourishing their business deprecated by Supreme Appellate Court--- Principles. **[2011 GBLR (e) 290]**

----Art. 60---See Penal Code (XLV of 1860), S.302/34. **[2011 GBLR (a), (b), (c), (d), (f), (g) & (i) 486]**

----Art. 60--- See Penal Code (XLV of 1860), S.302(b)/34. **[2011 GBLR (a) 475]**

----Arts. 60 & 61---Establishment of Supreme Appellate Court in Gilgit-Baltistan---Original jurisdiction of Supreme Appellate Court---Scope and extent---Doctrine of abstention, applicability of---Scope---Status of the Supreme Appellate Court has been equated with the status of Supreme Court of Pakistan within the territory of Gilgit-Baltistan---Supreme Appellate Court Gilgit-Baltistan having the status of apex court in Gilgit-Baltistan undoubtedly has independent and

absolute jurisdiction in respect of all matters ,in which the legal and constitutional rights of the people of Gilgit-Baltistan including all those Human Rights which are recognized as legal rights and are not indiscriminate to the Fundamental Rights guaranteed under the Constitution of Pakistan and Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009---Judgment of the court of independent jurisdiction, on a question of law relating to the affairs of territory of its jurisdiction may operate with binding force even beyond its territorial jurisdiction---Principles. **[2011 GBLR (c) 1]**

---Arts. 60 & 71---Educational institution---Correction of date of birth---Petition had been directed against the judgment, whereby the Chief Court dismissed writ petition filed by the petitioner seeking direction for correction of his date of birth in his service record on the basis of his revised Matriculation Certificate was issued by the Education Board in execution of a decree of the civil court---Writ petition was dismissed by the Chief Court with the observation that matter related to the satisfaction and execution of the decree of the civil court and remedy for execution of decree could be availed by the petitioner---Decree passed in civil suit was not challenged by way of appeal or revision, either by Board of Education or Government, and instead Board preferred an application under S.12(2), C.P.C. before the Civil Court, which finally was dismissed---Original Matriculation Certificate issued by Board was part of the service record of the petitioner, and despite the Government was not party in the suit, revised certificate issued by the Board in satisfaction of the decree of civil court was substitute of the original, which would be given effect accordingly and Government could not take exception to the revised certificate---Competent Authority, even without formal order of the court, in exercise of power under the Service Rules could competently correct the entry relating to the date of birth of the petitioner in his service record on the basis of revised matriculation certificate issued by the Board in satisfaction of the decree of civil court---Decree of civil court was not ignorable and Board rightly giving effect to the decree issued the revised certificate, which would be deemed to have been substituted for the original certificate for all intents and purposes---Petition was converted into appeal and was allowed with direction that the date of birth of the petitioner in his service record would be corrected accordingly. **[2011 GBLR 503]**

---Arts. 60 & 71---See Land Acquisition Act (I of 1894), S.4. **[2011 GBLR (a) 509]**

---Arts. 60 & 71---Writ petition before chief court---Laches-  
Connotation and scope---Question of laches in the writ petition, was

always considered in the light of the conduct of the person invoking the writ jurisdiction of the Chief Court; and the degree of negligence, if any and that if by grant of relief being sought, no injustice was caused to the opposite party---Laches in simplest form, would mean failure of a person to do something which should have been done by him within a reasonable time; and was not synonymous with delay alone, but it could be worked out to the disadvantage to another party in the matter of his right---In suitable cases, in its discretionary jurisdiction, subject to the offering of reasonable explanation, court could entertain the writ petition in the interest of justice---Law as to laches was based on maxim “Vigilantibus, non dormientibus acqutitas subvenit” equity helps the wakeful, not the slumbering---Laches signify laziness in pursuing a legal remedy--- Controversial question of fact could not be adjudicated upon or gone into by Chief Court in exercise of its writ jurisdiction-impugned judgment passed by Chief Court being result of misconception, misapplication of law and misreading of the documentary evidence available on record, petition for leave to appeal was converted into appeal and allowed---Judgment passed by the Chief Court, was set aside by declaring the same as not maintainable. **[2011 GBLR (b) 509]**

---Art. 60(10)---Constitution of Pakistan, Arts. 205, 258 & Fifth Schedule---Supreme Court Judges (Leave, Pension and Privileges) Order (II of 1997), Para. 16-A---Supreme Appellate Court Judges---Remunerations---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, is a Legal Framework Order for governance of Gilgit-Baltistan, which is deemed to have been issued by Government of Pakistan under Art. 258 of the Constitution and has the status of sub-constitutional document for Gilgit-Baltistan, in respect of internal affairs of Gilgit-Baltistan---Provisions of Supreme Court Judges (Leave, Pension and Privileges) Order, 1997, issued under Art. 205 read with Fifth Schedule of the Constitution of Pakistan is not directly applicable to Chief Judge and Judges of Supreme Appellate Court Gilgit-Baltistan--- rather it has been made applicable to them by implication under Art. 60(10) of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009. **[2011 GBLR (a) 388]**

Forest Rules, 1975---Accession Deed of Darail/Tangir, 1952---Forest Act (XVI of 1927), Preamble---Gilgit-Baltistan. (Empowerment and Self-Governance) Order, 2009, Art. 61--- Private forests, ownership of---Recognized rights of people of Chilas, Darail, Tangir of District Diamer---Supreme Appellate Court declared that village proprietary bodies were exclusive owners in private forests of Chilas, Darail, Tangir of District Diamer under Accession Deed, 1952 with entitlement of recognized rights of the area---Owners of other private

forests in Gilgit-Baltistan. which are governed by Private Forest Regulations, 1970 read with rules framed thereunder and Forest Act, 1927 are also subject to any exception entitled to rights recognized under law---Supreme Appellate Court, in circumstances, held that: (i) the Malikan (private owners) of the local tribes shall have absolute ownership in private forests in the respective areas, (ii) the Government shall spend more than one third share in sale, proceed of private forest whereas remaining income shall be the collective right of private owners which shall be distributed amongst them as per their entitlement by the concerned official agency; (iii) there shall be right of cutting of waste and fire wood from private forest and also right of cutting standing trees for use of private house, religious purposes, charity and welfare project or for any other private and official use with the permission of Forest Department. This right shall not be abridged or curtailed, (iv) the right of animal grassing except in restricted , areas shall be operative throughout the year; (v) the right of sale of standing trees in a compartment of private forest shall be subject to the approval of Government under a proper scheme prepared by the Government under Private Forest Regulations, 1970 and rules framed thereunder; (vi) the private sale agreement without approval of Government shall not create any legal right in favour of parties; (vii) the Government shall establish public welfare projects in the area such as construction of schools, colleges, hospitals, play grounds, community centers, mosques, libraries, animal husbandry, drinking water, electricity, supply handicraft, technical centers and also women vocational center etc from the share of government in the income of private forest; (viii) the transportation of already cut timber under a Scheme with the approval of Forest Department will be allowed so that private owners may get their share in the sale proceed. The unnecessary restriction shall be avoided and (ix) the future Working Plan for cutting of private forest on the basis of commercial activity shall be made in the interest and for the benefit of the area, with the consent of Malikan of the private Forests of the area and prior approval of the competent authority---Management of forest shall be the liability of Government in the manner that (a) the framing of policy for cutting of private forest and transportation of cut timber in accordance with the law on the subject; (b) the preservation, protection and generation of forest and also improvement of private forests as future natural assets of the area; (c) the regular maximum sessional generation of private forest in each area to improve the forest and cover the deficiency caused by cutting of standing trees; (d) the vigilance teams to be deputed to check the overall performance of Forest Department and also of individual officials of Forest Department and (e) the strict enforcement of misconduct rules in case

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of negligence of any forest official in performance of his duty. [2011 GBLR 186]

---Art. 60(10) & 61---Constitution of Pakistan, Arts. 205 & Fifth Schedule---Supreme Court Judges (Leave, Pension and Privileges) Order (II of 1997), Para. 16-A---Supreme Appellate Court Judges---Remunerations---Supreme Appellate Court in exercise of suo motu powers, took up the matter relating to grant of pensionary benefits to ex-Chief Judge of Supreme Appellate Court---Ex-Chief Judge, who retired from Peshawar High Court as Judge and was drawing his pension from there, was appointed as Chief Judge Gilgit-Baltistan for a period of three years---Question requiring determination was whether appointment of a former Judge of High Court or Supreme Court of Pakistan as Chief Judge or Judge of Supreme Appellate Court Gilgit-Baltistan was a re-employment in service of Pakistan or it was an independent assignment in service of Gilgit-Baltistan---Held, former Chief Judge of Supreme Appellate Court after retirement from service of Pakistan as Judge of Peshawar High Court was appointed as Chief Judge Supreme Appellate Court Gilgit-Baltistan, in the service of Gilgit-Baltistan, therefore, he was not re-employed in service of Pakistan---Appointment of former Chief Judge in service of Gilgit-Baltistan was independent to the service of Pakistan--- Without prejudice to the right of pension etc. earned in service of Pakistan as Judge of High Court, the ex-Chief Judge was entitled to pension and other privileges in his independent right as Chief Judge of Supreme Appellate Court Gilgit-Baltistan--- Service of Gilgit-Baltistan had entirely separate structure and status, therefore, appointment of a person in service of Gilgit-Baltistan after retirement from service of Pakistan was not re-employment or continuation of service of Pakistan--- Rights arising out of service of Gilgit-Baltistan would neither affect rights earned by a person in service of Pakistan and nor the rights in two services could be amalgamated with each other or merged in service of Pakistan by mere reason of administrative control of Prime Minister of Pakistan as Chairman of Council of Gilgit-Baltistan---Government of Gilgit-Baltistan was not Provincial Government established under Constitution of Pakistan, therefore, appointment of a retired Judge of High Court or Supreme Court of Pakistan as a Judge in service of Gilgit-Baltistan was not a re-employment in terms of Para 16-A of Supreme Court Judges (Leave, Pension and Privileges) Order, 1997---Such employment was an appointment in service of Gilgit-Baltistan and office of Judge in service of Gilgit-Baltistan was not a post in connection with the affairs of Federal Government or Provincial Government of a Province of Pakistan---Judge, on retirement from Supreme Appellate Court, had a

right of pension and other privileges as a retired Judge of High Court or Supreme Court of Pakistan and would be entitled to pension and other retirement benefits in his own independent right under Art. 60(10) of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, and was also entitled to additional facilities in terms of notification of adoption of Supreme Court Judges (Leave, Pension and Privileges) Order, 1997, issued by Supreme Appellate Court and under any other law within the allocated budget of Supreme Appellate Court---Suo motu case disposed of accordingly. **[2011 GBLR (b) 388]**

---Art. 60(11)---Penal Code (XLV of 1860), S.302/34---Qatl-e- amd--Bail, refusal of---Counsel for the petitioner, without pressing bail application, had submitted that if direction was given to the Trial Court for conclusion of the trial at an early date, he would be satisfied---Case being short, request of the petitioner appeared to be genuine---Supreme Appellate Court directed that Trial Court, without giving unnecessary adjournments or showing latitude to either party to cause delay, would conclude the proceedings in the trial within three months, failing which, the petitioner would be entitled to move a fresh application for bail before the Trial Court, which would be decided on its merits. **[2011 GBLR 228]**

---Art. 60(13)---Civil service---Counsel for the petitioner though admitted that the matter related to the terms and conditions of civil servant, but he defended the competency of writ petition with the plea that no forum of Service Tribunal had been established in Gilgit-Baltistan to provide remedy to the aggrieved employees and Federal Service Tribunal always refused to entertain the cases of employees belonging to the Gilgit-Baltistan---Petition for leave to appeal was admitted by Supreme Appellate Court, in circumstances. **[2011 GBLR (b) 266]**

---Art. 60(13)---Civil service---Dispute regarding date of birth---Retirement---Respondent/employee claimed; that his retirement from service was mala fide, incorrect, arbitral and without legal justification and he was legally entitled to continue his service in the department up to the date of retirement counting from his original date of birth, which according to him was 20-12-1953---Serious allegations had been levelled by the department with plea that respondent/employee had made false and fictitious entries in his service book, where he duly recorded his age as 20-11-1953, while the original page of service book had shown his date of birth as 5-7-1949---Employee, in circumstances, had committed forgery and was liable to be punished---Authorities had seriously disputed the entries made by the respondent/employee---Employee with the collaboration of Officials



of concerned department had prepared forged and fictitious entry in his own service book through a separate page along with the original one---Counsel for respondent/employee, could not satisfactorily answer said, questions and admitted that this was a serious dispute regarding factual aspect of the case, which involved framing of issues and recording of voluminous evidence---Serious question of fact involved in the case, could not be resolved, except through proper trial and was not fit to be dealt with under writ jurisdiction---Impugned judgment passed by Chief Court was set aside and respondent employee was left to seek remedy in accordance with law, at the proper forum. **[2011 GBLR 248]**

---Art. 60(13)---Civil service---Upgradation---Grievance of the petitioner was that in compliance of the instructions contained in letter dated 8-3-1993 of Federal Government, 75% posts of Lecturers, Assistant Professors and Professors were to be upgraded, whereas the department instead of upgradation of the petitioner in terms of said letter, had promoted him as Assistant Professor in 2000---Petitioner had alleged that in such circumstances he had been deprived of his legitimate right of financial benefit of upgradation---Petitioner after his retirement on 4-5-2009, filed a writ petition in the Chief Court seeking direction for his upgradation, prior to his promotion; which petition was dismissed---Validity---Writ petition filed by the petitioner suffered from laches and was filed after retirement from service without any cause of action, as upgradation subsequent to his promotion was a past and closed matter--- Petitioner having failed to satisfy the court about cause of action and maintainability of writ petition before the Chief Court, petition for leave to appeal was dismissed, in circumstances. **[2011 GBLR 275]**

---Art. 60(13)---Civil Service---Work charge employees---Right of regularization without undergoing process of Selection---Validity---No statutory policy of regularization of work charge employees of Government of Gilgit-Baltistan existed and any precedent if any, had no legal force and could not be treated as a mandatory rule to be followed---Regularization of work charge employees as a rule, might deprive the legitimate rights of others---Supreme Appellate Court, in circumstances, directed that notwithstanding the requirement of filing a formal application for the posts in question, the employees would be allowed to appear in the test and interview for selection as candidates and would also be entitled to the benefit of service in the department for the purpose of experience in terms of the advertisement---Petition for leave to appeal was disposed of accordingly. **[2011 GBLR 566]**

---Art. 60(13)---Election dispute---Chief Court, during hearing of revision, with consent of parties, appointed Civil Judge as Returning Officer for fresh election of Silk Route Dry Port Trust---Returning Officer after holding election submitted result report in the Chief Court---Petitioner being aggrieved of the election result instead of getting the decision of civil revision on merits, challenged the result of election by way of filing a writ petition, which was dismissed by Chief Court---Validity--- When the petitioner was confronted with the question of maintainability of writ petition against an order passed in civil revision which arose out of an interlocutory order, he realized the legal defect and without further pressing the petition submitted that if a direction was given to the Chief Court for decision of revision, he would not press petition before Supreme Appellate Court---Without commenting upon the merits of the petition “as not pressed”--- Supreme Appellate Court directed accordingly. [2011 GBLR 297]

---Art. 60(13)---Entitlement to suitable job in terms of agreement in case of affectees of construction of Dam in the area---Grievance of the petitioner was that he being an affectee of Diامر Bhasha Dam, was entitled to be provided suitable job in terms of agreement arrived at between Action Committee and the department concerned; but despite recommendation of the Chief Secretary and he possessing requisite qualification with experience, had not been considered for any position by the concerned authorities---Agreement in question without creating a vested right of employment, contained a policy for providing jobs to the affectees of Dam, subject to the availability of vacancies and suitability for the job---Petitioner, instead of agitating the matter before the court, should approach the concerned quarter to be considered for the suitable job--- Petition for leave to appeal was disposed of with observation that subject to all just exceptions and the required qualification and experience, the concerned authorities could consider the request of the petitioner for the vacant position for which he had applied in terms of the agreement in question. [2011 GBLR 303]

---Art. 60(13)---Inheritance---Compromise between the parties-- Compromise deed provided that petitioners had agreed to pay an amount of Rs. 25 lac to their sister (respondent) in lieu of her sharai share in the property; that in case the petitioners failed to make payment in terms of the compromise, the decree already passed against them by the Trial Court and maintained by the Chief Court should hold field and the petitioners would deliver the possession of the land, which was part of their sister’s share---Supreme Appellate Court, in circumstances, made the compromise deed a part of the record and modified the decree of the Trial Court with the direction

that if the petitioners failed to make payment to their sister in terms of the compromise, the present petition for leave to appeal filed by the petitioners would be deemed to be dismissed; that decree passed by the Trial Court would hold field; that the compromise will have no effect, and that possession of the land, which formed part of their sister's share would be voluntarily delivered to her without any formal execution of decree, failing which the revenue authorities would take over the possession of the said land through the police and deliver it to their sister---Petition for leave to appeal was disposed of accordingly. **[2011 GBLR 565]**

---Art. 60(13)---Penal Code (XLV of 1860), Ss. 302, 324 & 114/34---West Pakistan Arms Ordinance (XX of 1965), S.13--- Qatl-e-amd and attempt to commit qatl-e-amd---Bail, refusal of---Counsel for the petitioner without further pressing for the bail, requested that if a direction was given to the Trial Court for conclusion of the trial within the statutory period provided under the law, he would be satisfied---Advocate General had submitted that bail application could be disposed of accordingly---Supreme Appellate Court directed that if the case was triable under Juvenile Justice System Ordinance, 2000, the Trial Court as per direction of law while proceeding expeditiously, would conclude the trial within the statutory period; and in case trial was not concluded within the specific period, the petitioner could move the Trial Court for concession of bail. **[2011 GBLR 171]**

---Art. 60(13)---Penal Code (XLV of 1860), Ss. 302, 324 & 161/34---Qatl-e-amd, attempt to commit qatl-e-amd and taking illegal gratification---Bail, grant of--Further inquiry---Names of accused persons though were figured in the F.I.R., but no pivotal role, except the role of Lalkara had been assigned to them---Presence of accused has been shown at the place of occurrence, but there was no allegation of petitioners being armed at the time of occurrence---Question of recovery or non-recovery of fire arm from possession of accused, was immaterial---Mentioning the role of Lalkara to accused persons could be a reason to engage maximum number of persons from opposite party in the litigation as long standing enmity between the parties was admitted---Case against accused called for further inquiry into their guilt within the purview of S.497(2), Cr.P.C--- Bail was granted. **[2011 GBLR 172]**

---Art. 60(13)---Petition for leave to appeal---Limitation-Delay, condonation of---Normal limitation for filing petition for leave to appeal was 60 days, petition in the present case was filed with the delay of 31 days---Delay of each day was to be specifically explained, but the petitioners had failed to do so and no plausible explanation had

been offered by the petitioners for condonation of said delay---Petition, in circumstances, was dismissed as time-barred. [2011 GBLR 281]

----Art. 60(13)---Petition for leave to appeal---Limitation-Determination---Contentions of the petitioner were that impugned judgment was announced on 1-12-2009 but it was not written and signed till the date of filing the application for supply of certified copy, i.e. 9-6-2011, therefore, the intervening period would be excluded from consideration for the purpose of limitation; that present petition for leave to appeal, which was filed on 22-7-2011, was in circumstances well within the limitation period, and that even otherwise the impugned order was void and there was no limitation against a void order---Validity---Petitioner was unable to show that the impugned judgment after its announcement on 1-12-2009, was not written and signed by the judges till the date of filing of application for supply of certified copies, therefore, intervening period would not be excluded for the purpose of limitation period---Impugned order was not void and the petitioner on the basis of some misconception of law or on the presumption of some legal defect in the order treated the same, as void--- Petition for leave to appeal was dismissed as barred by time with the observation that notwithstanding the present order or order of the Chief Court, the petitioner might raise all questions of law and facts before the Trial Court for decision of the suit on merits in accordance with the law. [2011 GBLR 561]

----Art. 60(13)---Petition for leave to appeal---Negligent conduct of petitioner---Effect---Law would come to rescue those persons having approached court of law with clean hands---Petitioner in order to seek relief under discretionary jurisdiction would have to come to court with clean hands---Supreme Appellate. Court under extraordinary discretionary jurisdiction had power to decline relief asked for. [2011 GBLR (a) 223]

----Art. 60(13)---See Criminal Procedure Code (V of 1898), S. 497. [2011 GBLR 535]

----Art. 60(13)---See Criminal Procedure Code (V of 1898), S. 497(5). [2011 GBLR 533]

----Art. 60(13)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 10. [2011 GBLR (b) 290]

----Art. 60 (13)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art, 17. [2011 GBLR 318]

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----Art. 60(13)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 38(4). **[2011 GBLR 305]**

----Art. 60(13)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 71. **[2011 GBLR (a) 290]**

----Arts. 60(13) & 71---Civil Procedure Code(V of 1908), S.151---Interim injunction---Condemned unheard---Chief Court in exercise of jurisdiction under Art. 71 Of the Gilgit Baltistan (Empowerment and Self-Governance), Order, 2009 issued interim injunction---Plea raised by petitioners was that they were condemned unheard and were not able to defend the order, who sought disposal of petition with direction that appointment to be made by Council should be subject to the decision of petition before the Chief Court---Validity---Respondents had no objection to disposal of the petition in such manner---Supreme Appellate Court directed the parties to appear before Chief Court on the date already fixed in the petition---Petition for leave to appeal was disposed of by the Supreme Appellate Court accordingly. **[2011 GBLR 374]**

----Art. 60---See Specific Relief Act (I of 1877), S. 54. **[2017 GBLR 67]**

----Arts. 60 & 65---See Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1 & 2. **[2017 GBLR 294]**

----Arts. 60 & 71---Direction by authorities to deposit valid licensed weapon in the Police Station for security reasons in the year 2001---Chief Court in writ jurisdiction directed the authorities for returning the weapon so deposited by the licence-holder--- Validity---Advocate General could not point out any illegality and infirmity in the judgment of the Chief Court---Leave to appeal was refused. **[2017 GBLR 60]**

----Arts. 60 & 71(2)--- Gilgit-Baltistan Government Notification No. Sec. Edu-2(14)/2011, dated 3-11-2011---Suit for declaration---Respondent had filed writ petition before the Chief Court, seeking remedy therein that her village 'P.Y' being a part of village 'B', be declared as hard area as her village 'P.Y' was an integral part of 'B' village---Chief Court ordered accordingly---Validity---Chief Court, had no authority to include the village 'P.Y' as part of 'B' village without impleading villagers of village 'B'---Administrative status of village 'B', had to be decided by Government or Villagers of 'B'---Such a matter was domain of the administrative authority---Notification No. Sec. Edu-2(14)/2011, dated 3-11-2011, was upheld---

Petition for leave to appeal was converted into appeal and was accepted. [2017 GBLR 73]

---Arts. 60(9) & 60(10)---See Supreme Court Judges Leave Pension and Privileges Order (No. 2 of 1997) [as adapted by Gilgit-Baltistan], Para 2(a). [2017 GBLR 23]

---Art. 60(13)---Leave to appeal---Delay in filing---Condonation of delay---Office of Supreme Appellate Court had pointed out that petition for leave to appeal had been filed well in time, but certain objections raised by the office, were removed, after delay of 25 days---No application for condonation of such delay had been filed by the petitioner---Office objections were sustained Unexplained delay, of even of one day, could not be condoned--- Leave to appeal was refused being barred by time. [2017 GBLR 222]

---Art. 60(13)--- Delay in filing petition for leave to appeal---Condonation of delay---Petition was barred by three months and thirteen days--- Grounds for condonation of delay were not plausible and reasonable---Application for condonation of delay was dismissed--Unexplained delay, of even one day, could not be condoned. [2017 GBLR 173]

---Art. 60(13)---Petition for leave to appeal---Delay---Application for condonation of delay---Petition filed by the petitioner, was barred by 7 months and 14 days---Grounds given by the petitioner in his application for condonation of delay were not plausible and reasonable--- Petition was dismissed on account of unexplained delay as unexplained delay of even one day, could not be condoned. [2017 GBLR 192]

---Art. 60(13)---Petition for leave to appeal---Delay---Condonation of---Petition for leave to appeal, though was filed well in time, however, certain objections were raised by the office which were removed belatedly after a delay of 15 days---Reasons/grounds given in application for condonation of such delay, were not plausible and reasonable---Application for condonation of delay was dismissed and office objections were sustained---Even one day's unexplained delay could not be condoned. [2017 GBLR 276]

---Art. 60(13)---Petition for leave to appeal---Delay, condonation of--Petition filed by the petitioner was barred by 3 months and 20 days---Reasons given by the petitioner in the application filed for condonation of such delay, were not plausible and convincing---Unexplained delay of even one day, could not be condoned---Leave to appeal was declined. [2017 GBLR 16]

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---Art. 60(13)---See Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. IV, R. 23. [2017 GBLR 202]

---Arts. 60(13) & 71(1)---See Civil Procedure Code (V of 1908), S. 115. [2011 GBLR (b) 308]

---Art. 60---Pensionary benefits---Grant of pensionary benefits to former Chief Judge, Supreme Appellate Court---Chief Judge was appointed for a term of three years as Chairman Court of appeal Northern Areas in year 2005 under Northern Areas Governance Order, 1994---Former Chief Judge, at the time of appointment was drawing pension as a retired Judge of Peshawar High Court and on completion of tenure of three years of service, retired from Supreme Appellate Court in the year 2008---Matters, relating to the appointment of Judges of Supreme Appellate Court; and their terms and conditions of service, were governed by Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009; and their status in service of Gilgit-Baltistan, was same as the Chief Justice and Judges of Supreme Court of Pakistan---Expenditure in respect of their pay, perks and other privileges, including pension and retirement facilities, were met from the consolidated fund of Government of Gilgit-Baltistan, in the same manner, as the expenditure in respect of the pay, pension and other privileges including retirement benefits and facilities of Chief Justice and Judges of Supreme Court of Pakistan were met from consolidated fund of Government of Pakistan---Services rendered in Pakistan and Gilgit-Baltistan having no nexus with each other, appointment of former Judge of the High Court or Supreme Court of Pakistan as Chief Judge or Judge of Supreme Appellate Court, Gilgit-Baltistan, could not be treated as reemployment in service of Pakistan or appointment in service of Gilgit-Baltistan in continuation of service of Pakistan; rather it was an independent appointment, with independent rights of service---Former Judge of High Court or Supreme Court of Pakistan in the service of Gilgit-Baltistan on retirement as Chief Judge or Judge from Supreme Appellate Court; in addition to the right of pension and retirement facilities available to him in service of Pakistan as Judge, would be entitled to the pension and other retirement benefits, without any distinction---Tenure appointment of Judges of Supreme Appellate Court, was not in conflict with any provision of Constitution of Pakistan, or any law---Chief Judges, or a Judge of Supreme Appellate Court, Gilgit-Baltistan, notwithstanding appointed for a term of three years, on retirement in his own independent right, would be entitled to pension and other facilities---Right of pension and other retirement benefits of the Judges of Supreme Appellate Court, Gilgit-Baltistan, was recognized under Art. 60(10) of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009---Held, appointment of retired

Judge of a High Court or Supreme Court of Pakistan as Chief Judge, or a Judge of Supreme Appellate Court Gilgit-Baltistan, was not a reemployment in service of Pakistan; or in continuation of service of Pakistan, neither his appointment was in the service of Gilgit-Baltistan---On retirement from Supreme Appellate Court, Gilgit-Baltistan, such Judge, notwithstanding having the right of pension and other privileges, as a retired Judge of High Court or Supreme Court of Pakistan, would be entitled to the pension and other retirement benefits in his own independent right. **[2015 GBLR 293]**

---Art. 60---Petition for leave to appeal---Limitation---Delay, condonation of---Said petition being barred by 30 days, application for condonation of said delay was attached with petition---Points raised by counsel for the petitioners, could hardly be considered as grounds for condonation of delay under S.5 of the Limitation Act, 1908---Section 5 of Limitation Act, 1908 mandated accounting for each and every day of the delay caused---Internal and self-creative difficulties of the Government or the Government Departments did not fall within the ambit to condone the delay---Formalities of government department were not recognized by law of limitation--- Government, would not enjoy any preferential treatment qua an ordinary litigant in the application of law of limitation--- Opposite party could be not be penalized---Government department, if wished to get any legal remedy for which they were entitled under the law of land, they must follow the law of limitation and show their vigilance by avoiding the formalities to save the expiry of limitation---Petition for leave to appeal was refused being time barred. **[2015 GBLR 402]**

---Art. 60---Petition for leave to appeal---Limitation---Delay of three months and ten days , in filing petition---Application for obtaining certified copies of impugned judgment was filed after a delay of one month and six days---Copy of said judgment was prepared after four days and same was received by the petitioner on next day of its preparation, but petition for leave to appeal was filed four months after the receipt of said copy--- Explanation offered by Advocate-General, being not acceptable, leave to appeal was refused by Supreme Appellate Court being time barred. **[2015 GBLR 372]**

---Art. 60---Petition for leave to appeal---Maintainability--- Interim order---Supreme Appellate Court had power to hear the petition for leave to appeal against the final judgment, decree and order passed by the Chief Court---Petition for leave to appeal was not maintainable in case of an interim order. **[2015 GBLR 371]**



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---Art. 60---See Gilgit-Baltistan Service Tribunals Act (IX of 2010), S. 3. [2015 GBLR 318]

---Arts. 60, 61 & 95---Anti-Terrorism Act (XXVII of 1997), Ss. 7 & 14---Target killing and “worst” law and order situation in Gilgit-Baltistan---Exercise of suo motu jurisdiction by Supreme Appellate Court---Employee of Chief Court, Gilgit-Baltistan, having been done to death by some unknown persons, people of the area started protest against said target killing, demanding the arrest of culprits---Father of the deceased employee, made application to the Chief Judge, Supreme Appellate Court, narrating therein the story of the murder of his son and made request for taking Suo Motu notice regarding said target killing---Father of the victim asserted that target killing of different persons had become the routine matter; and the Administration of the area had failed to take any measure to control the situation---Main emphasis of the applicant was that stern legal action be taken against accused persons, and; the investigation of the case be ordered to be carried out fairly and in a transparent manner; and the culprits be brought to the court of law to meet the ends of justice---Law and order situation in the area of Gilgit-Baltistan, particularly in and around Gilgit city had become worst and it had become routine, that one or two persons were being killed---Culprits had started killing the innocent persons with the motive of sectarianism---Every one was living in fearful and frightening atmosphere, and no education was being imparted to the students in Schools and Colleges---Control of Administration had almost come to an end---No body was safe in the area---Culprits were openly displaying and brandishing their weapons everywhere; and peaceful people had squeezed to their houses---All law enforcing agencies had become helpless---Incidents of violation had shattered the confidence of the people to move freely--- Tourists had stopped visiting this beautiful area of Pakistan, and business relating to the tourism had almost abolished--- Karakoram Highway had become unsafe, and law enforcing agencies had failed to provide security and safety to the life of the passengers---Sectarianism had deepen its roots---Supreme Appellate Court took cognizance of the matter on the application of the father of deceased victim of target killing--- Concerned Officials were summoned to appear before the Supreme Appellate Court---High ranking Officers of the Government appeared and apprised the court on a number of issues; and court issued orders as guidelines to curb the menace of target killing--- Measures suggested and adopted by the concerned Officials had become helpful to reduce the gap between the people of the area and the law enforcing agencies---Harmony among the people of the area had started to prevail gradually---Private organizations i.e. Masajid,

Boards and Area-wise Peace Committees, as well as efforts of the renowned religious scholars, contributed to improve the law and order situation---Police had initiated and completed entire reform, which also became helpful in the matter---System of the courts, was also improved with intervention of Supreme Appellate Court---Under the directions of the Supreme Appellate Court, Police started all efforts to submit challans of the cases in the respective courts, and recording of testimony of the witnesses had started and expeditious decisions of the courts contributed a lot to minimizing the “worst law and order situation” of the area---Payment of compensation to the legal heirs of the deceased victims, were arranged to be paid satisfactorily---Action Committee of the Lawyers Association, had also strenuously made efforts while extending full help to resolve the issue in a proper manner---Chief Secretary of Gilgit-Baltistan in his report had expressed that iron hands would be used against the menace of sectarian violence; and had also given the details of the measures taken by the administration in the matter pertaining to the law and order situation---Home Secretary had informed the Supreme Appellate Court about the measures taken by the Administration to maintain law and order in the city---Position of law and order situation was explained in the reports of Chief Secretary, Home Secretary and Inspector General of Police, after taking administrative measures to maintain peace, and to curb the lawlessness in the area---By taking all such measures, peace and tranquility in the area had been restored, and the people were now free to move, and to do their business, or any other service, which they were already rendering---For the last about one year, no such untoward incident had taken place in and around the city of Gilgit, specially and in whole area of Gilgit-Baltistan generally--Supreme Appellate Court reposed full confidence in the working of the Police Officials as well as other officials of Government of Gilgit-Baltistan in the field--- With such exercise, the people of area could live without fear and on account of the assurance of the Government Officers no further action at the moment was required to be taken by the Supreme Appellate Court---Suo motu notice case was disposed of by the court accordingly. **[2015 GBLR 221]**

---Arts. 60, 69 & 71---See Civil Procedure Code (V of 1908), O. IX, R. 8. **[2015 GBLR (a) 24]**

---Arts. 60 & 69(13)---Remuneration and other terms and conditions of service of employees of Chief Court---Entitlement of retired Chairman, Chief Court for pension and all post retirement benefits and privileges---Chief Court had accepted writ petition of respondent/retired Chairman, Chief Court and held him entitled for pension and all post retirement benefits and privileges as admissible to

a Chairman of Chief Court--- Government had filed appeal to Supreme Appellate Court against judgment of Chief Court, contending that respondent (retired Chairman, Chief Court) was given status of acting charge Chairman till appointment of regular Chairman of Chief Court; that respondent being a civil servant in BPS-21, had no locus standi to file writ petition; that Chief Court had wrongly entertained/adjudicated and decided said writ petition, despite having no jurisdiction--- Petitioners, further contended that Chief Court was given the status of High Court in the year 2007, whereas the respondent retired on 13-11-2004; that doctrine of laches and principle of estoppel attracted in the case barring the respondent to file writ petition, as he remained silent for considerable period of 8 years---Petitioners, further contended that impugned judgment was the result of misconception of law, misreading and non-reading of material/notification and orders---Case law referred by Advocate General on behalf of the petitioners/appellants, were applicable, whereas relied upon by the counsel for the respondent, was distinguishable--- Validity--- Respondent, admittedly retired on 13-11-2004, whereas vide notification No. F. No. 1(16)/99. NA-II dated 28-4-2008, the Chairman and Members of the Chief Court, had been renamed as Chief Judge and Judges of the Gilgit-Baltistan Chief Court---Under, Art. 69(13) of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, the remuneration and other terms and conditions of service of Chief Judge and Judges of Chief Court would be the same as admissible to the Chief Justice and Judges of High Courts of Pakistan---Appeal was accepted and impugned judgment passed in writ petition by the Chief Court, was set aside, in circumstances. **[2015 GBLR 85]**

---Arts. 60, 71 & 81---See Gilgit-Baltistan Service Tribunals Act (IX of 2010), S. 3. **[2015 GBLR 362]**

---Art. 61---See Penal Code (XLV of 1860), S. 322. **[2015 GBLR 324]**

---Art. 61---See Specific Relief Act (I of 1877), S. 42. **[2015 GBLR 335]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter concerning claims of landowners/effectees whose land had been acquired for Karakoram Highway--- Effectees were willing to withdraw the present case if the Authority before whom their claims were pending, decided their claims and paid compensation within 3 months---Counsel for the Authority had no objection to the submission made by the effectees---Supreme Appellate Court, in view of

submissions of both parties, directed that the authority shall decide the claims of the effectees, and pay them compensation expeditiously within a period of 3 months and submit a progress report every month in the office of the Registrar of the Supreme Appellate Court---Suo motu case was disposed of accordingly. **[2015 GBLR 162]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter concerning complaint against Civil Aviation Authority for not starting flights between Skardu and Gilgit as per direction of the Supreme Appellate Court---Concerned officials of Civil Aviation Authority appeared before the court and tendered unconditional apology and placed themselves at the mercy of the court---Said officials also made a request to be allowed to withdraw the parawise comments filed by them earlier---Supreme Appellate Court accepted the unconditional apology tendered by the concerned officials and warned them to be careful in future and pay respect to the judiciary--- Supreme Appellate Court directed that the parawise comments already filed by concerned officials be returned to them and the copy of written submission regarding tendering of unconditional apology be placed on record---Suo motu case was disposed of accordingly. **[2015 GBLR 175]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter concerning death of a child due to collapse of a school boundary wall---Father of deceased child, who died due to collapse of the school wall stated before the court that he had been compensated, and that a piece of land worth Rs. 250,000 out of the land of defaulter had been transferred and mutated in his name---Application in suo motu case was disposed of accordingly. **[2015 GBLR 122]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter concerning illegal cutting of forest in Chaprote Nagar 2 and Chakarkot Juglote, Sai---Supreme Appellate Court directed that the “report” submitted by Conservator Forest should be placed before the Chief Secretary to resolve the matter in order to discourage the smuggling of wood from Gilgit-Baltistan to down country and black marketing within Gilgit-Baltistan; that in case a meeting was convened by the Chief Secretary with regard to present issue, then, if required, the Conservator Forest, the amicus curiae in the present case, and the Advocate General should attend the said meeting; that an amendment was required to be made in the relevant law regarding enhancement of sentence, imposition of fine and penalty thereto against the offenders/law breakers; that the requirement of amendment in the law should be forwarded to the Secretary Law, who shall place the same

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before the legislative body---Suo motu case was disposed of accordingly. [2015 GBLR 186]

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter concerning 50% hard area allowance for employees of Controller of Military Accounts and others (“petitioners”)---Plea on behalf of petitioners that the Supreme Appellate Court had ordered in one of its judgments (SMC No. 04/2010 dated 02.06.2011) (“the judgment”) that employees of Controller of Military Accounts being paid from defence budget, would be equally entitled to the privileges conferred upon other employees of Federal Government serving in Northern Areas without any distinction; that said ‘judgment’ had not been implemented by the Military Accountant General; that freezing of special pay and allowances of petitioners should be declared null and void as it was a violation of the ‘judgment’---Validity---Supreme Appellate Court directed that the petitioners should approach the Chief Court (Gilgit-Baltistan) for the implementation of the ‘judgment’; that the civil employees of Directorate General ISI serving in Gilgit-Baltistan or any other employees of Federal Government serving in Gilgit-Baltistan who were also entitled for such allowances and were not party to present case may in pursuance of the ‘judgment’ of Supreme Appellate Court approach the Chief Court (Gilgit-Baltistan) for their lawful claims and grievances, and that such civil servants/defence personnel should be treated equally amongst equals--Application in suo motu case was disposed of accordingly. [2015 GBLR 104]

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter relating to clean drinking water for people of Skardu city--- Constitution of a Committee on the order of the Supreme Appellate Court to resolve the issue of provision of clean drinking water for the inhabitants of Skardu City---Said Committee submitted its report along with recommendations for improving quality of drinking water in the city---Supreme Appellate Court after perusing the said report directed that the main upper water supply complex on the city needed strengthening through provision of water quality testing equipment, which was to be undertaken by the works department; that the works department should ensure the operation of the water supply complex in accordance with the standard practices and the concerned Environmental Protection Agency (GBEPA) must monitor the water quality on monthly basis; that the Public Health Engineering Department, and District Administration of the city should cut the water supply lines of all vehicle service stations in the town in one month; that the District Public Health Engineering Department should install 35 more filtration plants in the city within one year and should

initiate their PC-I for immediate installation; that the sites for installation should jointly be selected by a committee comprising of the District Administration, Representative of Chief Engineer of the concerned Division, and the Environmental Protection Agency; that if required, additional filtration plants should be installed in the city in the second phase to cover the requirement of the entire population of the city, and that a mechanism should be devised for proper maintenance of the filtration plants after their installation---Suo motu case was disposed off accordingly. **[2015 GBLR (a) 30]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter relating to clean drinking water for people of Skardu city--- Constitution of a committee on the order of the Supreme Appellate Court to resolve the issue of provision of clean drinking water for the inhabitants of Skardu City---Said Committee submitted its report along with recommendations for the issue of “Upstream Satpara Dam”---Supreme Appellate Court after perusing the said report directed that the project “Satpara Dam Watershed Management” already initiated by Forest Department should be expedited and recommendation of Environmental Protection Agency must be incorporated in the said project; that the administration should establish Village Organizations in each village under the umbrella of a Non-Governmental Organization (NGO) (Satpara Development Organization) and provide resources, training, awareness and sustainability mechanism to stop people from washing clothes in the main Satpara Nullah and its tributaries; that the people should also be educated to keep away their cattles from clean drinking water sources; that the Forest Department, Works Department and Environmental Protection Agency should provide bioengineering techniques for slope stabilization and soil erosion for protection of water quality; that check dams and other infrastructure should be constructed to protect the Satpara Dam watershed, and that the Works Department should initiate feasibility study (PC-II) for establishment of mini sewerage treatment plant at Satpara village to protect water from contamination--Suo motu case was disposed off accordingly. **[2015 GBLR (c) 30]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter relating to clean drinking water for people of Skardu city--- Constitution of a Committee on the order of the Supreme Appellate Court to resolve the issue of provision of clean drinking water for the inhabitants of Skardu City---Said Committee submitted its report along with recommendations On issue of quality of water at Pakistan Tourism Development Corporation (PTDC) Motel at Satpara Dam--- Supreme Appellate Court after perusing the said report directed that as Pakistan Tourism Development Corporation (PTDC) had already

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constructed wastewater treatment system according to the approved design and arrangements had been made to uplift and re-use the partially treated water for landscaping as suggested by Environmental Protection Agency (EPA), therefore, the Motel should be made operational at the earliest with the following conditions that the Pakistan Tourism Development Corporation (PTDC), management at Satpara would be responsible to operate the system in accordance with the best environmental practices such that no sewerage shall spillover or ingress in the reservoir; that the treatment system should be operated at the levels of irrigation water standards and be used for landscaping, and that the Environmental Protection Agency (EPA) should regularly monitor the operation of the treatment system, and issue and renew the certification of Pakistan Tourism Development Corporation (PTDC) annually---Suo motu case was disposed off accordingly. **[2015 GBLR (b) 30]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter relating to complaint against a police official by an advocate--- Relationship between the bar and the police--- Matter was amicably resolved on the terms that the accused police constable should be suspended immediately and an inquiry be initiated against him in accordance with law, and that in case, the complainant-advocate forgave the police constable then inquiry/departmental proceedings against him would be dropped---In view of such resolution the Inspector General Police ordered suspension of the police constable forthwith and ordered an inquiry against him in accordance with law--- Supreme Appellate Court observed that in case, the advocate forgave the police constable, the matter would be closed; that Inspector General Police and the President of the concerned Bar Association had to keep liaison and coordination with each other to minimize misunderstandings and complaints in order to keep up healthy relations between the bar and police---Suo motu case was disposed of accordingly. **[2015 GBLR 369]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court---Suo motu notice originated from the office note, prepared on the basis of publication in various local newspapers, which reported that public at large had been facing acute shortage of flour for many days; and the flour mills owners had stopped grinding the wheat on account of various demands agitated by them, which were required to be addressed by the Authorities---Situation further aggravated, when the Bakers (Tandories) also stopped the baking of Roti---People of the area were facing serious problems on account of shortage of flour--- Supreme Appellate Court, being a court of equity and conscious, interfered into the matter in order to enforce the Fundamental Rights

of the people of area---Cognizance in the matter was taken by the Court in exercise of its original jurisdiction as envisaged under Art. 61 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009---Matter was fixed before the Bench, notices were issued to all concerned departments and concerned parties---Court, after hearing concerned parties, directed that Food Department to retain and distribute a certain amount of wheat to general public, so that the consumer could avail opportunity of having it grinded at the place of his own choice, which would save the individual from payment of extra charges; that it was the sole domain of Price Control and Regulatory Authority in collaboration with Civil Administration to fix the rate of flour, to be given to the consumer at the sale points; that Price Control and Regulatory Authority, should fix the rate of the Bread (Roti) and the weight of the same; that Price Control and Regulatory Authority, should also fix rate of wheat per 40 KG to be grinded by the flour mills; that it was the privilege of the mill-owners to impose their own demand and rates of grinding without adhering to the directives of the Price Control and Regulatory Authority, and said Authority should also keep in mind the genuine requirements of the mill-owners; that Food Inspectors, should visit each and every baker to check the weight of the Roti and if found below the weight, the licence of the Baker (Tandori) should be cancelled; that if the mill-owners, deliberately, and without any cogent reason, would try to create temporary shortage of flour, by way of strike, or by adopting any other method, the Food Department, was at liberty to provide the flour to general public/consumer by an alternate arrangement and necessary steps would be taken on priority basis; and that, if any other matter relating to the issue of supply of flour to the consumer would arise, the Food Department, Government of Gilgit-Baltistan, would be at liberty to adhere to the guidelines given in the judgment of the Chief Court. **[2015 GBLR 379]**

---Arts. 61 & 75---Suo motu jurisdiction of the Supreme Appellate Court---Contempt of Court, notice for---Unconditional and unqualified apology by contemnors--- Effect---Discharge of contempt notice--- Complaint against Accountant General Pakistan Revenue, Gilgit-Baltistan and his office staff---Disrespect and disgrace to the Court--- Interruption and intervention in the work/affairs of the Court---Raising slogans derogatory to the honour and respect of the Court---Chief Judge, Supreme Appellate Court sanctioned purchase of an old vehicle for Liaison Office at Islamabad---Accountant General Pakistan Revenue, Gilgit-Baltistan cancelled the cheque issued for the purpose of purchase of said vehicle---Staff of Accountant General office also called a strike and raised derogatory slogans and staged an agitation at



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the main gate of the Court---Accountant General and his office staff were issued show-cause notices for contempt of court---Accountant General and his staff officials appeared before the court in person in reply to the show-cause notice---Accountant General realized his misconduct and showed his sincere repentance and tendered unconditional and unqualified apology---Staff officials of Accountant General's office appeared before the Court and surrendered themselves at the mercy of the Court and claimed unconditional and unqualified apology and showed their repentance---Supreme Appellate Court accepted such apology and discharged the contempt notices against the Accountant General and his office staff---Suo motu case was disposed of accordingly. **[2015 GBLR 355]**

----Art. 61(1)--- Frivolous litigation--- Litigant, duty of--- Scope--- Foremost duty of the citizens was to come to the court with clean hands to get relief--Citizens could not be allowed in any manner whatsoever, to start frivolous litigation in the superior courts, which was nothing but a mere wastage of public money and time---Such litigation not only caused loss to public exchequer but also wasted time. **[2015 GBLR (b) 339]**

----Art. 61(1)--- See Public Procurement Rules, 2004, R. 2(g). **[2015 GBLR (e) 252]**

----Art. 61(1)---See Public Procurement Rules, 2004, R. 42(c)(iii). **[2015 GBLR (c) 252]**

----Art. 61(1)--- See Qanun-e-Shahadat (10 of 1984), Art. 46. **[2015 GBLR (c) 339]**

----Art. 61(1)---Suo motu jurisdiction of Supreme Appellate Court--- Powers of judicial review---Scope---Use of public funds or public property by the executive or public functionaries--- Public benefit--- Award of contract by public functionaries--- Where public funds or any public property was to be dealt with by the executive authorities for the benefit of the people, the public authority was required under the law to examine the use of funds in accordance with law, keeping in view the constitutional rights of the citizens---Since the people were real owners of the public exchequer, therefore, public functionaries were under a legal obligation to execute contracts justly, fairly, legally and in a transparent manner in order to avoid misuse of the public money and any element of arbitrariness---Public functionaries derived their authority and power from, or under the law and they were obliged to act equitably, reasonably and in a manner that there should not be any element of discrimination, favouritism, nepotism and unfairness, keeping themselves within four corners of law---Where the

executive authorities did not comply with all the said conditions, the matter would be open for judicial review to correct the errors committed by the public functionaries while executing and awarding a contract, without showing favour to any of the party on account of any consideration other than the public benefit--- Supreme Appellate Court would not hesitate to exercise its jurisdiction of judicial review in such like cases to scrutinize the matter where public money was being used or expended--- Public functionaries were duty bound to ensure that they undertook transactions and executed contracts lawfully, fairly, equitably and without any element of arbitrariness by ensuring transparency---Court had the power of judicial review of the decision making process carried out by the executive authorities in the matters of expending of public money and if, on scrutiny, it was found tainted with an element of unreasonableness and arbitrariness, the intervention of the Court was justified while keeping in view the larger interest of the public. [2015 GBLR (a)252]

---Art. 61(1)---Suo motu jurisdiction of the Supreme Appellate Court---Matter relating to allotment of land to refugees of village Mir Malik at Bunji---Claim of allotment of land not backed by any documentary evidence or revenue record--- Frivolous litigation--- Scope---Wastage of time of court and loss to public exchequer--- Refugees/claimants in question contended that they were allotted about 1400 kanal of land near Bunji desert on the orders of the President of Pakistan; that said allotment was purportedly incorporated in the revenue record and the “aks shajra” was also statedly prepared and formal possession of the land was handed over to them---Contrary to the claim made by claimants, the families living in Bunji village asserted that they had been pottering in the area from the years 1840 to 1920, therefore, in the year 1979, the Deputy Commissioner, allotted them 10 thousand kanal of land, which included the 1400 kanal of land purportedly allotted to the claimants---Held, that on the directions of the court, the Deputy Commissioner/Inquiry Officer submitted a detailed report in court---Perusal of the said report showed that inquiry officer after recording statements of representatives of both parties and going through the revenue record came to the conclusion that no allotment order in favour of claimants was ever passed; that no record pertaining to the allotment of the land to the claimants was available in the revenue record; that sufficient opportunity was given to the claimants to place on record any document of any year with regard to their claim of allotment, but they could not bring on record any such document showing the allotment of the land in their name---Case record showed that no allotment order of the land was ever made in favour of the claimants---Claimants neither had any documentary

evidence nor any other cogent evidence to show that they were ever allotted the land in question or that they had remained in possession of the same and made improvements thereon--- Litigation initiated by the claimants had not only caused loss to public exchequer but also time (of the court) had been wasted--- Claimants had shown irresponsible attitude as it was their foremost duty to verify their claim from the revenue record before filing an application before the court---From the minute examination of the record and the activities of the claimants, it seemed, prima facie, that it was in their knowledge that they would not be in a position to substantiate their claim---On the other hand, land in question was allotted to the families living in Bunji village in the year 1979 and the documentary evidence was also available with record of such allotment---Claimants could not prove their case in any manner whatsoever---Suo motu case was disposed of accordingly. [2015 GBLR (a) 339]

---Art. 61(1)---Suo motu jurisdiction of the Supreme Appellate Court---Project for construction of RCC bridge between Danyore and Karakoram International University on Hunza River---Delay in construction of bridge---Inconvenience to the people of the area---Supreme Appellate Court monitoring progress of construction of the bridge and ensuring its completion---Contract for construction of the bridge in question was awarded in the year 2004-05 and had remained unattended for a considerable period, as the contractor had abandoned the work at the site for reasons best known to him---Delay in the construction of the bridge had been caused at the cost of public time and exchequer---Inconvenience to the people had also been caused which amounted to depriving the people of the area of necessity of life as their basic right---Without the approval of the competent departmental authority, the contract for the construction of the bridge was sublet by the contractor to another construction company---During hearing of the present case the Court gave various directions on different hearings for taking action against the delinquent officers and others who were responsible and had become instrumental for causing delay for completion of the project---Court also gave directions at a hearing for fixing liability for recovery of the loss caused to the government and determining criminal liability of those responsible---Court deputed the Project Director to monitor the project's work and get the same accelerated so that the project could be completed within its time frame---Project Director was also directed at a hearing to continue submitting progress reports through the Registrar of the Court mentioning progress of the construction of the project---Chief Secretary concerned was directed at a hearing to initiate an inquiry to fix responsibility of concerned officials, who were instrumental in

making advance payments without actual work and contributed delay in the project at the cost of public money and time--- Court also had to give directions to the Public Works Department to accelerate the pace of the project and to furnish monthly progress report to the Registrar of the Court---To ensure that the project was not delayed due to non-payment to the contractor, the court also had to give directions for releasing payment to the contractor---Court remained vigilant on each and every date of hearing and ultimately, the construction of the bridge was completed in all respects and it was made functional and operational for all kinds of traffic for convenience, of the public at large---Supreme Appellate Court observed that if it had not kept a constant watch on the construction of the project, it might not have been completed for many years; that although the construction of the bridge was a technical matter, the Court got the said bridge completed within adequate time despite innumerable hurdles and somersaults of the departmental officials as well as the contractor, and that no further action was required in the present case after completion of the bridge---Suo motu case was disposed of accordingly. **[2015 GBLR 196]**

---Art. 61(1)--- Supreme Appellate Court---Powers of judicial review---Scope--- Award of contract by public authority/functionary--- Where there was any element of partiality or undue favour or substantial irregularity on the surface of record which might create a serious doubt in the mind of common man with regard to the transparency in execution and award of public contract or any other transaction lacking transparency, the Court may not hesitate to interfere in the matter and may in exercise of power of judicial review declare the transaction illegal. **[2015 GBLR (b) 252]**

---Art. 61--- Constitution of Pakistan, Art. 161(2)---Petition under Art. 61, Gilgit-Baltistan (Empowerment of Self-Governance) Order, 2009, seeking declaration to the effect that the construction of Diamer Bhasha Dam had been approved in the area of District Diamer of Gilgit-Baltistan with two Hydro Electric Power Houses for generation of electricity, one each on the left and right bank of river Indus, on the territory of Gilgit-Baltistan, therefore, the people of Gilgit-Baltistan had exclusive right to royalty of generation of electricity from Diamer Bhasha Dam; that the area subject-matter, of boundary dispute between District Diamer Gilgit-Baltistan and District Kohistan Province of Khyber Pakhtunkhwa, as per existing boundary of the two Districts was included in District Kohistan, but originally this area forming part of District Diamer, was an integral and natural part of territory of Gilgit-Baltistan, therefore, claim of Province of Khyber Pakhtunkhwa in respect of royalty of electricity generation of

proposed power house of Diamer Bhasha Dam, on left bank of River Indus in the area of District Kohistan was without, any foundation and legal justification; and that the land owners and affectees of Diamer Bhasha Dam were entitled to the payment of compensation of their land acquire for the construction of mega project of Diamer Bhasha Dam on the basis of future potential value of the land-Indus river is combination of various rivers of Gilgit-Baltistan and the water of Indus river flowing from the mountainous range of the territory of Gilgit-Baltistan enters into District Kohistan of Khyber Pakhtunkhwa from District Diamer of Gilgit-Baltistan, where the Project of Diamer Bhasha Dam with two Power Houses one each on the right and left bank of river indus is under construction---Power House on the right bank of the River Indus is situated exclusively within the limits of District Diamer Gilgit-Baltistan, whereas the Power House on the left bank of the River Indus is partly in the area of District Kohistan and partly in District Diamer of Gilgit-Baltistan as the installation of machinery of the Power House is in area of District Kohistan and source of water is entirely in the area of District Diamer, therefore, notwithstanding the Boundary dispute between District Diamer and Kohistan, the sole question for determination would be whether in the light of definition of “Power House” in mechanical engineering, Province of Khyber Pakhtunkhwa on the basis of existing boundary of two districts, can claim exclusive right in the royalty of Power House on left bank of River Indus in terms of Article 161(2) of the Constitution of Pakistan or may have a right of proportionate share with Government of Gilgit-Baltistan and if so, what shall be the ratio of their respective share---Question in respect of the right of royalty of the Power House of Diamer Bhasha Dam on left bank of River Indus is a mix question of law and fact which requires examination in the light of definition of Hydro Electric Power Generation House; the connection of source of water with the installation of power house in the technical process of electricity generation; the rights in Inland Waters; the doctrine of territorial nexus and the right in royalty as intellectual property---Two components of power house i.e. source of water and installation of Hydro Electric Power House are equally essential for electricity generation---Installation of Diamer Bhasha Dam on the left bank of River Indus is in the area of District Kohistan whereas the source of water is exclusively in the area of District Diamer and the object of electricity generation is the result of connection of water with installation of Power House---Object of connection of the two components of power House i.e. source of water and installation of power house is generation of electricity through mechanical process which is based on the principle of territorial nexus and the royalty of electricity generation is intellectual property,

therefore, the question relating to the right of royalty must be determined in the light of principle of territorial nexus. [2011 GBLR (p) 1]

----Art. 61---Court which can exercise jurisdiction in a matter under the law can also render judgment both in law and in equity---Principles. [2011 GBLR (n) 1]

----Art. 61---Educational institution---Complaint against Education Department---Complainant had alleged that despite their selection on merits on the basis of test and interview, conducted by the Education Department for appointment as Teachers against vacant posts in different Schools, they had not been appointed---Secretary Education department, contended that though the complainants had been selected for appointment, but as per merits they could not be appointed against existing vacancies and that their names had been kept on waiting list---Validity---Education was a basic right of citizens and Gilgit-Baltistan being a remote and backward area, would require maximum on health, food and education---Shortage of Teachers was one of the major causes of deterioration of education standard---Matter being of utmost importance, Chief Secretary could initiate the process on priority---Merit list prepared by Education Department on the basis of test and interview, already undertaken would remain operative and candidates who had been placed on waiting list, would have first right. [2011 GBLR 507]

----Art. 61---Original Jurisdiction of Supreme Appellate Court---Nature. [2011 GBLR (k) 1]

----Art. 61---Payment of, compensation to flood affectees--- Supreme Appellate Authority, in pursuance of an application moved by affectees of villages concerned, had directed the District and Sessions Judge for holding an inquiry, into the matter and he submitted his report and in the light of, said-report Deputy Commissioner was directed to explain the position regarding action taken in the matter---Position explained by the Deputy Commissioner showed that matter relating to the payment of compensation to the flood affectees was pending with the Government for approval and payment will be made on approval of the competent Authority-Supreme Appellate Court observed that scheme of construction of proper protective 'bund' along with the bank of river was a project of Federal Flood Commission and the Chief Secretary could take up the matter with Federal Flood Commission for approval of the project to save the people of the area from unforeseen loss and damage to their life and property. [2011 GBLR 312]

---Art. 61---Penal Code (XLV of 1860), Ss. 341/353/147/ 186/430/ 506(2)---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Wrongful restraint, assault or criminal force to deter public servant from discharge of his duty, rioting, obstructing public servant in discharge of public functions, mischief by' injury to works of irrigation or by wrongfully diverting water, criminal intimidation, acts of terrorism---Suo motu case concerning illegal occupation of the power houses (Government property) by Power and Water Department (PWD) contractors--Section 6 of the Anti-Terrorism Act, 1997---Applicability---Scope---Police official had submitted before the court that separate cases had been registered against the persons involved on the incident of disconnection of electricity supply and break down of power houses under Ss. 341, 353, 186, 430, 506(2) & 47, P.P.C---Reading of the F.I.R. showed that an attempt was made to cause damage to the power houses for disconnecting the electricity supply as a result of which the public in general was extended threats of serious crimes---Local police took the matter lightly and registered only an ordinary case of interruption in the discharge of official duty---Cases against the accused persons pertained to an incident in which disturbance was caused to the public life by making an attempt to damage Government property (power houses)---Act of the accused persons fell within the definition of terrorism under S. 6 read with S. 7 of the Anti-Terrorism Act, 1997---Police had stated that offence under the Anti-Terrorism Act, 1997, would be added in the cases accordingly---Supreme Appellate Court directed that the investigation team on completion of the investigation into the cases, pertaining to the incident, would submit its final report within the time prescribed under the law; that concerned officials and authorities should constitute a committee for verification of the claims of the contractors, and that the concerned official should take necessary steps for allocation of funds or for special grant, as the case might be to satisfy the genuine claims of the contractors---Suo motu case was disposed of accordingly. [2011 GBLR 541]

---Art. 61---Petition under Art. 61, Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 by a resident of Gilgit-Baltistan seeking declaration to the effect that the construction of Diamer Bhasha Dam had been approved in the area of District Diamer of Gilgit-Baltistan with two Hydro Electric Power Houses for generation of electricity, one each on the left and right bank of river Indus, on the territory of Gilgit-Baltistan, therefore, the people of Gilgit-Baltistan had exclusive right to royalty of generation of electricity from Diamer Bhasha Dam; that the area subject-matter of boundary dispute between District Diamer Gilgit-Baltistan and District Kohistan Province of

Khyber Pakhtunkhwa, as per existing boundary of the two 'Districts' was included in District Kohistan, but originally this area forming part of District Diamer, was an integral and natural part of territory of Gilgit-Baltistan, therefore, claim of Province of Khyber Pakhtunkhwa in respect of royalty of electricity generation of proposed power house of Diamer Bhasha Dam, on left bank of River Indus in the area of District Kohistan was without any foundation and legal justification; and that the land owners and affectees of Diamer Bhasha Dam were entitled to the payment of compensation of their land acquired for the construction of mega project of Diamer Bhasha Dam on the basis of future potential value of the land---Supreme Appellate Court Gilgit has absolute jurisdiction to hear and determine the question of royalty of electricity generation of the proposed power houses of Diamer Bhasha Dam to be constructed by the Federal Government and the objection of jurisdiction taken in the matter on the ground that province of Khyber Pakhtunkhwa having interest in the matter is not subject to the territory all jurisdiction of the Courts of Gilgit-Baltistan has no legal foundation---Gilgit-Baltistan has entirely independent judicial system and courts of Gilgit-Baltistan are not subject to the jurisdiction of any court in Pakistan, therefore, the validity of Judgment of Supreme Appellate Court Gilgit-Baltistan relating to the rights of people of Gilgit-Baltistan is not questionable before any Court in Pakistan on any ground including the question of jurisdiction. **[2011 GBLR (o) 1]**

---Art. 61---Petition under Art. 61, Gilgit-Baltistan (Empowerment of Self-Governance) Order, 2009 by a resident of Gilgit Baltistan seeking, declaration to the effect that the construction of Diamer Bhasha Dam had been approved in the area of District Diamer of Gilgit-Baltistan with two Hydro Electric Power Houses for generation of electricity, one each on the left and right bank of river Indus, on the territory of Gilgit-Baltistan, therefore, the people of Gilgit-Baltistan had exclusive right to royalty of generation of electricity from Diamer Bhasha Dam; that the area subject-matter of boundary dispute between District Diamer Gilgit-Baltistan and District Kohistan Province of Khyber Pakhtunkhwa, as per existing boundary of the two Districts was included in District Kohistan, but originally this area forming part of District Diamer, was an integral and natural part of territory of Gilgit-Baltistan, therefore, claim of Province of Khyber Pakhtunkhwa in respect of royalty of electricity generation of proposed power house of Diamer Bhasha Dam, on left bank of River Indus in the area of District Kohistan was without any foundation ; and legal justification and that the land owners and affectees of Diamer Bhasha Dam were entitled to the payment of compensation of their land acquired for the



construction of mega project of Diamer Bhasha Dam on the basis of future potential value of the land---Choice of forum---Doctrine of convenience---Applicability---Scope--- Choice of forum is based on the doctrine of convenience and in the light of said doctrine this is not fair and proper for the Courts in Gilgit-Baltistan to decline the exercise of jurisdiction conferred by law and remit a resident of Gilgit-Baltistan to invoke jurisdiction of the Courts in Pakistan for mere reason that the matter also involves the interest of a person who is not as such subject to the territorial jurisdiction of Supreme Appellate Court---Refusal of the Supreme Appellate Court to take cognizance and exercise power under Article 61 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, in a matter of public importance relating to the enforcement of Fundamental Rights of the people of territory of Gilgit-Baltistan on the basis of technical objection to the jurisdiction of Court would amount to deny the right of access to justice.[2011 GBLR (m) 1]

---Art. 61---Petition under Art. 61, Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 by a resident of Gilgit-Baltistan seeking declaration to the effect that the construction of Diamer Bhasha Dam had been approved in the area of District Diamer of Gilgit-Baltistan with two Hydro Electric Power Houses for generation of electricity one each on the left and right bank of river Indus, on the territory of Gilgit-Baltistan, therefore, the people of Gilgit-Baltistan had exclusive right of royalty of generation of electricity from Diamer Bhasha Dam, that the area subject-matter of boundary dispute between District Diamer Gilgit-Baltistan and District Kohistan Province of Khyber Pakhtunkhwa, as per existing boundary of the two Districts was included in District Kohistan, but originally this area forming part of District Diamer, was an integral and natural part of territory of Gilgit-Baltistan, therefore, claim of Province of Khyber Pakhtunkhwa in respect of royalty of electricity generation of proposed power house of Diamer Bhasha Dam, on left bank of River Indus in the area of District Kohistan was without any foundation and legal justification and that the land owners and affectees of Diamer Bhasha Dam were entitled to the payment of compensation of their land acquired for the construction of mega project of Diamer Bhasha Dam on the basis of future potential value of the land--- Maintainability---Petitioner, a resident of District Diamer with the consideration that Government of Gilgit-Baltistan had no independent source for development of the region and protection of the rights of people had filed the petition in representative capacity with the object of safeguarding the right and interest of people of the region of Gilgit-Baltistan in the royalty of electricity production of Diamer Bhasha Dam which may prove major

financial source of Government of Gilgit-Baltistan---Supreme Appellate Court was empowered to take cognizance in a matter in which a question of public, importance relating to the enforcement of any of the fundamental rights conferred by Part II (Art. 3 to Art. 19) of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 was involved---Royalty of Diamer Bhasha Dam was a matter of great public importance relating to the enforcement of fundamental rights of the people and would squarely fall within the ambit of Art. 61 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, for the purpose of adjudication by the Supreme Appellate Court in its original jurisdiction and may pronounce declaratory judgment in a matter of public importance relating to fundamental rights---Matter relating to the payment of compensation of the private land acquired for the purpose of construction of Diamer Bhasha Dam and the boundary dispute between District Diamer Gilgit-Baltistan, and District Kohistan, Khyber Pakhtunkhwa, being sub-judice before the respective forums namely Land Acquisition Collector Diamer and Boundary Commission setup by the Federal Government, Supreme Appellate Court declared that the court had the jurisdiction to the extent of these matters, and observed that the adjudication in the present petition would confine only to the question relating to the proportionate royalty of Hydro Electric Power generation from the two proposed Power Houses of Diamer Bhasha Dam. **[2011 GBLR (a) 1]**

---Art. 61---See Customs Act (IV of 1969), S. 19. **[2011 GBLR (F) 81]**

---Art. 61---See Gilgit Private Forest Regulations, 1970. **[2011 GBLR 186]**

---Art. 61---See Gilgit-Baltistan Muslim Personal Law Shariat Application Act, 1963, S.2.(a). **[2011 GBLR (a) 575]**

---Art. 61---See West Pakistan Family Courts Act, (XXXV of 1964), S. 5. **[2011 GBLR (d) 555]**

---Art. 61---Suo motu jurisdiction---Civil service---Misconduct---Scope---Removal from service---Applicant who was qualified Nurse, filed application for education leave with permission to join special course, Which according to applicant was duly entertained by the office and accordingly she went to join the course---Applicant, after completion of the course reported back for duty but for certain reasons absented from duty--- Applicant was departmentally proceeded against and was removed from service for charge of misconduct---Authorities reported that applicant proceeded for special course without formal permission of competent authority and after joining duty back, she

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again remained absent from duty for a considerable period without intimation---Application for leave and permission to join the special course was officially entertained by the office, but she was not given any information of refusal of leave---Essential question requiring determination was as to “whether absence of applicant was wilful; or she had bona fide impression that formal permission to join the special course would be given to her”---“Wilful absence” of a government servant from duty could constitute misconduct, but absence in exceptional circumstance could not be wilful---Applicant who was a trained Nurse proceeded to undergo a special nursing course and her absence, if any was not as such intentional; in such circumstances, instead of awarding maximum penalty of removal from service, she could be awarded lesser penalty providing her a chance to improve her conduct and it would be proper to send the matter to the Chief Secretary for an independent inquiry by a senior officer who would provide proper opportunity to the applicant to explain her position and in the light thereof, the Chief Secretary could pass an appropriate order in accordance with law---Order of Secretary Health (competent authority) would be subject to final order passed by Chief Secretary. **[2011 GBLR 473]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Allotment of land for housing schemes of advocates, members of Supreme Appellate Court Bar Association and employees of the court---Land measuring 45 kanals was allocated for allotment of residential plots to the lawyers in Jutial area in 1986, but after the establishment of Chief Court and Supreme Appellate Court, the strength of lawyers had increased---Effect---Further land might be allotted for residential purposes of lawyers on the basis of nominal price---Deputy Commissioner had given his assurance that he would do the needful and any suitable land available in the surroundings of Supreme Appellate Court in Jutial area would be allotted jointly to Supreme Appellate Court Bar Association and Chief Court Bar Association in consultation with the office bearers of the two said Bar Associations---Supreme Appellate Court observed that its employees Were also in need of official accommodation, but no official accommodation was available for them and the Deputy Commissioner might also allot some land for said employees for their residential houses---Supreme Appellate Court directed that the Registrar of the Court should nominate an official to provide necessary information to the Deputy Commissioner about the requirement of land---Case was disposed of accordingly. **[2011 GBLR 569]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Complaint (application) against Press Information Department (PID)

by newspaper (Sada-e-Gilgit)---Maintainability---Said newspaper had been de-listed from the central media list maintained by the Ministry of information for charges of filing false statement with fake verification of director of Press Information Department, and in consequence thereto a criminal case was also registered against the said newspaper---Present complaint had been filed by the newspaper for its enlistment on the basis of fair and equal treatment in the press--- Director, Press Information Department, had stated that the management of the newspaper had filed a civil suit in the matter in which the civil court and the first appellate court declined to grant temporary relief on the question of enlistment; and that management of the newspaper instead of availing proper remedy before the Chief Court against the order of the civil court had filed present complaint, which was not maintainable---Ex-employee of the newspaper had also filed an application stating that the publication of the newspaper was without lawful authority as it was publishing daily newspaper on the basis of a declaration submitted for a weekly paper--- Newspaper had contended that it had been discriminated against for the reason that it was not following the policy of the Government in respect of publication of news as per choice of the Government---Validity--- Supreme Appellate Court observed that pending civil suit on the matter before the civil court, Supreme Appellate Court was not supposed to interfere in the matter in its original jurisdiction under Art. 61 of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009; that the newspaper might avail appropriate remedy in accordance with the law; that the Director, Press Information Department, might look into the complaint of the newspaper regarding discriminatory treatment and the question of illegality of declaration and submit its report to the concerned authorities in the Ministry of Information for appropriate action by the competent authority in accordance with the law---Complaint was disposed of accordingly.

**[2011 GBLR 539]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Contract for project of construction of roads and bridges in Basin Road Area---Abandonment of said project by its contractor---Contract for the project was awarded to the contractor in the year 2007 and payments, including advance payment; were also made to him but he had abandoned the project, which was lying in the same condition for the last about five years---Government had contended that rescinding of the contract in question would amount to extending undue benefit to the contractor and cost of the contract would also be much more compared to the original cost due to increase in the prices, and that the leftover work of the project should be completed by the concerned

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department in terms of the contract at the cost and risk of the contractor---Validity---Supreme Appellate Court directed that the concerned department would proceed under the contract and complete the project during the financial year at the cost and risk of the contractor; that the Chief-Secretary would look into the matter and might also take appropriate action including black-listing of contractors who had abandoned their contracts without any justification; that the Secretary Works Department would revise the list of approved contractors and retain the names of only those contractors who had a clean record---Supreme Appellate Court observed that intentional delay in execution of work on part of contractors with the purpose of escalating or revising their claims on the ground of increase in prices, was to be strongly discouraged as it caused extra burden on the public exchequer and inconvenienced the public---Case was disposed of accordingly. [2011 GBLR 573]

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Delay in construction work of housing colony of Karakoram International University---Officials of the said university have stated that the possession of ten houses had been handed over to the Registrar of the university and allotment of these houses had also been made to officials of the university; that possession of remaining six houses would be handed over after completion of minor finishing work, and that the whole project was almost complete in all respects including the Construction of the house of the Vice-Chancellor except for some finishing work--- Effect---No further proceedings were required in the matter in view of the statements of the official of the university---Case was disposed of accordingly. [2011 GBLR 558]

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Establishment of Dar-ul-Aman in Gilgit-Baltistan---Supreme Appellate Court, with reference to one of its earlier orders, directed the Registrar, Supreme Appellate Court to make contact with the Managing Director of Bait-ul-Maal, Islamabad for establishment of Dar-ul-Aman in Gilgit-Baltistan, if possible---Case was disposed of accordingly. [2011 GBLR (c) 555]

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Establishment of Family Courts and Rent Controller in Gilgit-Baltistan---Secretary Law had stated that due to legal complications, Family Courts had not so far been established in Gilgit-Baltistan---Validity---Establishment of separate Family Courts was not required rather existing civil courts could be notified as Family Courts and Rent Controller for the purposes of rent and family cases---Supreme Appellate Court directed that a notification should be issued, if not

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done earlier, by the competent authority for exercise of power of Family Courts and Rent Controller by the civil courts of Gilgit-Baltistan--- Case was disposed of accordingly. [2011 GBLR (b) 555]

----Art. 61---Suo motu jurisdiction of Supreme Appellate Court--Jail reforms in Gilgit-Baltistan---Inspection report of District and Sessions Judge, Skardu, stated that arrangement of food and other essential requirements of life in jail were satisfactory, but no proper medical and educational facilities were available to the prisoners; that the prisoners had no facility of free access to telephone in jail to contact their families in case of need, and that there was a shortage of jail staff--Supreme Appellate Court, in circumstances, gave directions that the Home Secretary and all concerned jail authorities would ensure that all basic and necessary facilities of life were provided to the prisoners including regular medical checkup and treatment; that the jail administration must make necessary arrangements for general and technical education of prisoners in all the jails of Gilgit-Baltistan; that the Inspector General of Police must pay occasional visits to different jails and ensure that all the prisoners were being provided basic facilities of life, including food, clothing, medical care and education; that the prisoners should also be provided the facility to use official telephone in the jail; that the Home Secretary should take necessary steps for transfer of convicts in serious cases out of Gilgit to avoid overcrowding in jail and might also arrange fool-proof security and checking of jail visitors; that in case of any indiscipline the Home Secretary should take action against the concerned jail official; that the District and Sessions Judge of each district would make inspection of jails of his district at least once a month or might depute any subordinate judicial officer to inspect the jail and issue necessary directions to the jail authorities in respect of affairs of the prisoners and also send a reference to the Inspector General of Police and Home Secretary for taking necessary administrative measures for removal of any problem; that the District and Sessions Judge might proceed against the jail administration or concerned Government authorities in case of failure by them to attend to a problem, and that the Jail Reforms Committee constituted by the Supreme Appellate Court should also be vigilant about the affairs of jails and should bring matters concerning jail reforms to the notice of the District and Sessions Judge of their respective districts for appropriate action in accordance with the law---Order accordingly. [2011 GBLR 552]

----Art. 61---Suo motu jurisdiction of Supreme Appellate Court--Matter concerning---Establishment of human rights wing in the Law Department---Secretary Law Department had stated that due to non-availability of funds, the process of establishment of human rights

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wing had not been initiated---Validity---No additional budget and staff was required to run the human rights wing and in any case after establishment of such a wing the Secretary Law might make a demand accordingly in the annual or supplementary budget and might also ask for special allocation for financial support to the victims of human rights violations---Secretary Law had given an undertaking to take necessary action for establishment of human rights wing in the Law Department with the approval of the competent authority without further loss of time and would also make a request to the concerned quarters for special allocation of funds for financial support for the victims of human rights violations---Case was disposed of accordingly. **[2011 GBLR (a) 555]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Matter concerning death of a boy who had drowned in river Gilgit---Supreme Appellate Court directed that the Chief Engineer WASA might constitute a committee consisting of an official from the concerned department and police, to complete the work of installation of barbed wire and sign boards at different places on both sides of river Gilgit; that the said committee would also arrange public awareness program through media for using protective measures, and that Secretaries of Finance and Planning and Development would extend their cooperation to the said committee, and Public Works Department in the completion of the project---Order accordingly. **[2011 GBLR (b) 536]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Matter concerning death of a child due to collapse of the school boundary wall---Complainant (father of the deceased-child) had made a claim for damages as his deceased-son died an unnatural death as a result of sudden fall of the school boundary wall--- Validity---Official of the Law department had stated that the substandard boundary wall of the school was constructed by the contractor on the instructions of the education department, for which the concerned Education department official as well as the contractor and the owner of the land were equally responsible---Such facts stated by the official of the Law department had been suppressed in the report submitted by the concerned engineer and Education department---Concerned officials of the Law and Education departments had suggested that a compensation of Rs. seven lac, was recoverable by the complainant, which would be paid to him within a period of three months---Supreme Appellate Court directed that subject to the determination of responsibility of the contractor and official of education department, the Secretary Education would recover the amount of compensation for payment to the complainant or in the alternative, the payment

would be made by the Education department, which would be recoverable from the concerned persons as arrears of land revenue; that the Secretary Education and Secretary Law would ensure that a contractor who failed to perform his part of the contract in accordance with the law and specification of work should be removed from the list of approved contractors of the department, and that the police would submit the challan in the criminal case in the matter in accordance With the law--- Complaint (application) was disposed of accordingly. **[2011 GBLR 544]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Matter concerning death of a child-patient at District Head Quarter Hospital due to non-availability of anti-tetanus vaccine--- Contentions of the hospital authorities were that the report of National Institute of Health, Islamabad had established that medicine for treatment of tetanus was not available in Gilgit; that there was no option for the doctors except to provide normal treatment to the child-patient, and that there would be no justification to put the hospital authorities under the burden of damages for negligence---Validity---Hospital staff despite having the knowledge that special treatment was not available, did not bother to refer the child-patient for treatment at Rawalpindi/Islamabad---Matter could not be ignored for the simple reason that special medicine was not available in the hospital and the death of the patient was an act of God---Record was not clear as to who was individually or collectively negligent in attending the child and providing, treatment and who was supposed to refer the patient to Rawalpindi/Islamabad for treatment---Supreme Appellate Court, in circumstances, directed the Chief Secretary to constitute an independent inquiry committee to hold an inquiry into the matter and said committee in the light of the report of the Federal Investigation Agency and orders of the court, would determine the question of negligence, and that the Chief-Secretary in the light of the report of the said inquiry committee would take appropriate action and also fix the amount of compensation payable---Case was disposed of accordingly. **[2011 GBLR 546]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Matter relating to “Konodass” water supply system---Report regarding the said water supply system showed that there was no proper system of supply of drinking water and further supply was made from the water tanks without sedimentation and chlorination of the water---Raw water was lifted from the river into the water tanks, which were open from all sides and were in dilapidated condition, full of dirt---Water storage in the tanks was not fit for human consumption---Concerned Chief Engineer and department officials had stated that although there



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was a large establishment of Water and Sanitation Agency (WASA) but approximately, one-third of the total strength of the employees was functional whereas the remaining employees were on payroll without any actual work, and that due to political interference no action could be taken against such employees---Supreme Appellate Court directed the Chief Engineer to provide a list of employees who were on payroll without any work with verification report of their assets to the Chief Secretary official for his information and appropriate action---Order accordingly. **[2011 GBLR (a) 536]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Problems faced by pensioners (retired government employees) in getting their pensions---Concerned Accounts Officer had stated that in pursuance of the direction of the Government, option had been sought from all the pensioners for availing the facility of payment of pension through the bank account in the schedule-banks nearest to their place of residence, and that on completion of the process of scrutiny of option, the information would be conveyed to the pensioners for credit of their pension and transfer in their bank account by the concerned bank on the first of each month---Supreme Appellate Court, in circumstances, gave directions that the Accountant General of Pakistan Revenues (AGPR), Gilgit-Baltistan, on the completion of the process of scrutiny, would take necessary action for credit of pension through the bank accounts in the concerned banks under intimation to the Registrar of the Supreme Appellate Court---Case was disposed of accordingly. **[2011 GBLR 559]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--Scheme for supply of clean drinking water at Sikandar Abad Nagar---Report of concerned XEN stated that original scheme was for supply of drinking and irrigation water, but supply of drinking water was subsequently excluded, and that there was a dispute between different groups in the area in respect of use of water of the stream (nallah) in the scheme---Finance Minister had stated that dispute between the residents of the area on the question of use of stream (nallah) water had already been settled but the concerned department for no good reason had been delaying the scheme on one pretext or another---Supreme Appellate Court, in circumstances, observed that further delay in the completion of scheme in question would not only deprive the people from their legitimate right of water but also might put the exchequer under extra burden, and that if the scheme was revised, it might cause great inconvenience to the people and also might not be executed within the allocated funds--- Supreme Appellate Court directed that the Secretary Works department would execute the existing scheme for supply of water for drinking and irrigation and if

need be, he might also approve additional-expenditure; that the Finance department would provide the funds accordingly on priority basis to complete the scheme in the financial year; that if the scheme was not completed, despite the release of funds, departmental action would be taken against the officials responsible for causing delay in the project, and that the XEN concerned should ensure that proper pipes should be used in the scheme for drinking water and in case of any defects in the pipes, the XEN and contractor both, would be responsible---Case was disposed of accordingly. [2011 GBLR 563]

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Shortage of electricity supply and load-shedding in Gilgit--- Chief Minister's inspection team, in pursuance of an earlier order of the Supreme Appellate Court, submitted an exhaustive report tracing out the reasons and cause of shortage of electricity and also suggested proposals, methods and recommendations to cover the shortage and reduce load-shedding---Supreme Appellate Court, in view of the said report, directed that the solutions and recommendations proposed in the report were made rule of the court and should be treated as part of the present order; that Water and Power department would take necessary steps for implementation of the recommendations provided in the report; that essential measures for execution of the order in respect of matters relating to the Government, should be taken by the Water and Power department on priority basis and matters which were beyond the authority of Government should be taken by the Water and Power Department through the Chief-Secretary, and that the Chief Secretary would ensure that the Water and Power department should take all possible measures to discharge its responsibility in respect of the matters within its domain without unnecessary delay---Order accordingly. [2011 GBLR 548]

---Arts. 61 & 1---Fatal Accidents Act (XIII of 1855), S. 1--- Constitution of Pakistan, Art. 9---Tort---Original jurisdiction of Supreme Appellate Court---Suo motu notice by Supreme Appellate Court of collapse of temporary wooden bridge installed at river Bara Pani, Deosai while a passenger Wagon crossing same fell into river resulting into death of three passengers and driver of wagon--- According to statements of official witnesses recorded by Assistant Registrar (Judicial), such fateful incident took place by the fault of Driver, when his wagon struck with side robes of bridge and fell into river--- Official witnesses stated that iron robes used in installation of bridge were old; that bridge had collapsed due to breakage of iron robes; and that after installation of bridge without technical checkup from engineering point of view, same was declared fit for all types of traffic by passing test vehicles hereon---According to statement of a

private witness, who was following wagon at relevant time that such incident was result if breakage of iron robes of bridge; that there was no chowkidar on duty at bridge; and that no rescue efforts could be made due to darkness of night---According to statement of another private witness (passenger of wagon) that when driver topped all other passengers except one woman and her two children, proceeded to cross bridge, when wagon reached in middle of bridge, then its iron robes suddenly loosed and wagon fell into river---Such private witnesses were most natural witness of incident as one of them was a passenger of wagon and other was following wagon in his car---Installation and maintenance of bridge in summer and its dismantling in winter was responsibility of Public Work Department---Official witnesses by stating that old and damaged iron robes were used in bridge had impliedly admitted that old and damaged iron robes could not sustain heavy load of traffic and use of old iron robes in installation of bridge being certainly dangerous by itself was an act of gross negligence of Department---Delay in construction of approved RCC bridge at river Bara Pani despite repeated directions of Supreme Appellate Court for its construction on priority basis, carelessness in use of damaged iron robes and ignorance of proper maintenance of bridge by itself was sufficient evidence of gross negligence to hold department responsible for such incident---Such incident was not a natural calamity or an act of God, rather same was result of visible negligence of officials of department, who being responsible for maintenance of bridge had failed to discharge their legal duty to take proper care in its installation---Department had not taken any precautionary measures to meet an unforeseen incident or emergent situation by having rescue arrangement at bridge---Proper maintenance of bridge to keep same in good serviceable condition with proper safety measure was duty of Department, which had failed to discharge its duty---Victims of such incident were travelling in wagon with expectation of safe journey and could not visualize situation leading to fateful incident---Victim of road accident or such other fatal accident would be entitled to payment of compensation under Fatal Accidents Act, 1855---Present case would not fall under Act, 1855, rather same was a case of negligence under general law of tort, thus, department would be liable to pay damages---Supreme Appellate Court directed department to pay within three months Rs. 5 lac to legal heirs of each victim on basis of succession certificate and proper verification of their antecedents, and in case of its failure to do so, such amount of compensation would be recoverable as arrears of land revenue and in addition thereto concerned officials might face other legal consequences---Supreme Appellate Court further clarified that such order would not debar legal heirs of such victims to take civil

or criminal action in the matter, and in case they availed civil remedy for damages, then such awarded amount of compensation would be treated part of damages to be calculated by Concerned forum. [2011 GBLR (a) 252]

---Arts. 61 & 11---Press, Newspapers, News Agencies and Books Registration Ordinance (XCVIII of 2002), Preamble---Defamation Ordinance (LVI of 2002), Preamble---Press Council of Pakistan Ordinance (XCVII of 2002), Fourth Sched. (Code of Conduct)---Penal Code (XLV of 1860), Ss. 499 & 500--- Petition under Art. 61, Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 by President, Press Club, Gilgit seeking declaration to the effect that subject to reasonable restrictions imposed by law in public interest and the glory of Islam, the right of freedom of press guaranteed under Article 11 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 read with Arts. 19 and 19-A of Constitution of Pakistan could not be directly or indirectly curtailed by the State authorities through legislative measure or executive order and punitive action under Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 read with Defamation Ordinance, 2002 or any other law was in conflict to the right of freedom of press; and further sought implementation of Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 and Defamation Ordinance, 2002 in Gilgit-Baltistan in letter and spirit---Press Club Gilgit had invoked the jurisdiction of Supreme Appellate Court Gilgit-Baltistan under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 for examination of the vires of Defamation Ordinance, 2002 and Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, in the light of provision of Article 11 of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 and Supreme Appellate Court, in exercise of the power of judicial review under the said Article may examine the vires of laws applicable in Gilgit-Baltistan in the same manner as the Supreme Court of Pakistan exercises power under Article 184(3) of the Constitution of Pakistan and may also go into all questions of law and facts in a matter relating to enforcement of any of the fundamental rights involving an issue of public importance---Supreme Appellate Court declared and directed that subject to the reasonable restrictions imposed by law, the right of freedom of speech, expression, the right of free press and publication and of information was an absolute right under the Constitution and law---Subject to the provisions of sections 499 and 500, P.P.C., the special statutes of Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 and Defamation Ordinance, 2002, had overriding effect to the general law in respect of right of press and

remedy for criminal action against the press and said special statutes by reason of prohibition contained therein were not oppressive to the right of free press and also did not curtail the remedy for civil suit for libel defamation, therefore, the courts and press must strictly follow the said special statutes in letter and spirit in Gilgit-Baltistan---Supreme Appellate Court, Gilgit-Baltistan in exercise of its power of judicial review, could examine the vires of any law enforced in Gilgit-Baltistan and may also declare an administrative action taken in violation of the fundamental or legal rights of the people of Gilgit-Baltistan or an action against the public interest as illegal---Courts in Gilgit-Baltistan had legal obligation to strictly follow the Defamation Ordinance, 2002 in the cases of libel defamation for criminal action against the press and must be vigilant to protect the right of expression, right of press and publication and of information as of legal duty and must not allow abuse of process of law, by entertaining false complaints for criminal action and frivolous civil suits for damages--- Executive and judicial authorities in Gilgit-Baltistan had legal duty to give proper legal effect to the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 to protect the right of press in accordance with the spirit of law---Right of freedom of speech, expression and free press was subject to the right of honour, dignity and reputation which was as valuable as right of free Press and had equal protection of law, therefore, subject to all just exceptions, the victim of defamatory and malicious publication or for defamation by libel or slander, may choose his remedy for legal action in accordance with law--- Press as a source of information had equal protection of law without any distinction and subject to the principle of equality and Code of Conduct mentioned in 4th Schedule of Press Council of Pakistan Ordinance, 2002 the Press people were bound to exercise the right of press accordingly---Press Club Gilgit as well as all its members, in addition also must follow the domestic Code of Conduct brought on record on behalf of Press Club, to the extent it was not inconsistent to any general or special law and Code of Conduct published under Press Council of Pakistan Ordinance, 2002. **[2011 GBLR (a) 121]**

---Arts. 61 & 60---Power of judicial review by the courts---Nature and scope. **[2011 GBLR (i)1]**

---Arts. 61 & 60---Superior Judiciary in Gilgit-Baltistan having been established under the Constitutional document may also have the constitutional recognition in Pakistan and Gilgit-Baltistan---Superior legislative courts in Gilgit-Baltistan are not inferior to the Constitutional Courts in Pakistan and are also not subject to the jurisdiction of any court of Pakistan---Supreme Appellate Court is

final court in Gilgit-Baltistan and had absolute jurisdiction in all judicial matters under Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 in the same manner as Supreme Court of Pakistan has the jurisdiction and power under the Constitution of Pakistan. **[2011 GBLR (f) 1]**

---Arts. 61 & 71---Constitutional petition before the Supreme Appellate Court---Maintainability---Civil service---Withholding of salaries---Writ petition was filed before the Chief Court on behalf of work charge employees in representative capacity and present employees (petitioners) although were not direct party in the writ petition by name but they were being represented, therefore, their contention was that they had the locus standi to challenge the order of the Chief Court in their own right before the Supreme Appellate Court---Validity---Employees (petitioners) instead of agitating the matter before the Supreme Appellate Court through present petition should at the first instance invoke the jurisdiction of the proper court--  
-Employees (petitioners) were admittedly not a party in the writ petition before the Chief Court and the order passed therein being an order in personam would not be challengeable before the Supreme Appellate Court by a person who was not a party in the writ before the Chief Court---Constitutional petition of said employees was not maintainable in circumstances and was accordingly dismissed. **[2011 GBLR 568]**

---Art. 61(1)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 17. **[2011 GBLR (a) 451]**

---Art. 61---Judicial review---Public auction---Mere technicalities or minor procedural irregularities in the proceedings of bidding Committee, the Procurement Agency and also the order of departmental Secretary may not directly or indirectly effect the validity of the order calling for interference of Supreme Appellate Court. **[2010 GBLR (k) 467]**

---Art. 61---Judicial review---Scope---Administrative decision/action---Reasonableness, doctrine of---Meaning and Scope-Reasonableness of an action is the degree of care taken in dealing with a matter involving rights of others which are taken by a person of ordinary prudence in the use of his property---Rule with regard to exercise of power of judicial review in respect of administrative decision and action is that court should not substitute its judgment and decision for the order and action of a public authority rather the function of the court is to determine the reasonableness of the order by considering the facts and circumstances and the evidence in the

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manner in which a reasonable man would determine reasonableness in such matter---Reasonableness of an order---Test. [2010 GBLR (n) 467]

---Art. 61---Judicial review---Scope---Contract carrying element of public interest is open to judicial review. [2010 GBLR (s) 467]

---Art. 61---Judicial review---Scope---Public auction---Mala fide---Mala fide, unfairness, unjust, unreasonableness or bias and favouritism or improper exercise of the discretion in the public auctions and contracts by the public authorities or such other matters of public importance are valid and legal reasons for interference of courts but if no such reason is found in a transaction, the same would be deemed to have been conducted in quite transparent manner and no presumption to the contrary would be raised on the basis of mere assertion---Supreme Appellate Court, in exercise of power of judicial review is not supposed to import new facts or to allow to plead new facts which are not part of record to raise the presumption of mala fide---Courts are not supposed to frequently interfere in the administrative decisions unless there is a valid reason to show improper or illegal exercise of jurisdiction by an administrative authority. [2010 GBLR (m) 467]

---Art. 61---Original jurisdiction of Supreme Appellate Court---Suo motu powers, exercise of---Conditions of jails---Rights of prisoners---Reports of District and Sessions Judges showed that Jail Administration had no concept of right of prisoners as human beings and controlling authorities in government were also least bothered about problems of prisoners---Non-observance of instructions contained in Jail Manual and Prison Rules, in respect of right and facilities to be provided to prisoners was not only violation of human rights but also was a grave legal and constitutional violation---Prisoners were human beings and subject to law and were entitled to fair and equal treatment in respect of their rights as citizens under the law and Constitution---Supreme Appellate Court, for improvement of poof condition and reformation of Jails issued directions and asked the Home Secretary and Chief Secretary for taking action on Jail reformation on long and short term basis---Supreme Appellate Court also directed District and Sessions Judges and Jail Reforms Committees for implementation of the directions so issued and to submit their reports. [2010 GBLR 50]

---Art. 61---Original jurisdiction of Supreme Appellate Court---Suo motu powers, exercise of---Non-payment of salaries--- Supreme Appellate Court took suo motu notice of news item published in newspaper that hundreds of employees with government department

on work charge basis had not been given their salaries---Supreme Appellate Court appointed a Judicial Officer to hold inquiry into the matter and submit his report---Authorities contended that appointments of employees in question were made in violation of rules/regulations by the then Superintending Engineer and the employees did not render any service to department to claim salaries---According to report prepared by inquiry officer, except a few, rest all employees had been working since their appointment---Effect---Superintending Engineer was competent to make appointment of work charge employees, therefore, notwithstanding the objection that appointments were made in violation of rules / regulations, the work charge employees in their own right were entitled to payment of salaries for services rendered by them to department---Authorities concerned instead of proceeding against officials who had committed alleged irregularity in appointments withheld salaries of employees depriving them from their legal right---Withholding payment of legal remuneration of a person was an actionable act in law and aggrieved person could avail legal remedy for recovery of his claim as of right---Inquiry in the matter was held by Judicial Officer and Supreme Appellate Court declined to take any exception to the conclusion drawn therein---Competent Authority could proceed against officers/officials who without any legal justification withheld salaries of work charge employees---Supreme Appellate Court directed that department, without disturbing appointment of work charge employees, might proceed for their regularization and would make payment of their unpaid salaries in terms of inquiry report---Suo motu case was disposed of accordingly. **[2010 GBLR 155]**

---Art. 61---Original jurisdiction of Supreme Appellate Court---Scope---Retirement of employees with full benefits---Individual employees of company who were not satisfied with the decision of their retirement could not maintain a petition under S.61 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 for redressal of their grievance---If such employees were not satisfied with the order of their retirement they could avail appropriate remedy before the proper forum. **[2010 GBLR 255]**

---Art. 61---Power of judicial review by Supreme Appellate Court---Scope---Case of public or national importance--- Enforcement of fundamental Rights---Locus standi, principle of---Applicability---Scope---Held, in case of an adverse order even a person who is not party in the proceedings can invoke jurisdiction of judicial review of Supreme Appellate Court and Court in exercise of extraordinary power of judicial review under Art. 61 of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 may not give any



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importance to the question of locus standi in such cases of public and national importance or involving question relating to the enforcement of Fundamental Rights of the people. **[2010 GBLR (b) 467]**

----Art. 61---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Part II. **[2010 GBLR (o) 467]**

----Art. 61---Shortage of Electricity---Application against--- Original jurisdiction of Supreme Appellate Court---Scope---Chief Engineer (water and power) had reported that six new Hydro Power Projects were under construction and on their completion electric shortage problem would be solved---Report had further revealed that load shedding had since been eliminated in Gilgit city and in the surroundings and that uninterrupted electricity was being supplied, for the time being the diesel generators need not to be operated and that amount collected for the purpose of generator fuel would be utilized during the next water season to minimize the loadshedding in Gilgit and suburbs---Position explained in the report had been confirmed by the Chief Engineer in person in the court---Further proceedings in the matter, were not required. **[2010 GBLR 270]**

----Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Complaint of the public in general published in the newspapers that because of non-availability of clean drinking water in Gilgit city, majority of the population was victim of various serious diseases--- Supreme Appellate Court in exercise of powers under Art. 61 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, took cognizance of the matter, issued notices to the concerned authorities and passed orders on various dates during the proceedings--Clean drinking water was a basic necessity of life which was a fundamental right of the people and government was obliged to provide clean drinking water to the citizens as a legal duty---Despite limited sources and financial constraints, Government of Gilgit-Baltistan had approved the scheme for supply of clean drinking water in the welfare of the people in pursuance of their fundamental rights guaranteed under Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 read with Universal Declaration of Human Rights of United Nations--- Issue regarding the defect in the pipelines of the water supply and its replacement was also considered and direction was given to authorities concerned for technical inspection of the site and the team deputed by the authorities for physical inspection, had submitted its report---In the light of said report, no further proceedings being required in the matter, case was closed--- Case having born fruit, same stood disposed of accordingly. **[2010 GBLR 390]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Construction of Naltar road---Advocate General had submitted that reconstruction of the damaged road would only be possible in the next season; as the matter was still under consideration with the concerned authorities; and even if decision was taken at an early date, the work could not be carried out in winter season---Advocate General had further submitted that since remaining portion of the road was already complete in all respects, further proceedings in the case could be closed for the time being---Further proceedings for the time being, were closed by the Supreme Appellate Court and matter was disposed of accordingly. **[2010 GBLR 419]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Counsel for accused had stated that daughter of complainant with her consent performed Nikah with accused, whereupon her father got a criminal case of her abduction registered against the accused--- Accused had filed suit for conjugal rights which was pending before Family Court at place 'G' in which status quo order was passed by the court--- Daughter of the complainant moved an application for transfer of the suit for conjugal rights from the court at 'G' to any other court of competent jurisdiction---Counsel for accused had conceded to the request of complainant for transfer of suit--- Held, it was proper to transfer criminal case filed against accused pending in the court at 'G' to the court of another place "Gt" and family suit pending before Family Court at 'G' to the Family Court at 'Gt', with direction that proceedings in Family suit would remain stayed till final disposal of the criminal case. **[2010 GBLR 430(2)]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Death in Police custody---Original jurisdiction of Supreme Appellate Court---Supreme Appellate Court, without commenting on the merits of the case, observed that deceased having died in Police custody, notwithstanding the ultimate result of the case, Police could settle the matter with legal heirs of deceased to their satisfaction; and instead of seeking any favourable order from the court, could enter into compromise with them by paying compensation, as was permissible under the law, before the Sessions Judge concerned---No further order was passed and case was not kept pending---Matter was disposed of with direction that local Police, on receipt of investigation report, would submit final report accordingly before the court concerned for appropriate action in accordance with law. **[2010 GBLR 427]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Dilapidated condition of roads/cleanliness in Gilgit city---General complaints of undue favour in public projects and poor performance of

departments which were responsible to maintain water supply schemes and public roads etc. were received---Government incurred huge expenditure for the improvement of the roads and water supply scheme, but due to the inefficiency of concerned departments, no visible improvement was made in the projects of public utility; as a result thereof, public money and time, without any substantial work, useful to a common person was wasted---Function of Supreme Appellate Court was not to control the administrative affairs of the departments of Government---Court being custodian of legal rights of the people, could interfere in the matters which involved public rights--Keeping in view the poor performance of the departments, Supreme Appellate Court observed that the Chief Secretary, while taking notice of the situation, could propose to the higher authorities for the establishment of an independent development authority, in public interest---Order accordingly. [2010 GBLR 420]

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Independence of judiciary---Concept---Upgradation of judicial officers of the subordinate judiciary---Petition arose out of the representation filed by the Judicial Officers of the Gilgit-Baltistan subordinate judiciary before the Chief Court Gilgit-Baltistan for an appropriate order for their upgradation in the manner in which the judicial officers of subordinate judiciary in the Provinces of Pakistan and in Azad Jammu and Kashmir had been upgraded---Chief Court forwarded their representation to the KA&NA Division, (KA&GB) Division) Government of Pakistan for appropriate action and on failure to get any decision for a considerable long time, they sought appropriate directions from Supreme Appellate Court by sending a copy of their representation which was treated as an application under Article 61 of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009---District & Sessions Judge Gilgit had submitted the representation on behalf of whole Judicial Officers of Gilgit-Baltistan subordinate Judiciary seeking upgradation of the posts of judicial officers in Gilgit-Baltistan judiciary in the manner in which such posts had been upgraded in the four provinces of Pakistan and Azad Jammu & Kashmir, with effect from 1st January, 2008---Held, Gilgit-Baltistan, was part of Pakistan and by following Judicial Policy enforced in Pakistan, judiciary of Gilgit-Baltistan would certainly be benefited and the disparity in the standard of Judicial Service of Gilgit-Baltistan would certainly be removed which would advance the cause of independent judiciary---Concept of independence of judiciary was not confined only to the person of judicial officers, rather judicial independence mostly depended on administrative and financial independence-interference of executive in the affairs of judiciary with

respect to the prospect of their service and terms and conditions of service directly or indirectly could affect the independence of judiciary---Better service status with better terms and conditions, could ensure the independence of judicial officer to the expectation of a common man---Under Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, the superior Judiciary of Gilgit-Baltistan had been placed at par with the superior Judiciary of Pakistan and on the basis of same principle, the subordinate judiciary in Gilgit-Baltistan must be treated at par with that of the subordinate Judiciary in the Provinces of Pakistan and it would be fair to follow the Policy of the High Courts in the Provinces of Pakistan regarding upgradation of judicial officers in the subordinate judiciary--- With a view to remove the disparity in the status and standard of Judicial Service in Gilgit-Baltistan and to bring at par with the judicial service in the Provinces of Pakistan in the light of principle of fair and equal treatment, Supreme Appellate Court held that judicial officers of subordinate judiciary of Gilgit-Baltistan, would be entitled to the benefit of upgradation--- Chief Court Gilgit-Baltistan, in exercise of powers conferred to it under Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009, would initiate the process of upgradation of judicial officers of the subordinate judiciary in the same manner as had been done by the High Courts in the Provinces of Pakistan within specified period. **[2010 GBLR (b) 160]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Matter arose out of application moved by Member Northern Area” Legislative Assembly wherein it was urged that project of “Sadpara Dam” was approved with diversion of “Shatong Nullah” in the Dam, but the authorities excluded the diversion of Nullah to the Dam--- Applicant had requested that direction be given for completion of “Sadpara Dam” with diversion of “Shatong Nullah” as per original plan of the project---Matter being of national importance which related to the enforcement of fundamental rights of the people of Gilgit-Baltistan, Supreme Appellate Court while taking cognizance of the matter, in exercise of its original jurisdiction, issued notice to the concerned authorities---Subject to the national and public interest, the diversion of “Shatong Nullah” in the Dam as per original plan of “Sadpara Dam” would not be deferred for indefinite period or changed permanently without the approval of the Legislative Assembly and the counsel of Gilgit-Baltistan---Sadpara Dam was a project of national interest and permanent exclusion of diversion of Shantong Nullah, Dam could on one hand result in wastage of water of Nullah; and on the other hand due to shortage of water, the Dam ultimately could have no useful purpose---To avoid national loss, Supreme Appellate

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Court directed that Authorities, must ensure diversion of Shatong Nullah as per original scheme on the expiry of the period for which it had been suspended. **[2010 GBLR 379]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Matter related to public project of construction of Karakurum International University Road---Notices were issued to the Superintending Engineer and Vice Chancellor of the University--- Government functionary and the contractor appeared and explained the position for delay in construction of the road which was shortage of funds---Contractor despite permission from the authorities for construction of road had failed to fulfil his commitment---Matter remained pending without any progress---Supreme Appellate Court had directed the department not to make payment to the contractor--- Finally, because of intervention of the court, road work had been completed within the contract period without extra burden on the exchequer---Efforts made by the department for completion of the project and cooperation of contractor without claiming extra charges was appreciated by the court--- Proceedings in suo motu case had already been closed and same was accordingly disposed of. **[2010 GBLR 364]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Provision of basic facilities in Skardu---Additional Deputy Commissioner concerned, Superintending Engineer and XEN, had stated that the position of the projects in question was satisfactory and Commissioner was vigilant for the continuous process of maintaining the projects Supreme Appellate Court disposed of the matter accordingly. **[2010 GBLR 416]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Public interest---On basis of Editorial published in a Daily newspaper regarding deteriorating condition of District Hospital and shortage of Doctors, Supreme Appellate Court took suo motu cognizance in the matter in public interest--- Matter remained under consideration for a considerable time and ultimately Advocate General, submitted a report in the court on the subject and in consequence thereto the court proceeded to pass orders to the effect; that acting Director Health Services would submit a detailed report showing the total number of Doctors of prolong absence from duty without permission; and the action taken against them including the recovery of financial loss caused to the Government in form of salaries and allowances received by them during the period of absence---Secretary Health would expedite the disciplinary proceedings of taking appropriate departmental action in the matter in accordance with law and would

submit compliance report to the Registrar of Supreme Appellate Court. **[2010 GBLR 436]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Shifting of stone crushing and stone cutting machine in Gilgit--- Counsel for the contractor submitted that the contractor could be given special permission to continue the stone crushing machine and stone cutting machine installed at the site of Secretariat building and River View Road, which was installed only for the Government project without any other commercial activity---Advocate General without conceding the legal position had indirectly supported counsel for the contractor--- Comments submitted by Director Environment department would show that conditional 'No objection certificate' to the extent of cutting machine installed at River View Road could be given, subject to the giving of undertaking by the contractor for fulfilment of the conditions namely that project would not be used for any other purpose and that cutting machine would immediately be removed after completion of the work---Counsel for the contractor had given undertaking that the contractor would not operate unit without fulfilling the condition imposed by the Environment Department--- Subject to all just exceptions and Environment Law, the contractor could on fulfilment of the condition, operate the unit of cutting machine at River View Road---When it was pointed out that stone crushing machine within prohibited zone could not be allowed to operate on any condition as no special favour could be extended to the contractor for installation of stone crushing machine in prohibited zone, the contractor without further agitating the matter, had requested for time to shift the stone crushing machine outside the prohibited area---Contractor was allowed by Supreme Appellate Court two weeks time for shifting of stone crushing machine to a place outside the prohibited zone--- Order accordingly. **[2010 GBLR 362]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court--- Supply of electricity at Skardu---Deputy Secretary Water and Power stated that total consumption of electricity in Skardu City was 13 MW, whereas 11 MW electricity was already in production and shortage of 2 MW was not material to create electricity problem in the city and that a power project of the capacity of 26 MW would be constructed on release of funds---Government functionary, in view of said position, had stated that in case of shortage of electricity, the alternate arrangement of diesel generators already available with the department in Skardu, subject to availability of funds, could be operated---Further proceedings in the matter, in circumstances, were closed and case was disposed of accordingly. **[2010 GBLR 418]**

---Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Court took suo motu notice on an application moved by teaching staff of a School---On the direction of Chief Judge a report was called from concerned authorities---Schools in question were established by communities with the aid of Government under social action programme, but the communities in departure to the Scheme, appointed more than one teacher of their choice in one school; as a result thereof, due to shortage of funds the teachers could not get their remuneration in terms of the programme---Secretary Education Department had stated that due to financial constraint of the Government, the Chairman of the National Education Foundation, decided to take over the management of schools, and consequently an agreement was signed between Federal Minister for Education and Governor Gilgit-Baltistan for taking over the management of school by National Education Foundation for financial and logistic Support---Secretary Education Department with co-ordination of Director had constituted an Implementation Committee to give effect to said agreement; and except minor matters, the agreement had been implemented in letter and spirit---In the light of the report and joint statement made by Secretary Education and Acting Director, National Education Foundation, matter was disposed of vide order which could be treated as part of the judgment. **[2010 GBLR 450]**

---Art. 61--- Suo motu jurisdiction of Supreme Appellate Court--- Up-gradation of Judicial Officers/Staff and Allowances---Suo motu case to the extent of matter in respect of upgradation of Judicial Officers of the Subordinate Judiciary had already been disposed of, whereas, the question relating to the status of three Districts, as Sessions Divisions, was kept pending for the comments of Chief Court and Law and Prosecution Department, which had been submitted---Secretary, Law and Prosecution Department, had stated that Government had never recommended down-gradation of Sessions Divisions and the change of Sessions Divisions with Additional District and Sessions Judges in the three Districts, was in violation of law--- Registrar, Chief Court also took the similar view of the matter--- Law and Prosecution Department, on its report and Registrar, Chief Court in the comments had conceded that upgradation of the said Districts as Sessions Divisions, was essential for the better administration of justice--- Supreme Appellate Court directed that competent Authority would issue notification of up-gradation of the three Districts, as Sessions Divisions, with immediate effect. **[2010 GBLR 432]**

---Art. 61(1)---Suo motu jurisdiction of Supreme Appellate Court--- Complaint against Registrar, Gilgit-Baltistan Chief Court (“the Registrar”)---Failure to properly communicate directions of the Chief

Court---Good faith---Secretary to the Registrar mis-communicated certain directions of the Chief Court to the Assistant Registrar---Supreme Appellate Court passed interim order to withhold administrative and judicial powers of the Registrar and also his powers as District and Sessions Judge---Registrar explained that the mis-communication of the directions of the Chief Court by his Secretary, to the Assistant Registrar, was due to weak signals and bad telecommunication system; that the directions were misunderstood and incorrectly conveyed to him which caused inconvenience and constrained the Supreme Appellate Court to take cognizance; that he regretted his inadvertent act in carrying out execution of the orders of the Chief Court, which were wrongly passed on to him due to misunderstanding---Held, that the complainant/petitioner was satisfied with the explanation provided by the Registrar, who had acted innocently in good faith---Supreme Appellate Court recalled the interim order passed against the Registrar and observed that the Chief Court may, however, call an explanation, if so required, from the responsible officers in creating misunderstandings and then mis-communicating directions to the Registrar---Suo motu case was disposed of accordingly. **[2016 GBLR 13]**

---Art. 61(1)---Suo motu jurisdiction of Supreme Appellate Court---Establishment of the Regional Office of the Directorate General Intelligence and Investigation-FBR at Gilgit-Baltistan--- Supreme Appellate Court appreciated the steps taken by the Federal Board of Revenue in establishing Regional Office of the Directorate General Intelligence and Investigation-FBR at Gilgit-Baltistan, but framed the questions that under what authority and whose orders the Customs check post/station at “Sost” was established and functioning; that under what authority and whose orders the Model Customs Collector at Gilgit was functioning, and that under what authority and whose orders the then Central Board of Revenue and now Federal Board of Revenue (FBR) was functioning in Gilgit-Baltistan---Supreme Appellate Court directed that the reply/answer to the framed questions should be submitted to the Registrar of the Court within a period of three (03) months, and that the Registrar must be kept informed of developments regarding establishment of Regional Office of the Directorate General, Intelligence and Investigation-FBR in Gilgit-Baltistan---Suo motu case was disposed off accordingly. **[2016 GBLR 8]**

---Art. 61(1)---Suo motu jurisdiction of Supreme Appellate Court---Islamic law---Complaint filed by wife in respect of her insane husband---Wife complained that she had been severely tortured and beaten by her in-laws and thrown out from the house of her insane



husband to deprive her from his property; that the alleged divorce given by her husband was not recognized as he was insane, and that she was not receiving any maintenance allowance---Held, that the Holy Quran clearly provided that divorce was not acceptable if the person was insane---Supreme Appellate Court directed that the complainant's father-in-law and his three sons should protect the complainant's insane-husband and take him to any psychiatrist for his treatment; that the custodian of the family (complainant's father-in-law) was alive and he was bound to take care and protect the-rights of the family of his insane son, without harming his legal heirs and to treat them properly as per Islamic law and tradition; that the complainant should remain loyal to her insane husband and respect the laws of the area; that she should not pay visit to irrelevant individuals except her real brother in times of any happiness or sorrow, and that the complainant should take care of her ailing and insane husband without any complaint---Suo motu case was disposed of accordingly. **[2016 GBLR 19]**

---Arts. 61 & 60---Suo motu jurisdiction of Supreme Appellate Court---Murder of under-trial prisoner in Chief Court premises opposite the Supreme Appellate Court---Home Secretary stated that courts were located in populated area; and that security arrangement of the Judges, Lawyers and Public litigants, was not satisfactory and that location of Special Court (Anti-Terrorism) adjacent to the Supreme Appellate Court and near the Chief Court was security risk; and even otherwise the present location of the Special Court was not proper---Chief Secretary had undertaken to shift the Special Court to any other suitable place, within a period of one month---Similar incident of firing outside the premises of Chief Court and Supreme Appellate Court had taken place and Chief Secretary was directed to shift Special Court (Anti-Terrorism) to some other place---Such incident was an alarming situation and no exception could be taken in the matter of security of the courts---Home Secretary would ensure proper security of court premises and would also shift Special Court to any other place, without wasting any time. **[2010 GBLR 414]**

---Arts. 61 & 60(13)---Northern Areas Governance Order, 1994, Art. 27---Constitution of Pakistan (1973), Art. 184(3)---Filing of direct constitutional petition before superior courts---Locus standi---Alternate remedy, availability of---Such petition with reference to enforcement of fundamental rights of public importance guaranteed under Constitution or law could be brought by any person and question of locus standi of a person, whether he was directly aggrieved or not would be of no significance---When question of public importance relating to enforcement of fundamental rights was

involved in such petition, then Supreme Appellate Court notwithstanding availability of alternate remedy under law could take cognizance of matter on such petition moved by an individual or by an association of representative capacity---Principles. **[2010 GBLR (f) 1]**

---Arts. 61, 60(13), 69 & 71--- Northern Areas Governance Order, 1994, Arts. 19-A & 27---Constitution of Pakistan (1973), Art. 184(3), Part II, Chap. 1 (Arts. 8 to 28)---Original jurisdiction of superior courts in Gilgit Baltistan---Scope---such jurisdiction would be exercised for enforcement of fundamental rights in matters involving question of public importance---Any rigid interpretation in respect of exercise of such powers by superior courts i.e. Chief Court and Supreme Appellate Court of Gilgit Baltistan for enforcement of fundamental rights would be against concept and spirit of rights conferred by Art. 19-A of Northern Areas Governance Order, 1994 read with Ch. I, Part-II of Constitution of Pakistan---Principles. **[2010 GBLR (d) 1]**

---Arts. 61 & 71---Writ jurisdiction, an equitable and discretionary jurisdiction---Public auctions and contracts--- Administrative discretion---Interference by superior courts---Scope and extent. **[2010 GBLR (q) 467]**

---Art. 63-A---See Criminal Procedure Code (V of 1898), S. 497(5). **[2010 GBLR 430(1)]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 1980, O. XXVI, R. 1--- Civil Procedure Code (V of 1908), O. XLVII, R. 1--- Review of judgment of Supreme Appellate Court---Error having material effect---Supreme Appellate Court set aside the order passed by the courts below and directed Trial Court to decide application for setting aside ex parte decree afresh but in judgment under review it was mentioned that ex parte decree had been set aside---Validity---Error pointed out in the judgment was of substantial nature and without its correction remand order would be of no consequence--- Supreme Appellate Court directed not to read the words ‘set aside the decree’ as part of judgment under review, which was modified accordingly---Petition was allowed. **[2010 GBLR 147]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. XXVI, R. 1---Review of Supreme Appellate Court judgment--- Fresh evidence---Authorities produced a letter to support fixing of royalty and other surcharges---Validity---Such letter could neither be treated as rule nor it was brought in evidence on record at any stage and surfaced for the first time in review petition, which could not be considered as part of record---Such letter produced by authorities had no force of law as to be given effect---Authorities failed to point out

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any error in the judgment for interference in review jurisdiction---  
Petition was dismissed. **[2010 GBLR 32]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 1980, R. XXVII---Civil Procedure Code (V of 1908), S.114 & O. XLVII, R. 1---Review of Supreme Appellate Court judgment--Petitioners had sought review of the judgment on the ground that main appeal and additional issues framed in appeal were out of the pleadings of the parties and appeal was time-barred--- Question of limitation was not raised by the petitioners in appeal at any stage---Appeal was barred by time and the point having not been taken earlier, would be deemed to have been waived; and could not be allowed to be raised in review petition---Contentions on the merits of the additional issues requiring determination by the Trial Court, could be taken before the Trial Court---Order accordingly. **[2010 GBLR 413]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. XXXI---Civil Procedure Code (V of 1908), S.114 & O. XLVII, R. 1---Review petition---New ground could not be allowed to be taken in review petition on the basis of fact which was not brought before the court at proper stage. **[2010 GBLR (b) 424]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. XXXIII---Review of Supreme Appellate Court judgment---No ambiguity was found in the order wherein main judgment had been maintained with direction that the case of the petitioners in review petitions would be placed before Selection Board of the university--- Applicants in the review petition were not required to appear before the Board---Order accordingly. **[2010 GBLR 417]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. XXVII---Civil Procedure Code (V of 1908), S.114 & O. XLVII, R. 1---Review of Supreme Appellate Court judgment-- Petitioner had sought review of judgment, whereby court while maintaining the judgment of Chief Court had dismissed petition for leave to appeal--- Points raised by the counsel for the petitioner had already been discussed and dilated upon in the impugned judgment in a comprehensive manner---Counsel for the petitioner could not point out any mistake or error on the face of record for review of the impugned judgment---Petition for review was dismissed. **[2010 GBLR 325]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. XXVII---Review of Supreme Appellate Court Judgment--- Principles of natural justice---Fair treatment--- Dispute was with regard to selection of candidates against vacancies in Karakorum International University---Validity--- Rule of fair treatment and

natural justice would demand that candidates who qualified the interview on the basis of 40% aggregate Marks had acquired a legitimate right of selection on their own merits and should have been dealt with accordingly--- Similarly the candidates who were appointed on contract basis in prescribed manner, would be entitled to be considered for regular appointment in their own right on the basis of their contract service---Supreme Appellate Court directed the Registrar of the University to place the cases of petitioners before Selection Board for final selection on merits and in the light of recommendations of Selection Board the competent authority would make appointment accordingly---Supreme Appellate Court modified the judgment passed by Chief Court---Review petition was disposed of. **[2010 GBLR 291]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. XXVII---Review of Supreme Appellate Court judgment---Statement of account earlier submitted by respondents and the Auditor-General were not correctly prepared and the arrears of pay and allowances actually payable to the petitioner were wrongly calculated---Deputy Auditor-General rectifying the error of miscalculation of amount of claim in the previous statements of account had submitted report on the basis of last pay drawn by the petitioner in the service---Said report and statement of account was treated as part of record and judgment under review was modified accordingly---Petitioner would be paid arrears of his pay and allowance, according to modified report---Supreme Appellate Court directed that Chief Secretary would ensure that payment of claim of the petitioner would be made within a month. **[2010 GBLR 341]**

---Art. 65---Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. V, R.3---Review petition---Petitioners had challenged the interim order passed by the Division Bench of Supreme Appellate Court---Registrar of Supreme Appellate Court had taken legal objections and directed to remove objections within three days---Petitioners filed appeal against legal objections raised by the Registrar, but same was not maintainable; and was liable to be rejected on the grounds that the contempt petition which was sub judice, was a matter between the court and contemnor and third party would not interfere with contempt petition; that impugned order was purely interlocutory in nature and not the final one; that review petition filed by the petitioners against the order, was not competent until and unless it could obtain finality and affect the precious rights of any aggrieved party and that petitioners were not the party in the contempt proceedings before the court; and in circumstances were not competent to file petition---Supreme Appellate Court observed that if they were aggrieved from

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the order passed by the competent authority, they could avail remedy as provided under the law before competent forum. [2010 GBLR 558]

---Art. 65---Review of the judgment of Supreme Appellate Court---  
Limitation---Petitioners had conceded that review petition was barred  
by time and could not explain plausible justification in that regard---  
Even one day's unexplained delay being not condonable, review  
petition was dismissed, in circumstances. [2016 GBLR 244]

---Art. 65---See Penal Code (XLV of 1860), S.302/34. [2011 GBLR  
(b) 118]

---Art. 65---Supreme Appellate Court Rules, O. XXVI---Review of  
Supreme Appellate Court judgment---Scope---Article 65, Gilgit-  
Baltistan (Empowerment and Self-Governance) Order, 2009 and  
O. XXVI of Supreme Appellate Court Rules empower Supreme  
Appellate Court to review its judgment/orders--- According to  
O. XXVI of Supreme Appellate Court Rules, review could be made in  
criminal proceedings on the ground of an error apparent on the face of  
record---Error would be so apparent and glaring, that no court would  
permit it to remain a part of the proceedings---Such error would be  
absolutely significant and must be eminent from the record on the  
basis of its own existence and not be the result of analytical logic, and  
scrutiny of the evidence---Plea that exposition of law was wrong or  
incorrect conclusion was drawn as a result of scrutiny of the evidence,  
would not constitute a valid ground for review---Error apparent on the  
face of the record manifestly be of a nature that, if ignored "complete  
justice could not be done". [2011 GBLR (a) 118]

---Art. 65---Civil Procedure Code (V of 1908), S. 114--- Petition  
seeking review of orders/directions passed by the Supreme Appellate  
Court in a suo motu case---Contract employees of BPS-17 and BPS-18  
working in various departments of Gilgit-Baltistan--- Matter of  
regularization of such contract employees---Non-compliance with  
directions of the court---Judicial restraint, exercise of---Secretary  
Services failing to comply with directions of the Supreme Appellate  
Court regarding regularization of contract employees --- No material  
legal error floating on the face of the impugned order was pointed out  
by the Provincial Government/petitioner--- Courts revisited their  
judgments/orders whenever a glaring mistake or error was shown  
floating on the face of judgment/order---Undertaking given by the  
Secretary Services for compliance with directions of the court had  
been incorporated in the impugned order and directives had been  
issued in the light of the said undertaking---Present review petition  
was, thus, meritless---Supreme Appellate Court observed that the

attitude of the administrative authorities was such that whenever they had to appear in cases, they felt that their appearance before the court of law was against their status and dignity; that administrative authorities also felt no hesitation in defying the orders passed by the court of law; that the Government did not take interest in pursuing the cases filed in courts of law against or for the Provincial Government and always tried to shift the burden on the courts; that due to slackness on part of public functionaries, the Government was suffering colossal losses to the public exchequer; that Government officials could not be given special treatment in courts of law as against the ordinary citizen locked in litigation, and that the higher authorities should take notice of the performance of officials and stern action was required to be taken, if they acted in derogation of the interest of the department--- Supreme Appellate Court, following the principle of judicial restraint, directed that the Secretary Services was granted three weeks' time to probe into the present issue and to submit a clear report in such regard; that the Federal Public Service Commission should keep in abeyance all the cases sent by the Provincial Government, till further orders of the court and refrain from conducting interviews/test of the candidates for the vacant posts in question---Review petition was dismissed accordingly. [2011 GBLR 163]

---Art. 65---Review of Supreme Appellate Court judgment--- Advocate-General, who represented the State, had sought review of specific para of the judgment rendered by Supreme Appellate Court, wherein concession was recorded on behalf of Advocate-General with regard to the statement of accused made before the Police Officer under S.21-H of Anti-Terrorism Act, 1997, that same was not admissible in evidence under the law--- Statement of an accused relating to inculpatory statement before the Police Officer was not admissible and on the touchstone of same principle, a confessional statement in terms of S.21-H of Anti-Terrorism Act, 1997 could have no evidentiary value and was not admissible---Advocate-General had rightly assisted the court on legal premises---Answer of Advocate-General on a court query, was not concession, nor it could be treated as concession of law and fact---Court had appreciated the assistance and the phrase contained in the said para of the judgment, would not convey the meaning of concession at all, but the matter related to the correct position of law which could be submitted to court or Executive Authority and would not carry any adverse effect---Review petition was granted by Supreme Appellate Court, with observation that the words 'frankly conceded' used in the para of the judgment, would not deemed to be a concessional statement, rather same was assistance to the court on a legal point. [2011 GBLR 228]

----Art. 65---Review of Supreme Appellate Court judgment--- Scope--  
-Petitioner had sought review of judgment of Supreme Appellate  
Court, whereby a contract for wheat carriage was awarded and was  
declared illegal, invalid and allegedly executed in violation of the  
mandatory provision of Public Procurement Regulatory Authority  
Ordinance, 2002 and Public Procurement Rules, 2004---Every aspect  
of the case was considered by the Supreme Appellate Court, in its  
depth before rendering the judgment and each point raised by the  
respective parties, was taken into consideration and conclusion was  
drawn in accordance with law applicable to the case---Legal as well as  
factual points raised by the parties during the arguments were adhered  
to and decided---Review jurisdiction, could only be exercised on the  
ground, when there was discovery of new and important legal, or any  
evidence, which was not within the knowledge of the petitioner before  
the final conclusion of the case---Petitioner had not pointed out  
anything which was not taken into consideration by the court before  
the disposal of the case---Present review petition, was nothing, except  
the repetition of the points, which had already been taken into  
consideration and decided---Scope of review was very limited, which  
could be sought in extraordinary situation and could not be taken as a  
matter of routine---No error, glaring mistake or patent illegality of  
substantial nature, had been pointed out during the arguments---Points  
raised, had already been discussed and dilated upon in the judgment  
under review in a very comprehensive manner---Review petition being  
meritless and misconceived, was dismissed. **[2011 GBLR 167]**

----Art. 65---See Civil Procedure Code (V of 1908), S. 114. **[2011  
GBLR 200]**

----Art. 65---Supreme Appellate Court Rules, 2008, O. XXVI--- Civil  
Procedure Code (V of 1908), S. 114 & O. XLVII--- Review of  
Supreme Appellate Court judgment---Limitation-Delay, condonation  
of---Review petition, in the present case, was not only barred by time,  
but the petitioner was not party to the proceedings in which the order  
sought to be reviewed was passed---No plausible reason had been  
given in the application for condonation of delay to condone the delay  
of 57 days---In absence of any ground for condonation of delay,  
review petition was dismissed, in circumstances. **[2011 GBLR 100]**

----Art. 65---See Specific Relief Act (I of 1877), S. 8. **[2015 GBLR  
176]**

----Art. 65---Review of Supreme Appellate Court---Judgment---  
Counsel for the petitioners had pointed out that one of the Judges of  
Chief Court, who had conducted the proceedings, was Civil Judge in

the year 1993-94 and had passed certain orders in the present case---Petitioner, contended that propriety demanded that revision petition should have been heard and decided by another Judge of the Chief Court as said Judge could not sit in his own cause---Validity---Review petition was allowed---Case was remanded to Chief Court---Civil revision petition was directed to be treated as pending adjudication---Registrar of Chief Court was required to place the case before Chief Judge to assign the case to another Bench and to decide revision afresh expeditiously on merits in accordance with law within a period of 3 months. **[2017 GBLR 22]**

----Art. 65---See Penal Code (XLV of 1860), S. 436. **[2017 GBLR 52]**

----Art. 65--- Supreme Appellate Court Rules, 2008, O. XXIII, R.7---Review before against acquittal---Review petition had arisen out of judgment passed by Supreme Appellate Court, whereby accused persons were acquitted---Review petition had been filed belatedly after unexplained delay of more than three months--- Petitioner filed application for condonation of delay, but grounds raised in said application being not reasonable and plausible, could not be considered---Order XXIII, R.7 of the Supreme Appellate Court Rules, 2008 was also applicable to the case---No infirmity and illegality was pointed out in the judgment of Supreme Appellate Court by the petitioner---Review petition being barred by time, was dismissed by maintaining the impugned judgment. **[2017 GBLR 296]**

----Art. 69---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2010 GBLR (p), (r) & (s) 160]**

----Art. 69(13)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2015 GBLR 85]**

----Arts. 69 & 71---Order of the Chief Court, implementation of---Advocate General contended that Secretary Finance, on court directions appeared in the Chief Court and stated that judgment passed in writ petition by the Chief Court was implemented in its letter and spirit---Chief Court observed that said order was not implemented as passed, rather an attempt was made to thwart the ends of justice, which amounted to defiance of the court order--- Advocate General further contended that order of the Chief Court, had already been complied within the sanctioned budget and no violation had been made and that Secretary Finance, was not be ordered by the Chief Court to attend the court on each date of hearing---Case was remanded by the Supreme Appellate Court to the Chief Court for disposal on merits in accordance with law; with the direction that no interim order be passed during the pendency of petitions and that Secretary Finance in



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compliance with order, had already appeared in Court and offered his submissions, he be dispensed with for further appearance as prayed---Petition was disposed of accordingly. **[2017 GBLR 366]**

----Art. 71---Criminal Procedure Code (V of 1898), S.561-A Jurisdiction of Chief Court---Inherent powers of Chief Court---Chief Court has inherent power to pass any order to secure the ends of justice. **[2016 GBLR 161]**

----Arts. 71 & 60---Suo motu jurisdiction of Chief Court--- Scope--- Chief Court Gilgit-Baltistan would exercise jurisdiction under Art. 71 of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, when it was satisfied that, subject to the said Article no other adequate remedy was provided by law; on the application of a person, whether aggrieved or not on an information or on its own knowledge---Chief Court Gilgit-Baltistan, could not exercise suo motu jurisdiction under Art. 71 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed---Impugned judgment in suo motu passed by the Chief Court was set aside being without jurisdiction. **[2016 GBLR 64]**

----Art. 71--- Judicial review---Public auction---Aggrieved person--- Natural justice, principles of---Applicability---Scope. **[2010 GBLR (e) 467]**

----Art. 71---Writ jurisdiction---Scope---Locus standi, principle of--- Applicability---Scope---Public auction---Case of public importance--- After withdrawal of the earnest money or bid security a participant of the auction may have no locus standi to claim any right in public auction and also may not be able to challenge the auction in the extraordinary writ jurisdiction but notwithstanding the general rule and technical objection the court may entertain a petition in public interest--Ordinarily writ jurisdiction is not invokeable in the cases of public auctions and contracts involving contractual obligation and unsuccessful bidder may have no legitimate right to call interference of court in discretionary jurisdiction---Principle of locus standi is not strictly applicable in the cases of public importance and even a stranger can invoke the jurisdiction of court in such cases---Court, in a case of public importance, may ignore the technical objections and interfere in a matter in which decision was made adverse to the public interest or in an unfair, unreasonable or unjust manner. **[2010 GBLR (a) 467]**

----Art. 71---Writ jurisdiction of Chief Court---Scope---Chief Court, in the normal cases, could not interfere in the administrative affairs and

Policy decision of Government in writ jurisdiction, but in a case of infringement of a legal right of a person, Chief Court would not hesitate to interfere for the protection of such right in the interest of justice and rule of law---Administrative orders which were directly or indirectly contained the element of victimization or discrimination in dealing with such matters, were always subject to the judicial review of the courts. **[2010 GBLR (b) 460]**

---Art. 71---Writ petition before Chief Court---Maintainability---Scope---Matter of public importance relating to enforcement of fundamental Rights or involving important question of law---Held, in the cases of public importance the jurisdiction of the Court can be invoked by any person in public interest--- Technical objection regarding maintainability of writ petition is not entertainable in a matter of public importance relating to the enforcement of Fundamental Right---Matter involving important questions of law would require decision on merits in the interest of substantial justice. **[2010 GBLR (c) 467]**

---Arts. 71 & 61---Judicial review---Case of public interest---Held, in the cases of public interest if an element of partiality or undue favour or a slight substantial irregularity is found on record which may create doubt in the mind of a common man regarding the transparency of the transaction, the Court may not hesitate to interfere in the matter. **[2010 GBLR (h) 467]**

---Arts. 71 & 61---Judicial review---Scope---Decision taken or order passed by the public functionaries if lacked procedural or substantive transparency or is found tainted with the element of mala fide, unfair, unjust or is based on unreasonable consideration or is the result of improper exercise of discretion vested in a public authority or is found adverse to the public interest is not immune from the judicial scrutiny of the courts. **[2010 GBLR (d) 467]**

---Art. 71(2) (a)---Constitution of Pakistan (1973), Art. 199---Writ petition---Aggrieved person---Vested right---Selection for a post---Respondents, in response to an advertisement in newspaper, applied for posts in question and remained unsuccessful in the process of selection---Chief Court in exercise of writ jurisdiction directed the authorities to appoint respondents against vacant posts---Validity---No vested right whatsoever had accrued in favour of respondents, hence question of its infringement did not arise---Person could be said to be aggrieved only when he was denied a legal right by someone, who had a legal duty to perform relating to that right---Court could extend its jurisdiction to entertain writ petition when there existed not only a

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right but justiciable right either personal or otherwise---No order could be passed under Art. 199 of the Constitution of Pakistan, 1973, merely on the basis of recommendations or short listing respondents because no legal or vested right of respondents was infringed--- Appointment being a subjective assessment, exclusively fell within the jurisdictional domain of appointing authority, who could not be compelled to make any appointment---Plea of mala fide, which though was alleged but could not be substantiated by providing any cogent and concrete evidence---Supreme Appellate Court set aside the judgment passed by Chief Court to meet the ends of justice---Appeal was allowed. **[2010 GBLR (b) 27]**

---Art. 71---Jurisdiction of chief court---Duty of petitioner--- Factual inquiry---Primary duty of those who seek justice from Court of law, particularly under the jurisdiction under Art. 71 of the Gilgit-Baltistan (Empowerment and Self-Governance), Order, 2009 should establish their right through undisputed and authentic record---Said jurisdiction is an extraordinary jurisdiction of Chief Court and it can be exercised in special circumstances where aggrieved party had no other adequate, expeditious and efficacious remedy available---Chief Court under said jurisdiction cannot go into question involving minute details and investigation. **[2011 GBLR (b) 383]**

---Art. 71---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 10. **[2011 GBLR (B) 290]**

---Art. 71---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2011 GBLR 503]**

---Art. 71---See Gilgit-Baltistan (Empowerment and self Governance) Order, 2009, Art. 60. **[2011 GBLR (b) 509]**

---Art. 71---See Gilgit-Baltistan (Empowerment and self Governance) Order, 2009, Art. 60(13). **[2011 GBLR 374]**

---Art. 71---See Gilgit-Baltistan (Empowerment and Governance) Order, 2009, Art. 61. **[2011 GBLR 568]**

---Art. 71---Writ jurisdiction--- Laches--- Applicability---Petitioner who retired from his service in the year 2008 after completion of age of superannuation, had invoked jurisdiction of Chief Court through writ petition in 2010, after a lapse of long time---Question of laches, in circumstances had automatically come into operation, but Chief Court overlooked question of laches---Question of laches was to be examined on equitable principles for the reason that the exercise of writ jurisdiction was always discretionary with the court---Court must

exercise discretion in favour of such party who would come before the court with clean hands---If the court would find that the party invoking writ jurisdiction of the Chief Court was guilty of contumacious lethargy, in action, laxity or gross negligence in the prosecution or a cause for enforcement of right---Court would be justified in non-suiting such person on the premises of laches---Issue of delay or laches was to be considered with reference to the facts of each case; and no hard and fast rule could be laid down in that behalf. **[2011 GBLR (a) 266]**

---Art. 71---Writ jurisdiction of Chief Court---Scope---Service matter of employees of private limited company---Governed by rule of “master and servant” ---Principles---Rules framed by a private limited company in relation to its business and internal affairs, had no statutory force at par to the rules framed under a statute; and in principle, the proposition relating to the prospectivity or retrospectivity of non-statutory service rules of a company, could not be governed by the rules of statutory law---Service rules of a private limited company registered under Companies Ordinance, 1984, would regulate the terms and conditions of service of employees of company; and could have the force of law to determine the right of an employee relating to his service under such rules, but the validity of non-statutory rules could not be questioned in the writ jurisdiction of the Chief Court---Employees of non-statutory bodies were governed by the principle of Master and Servant; and Service Rules of such bodies, subject to any exception or principle of law could regulate the relationship inter se employer and employees accordingly---Rules of private limited company registered under Companies Ordinance, 1984, were framed by the Board of Directors of company; and Board of Directors would derive power under Articles of the Association of the company, whereas statutory rules of a corporation or public limited company were framed under a statute---Since statutory and non-statutory bodies had distinct legal status, rules of non-statutory bodies, could not be equated with rules of statutory bodies---Aggrieved person, in case of infringement of a right under non-statutory rules, the aggrieved person could avail the remedy of civil suit, but could not be able to invoke the writ jurisdiction of Chief Court for enforcement of such right---Vires of non-statutory rules, could not be questioned in writ jurisdiction. **[2011 GBLR (b) 515]**

---Art. 71---Writ jurisdiction of Chief Court---Scope. **[2011 GBLR (g) 290]**

---Art. 71--- Writ jurisdiction of Chief Court---Scope---Such jurisdiction could be invoked to rectify jurisdictional defects or where

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impugned order was tainted with malice or violative of law, but not to correct a finding of fact. **[2011 GBLR (d) 223]**

---Art. 71---Writ jurisdiction of Chief Court---Scope---Writ being an equitable relief could not be granted in favour of a person having come to court with un-clean and soiled hands and had suppressed material facts from the court. **[2011 GBLR (d) 290]**

---Art. 71---Writ petition involving factual disputes---Maintainability---Factual disputes could not be determined without, enquiry and recording of evidence---Chief Court in writ jurisdiction could not adopt such course. **[2011 GBLR (c) 223]**

---Arts. 71 & 60(13)---Writ petition before High Court---Issuance of No Objection Certificate (NOC) by Government for establishment of Flour Mills---Raising of construction by original NOC holder---Transfer of ownership rights in land along with incomplete structure of Flour Mills by original NOC holder in favour of petitioner---Subsequent imposition of ban on construction of Flour Mills by order of Chief Court---Petitioner's prayer to permit him to complete remaining construction work of Flour Mills allowed by Chief Court---Government's plea that no NOC for construction of Flour Mills was issued in petitioner's name, rather non-transferable NOC had been given to original NOC holder, whereas petitioner had started construction without a valid NOC or formal permission of Government; and that Chief Court while passing impugned order had not considered correct legal position and locus standi of petitioner to maintain a writ petition---Validity---Supreme Appellate Court granted leave to appeal to consider such plea. **[2011 GBLR (a) 290]**

---Art. 71(2)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 17. **[2011 GBLR 318]**

---Art. 71---Revisional jurisdiction of Chief Court of Gilgit-Baltistan---Scope. **[2011 GBLR (b) 187]**

---Art. 71---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 81. **[2011 GBLR 54]**

---Art. 71---See Specific Relief Act (I of 1877), S.8. **[2011 GBLR (a) 187]**

---Art. 71---Inherent jurisdiction of the Chief Court---Scope---Suit was concurrently dismissed by the Trial Court and appellate court below---Defendants, despite service of summons for their appearance before the Chief Court, failed to attend the court and Chief Court accepted revision with costs ex parte for non-prosecution---Revision

petition having been accepted ex parte for non-prosecution, defendants being aggrieved party, could invoke inherent jurisdiction of the Chief Court for setting aside the ex parte order---Defendants had ignored the remedy available to them to invoke the inherent jurisdiction of the Chief Court---Petitioners/defendants had come to the Supreme Appellate Court directly through petition for leave to appeal which was refused---Defendants were directed by Supreme Appellate Court first to exhaust the remedy available to them, before the Chief Court---Order accordingly. **[2015 GBLR 188]**

---Art. 71---See Land Acquisition Act (I of 1894), S. 4. **[2015 GBLR 275]**

---Art. 71---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2017 GBLR 60]**

---Art. 71(2)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2017 GBLR 73]**

---Art. 75---Contempt petition---Petitioner, filed contempt petition under Art. 75 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 before the Chief Court against the respondents (Government Department) for violation of status quo granted on 20.10.2014 by Chief Court, was not extended, on the next date of hearing i.e. 24-11-2014---Said petition was dismissed having no merits--- Counsel for the petitioner, could not point out any illegality and infirmity in the impugned order---Chief Court was to decide as to whether its directions/orders were violated or not---Order passed by Chief Court, was affirmed---Leave was refused. **[2017 GBLR 55]**

---Art. 75---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. **[2015 GBLR 355]**

---Arts. 75 & 61---Contempt of Court---Application for initiating contempt proceedings against the then Secretary Agriculture, Live Stock and Fisheries and the Director Fisheries for non-compliance with directions of the Supreme Appellate Court regarding regularization of services of petitioners---Present Secretary Fisheries Department informed the court that the petitioners had been adjusted and were given appointments in compliance with the directions of the Supreme Appellate Court---Supreme Appellate Court observed that compliance had been made with its directions and the petitioners had duly been compensated by being appointed or by regular footing---Contempt proceedings were no longer required in such circumstances---Suo motu case along with application for initiating contempt proceedings was disposed of accordingly. **[2015 GBLR 152]**

---Art. 75---Constitution of Pakistan, Art. 204---Contempt of Court Ordinance (IV of 2003), Ss. 3 & 5---Notification No. Pen/Court-cases/2013-14 dated 10-10-2013---Criminal original petition before Supreme Appellate Court---Contempt of court--- Petitioners who were retired Justices, were continuously drawing their pension along with pensionary benefits and other perks and privileges since their retirement---Authorities vide Notification No. Pen/Court-cases/2013-14 dated 10-10-2013 stopped said pension and privileges---Petitioners moved a contempt application against authorities with the prayer that they be proceeded against, under relevant provisions of law of contempt of court---Notices were issued to the authorities--- Respondents (authorities) personally appeared in the court and gave their explanation that pension and other privileges were stopped on the direction of the high-ups of their department and that said notification was issued due to some misunderstanding which had been withdrawn--- Respondents (officials) had shown remorse and repentance of their action--- Respondents verbally stated that since the notification in question was issued inadvertently, they put themselves at the mercy of the court while tendering unqualified apology; and also stated that they would remain careful in future---Counsel for the petitioners did not press contempt application any more---Court accepted the apology tendered by the respondent officials---Petition, was disposed of accordingly. **[2011 GBLR 161]**

---Art. 75---Supreme Appellate Court Rules, 2008, O. XXVII, R. 6--- Public Procurement Regulatory Authority Ordinance (XXII of 2002), Preamble---Public Procurement Rules, 2004--- Contempt of Court Ordinance (IV of 2003), Ss. 3 & 4--- Contempt of court---Contentions of the petitioner were that Supreme Appellate Court had rendered a judgment declaring that contract awarded to a Transport Company for the carriage of wheat was illegal and invalid; that said contract was executed in sheer violation of the mandatory provisions of Public Procurement Regulatory Authority Ordinance, 2002, as well as the provisions of Public Procurement Rules, 2004---Petitioner had alleged that concerned authorities had not complied with the directions given by Supreme Appellate Court and that respondents/alleged contemnors had not only refused to act upon the directions of Supreme Appellate Court, but had acted in derogation of the dictum laid down in the said judgment--- Petitioner had not raised any ground regarding any wilful disobedience to the judgment/order passed by Supreme Appellate Court; and had not shown, in the petition, any act of concerned authorities, which could be said to be contumacious conduct of public functionaries to obstruct the course of justice or caused any hindrance in administration of justice---Non-compliance of the judgment/order,

prima facie, tantamounted to lower and undermine the authority of the court and it called for action against him for Contempt of Court under Art. 75 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 read with Ss. 3 & 4 of the Contempt of Court Ordinance, 2003 but while exercising restraint, court had decided not to proceed against the respondents---Said jurisdiction had to be exercised very sparingly on case to case basis; and only in very serious cases---Even on factual aspect, in order to issue the notice of contempt under S.3 of the Contempt of Court Ordinance, 2003, it was required that the fact be gone into thoroughly to ascertain, as to whether or not the contempt had been committed---Petitioner had not brought on record any material to show that respondents had acted in derogation of the judgment of Supreme Appellate Court; or to have brought any kind of disrespect to the authority of the Court or the administration of justice---Court was not required to take into consideration all the facts in depth and had only to satisfy itself, whether the petitioner had brought an arguable case before the court or not---Petitioner, having failed to make out any case to proceed against the respondents for contempt of court, petition for contempt of court was dismissed, in circumstances. **[2011 GBLR 169]**

---Art. 75---Gilgit-Baltistan Supreme Appellate Court Rules, 2008, O. XVII---Contempt of Court Act (I of 2004), Ss. 3 & 4--- Contempt of Court---Publication of contemptuous statement in violation of Supreme Appellate Court judgment---Counsel for respondent had placed a copy of office order regarding the implementation of judgment of Supreme Appellate Court passed with direction for payment of the dues to the petitioner from the date of his removal from service---Petitioner had stated that his grievance had been redressed and he was no more interested to pursue contempt application---Same was disposed of with direction that dues of the petitioner would be paid without any further delay. **[2010 GBLR 425]**

---Art. 75---See Contempt of Court Act (LXIV of 1976), S.3. **[2011 GBLR 530]**

---Art. 78---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2011 GBLR 101]**

---Art. 78---Administrative Courts and Tribunals Supreme Appellate Court observed that Provincial Government of Gilgit-Baltistan was required to frame rules with regard to appointments and terms and conditions of service of Special Judges and the Law Department, Government of Gilgit-Baltistan in consultation with the Chief Judge of the Chief Court will proceed to frame rules to regulate the judicial



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Service in Gilgit-Baltistan, including the service of Special Judges as part of Judicial Service---Principles. [2010 GBLR (q) 160]

---Art. 79---See Gilgit-Baltistan Judicial Service Rules, 2010, R. 6. [2015 GBLR 366]

---Art. 81---See Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, R. 3. [2015 GBLR 148]

---Art. 81---See Gilgit-Baltistan Service Tribunals Act (IX of 2010), S. 3. [2015 GBLR 318]

---Art. 81---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. [2011 GBLR 101]

---Arts. 81 & 71---Civil service---Appointment---Chief Court, while accepting the writ petition of respondents declared the appointment of the petitioner as void and without lawful authority and also directed the department to fill up the vacant post of Assistant Engineer afresh--Petitioner, who was B.Sc. (Engineering), initially was appointed as a Sub-Engineer on work charge basis at a fixed pay of Rs. 3500 per month for a period of six months, later on, he was adjusted against vacant post as an Assistant Engineer in BPS-16 on regular basis on creation of regular post of Assistant Engineer---Respondents, who were diploma holders, were appointed as Sub-Engineers in BPS-11, being aggrieved with direct appointment of the petitioner against vacant post of Assistant Engineer filed writ petition before the Chief Court which was accepted, and Chief Court declared the appointment of the petitioner as illegal and against the relevant service rules---Method of appointment for the post of Assistant Engineer, BPS-16, under Rules framed by Ministry of Kashmir Affairs and Northern Areas, was by 100% promotion from amongst the Sub-Engineers BPS-11, along with 5 years experience in the relevant field and for filling up a post meant for promotion or selection, no advertisement was required---Recommendations of Departmental Promotion or Selection Committee, were to be considered for promotion of eligible incumbent---Respondents, without seeking redressal of their grievance from the proper forum, directly invoked the writ jurisdiction of Chief Court, which allowed the writ and granted the relief as prayed for by the respondents---Validity---Writ jurisdiction was an extraordinary jurisdiction which could be exercised in special circumstances, where no other remedy was available to the petitioner, otherwise the court could decline to press into service its writ jurisdiction---Respondents, in the present case, without availing the opportunity to approach the concerned authorities/forums had voiced their grievance through writ jurisdiction of the Chief Court---Chief Court, in circumstances, ought

to have dismissed the writ petition being not maintainable---Appeal was allowed and impugned judgment was set aside, in circumstances. **[2011 GBLR 54]**

---Art. 95---Laws of Pakistan without express exclusion from operation in the territory of Gilgit-Baltistan by the competent authority, are applicable in Gilgit-Baltistan by implication--- Unless a specific law of Pakistan is expressly excluded from operation in Gilgit-Baltistan by the Council of Gilgit-Baltistan, the concept of general exclusion may not be correct--- Principles. **[2011 GBLR (a) 81]**

---Arts. 95 & 2(n)---Pakistan Citizenship Act (II of 1951), Preamble---People of Gilgit-Baltistan by virtue of Pakistan Citizenship Act, 1951 are citizens of Pakistan and being citizens of Pakistan are entitled to hold the National Identity Card and Passport of Pakistan--- Mere fact that a bona fide resident of Gilgit-Baltistan has been described as citizen of Gilgit-Baltistan in Art. 2(n) of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 for internal purposes would not change his status as citizen of Pakistan--- Principles. **[2011 GBLR (b) 81]**

---Art. 95---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. **[2015 GBLR 221]**

---Part II & Art. 61--- Fundamental Rights---Enforcement---Scope--- Public auction---Participation in a public auction subject to fulfilling requisite qualification is a legal right of a person and a wrong action in respect of such right in breach of the law is actionable at law; therefore a successful bidder in an public auction may on wrongful rejection of his bid by availing the legal remedy take action for enforcement of his right but an unsuccessful bidder cannot defeat the legitimate right of contract of successful bidder on the basis of claim of re-auction for technical reasons---Principles. **[2010 GBLR (o) 467]**

---Part IX [Arts. 60-79]---Judicature---Functions of courts to administer justice in accordance with the rule of law---Scope--- Principles. **[2011 GBLR (g) 1]**

---Part IX [Arts. 60-79]---Judicature---"Judicial Power" and "Jurisdiction" of courts---Distinction. **[2011 GBLR (j) 1]**

---Part IX [Arts. 60-79]---Judicature---Principle of separation of powers is not rigid and if legislature has unquestioned authority of enactment of laws, the courts are also empowered to declare a law ultra vires to the fundamental law or constitutionally invalid and can

also, strike down an administrative action of executive branch of government involving the legal and constitutional rights of people if the action is found in conflict to the law---Principles. [2011 GBLR (h) 1]

---Part IX [Arts. 60-79]---Judicial system in Gilgit-Baltistan is same as in Pakistan but judicial history of Pakistan is entirely different---Constitutional history and constitutional developments in Pakistan discussed. [2011 GBLR (e) 1]

### **Gilgit-Baltistan Judicial Service Rules, 2010---**

---Rr. 6, 7 & 12 [as amended by Gilgit-Baltistan (Amendment) Judicial Service Rules, 2014]---Supreme Appellate Court Gilgit-Baltistan Rules, 2008, O. XIII---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 79---Appointment of employees of the Chief Court---Petition for leave to appeal to Supreme Appellate Court---Advocate General and Secretary Law, contended that since Government of Gilgit-Baltistan had issued SRO No. 909(I)/2014 in exercise of power under Art. 79 of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009; Chief Court with the approval of the Governor, had amended Rr. 6, 7 & 12 of Gilgit-Baltistan Judicial Service Rules, 2010---Petition for leave to appeal, in circumstances, had become infructuous---Advocate for the petitioners, contended that appellants who had applied for the post of Civil Judges-cum-Judicial Magistrate, their maximum age be calculated from the date of filing of their applications for such posts---Contentions raised by counsel for both the petitioners and respondents were genuine and were in accordance with law, same were allowed---Registrar, Chief Court, was directed to implement the order of Supreme Appellate Court in its letter and spirit and vacant posts be filled in at the earliest---Process of examination and test/interview thereto be complied expeditiously, so that the successful candidates on merits be selected and appointed and Civil Judges-cum-Magistrates accordingly.[2015 GBLR 366

### **Gilgit-Baltistan Local Government Ordinance (VI of 1979)----**

---S.53---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60(13) & 71---Development charges--- Transfer of immovable property---Issuance of notification--- Provincial Government, jurisdiction of---Chief Court in exercise of jurisdiction under Art. 71, Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, set aside notification regarding payment of development charges on transfer of immovable property---Validity---Notification was issued by officer of Provincial Government as delegatee, without any resolution of local council and no such resolution was passed by

the Council---Issuance of such notification by Provincial Government was beyond the scope of S.53 of Gilgit-Baltistan Local Government Ordinance, 1979---Supreme Appellate Court declined to interfere in the judgment passed by Chief Court--- Leave to appeal was refused. [2010 GBLR 136]

**Gilgit-Baltistan Muslim Personal Law Shariat Application Act, 1963---**

---Ss. 2 & 3---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61---Islamic law---Inheritance---Two brothers died during the rule of Local Raja, when custom was still in force in "Hunza"---One of said two brothers left behind him four daughters, while other one left behind him one son--- Said son of other brother took over the possession of ancestral land of his share as owner under custom---Subsequently the said four daughters claimed their right of inheritance in the property, left by their father, filed suit for declaration and possession, which suit was dismissed by the courts below on the ground that under custom in 'Hunza' State females were not entitled to get any share in the property by inheritance---Muslim personal law was enforced in Gilgit-Baltistan by virtue of Gilgit-Baltistan Muslim Personal Law Shariat Application Act, 1963 and prior to 1974, custom was applicable in different parts of Gilgit-Baltistan including 'Hunza' State and as per custom in 'Hunza' State, a female was not entitled to get share in inheritance, but that custom would not under the Command of Holy Quran in the matter of inheritance, and Muslim female would be entitled to get her share in the ancestral property in accordance with law of inheritance in Islam---General principle was that enactment in respect of the substantive rights was prospective in nature, unless it was specifically made applicable retrospectively, but that rule could not be applicable to the law of Sharia, which was not subordinate to man made laws and was not governed by the principles of interpretation of ordinary law---Rights acknowledged by the Law of Sharia in the Command of Holy Quran, could neither be suspended nor taken away by any other law on the earth; and in the light of Command of Sharia Law, proviso to S. 3 of Gilgit-Baltistan Muslim Personal Law Shariat Application Act, 1963, would also acknowledge the right of inheritance of a Muslim female in accordance with law of inheritance in Islam---Gilgit-Baltistan Muslim Personal Law (Shariat Application) Act, 1963, in circumstances would have retrospective effect in respect of acknowledgment of the right of a female in inheritance on death of last full owner, and a female would get her share as per entitlement in accordance with law of inheritance in Islam---Notwithstanding the custom contrary to the law of Sharia in a particular area or a the State,

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the law of Sharia would prevail as superior law with binding force, and right of a Muslim female in inheritance recognized by Islam, would not be defeated by custom---Petition was converted into appeal and allowed the same with the declaration that inheritance in Islam would always be a superior law in a Muslim Society and would prevail over the custom. **[2011 GBLR (a) 575]**

---Ss. 2 & 3---Inheritance---Custom---Applicability---Scope---Supremacy of Law of Quran, could not be disputed in any, circumstances; and any law or custom usage contrary to the law of Sharia was always treated repugnant to the Injunctions of Islam as laid down in Holy Quran and Sunnah of Holy (P.B.U.H.)---Gilgit-Baltistan, was a Muslim populated area and in there being also a Muslim Ruler, Hunza State notwithstanding the enforcement of custom before 1974, and disputed status of the territory of Gilgit-Baltistan, that area for all intents and purposes was a part of Pakistan and Islam is the State religion of Pakistan---Consequently, notwithstanding the rule of Local Raja in Hunza State and other parts of Gilgit-Baltistan prior to 1974, the local laws and customs would relate to the administration and governance of the State and would neither negate the Hunza State as part of Pakistan nor would override the laws of Islam---State of Hunza for the purpose of social and political matters would certainly be governed by the laws made by the Local Rajas; and the customs, but the religious faith of Muslims and their personal rights recognized in Sharia, would certainly be not subordinate to customs; and in such matters Law of Sharia in the Command of Holy Quran would prevail---Inheritance in the Command of Holy Quran was a substantive right and no exception could be taken to the, right of inheritance of Muslim female or male in Islam---In present the case, property left by a deceased Muslim Would be distributed among his four daughters and brother according to Sharia Law. **[2011 GBLR (b) 575]**

---Ss. 2 & 3---Inheritance---In a Muslim Society, a Ruler or Government could not enact any law repugnant to the Injunctions of Islam as laid down in Holy Quran or Sunnah of Holy Prophet (P.B.U.H.), and if any law, custom or usage was found in conflict to the Holy Quran and Sunnah of Holy Prophet (P.B.U.H.), it would be treated void and would have no legal effect---Law of Quran was Supreme and no governmental Authority, or man made law could override that law for any worldly considerations---Right of inheritance given to a Muslim female in Holy Quran could not be taken away by any law or authority, and the customs or local laws could have the effect of temporary deprivation of a right of a person, but there could not be permanent extinguishment of a right recognized in Islam---

Despite application of custom in Hunza State, the Muslim females would be entitled to inherit the property in accordance with the Law of Sharia and custom would have no overriding effect to the Law of Islam---Right of female in the inherited property would not be taken away under the custom, except in a case in which a female of her free will or consent following the local custom would surrender her share in favour of male---Law of inheritance in Islam had always been enforced, and would never be deemed to have been suspended or secondary to the customary law or any other law of land. [2011 GBLR (c) 575]

**Gilgit-Baltistan Pre-emption Act (VII of 2010)----**

----S. 34---Pre-emption suit---Petitioner/plaintiff, filed suit for pre-emption, on the ground that respondent/defendant had sold suit land to other respondent/vendee in consideration of Rs. 65000 without knowledge and information of the plaintiff; that plaintiff was entitled to purchase the suit land being adjacent to his residential house--- Respondents/defendants, contested the suit, denying all averments of the plaintiff and averred that suit property was not purchased, but had been obtained by him in exchange of house---Trial Court, decreed the suit, but appellate court below, dismissed the same---Chief Court maintained the judgment/decreed passed by appellate court---Validity--- Petitioner/plaintiff, in proof of his version, had produced two witnesses, who only stated about adjacency of suit property, but they were silent about the price of suit land, which the plaintiff was ready to pay in case of decree--- Evidence on record had established that exchange of property had been effected between, the parties---Case, in circumstances, was not of "sale"---Petitioner/plaintiff had failed to establish the case---No reason existed for interference in the impugned judgment/decreed of the Chief Court and appellate court below--- Petition for leave to appeal was converted into appeal and was dismissed, in circumstances. [2010 GBLR 90]

----S. 34--- Suit for pre-emption--- Payment of extra amount as compensation to respondent/vendee---Respondent purchased a piece of land from the petitioner for Rs. 200,000 along with 45 standing trees---Said sale was pre-empted through suit by the petitioner which suit was dismissed by the Trial Court---Appeal of pre-emptor was accepted by the appellate court below setting aside judgment of the Trial Court---Judgment of appellate court below had been upheld by Chief Court with slight modification by directing petitioner/plaintiff to pay an extra amount of Rs. 100,000 to the respondent/purchaser as compensation for the monetary loss caused to him---Petitioner, challenged judgment of Chief Court contending that Chief Court,

arbitrarily and illegally imposed the compensation on the petitioner, which was not sustainable and judgment of the Chief Court, be set aside to the extent of imposing cost of Rs. 100,000---Advocate-on-record appearing on behalf of respondents had supported the impugned judgment---Impugned judgment passed by the Chief Court was well reasoned and well founded---No interference was warranted into it by the Supreme Appellate Court---Petition for leave to appeal was converted into appeal, and was dismissed---Impugned judgment passed by the Chief Court, was affirmed. **[2010 GBLR 337]**

---S. 34---Civil Procedure Code (V of 1908), O. VII, R. 11 & O. XIV, R. 1---Suit for pre-emption filed before the promulgation of Gilgit-Baltistan Pre-emption Act, 2010---Effect---Rejection of plaintiff/Appellants/pre-emptors, filed preemption suit, claiming their right of pre-emption over the property sold to the respondent (vendee)---Appellant pre-empted the subject matter of the suit on the basis of their possession over it as occupancy tenants since their forefathers---Respondent vendee, filed application under O. VII, R. 11, C.P.C., for rejection of plaintiff---Plea of counsel for respondent/vendee about the extension of the Gilgit-Baltistan Pre-emption Act, 2010, even to the suits of pre-emption filed before promulgation of the said Act, had been rightly discarded by the Chief Court---Counsel for respondent/vendee had wrongly interpreted S.34 of Gilgit-Baltistan Pre-emption Act, 2010---Case was remitted to the Trial Court by setting aside both the impugned judgments/decrees, with direction to proceed the suit on merits, after framing the issues, including the legal points. **[2015 GBLR (b) 284]**

#### **Gilgit-Baltistan Prior Purchase Regulation, 1938---**

---S. 29---Limitation Act (IX of 1908), Arts. 10 & 120---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Right of pre-emption (prior purchase), exercise of---Limitation---Land in question was sold in favour of vendee vide registered sale deed dated 21-10-2003 and pre-emptor filed suit after he got knowledge in October, 2004---Validity---Right of Shuffa (pre-emption) was a feeble right and pre-emptor seeking to exercise such right was bound to perform and fulfil its requirements meticulously---Any failing on the part of pre-emptor performing his obligation would be at his grave risk and could turn out fatal to his success---There were two provisions of law which governed question of limitation in pre-emption suits, first was in S.29 of Gilgit-Baltistan Prior Purchase Regulation, 1938, and later one was Art. 10 of Limitation Act, 1908; according to both the laws time period to claim preemption or enforcement of right of Prior Purchase was one year from the date of

registration of sale deed if any---In case the sale was not so registered within one year, then from the date of delivery of physical possession of property sold---As the case fell within the purview of S.29 of Gilgit-Baltistan Prior Purchase Regulation, 1938, and Art. 10 of Limitation Act, 1908, therefore, there remained no room for applicability of Art. 120 of Limitation Act, 1908---In the present cases, there was registered sale deed which was executed in favour of vendees in the same Tehsil and District wherein pre-empted land was situated---Pre-emptor could not claim any other provision of Limitation Act, 1908, except that provided specifically for the purposes of enforcement of right of preemption---Supreme Appellate Court did not find any legal or factual infirmity in the judgment passed by Chief Court---Leave to appeal was refused. **(126 GBLR 2010)**

**Gilgit-Baltistan Regularization of the Services of Contract, Employees Act (II of 2014)---**

---S. 3--- Contract employees working in various departments of Government of Gilgit-Baltistan---Regularization in service--- Advocate General requested that all the cases of contract employees pending in the Supreme Appellate Court may be referred to the Government of Gilgit-Baltistan to consider and decide their cases on merit by a committee headed by Parliamentary Secretary, Government of Gilgit-Baltistan---Said request was allowed and the Supreme Appellate Court directed that Government of Gilgit-Baltistan might consider the cases of petitioners regarding their regularization of services as per “permissible Service Rules” and/or the policy of the Government of Gilgit-Baltistan; and, that if any party was aggrieved by any order of the Government of Gilgit-Baltistan, that could seek remedy from the proper forum/competent court of law. **[2014 GBLR 44]**

**Gilgit-Baltistan Supreme Appellate Court Rules, 2008---**

---O. V, R.3---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **(2010 GBLR 558)**

**Guardians and Wards Act (VIII of 1890)---**

---Ss. 17 & 25---Custody of minor---Right of guardian to custody of ward---Welfare of minors---Respondent/grandfather of minor had taken the custody of minor when he was only 10 months of age against the will of his mother---On filing petition by the petitioner/mother under S.25 of the Guardians and Wards Act, 1890, Guardian Judge directed the respondent/grandfather, to handover the child to the petitioner/mother as per Islamic law---Grandfather dissatisfied by the



order of Guardian Judge, filed appeal before the Chief Court, which was accepted and order passed by the Guardian Judge was set aside---Validity---Custody of infant/minor, could not be allowed blindly, but it must be decided objectively--- Welfare of the minor was always a paramount consideration, while determining the custody of minor---Mother's love and affection for her child could not be matched/compared/equated with any others; lap of mother was God's own cradle for a child---Deciding the custody of minor was an extremely conscious matter---Age of the minor, environment, circumstances and welfare of the minor were paramount considerations, in matter of custody---Mother's lap, was the first place of education where the minor learnt and knew mother---Affiliation of child with the mother was more than that of grandfather and grandmother---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was allowed---Impugned judgment passed by the Chief Court; was set aside and judgment/order passed by the Guardian Judge was upheld---Respondent/grandfather and his other family members, were allowed; by the Supreme Appellate Court to meet the minor after 15 days at the residence of the petitioner, causing no inconvenience to the petitioner/mother. [2015 GBLR 117]

---S. 25---See Guardians and Wards Act (VIII of 1890), S. 17. [2015 GBLR 117]

## I

### **Imports and Exports (Control) Act (XXXIX of 1950)----**

---S. 3(1)---See Customs Act (IV of 1969), S. 19. [2017 GBLR (f) 81]

---S. 3(1)(3)---See Customs Act (IV of 1969), S. 156(9)(70)(90). [2010 GBLR 231]

### **Independence of Judiciary----**

---Concept---Scope---Supreme Appellate Court desired the Government of Gilgit-Baltistan to make judicial reforms and ensure independence of Judiciary for better administration of justice. [2010 GBLR (a) 160]

### **Industrial dispute----**

---Changes in Rules in respect of terms and conditions of service---Employer, subject to the rule of law and principle of fair and equal

treatment, could make necessary changes in the rules in respect of terms and conditions of service of the employees; and in that the management of a company in the best interest of the company had the prerogative to make change in the rules relating to the service of the employees, in accordance with law. [2011 GBLR (c) 515]

#### **Industrial Relations Act (IV of 2008)----**

---Preamble---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 3 to 19. [2010 GBLR (a), (b) & (g) 1]

---Preamble---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13). [2010 GBLR (e) 1]

#### **Inheritance----**

---Suit for distribution of inherited property amongst the co-sharers--- Plaintiff and defendant were sister and brother inter se--- Plaintiff/respondent filed suit claiming that disputed land was given to him by his father as his share in consequence of the partition of his legacy in his life time, however, it was retained by his father as “Amanat”---Defendant/petitioner who was then residing with her father, after the death of his father was not ready to deliver the possession of land in dispute contending that same was gifted to her by her father---Trial Court decreed the suit dividing the land amongst legal heirs of the deceased according to Shari shares---Lower Appellate Court and Chief Court upheld the judgment and decree of the Trial Court---Validity---Judgment by the Chief Court was maintained by Supreme Appellate Court. [2016 GBLR 237]

#### **Interpretation of Constitution----**

---Principles. [2010 GBLR (o) 160]

#### **Interpretation of statutes----**

---Legislation at provincial or federal level---Principles--- Scope--- Such legislation would be made on basis of geographical situation, cultural environment, social and economic Consideration--- Classification in respect of legislation merely on territorial basis was not recognized, rather same might be one consideration among others. [2010 GBLR (j) 1]

#### **International law---**

---Natural water rights---Duty of government---Scope---Water rights of people of particular area of natural waters are confined to their areas---Extra water of natural lake falling in river beyond the limits of

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area of water rights can be utilized as drinking water in other parts of city, under a proper scheme without affecting water rights of a particular area---Rights in natural waters do not travel with water, rather such rights are created in the area in which water flows---Rights in natural water of lakes and nalas are not recognized beyond certain limits, therefore, issue can be resolved through negotiation, as drinking water is a basic need of citizens and can be resolved through negotiation---Drinking water is a basic need of citizens and this is responsibility of government to provide this basic need to all citizens without any discrimination. **[2011 GBLR (b) 340]**

---Water---Right of benefit arising out of the flowing waters of Rivers---Scope---Natural water such as water of Lakes and Rivers flowing within the territorial limits of a Country vests in that country and is considered the property of that country--- State in which natural waters are situated has complete jurisdiction on these waters and internal waters such as the Lakes and Rivers flowing in a particular part or specified territory of the State along with things of value underneath is an economic zone for the specified territory or particular part of the country---Natural water is a scare resource and water like air is a territorial resource which is not open to “private ownership but natural water may subject to public interest, also have private water rights---State government or the government of specified territory may regulate the use of natural waters by legislation and may also on river and natural water way in its area construct Dam for irrigation and Hydro Electric Generation---Natural waters are national waters of the country in which these waters are situated and are internal water of the area in which these waters are located and that the benefit arising out of the natural waters is the right of the territory or the area in which these waters flow or are situated. **[2011 GBLR (q) 1]**

### **Intellectual property---**

---Scope---Royalty---Electricity generation is intellectual property of category of intangible rights, which are distinct and separate from property rights in tangible goods---Term “property” would include anything subject to ownership and benefit attracted with the real and intellectual property in the society is an advantage conferred and protected by law as civil right---Royalty of electricity generation is an intellectual property of category of intangible rights, which are distinct and separate from property rights in tangible goods---Royalty is an intellectual property which has no physical existence to be controlled or operated as proper; therefore, the controversy relative to the royalty of electricity generation as an intellectual property in absence of specified law governing the rights shall be resolved under the ordinary

law in the light of principles of equity and natural justice. [2011 GBLR (r) 1]

### **Islamic jurisprudence---**

---Administration of justice---Duties of executive and judicial authorities stated. [2011 GBLR (m) 160]

---Administration of justice---Duty of Qazi or Judge---Principles. [2011 GBLR (g) 160]

---Administration of justice---Independence of judiciary---Duty of judge in administration of justice elaborated. [2011 GBLR (n) 160]

---Administration of justice---Principles. [2011 GBLR (k) 160]

---Inheritance, right of---Scope---Right of inheritance could not be defeated on technical grounds and a person must be given his/her share in the property in accordance with the injunctions of Islam. [2011 GBLR (b) 571]

---See Gilgit-Baltistan Muslim Personal Law Shariat Application Act, 1963, S.2. [2011 GBLR (a) 575]

---Adoption--- “Adoption” and “guardianship of a child”--- Distinction---Custody of a male or female child, could be given to the relatives on paternal or maternal line in the order of relationship in prohibited degree under Islamic law, and a person having relation with a child in prohibited degree, could act as guardian of a child without a formal order of the court, but there was nothing to prevent a person from applying to the court under the Guardians and Wards Act, 1890, for his appointment, as a guardian, or declare him to be the guardian of a child; but a person, was not bound to wait to seek such declaration, until, his/her title or fitness to act as guardian of a child was disputed by another person---Application for the appointment of a guardian, could be made, not only by a person desirous of being or claiming to be, the guardian of the minor, but also by any relative or friend of the minor, and in some cases by the Collector of the District---Right of custody of a child in case of boy under the age of seven years, and of a girl before attaining the puberty, belonged to the male and female relatives in the order of prohibited degree in the paternal and maternal line of child---Consideration for guardianship was based on the welfare of minor and his/her interest, rather than the interest of parents---Presumption that welfare of the minor lay with the party entitled to the Hizanat was rebuttable and if in a given case the circumstances justified to deprive a party, otherwise entitled to the custody under Islamic law, the court could pass an order accordingly--

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-Adoption, on the other hand, had different consideration---Adoption of child, had no legal effect in-Shariah, rather, it was for emotional and psychological satisfaction---Adoptive parents, could treat an adopted child as their natural child in the matters of love, affection and general behaviour---Adoption of a child with the purpose to provide shelter to him, was virtuous, which carried much reward in welfare of the child, but adoption had no legal consequence in Islam---Child should be attributed to the natural parents and not to the father or mother who had adopted him, and marriage of adopted children with natural children of adoptive parents, were not prohibited, unless they related to each other in prohibited degree---Adoption would not create a new legal relationship, which did not exist before adoption---Said Rule was inferred from the principle ordained by Holy Quran in 'Surah Al-Ahzab'---People in 'Jahiliyyat' used to treat an adopted child in all respect as the real one, and the Allah Almighty in Holy Quran, condemned that practice. **[2015 GBLR (d) 38]**

---Adoption---Adoption of a child of unknown parentage born in Muslim society---Adoption by non-Muslim---Scope---Such a child could not be a non-Muslim, as general presumption was that a child born in Muslim Society belonged to a Muslim family unless specifically proved that the child was not born out of Muslim wedlock, or his father was not Muslim by faith---Said presumption was rebuttable, and without rebuttal of the presumption by evidence, the custody of a Muslim child of unknown parentage, could not be given to a non-Muslim--- Adoption of a child by a non-Muslim without proof that the child was born in a non-Muslim family, could result in conversion of a child into non-Muslim, and by compulsion without consent---Presumption, that parentless child in a Muslim Society was born in Muslim Family, was rebuttable through evidence of parentage before the court of competent jurisdiction and if it was proved that child was not born in Muslim Family, court could decide the question of custody of child accordingly---Non-Muslim could not be given custody of a deserted or parentless child or a child whose parentage was not known from an orphanage, or otherwise, Child born in non-Muslim family, could be adopted by a Muslim and his custody was to be regulated accordingly. **[2015 GBLR (b) 38]**

---Adoption---"Law in non-Muslim Society" and "Islamic law of adoption"---Distinction---Adopted child, in Islam could not claim right of inheritance in the property of adoptive parents and adoptive parents could not claim share in the property of their adopted son or daughter--  
-Adopted child, in non-Muslim Society had all rights of natural child, including inheritance---In Islam adoption would not create natural relationship, whereas in other religions, adoption could create natural

relationship of child with adoptive parents---Law in Pakistan, subject to the dictate of Holy Quran, in ‘Surah Al’Ahzab’, acknowledged the official recognition of an adopted child on the basis of a declaration made by adoptive parents, and also recognized the right of an adopted child of entitlement of all privileges of his/her adoptive parents as of right---Relationship of adoption inter se the adopted child and his/her adoptive parents, was also accepted by public and private social organizations in the society and acknowledged the right and privileges in such social organization and clubs etc., including membership of organization or club as the case could be, of an adoptive child on the basis of membership and rights of his/her adoptive parents, subject to the By-laws of the club or social organization---No prohibition existed for an adopted child in law from availing the facility and privileges of his/her adoptive parents in the society in a lawful manner, rather an adopted child in Muslim society, except the right of inheritance, had all rights of natural child of adoptive parents and an adopted child, was entitled in all privileges and facilities of his/her parents as of right, so much so, in Islam, in absence of any legal heirs of a Muslim in nearer or remote degree, an adopted child could also get the property of his/her adoptive parents. **[2015 GBLR (e) 38]**

---Adoption---Suo motu exercise/application for exercise of original jurisdiction of Supreme Appellate Court---Applicant submitted that custody of large number of minors belonging to Gilgit-Baltistan had been given un-authorizedly by Guardian Court to the foreigners by issuing guardianship certificate--- Applicant prayed that matter could be intervened by Supreme Appellate Court so that the future of abandoned children of Gilgit-Baltistan could be saved in the larger interest of the State---Supreme Appellate Court held that adoption subject to the dictate of Holy Quran in ‘Surah Al-Ahzab’, was not prohibited in Islam; that Guardianship by itself, was not adoption of a child and adoption would require a proper declaration before the court of competent jurisdiction; that Guardian Courts in Gilgit-Baltistan in their respective jurisdiction, could exercise power under Guardians and Wards Act, 1890, but could not appoint a person as Guardian of a child in the custody of an orphanage centre; that adoption and appointment of adoptive parents as Guardian of a child, with the consent of natural parents/Guardians, was permissible, but a stranger to a parentless child in custody of orphanage centre, and child whose parentage was not known, could not be appointed as guardian without adoption of the child and permission of the Home Department, Government of Gilgit-Baltistan; that the custody of an adopted child on the basis of guardianship certificate, issued by a Guardian Court of Gilgit-Baltistan, could not be taken out of the jurisdiction of court

without the special permission of court; that orphanage centers in Gilgit-Baltistan by following the provisions of Control of Orphanage Act, 1958, could get Guardianship Certificate in the name of natural or adoptive parents and in case of unknown parentage of a child in the common Muslim name, could obtain registration accordingly from NADRA on the basis of Guardianship Certificate to be issued by the court of competent jurisdiction; that Guardian Courts in Gilgit-Baltistan, would not issue Guardianship Certificate of a child in the name of a person out of prohibited degree without proper declaration on oath by a person intending to adopt a child before the court concerned and without prior registration of child with concerned NADRA Authorities in accordance with law; that Guardianship Certificate of a parentless child would not be issued without proper verification of the antecedents of the person seeking guardianship of the child, and NADRA Authorities could make registration of child on the basis of Guardianship Certificate and that adoptive parents had to give undertaking before NADRA Authorities to which the custody of child was required to be taken, that adopted child would not be taken to any other country, without prior intimation to the NADRA Authorities in the country of adoptive parents, and also to the concerned department of the said country---Supreme Appellate Court directed that orphanage centres immediately on taking a child into custody, would intimate the Home Department of the Government of Gilgit-Baltistan, and would maintain the record of all children in the custody of orphanage centres under intimation to the Home Department; that welfare organizations or orphanage centres, would not accept the custody of a child of unknown parentage without obtaining undertaking of the person who would bring the child to an orphanage centre about the origin of child; that welfare organizations, registered under the Voluntary Social Welfare Agencies Ordinance, 1961, could not run orphanage centre without proper authorization and registration with Controlling Authority of welfare organization and that Chief Secretary, Government of Gilgit-Baltistan and NADRA Authorities would take up the matter with Ministry of Interior Government of Pakistan for initiation of the process for enactment of law on “adoption”. [2015 GBLR (f) 38]

----Adoption/custody of child---Custody of a Muslim or non-Muslim parentless or a deserted child to a stranger---Scope---Custody of a Muslim or non-Muslim child in absence of his/her mother or father, could be given to a person in prohibitory degree on the basis of guardianship certificate to be issued by the court of competent jurisdiction, but in a Muslim State, the custody of a parentless and deserted child, or a child whose parentage was not known, could not

be given by the Guardian Court to a stranger, without the permission of the concerned authorities because custody of parentless, deserted or children of unknown parentage was always considered to be with the State; and custody of such a child, could not be given by the court to any person, either Muslim or non-Muslim by adoption or otherwise without the permission of the State. [2015 GBLR (c) 38]

----Adoption of child---Scope---No prohibition on adoption of a child existed in Islam, however, as ordained in the Holy Quran in ‘Surah Al Ahzab’ the change of parentage of an adopted child, was strictly prohibited, because he was not natural child of adoptive parents, he could have the rights and privileges of his adoptive parents---Adopted child, could have all affections and love of adoptive parents and was entitled to all financial and other benefits from his/her adoptive parents---Adopted child, in Islam, had no right of inheritance in the property of his/her adoptive parents, but adoptive parents could willingly, during their life time, give their property to their adopted child by way of gift or will---Adopted child on attaining the age of majority, was at liberty to opt for the nationality of the country of his/her adoptive parents, or real parents, as the case may be, if the nationality of adoptive parents was different to that of the nationality of his/her natural parents---No codified law on adoption was promulgated in Pakistan, as adoption in Islam was based on the concept as ordained in ‘Surah Al-Ahzab’ and no law to the contrary could be enacted. [2015 GBLR (a) 38]

## J

### **Judicial review----**

----Powers of Supreme Court---Scope---Principles. [2015 GBLR (f) 160]

### **Jurisdiction----**

----“Jurisdiction in personam” and “jurisdiction in rem”--- Distinction. [2011 GBLR (1) 1]



# L

## Laches----

----See Gilgit-Baltistan (Empowerment, and Self-Governance) Order, 2009, Art. 60. **[2011 GBLR (b) 509]**

----See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 71. **[2011 GBLR (a) 266]**

## Land Acquisition Act (1 of 1894)----

----S. 4---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 16---Constitution of Pakistan, Art. 24--- Acquisition of land---Property rights---Scope---Provision of necessary and basic amenities like education, health, transport, electricity and clean drinking water etc. to citizens is responsibility and duty of State/Government functionaries--- Government can utilize and acquire landed property of any citizen but subject to payment of compensation in terms of Land Acquisition Act, 1894---No concept of forcible occupation of land of any individual without payment of land compensation existed---Protection of property rights of citizens has been provided under Art. 16 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, and Art. 24 of Constitution of Pakistan---Every citizen has a right to hold, possess and dispose of property according to his own choice and if property of any person/citizen is takeover for public purpose by government machinery, then such person is entitled for fair, proper and adequate compensation and for such Land Acquisition Act, 1894, provides special procedure. **[2011 GBLR (a) 383]**

----S. 4---West Pakistan Land Revenue Act (XVII of 1967), Ss. 80 & 81---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61(1)---Suo moto jurisdiction of Supreme Appellate Court-- -Acquisition of land---Compensation, non-payment of---Recovery as arrears of land revenue--- Applicants, were land owners and their lands were acquired in year, 2005 but Authorities had yet not paid them compensation---Contention of Authorities was that land acquiring agency WAPDA had not so for deposited amount of compensation for payment to land owners, despite commitment made for deposit of the same much before announcement of award by Collector for remaining land and Collector was handicapped to announce the award---Validity---Supreme Appellate Court directed the acquiring agency WAPDA to deposit amount of compensation of land

within two months for onward payment to affectees--- Acquiring agency was further directed to ensure deposit of amount in question and in case of failure by the acquiring agency, government would pay amount of compensation to the applicants---Collector was given direction to proceed in the matter for recovery of amount of compensation from acquiring agency as arrears of land revenue--- Application was allowed accordingly.[**2011 GBLR 37**]

---Ss. 4, 5-A, 6, 7, 9 & 34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60 & 71---Acquisition of land--- Payment of amount of compensation---Award of interest---Scope--- Acquiring Authority issued notices under Ss. 4 & 5-A of Land Acquisition Act, 1894 inviting objection against acquisition of land, but despite knowledge landowners failed to submit objections in accordance with law---Further notices, under Ss. 6, 7 & 9 of Land Acquisition Act, 1894 were issued to the landowners---All codal formalities were fulfilled by the Acquiring Authority in accordance with the provisions of Land Acquisition Act, 1894---Land was acquired in 2003 and payment of compensation amount had been made on 5-7-2004 to all the landowners---Landowners had failed through oral as well as documentary evidence to establish that land was acquired during 1999---Market rate of vicinity was the best proof of satisfaction and entire process of acquisition of land acquisition had gone unchallenged---Writ petition in respect of 8% compound interest was filed, by the landowners after lapse of 'five years' which was not maintainable. [**2011 GBLR (a) 509**]

---Ss. 4, 10, 11, 18, 28 & 34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Acquisition of land--- Determination of amount of compensation---Payment of interest on amount of compensation---Grievance of the petitioner/owner of acquired land was that he had not been paid interest on the payment of compensation from date of taking over possession of land in terms of S.34 of Land Acquisition Act, 1894---Question of payment of interest under S.34 of Land Acquisition Act, 1894 w.e.f. from 1979, when land was acquired, was not attended to by the Referee Court or the Chief Court in appeal, whereas in the application under S. 18 of said Act, the petitioner had specifically pleaded for the payment of interest from 1979 and the authorities had not controverted the claim of the petitioner---Payment of interest from the date of possession under S.34 of Land Acquisition Act, 1894 and on enhanced amount of compensation under S.28 of said Act, was statutory right of the land owner/the petitioner; and it was the duty of the court to ascertain the correct date of possession for payment of interest---Matter was sent back to Referee Court for determination of actual date of taking over

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the possession of land within a period of three months---Referee Court could frame the additional issue, if necessary and also record the evidence of the parties. **[2011 GBLR 270]**

---Ss. 4 & 34 Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 16, 60(13) & 71-Acquisition of land---Award of compound interest---Factual controversy---Lands owned by petitioners were acquired by authorities against compensation but no compound interest was given---Petitioners sought recovery of compound interest by filing petition under Art. 71 of the Order before Chief Court, but petition was dismissed as it contained factual inquiries---Validity---Person/ persons whose land was acquired by government machinery for utilization of public purpose, such person/persons were entitled for compound interest under S.34 of Land Acquisition Act, 1894, at the rate of 8% per annum from the date of taking possession of the land till payment of compensation---Date from which petitioners were entitled for payment of compound interest was not determined and it was still a disputed question of fact between the parties---Without determination of such question of fact petition before the Chief Court was not competent---Supreme Appellate Court declined to interfere in the judgment passed by Chief Court as the petitioners could seek proper remedy from an appropriate forum/Court of law---Leave to appeal was refused. **[2011 GBLR (c) 383]**

---Ss. 4 & 6---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 71---Acquisition of land--- Determination and payment of compensation---Suo motu jurisdiction of Chief Court---Scope---Application of landowners had been accepted by the Chief Court and authorities were directed to pay compensation to the land owners with compulsory acquisition charges---Contentions of Advocate General were that Art. 71 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, did not provide to the Chief Court to-exercise suo motu jurisdiction; that order passed in exercise of such jurisdiction would be coram non iudice--- Validity---Chief Court would exercise its extraordinary discretionary writ/constitutional jurisdiction, when satisfied that; no other adequate remedy was provided by law---Chief Court could not exercise suo motu jurisdiction under Art. 71 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009---Petition for leave to appeal was converted into an appeal by the Supreme Appellate Court and was allowed. **[2015 GBLR 275]**

---Ss. 4, 10, 11, 18 & 23---Acquisition of land---Determination of compensation---Reference to Court---Claim of petitioner/ landowner whose land was acquired for construction of school, was that his land

was adjacent to the land of two other persons near main road; that Revenue Field Staff assessed the price of land of the petitioner at Rs. 60,000 per kanal whereas land of other person (adjacent) was assessed at Rs. 1,20,000 per kanal, despite the lands were situated at the same place, such land, though had potential value, but was assessed at the lower price---Land Acquisition Judge, on reference, granted relief to the petitioner, partially and dismissed the reference---Petitioner being aggrieved by and dissatisfied with the order of the Land Acquisition Judge, filed appeal before the Chief Court, which also granted partial relief to the petitioner to the extent of compound interest from the date of acquiring land till the date of possession; but declined to enhance the rate of land as prayed for by the petitioner---Petitioner had prayed that he could be compensated equally amongst the equals---Advocate-General had contended that judgment passed by Chief Court and the Referee Judge, were illegal and unjustified and were liable to be set aside---Advocate General had submitted that petitioner had gifted 5 kanals and 2 marlas barren land for construction of the school and that none of the persons, whose land was included by the Committee in the school construction had raised objection against the award of the Collector, except the petitioner, who despite of obtaining employment and compensation had filed reference petition in the court against the award---Validity---Petitioner along with others had manouvred and succeeded with the collusion of Revenue Field Staff, obtained award and compensation of his barren land at the rate of Rs. 60,000 per kanal---Petitions for leave to appeal were converted into appeal by the Supreme Appellate Court and disposed of with the modification i.e., the impugned judgment passed by Chief Court to the extent of the compound interest payable to the petitioner at 8 % per annum (from the date of acquisition of land to the payment of award only), by agreeing with the judgment in reference passed by the Referee Court. **[2015 GBLR 154]**

---Ss. 4, 6, 18 & 23--- Acquisition of land--- Determination of compensation---Reference to Referee Court---Review petition--- Authorities, acquired land of the landowners and Collector, prepared award of compensation and assessed rate of compensation at Rs. 55,000 per Kanal for cultivated land and Rs. 35,000 per Kanal for uncultivated land---Landowners received the said compensation amount, but filed reference petition under S.18 of the Land Acquisition Act, 1894 for enhancement of rates of compensation--- Referee Court, dismissed reference petition and landowners filed first appeal before the Chief Court which was partially allowed by enhancing the rates of compensation of uncultivated land from Rs. 35,000 to Rs. 55,000 including 8% compound interest, while other

claim of the landowners was declined---Validity---Petition for leave to appeal, having been dismissed, authorities had filed review petition---Landowners had been paid full compensation of their lands, which they received without protest, but later on they allegedly managed to insert the word “under protest” in collusion with the Revenue Staff---Advocate-General contended that Chief Court in open court had granted Rs. 55,000 per Kanal only vide the impugned short order; but addition that “payment of 8% as compound interest till realization of the amount” was not tenable in law; that Chief Court failed to consider the facts on record that the landowners, could not prove the reference through independent evidence and that Chief Court had no jurisdiction to award the compound interest as no loss was caused to landowners by the authorities by widening the existing road on the demand of the landowners, therefore, no question of forcible/compulsory acquisition had arisen---Supreme Appellate Court affirmed the contentions raised by the Advocate General and petition for leave to appeal of landowners was dismissed---Judgment of the Chief Court in First Appeal, enhancing amount of compensation was set aside---Review petition filed by authorities was allowed---Judgment of Referee Court, which was well reasoned and well founded, was affirmed and maintained, in circumstances. [2017 GBLR 379]

---Ss. 4,10,11& 34---Acquisition of land---Award of compensation---Entitlement to compound interest---Scope---Land in question was acquired and amount of compensation, was paid to the landowners---Landowners approached the office of the Federal Ombudsman and authorities were directed to make payment of the awarded amount, which was paid after delay of 21 years, without including 8% compound interest as provided under S.34 of Land Acquisition Act, 1894---Petitioners being aggrieved filed writ petition before the Chief Court, which was dismissed being not maintainable---Validity---Authorities contended that acquired land was a Khalsa Sarkar and petitioners in collusion and connivance with Revenue Officials and the then Deputy Commissioner obtained compensation illegally---Held, admittedly no award was passed by any competent authority/court of law---Petitioners had been illegally paid amount of compensation in violation of the provisions of Land Acquisition Act, 1894---Order passed by Federal Ombudsman, was not a judicial order and the amount of compensation paid to the petitioners, was obtained through fraud and misrepresentation---Both orders passed by the then Deputy Commissioner and the Federal Ombudsman, were not tenable in law---Appeal was dismissed, consequently, impugned judgment passed by the Chief Court was affirmed---Authorities could approach the

competent forum/court of law for the refund of awarded amount with interest from the petitioners. **[2017 GBLR 291]**

---Ss. 4, 6, 18 & 23---Acquisition of land---Compensation, determination of---Reference to Referee Court---Revenue Field Staff, prepared compensation papers at the rate of Rs. 70,000 per kanal along with 15% compulsory acquisition charges---Landowner who received said amount under protest, filed reference petition under S.18 of the Land Acquisition Act, 1894, which was accepted by the Referee Court and rate of land was enhanced from Rs. 70,000 to Rs. 150,000 per kanal---Acquiring authority, being aggrieved and dissatisfied with the judgment of the Referee Court, filed appeal before the Chief Court, which was disposed of with direction to the District Collector to pass a new and fresh award--- Validity---Authorities could not point out any infirmity or illegality in the judgment of the Chief Court---Petition for leave to appeal was converted into appeal and was dismissed, judgment by Chief Court was affirmed. **[2017 GBLR 374]**

---Ss. 4 & 28---Acquisition of land---Award of compensation---Earlier Supreme Appellate Court while setting aside the order passed by Division Bench of the Chief Court had held that the petitioners/landowners were entitled for the compound interest under S.28 of Land Acquisition Act, 1894 and that excess amount in the shape of interest was to be paid with effect from the date of judgment---Chief Court had rightly held in its judgment that said order of Supreme Appellate Court be implemented in its letter and spirit---Order of the Chief Court was maintained---Supreme Appellate Court further directed that Executing Court, in case of difference in calculation, could take assistance from the private Accountant or Chartered Accountant. **[2017 GBLR 349]**

---Ss. 4, 18 & 23---Civil Procedure Code (V of 1908, S. 12(2)---Acquisition of land--- Award of compensation--- Enhancement of amount of compensation---Reference to Referee Court---Application on plea of fraud and misrepresentation---Respondents/landowners, filed reference petition under S. 18 of the Land Acquisition Act, 1894 in the court of Land Acquisition Judge against the award passed by Collector, wherein respondents claimed enhancement of rates of land, trees and structure---Land Acquisition Judge enhanced the rates of land, but erroneously accepted a fake list of trees fabricated by one unconcerned Patwari---Trial Court after correcting the figures, directed the staff to place the corrected copies, but by way of fraud and collusion through dishonest means, the corrected copy was not placed in the file of the case---Trial Court vide impugned judgment, fixed rates of different types of trees, irrespective of fraud---

Respondents/landowners filed appeal in the Chief Court against judgment of Trial Court---Chief Court enhanced rates as per incorrect record by fixing rates of trees, without discussing the documentary as well as oral evidence produced by appellants/authorities---Chief Court, failed to exercise jurisdiction vested in it---Chief Court while passing impugned judgment also failed to appreciate the inquiry report---Enhancement of compensation, through fraud and mis-representation, could be challenged through S.12(2), C.P.C---Petition for leave to appeal was converted into appeal and was allowed---Impugned judgment/order, passed by Chief Court was set aside and case was remanded to Land Acquisition Judge and decide the same of fresh on merits. **[2017 GBLR 120]**

---Ss. 4 & 6---Civil Procedure Code (V of 1908), O. XV, R.3---Specific Relief Act (I of 1877), S. 42---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)--Acquisition of land---Exchange of land---Judgment without recording of evidence---Suit filed by plaintiff was decreed in his favour by Trial Court under the provisions of O. XV, R.3 C.P.C---Judgment and decree passed by Trial Court was maintained by Lower Appellate Court but Chief Court remanded the case to Trial Court for decision afresh after recording of evidence---Grievance of plaintiff was that authorities acquired land owned by him but did not pay compensation, whereas authorities contended that they were ready to give land in lieu of the land acquired---Validity---Contention of authorities was neither logical nor valid as there was a specific law for acquisition of land for welfare of public or government purpose---Authorities could acquire any land, if it was needed for public purpose by paying compensation in accordance with the provision of Land Acquisition Act, 1894, but they could not be allowed to adopt novel procedure of providing alternate land without consent of owner of land--- Adducing of evidence was right of a party but court could not compel or drag a party for production of evidence---Wisdom behind enactment of provision of O. XV, R.3, C.P.C. was early disposal of cases on the strength of documentary evidence and to save precious time of court and saving protraction of unwarranted litigation---All issues framed by Trial Court were legal which went into the root of subject matter and did not involve question of facts---Findings of Chief Court regarding illegal exercise of powers of Trial Court were not based on sound reasoning rather the same were based on erroneous reasoning and incorrect exposition of law---Supreme Appellate Court declined to agree with the findings of Chief Court and order passed by Chief Court was set aside and judgment and decree passed by Trial Court was maintained---Appeal was allowed. **[2010 GBLR 107]**

---Ss. 4 & 18---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Acquisition of land--- Compensation--- Determining factors---Previous award--- Authorities assailed compensation of acquired land fixed by Referee Court and upheld by Chief Court---Land owner produced sale deeds in respect of transactions in surrounding area in which price of land was about Rs. 7000 per Marla (Rs. 140,000 per kanal), whereas authorities determined compensation at the rate of Rs. 50,000 per Kanal--- Validity---Principle for determining market value of land was whether price offered by a willing purchaser was acceptable to a willing seller or not---Relevant factors to be essentially considered for determination of market value of land were the character of land and its location as well as potential use in future---Previous award of similar kind of land in the area was certainly a relevant evidence but increase in price of land in intervening period would reduce its evidentiary value to determine current market value of land---Supreme Appellate Court did not find any legal or factual defect of misreading or non-reading of evidence or misrepresentation of law on the subject---Price of similar kind of land fixed in previous award could be the direct source for determining market value of acquired land but correct method for fair determination of market value of land on the date of issue of notification under S.4 of Land Acquisition Act, 1894, was the evidence based on transactions of sales of similar kind of land in surrounding area shortly before issue of notification---Supreme Appellate Court declined to interfere in the judgment passed by Chief Court---Leave to appeal was refused. **[2010 GBLR 59]**

---Ss. 4, 18, 28 & 34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)--- Acquisition of land--- Determination of amount of compensation---Reference to Referee Court---Interest payable to landowners---Scope--- Petitioners/landowners, whose land was acquired, being not content with the compensation amount, approached the Collector for referring the matter to Referee Court under S. 18 of Land Acquisition Act, 1894--- Referee Court enhanced the compensation amount---Dispute had arisen in the matter of calculation of interest payable to the petitioner under S. 28 of Land Acquisition Act, 1894---Section 28 of Land Acquisition Act, 1894 would come into play at a point of time when Referee Court had made its award upon the matter being referred to it by the Land Acquisition Collector under S. 18 of Land Acquisition Act, 1894---Interest would be payable only in case the court would come to the conclusion that the compensation payable to the landowners, was in excess of the amount of compensation awarded to them by the Land Acquisition Collector---Once the court would come



to such conclusion, the Collector upon direction of the court had to pay the compound interest on the excess amount at the rate of 8%---Compound interest payable, was to be paid on the excess amount and the excess referred to the difference between the amount determined by the court; and the amount assessed by the Collector; provided the amount determined by the court was excess of the amount assessed by the Land Acquisition Collector---Such interest was to be paid retrospectively with effect from the date mentioned in the judgment passed by Referee Court and till such time that the excess amount was deposited in the court---Impugned order passed by Chief Court and order passed by Executing Court below, were set aside, with the direction that the petitioners were entitled for the compound interest under S. 28 of Land Acquisition Act, 1894; further the excess amount in the shape of interest was to be paid retrospectively with effect from judgment of the Referee Court---Executing Court was directed to calculate the interest on the excess amount of compensation and satisfy the decree according to law and equity. **[2010 GBLR 370]**

---Ss. 4, 12, 18 & 34---Acquisition of land---Compensation---Determination of---Reference to Referee Court---Referee Judge in the light of pleadings, framed issues and parties produced their respective evidence pro and contra and passed a decree in favour of land owners---Authorities filed First Appeal before the Chief Court which upheld the judgment of Referee Court---Validity---Concurrent judgments had been passed by the Division Bench of the Chief Court and Referee Court after thrashing out entire documentary evidence---No substantial grounds or reasons existed for interference in the impugned judgments of the Chief Court and Referee Court---Petition was dismissed. **[2016 GBLR 246]**

---Ss. 4, 18 & 23--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Acquisition of land---Compensation---Determination of---Reference to court---Landowner having not been properly compensated for acquired land, filed reference before the Collector to properly compensate him according to the prevailing market rate; as the acquired land was of more value than the assessed amount---Said reference having been dismissed on the ground of limitation, petitioner filed writ petition before the Chief Court, which was dismissed by the Chief Court by a nonspeaking order---Validity---Supreme Appellate Court, remanded the case to the Collector; who would refer the same before the Court to hear and decide the same on its own merits in accordance with law---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed accordingly. **[2016 GBLR 261]**

---Ss. 4, 18, 23 & 31(2)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Acquisition of land---Award of compensation---Partial payment of compensation received by landowners---Order to surrender partial payment--- Reference to referee court---Acquiring authority being dissatisfied with the payment of amount filed reference petition under S.18 of the Land Acquisition Act, 1894 before Referee Court who directed the landowners to surrender the partial payment received by them---Judgment of the Referee Court was maintained by the Chief Court---Validity---Referee Court and Chief Court had passed the judgment in accordance with law and facts of the case---Well reasoned and well founded concurrent judgments of the courts below were maintained by the Supreme Appellate Court---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Petitioners, submitted that instead of surrendering the amount in cash, Bank Guarantee of the same/equal amount, was to be accepted by the Trial Court---Such request of the petitioners was accepted by Supreme Appellate Court---Order accordingly. **[2016 GBLR 255]**

---Ss. 4 & 23---Specific Relief Act (I of 1877), Ss. 8 & 42--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Acquisition of land---Suit for possession and declaration---Land in question owned by the plaintiffs/ petitioners, was acquired by the authorities, without paying compensation to the owners---Suit for declaration and possession filed by the plaintiffs was decreed by the Trial Court---Lower Appellate Court dismissed the first appeal, however the judgment of the Trial Court to the extent of delivery of structure/buildings and compound interest was varied---Chief Court, in revision, set aside the concurrent findings of the courts below and authorities were directed to prepare fresh award as per prevailing rates of the relevant year---Validity---Land in question, admittedly was acquired by the authorities, who had constructed a school on the land in question, without giving compensation to its owners/ petitioners---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed Judgment in revision passed by the Chief Court, was set aside whereas judgment passed by Civil Judge was maintained. **[2016 GBLR 232]**

---S. 10---See Land Acquisition Act (I of 1894), S. 4. **[2015 GBLR 154]**

---S. 18---See Land Acquisition Act (I of 1894), S. 4. **[2015 GBLR 154]**

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---S. 18---See Land Acquisition Act (I of 1894), S. 4. [2017 GBLR 120]

---S. 18---See Land Acquisition Act (I of 1894), S. 4. [2017 GBLR 374]

---Ss. 18, 23 & 34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)---Acquisition of land---Compensation and compound interest---Potential value of land---Determination---Compensation awarded by Land Acquisition Collector was enhanced by Referee Court and also imposed 15% of interest on total amount of compensation from the date of taking over possession of the land in question--- Validity---Land in question was commercial land having a potential value which was also admitted by witnesses of authorities in their statements before Referee Court--- Land owner through oral and documentary evidence had successfully substantiated his claim and the courts below had enhanced the amount of compensation on the basis of documentary as well as oral evidence by both the parties---Payment, of compensation was a statutory right of land owners and while determining amount of compensation, Collector was obliged to assess rate of compensation in terms of S.23 of Land Acquisition Act, 1894, keeping in view the location, commercial and potential value of land and amount of sale of similar kind of land in vicinity and fixed the rate in a fair and transparent manner---Chief Court enhanced rate of compensation on the basis of sale price of adjacent lands keeping in view commercial and potential value of land which was strictly in accordance with law and in consonance with evidence available on record which called for no interference---Authorities failed to point out any infirmity, misreading/non-reading of evidence and misinterpretation of law---Leave to appeal was refused. [2011 GBLR 467]

---Ss. 18 & 28---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Acquisition of land---Compensation---Rate of interest---Referee Court enhanced compensation but did not give any finding regarding payment of compound interest---Chief Court accepted the appeal of land owners and allowed 8% compound interest on excess amount of compensation from 1-5-1990---Validity---Chief Court had rightly held that land owners were entitled for payment of 8% compound interest on excess amount of compensation allowed by Referee Court from the date of possession till payment thereof---Supreme Appellate Court modified the order passed by Chief Court to the effect that interest under S.28 of Land Acquisition Act, 1894; should be paid to land owners only on

excess amount from 2-1-1991 from the date of possession to the date of payment---Appeal was allowed.

----S. 18 See Land Acquisition Act (I of 1894), S. 4. [**2010 GBLR 370**]

----S. 23---See Land Acquisition Act (I of 1894), S. 4. [**2015 GBLR 154**]

----S. 23---See Land Acquisition Act (I of 1894), S. 4. [**2017 GBLR 379**]

----S. 23---See Land Acquisition Act (I of 1894), S. 4. [**2017 GBLR 120**]

----S. 23---See Land Acquisition Act (I of 1894), S. 4. [**2017 GBLR 374**]

----S.28---See Land Acquisition Act' (I of 1894), S. 4.

----S. 28---See Land Acquisition Act (I of 1894), S. 18. [**2011 GBLR 270**]

----S. 28---See Land Acquisition Act (I of 1894), S. 4. [**2017 GBLR 379**]

----S. 28---See Land Acquisition Act (I of 1894), S. 4. [**2010 GBLR 370**]

----S. 34---See Land Acquisition Act (I of 1894), S. 4. [**2011 GBLR 270**]

----S. 34---See Land Acquisition Act (I of 1894), S. 4. [**2011 GBLR (e) 383**]

----S. 34---See Land Acquisition Act (I of 1894), S. 18. [**2011 GBLR 467**]

----S. 34---See Land Acquisition Act (I of 1894), S. 4. [**2017 GBLR 349**]

----S. 34---See Land Acquisition Act (I of 1894), S. 4. [**2017 GBLR 291**]

----S. 34---See Land Acquisition Act (I of 1894), S. 4. [**2010 GBLR 370**]

**Limitation Act (IX of 1908)---**

----S. 5---See Civil Procedure Code (V of 1908), O. VII, R. 2. [2010 GBLR 242]

----S.5---See Civil Procedure Code (V of 1908), O. IX, R. 13. [2010 GBLR (b) 334]

----Ss. 5 & 12---Civil Procedure Code (V of 1908), O. XLI, R. 19 & O. III, R. 2---Restoration of appeal---Condonation of delay---Appeal was dismissed for non-prosecution on 1-9-2009 and application for restoration was moved on 15-12-2009--- Validity---Personal appearance of petitioner was not at all required rather his representation through his authorized agent in terms of Order III, R. 2 C.P.C. was sufficient---Nothing was available on record to explain absence of the counsel of petitioner---Delay in filing application for restoration of appeal dismissed in default was not explained satisfactorily---Law would favour the vigilant and not the indolent particularly in a case in which valuable right had accrued in favour of opposite party---Petition for leave to appeal was dismissed. [2010 GBLR 382]

----S. 5---See Civil Procedure Code (V of 1908), O. IX, R. 13. [2017 GBLR 256]

S. 5 See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13). [2012 GBLR 196]

----S. 12---Exclusion of time consumed in obtaining certified copy of impugned judgment/decreed/order---Reckoning of excludable time---Method explained. [2010 GBLR (b)283]

----S. 12---See Civil Procedure Code (V of 1908), O. XLI, R. 19. [2010 GBLR (a)283]

----S. 12---See Limitation Act (IX of 1908), S. 5. [2010 GBLR 382]

----Art. 10---See Gilgit-Baltistan Prior Purchase Regulation, 1938, S. 29. [2010 GBLR 126]

----Art. 120---See Gilgit-Baltistan Prior Purchase Regulation, 1938, S. 29. [2010 GBLR 126]

----Arts. 120, 142 & 144---See Specific Relief Act (I of 1877), S. 39. [2010 GBLR 69]

----Art. 164---See Civil Procedure Code (V of 1908), O. VII, R. 2. [2010 GBLR 242]

---Art. 164---See Civil Procedure Code (V of 1908), O. IX, R. 13. [2010 GBLR (b)334]

---Art. 164---See Civil Procedure Code (V of 1908), O. IX, R. 13. [2012-14 GBLR 92]

---Art. 168---See Civil Procedure Code (V of 1908), O. XLI, R. 19. [2010 GBLR (a) 283]

---Art. 173---See Civil Procedure Code (V of 1908), S. 114. [2010 GBLR (c) 308]

---Art. 181---See Civil Procedure Code (V of 1908), O. IX, R.13. [2010 GBLR 463]

---Art. 181---See Civil Procedure Code (V of 1908), S. 114. [2010 GBLR (c) 308]

## M

### **Malafide---**

---Concept and meaning. [2010 GBLR (1) 467]

---General allegation of mala fide would not be sustainable in eye of law---Easy to allege mala fide, but very difficult to prove same. [2011 GBLR (b) 235]

---Proof---Mala fide could not be attributed to the Legislature; general allegation of mala fide was not sustainable in the eyes of law; it was very easy to allege, but very difficult to prove mala fide in writ proceedings---Onus was entirely upon the person alleging mala fides to establish it---Mala fide must be pleaded with particularity---Once one kind of mala fides was alleged, no one should be allowed to abuse proof of another kind of mala fide; nor should any equity be launched upon merely on the basis of vague and indefinite allegations---Person alleging mala fide should also not be allowed a roving inquiry into the files of the Government for the purpose of fishing out some kind of mala fide. [2012-14 GBLR (C) 266]

### **Malicious prosecution---**

---See Tort. [2010 GBLR (a) 128]

**Master and servant---**

---Appointment--- Termination of services of teacher--- Organization controlling administration of a private group of education service, appointed respondent against a vacant post in Primary School--- Respondent had passed examinations of F.A. and PTC during her service---After lapse of 13 years of service of the institution, organization introduced a scheme called “appraisal” (scheme), whereby services of the respondent were ---teacher (respondent) against her termination, was dismissed by the Trial Court, but appellate court below set aside impugned judgment and decree passed by the Trial Court---Chief Court maintained the judgment passed by the appellate court below---Validity---Organization had urged that respondent (teacher) lacked teaching abilities, but record had shown otherwise---Respondent had passed F.A. examination and also succeeded to pass her PTC examination during her service--- Respondent had gone through various trainings and workshops under the education system run by the organisation and she was placed in top-C by the administration---Organisation was running an Educational Institution and teachers appointed in various institutions, could not be let at the mercy of the organization on the pretext of principle of “Master and Servant” because as per legal maxim “ubi jus ibi remedium”, where there was a right, there was a remedy--- Respondent had spent 13 precious years of her life in the institution, all of a sudden, after expiry of her age to get any service in any other institution/department, organisation under the principle of equity might not be allowed to kick poor lady out from her respective service on the pretext of principle of “Master and Servant”---Principle of Master and Servant did not mean the principle of slavery--- Organisation was refused the grant of leave to appeal to Supreme Appellate Court and impugned order was upheld. [2015 GBLR 406]

**Mining Rules, 1948---**

---R. 79---Regulation of Mines and Oil Fields and Mineral Department (Government Control) Act (XXIV of 1948), Preamble---Criminal Procedure Code (V of 1898), S. 561-A--- SRO No. 797(1)72003, dated 8-8-2003---SRO No. 957(I)/2003, dated 4-10-2003---Mining, possessing and transporting mineral unauthorizedly---Quashing of FIR---Under R.79 of Mining Rules, 1948, possession of precious and semi precious stones from an individual, who had no authority for transportation of the same, could be dealt with under the law--- Extension of the Regulation of Mines and Oil Fields and Mineral Department (Federal Control) Act, 1948 to Gilgit-Baltistan (the then Northern Areas), had also framed rules there under vide SRO

No. 957(I)/2003, dated 4-10-2003---Writ petition could not be preferred, when there was an alternative remedy available under law--- Letters placed on record by the petitioners, were of no value as the Mining Rules had been extended to Gilgit-Baltistan---Petitioners had no case for quashing of FIR; petition for leave to appeal was refused by Supreme Appellate Court. [2015 GBLR 114]

**Muslim Personal Law (Shariat) Application Act (V of 1962)----**

----S. 2---See Specific Relief Act (I of 1877), s. 8. [2015 GBLR 218]

## N

**National Accountability Ordinance (XVIII 1999)--**

----Ss. 5(g) & 5A--- Gilgit-Baltistan (Empowerment and Governance) Order, 2009, Art. 61---Gilgit-Baltistan Council Notification No. C-4(2)/2013 GB Council dated 21.08.2015---Suo motu jurisdiction of Supreme Appellate Court---Matter relating to Judge of Customs and Banking Court additional charge of Judge, Accountability Court---consultation and consent of Chief Judge, Supreme Appellate Court, the Chief Court and the Gilgit-Baltistan Council was required before assigning additional charge Judge of Accountability Court---Judge, Banking/Customs Court lawfully appointed by the Gilgit-Baltistan Council with the consultation and consent of the Chief Judge, Supreme Appellate Court and the Chief Court---In such circumstances when the Judge, Banking/Customs was given additional charge Judge of National Accountability, no consultation and consent was required afresh from the Chief Judge, Supreme Appellate Court, the Chief Court and the Gilgit-Baltistan Council Notification No. C-4(2)/2013 GB Council dated 21.8.2015 issued by Gilgit-Baltistan Council whereby additional charge as Judge, National Accountability Court was given to Banking/Customs Court was restored---Supreme Appellate Court directed Judge, Banking/Customs Court to continue to hold additional charge as Judge of National Accountability Court in order to hear and decide cases in accordance with law, till the appointment of a regular Judge in terms of Ss. 5 & 5(A) of the National Accountability Ordinance, 1999---Suo motu case was disposed of accordingly. [2015 GBLR 134]

----S. 9---Criminal Procedure Code (V of 1898), S. 497(5)---Penal Code (XLV of 1860), S. 409---Prevention of Corruption Act (II of 1947), S.5(2)---Criminal breach of trust by public servant, corruption--Bail, cancellation of---Prima facie, the National Accountability



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Bureau Authorities had made out a case of corruption and corrupt practices against accused---Sufficient material was on record and reasonable grounds existed to believe the involvement of accused person in commission of alleged offence which disentitled them for concession of bail---Bail granted to accused person was cancelled, in circumstances. **[2016 GBLR (a) 418]**

---Ss. 9 & 10---Criminal Procedure Code (V of 1898), s. 497(5)---Corruption and corrupt practices---Bail, cancellation of---Prima facie NAB authorities had made out a case of corruption and corrupt practices against accused person; which had to be decided by competent court of jurisdiction on merits---Grant of bail to accused, was not tenable---Bail granted to one of accused persons, was confirmed purely on medical ground and bail granted to two co-accused persons were cancelled by the Supreme Appellate Court, in circumstances **[2016 GBLR (c) 390]**

---Ss. 9 & 10---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 71---Corruption and corrupt practices---Bail, grant of---Powers of Chief Court to grant bail to accused under National Accountability Ordinance, 1999---Chief Court, in exercise of its jurisdiction under S. 71 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, (Writ jurisdiction) was empowered to grant bail to accused under the National Accountability Ordinance, 1999, and all the grounds which were relevant for grant of bail under ordinary law, could generally be considered for grant of bail under writ jurisdiction. **[2016 GBLR (a) 390]**

---Ss. 9, 18, 19 & 31--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Corruption and corrupt practices--Cognizance of offence---Inquiry and investigation--- Petition for leave to appeal---For purpose of an inquiry or investigation, the officer so inquiring/investigating would have all the powers as were available with Officer-in-charge of a Police Station under Criminal Procedure Code, 1898 provided under Chapter XIV of the said Code---Inquiry/investigation could be initiated only by the Chairman of the Bureau or an Officer of the NAB duly authorized by him---If an inquiry or investigation was ordered in respect of offence punishable under National Accountability Ordinance, 1999 by Chairman NAB, then during the course of said inquiry of investigation of such offence, any officer duly authorized by Chairman, was competent to call for information from any person for the purpose of satisfying himself; whether there had been any contravention of the provisions of National Accountability Ordinance, 1999, or any rule or order made thereunder---Mere irregularity or illegality on the part of the

Investigating Officer in following procedure within meaning of Chapter XIV of Criminal Procedure Code, 1898 would not cost an offence to go unattended; because an irregularity or illegality in procedure could be cured, but not the impacts and effects of an offence, if same was let un-touched, despite its being coming to light--  
 - National Accountability Bureau authorities, could not be precluded to issue call-up notices or restrain to conduct an inquiry/investigation--  
 -Said authorities were lawfully authorized to conduct inquiry/investigation, and interference into such inquiries/investigations by the NAB authorities would seriously prejudice the prosecution towards its right in probing into an investigation/inquiry of an offence---No illegality or infirmity had been pointed out in the impugned judgments/order--- Impugned judgment being well reasoned and well founded, no interference was warranted---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was dismissed. [2016 GBLR 72]

----Ss. 9, 18, 19 & 31-D---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60 & 71---Corruption and corrupt practices---Inquiry, investigation or proceedings in respect of Bank loans---Scope---Accused allegedly obtained loan fraudulently from the Bank without providing proper securities---Co-accused, who was Branch Manager of the Bank, sanctioned said loan without obtaining sanction from the competent authority---Accused, in circumstances, had committed fraud, causing loss and damage to the Bank in connivance with co-accused---Accused persons were arrested by NAB authorities and they filed writ petition before Chief Court against their arrest, which was allowed---Validity---Case against accused persons fell within scope of S.9 of the National Accountability Ordinance, 1997---Chief Court fell in error and held that loan taken by accused was “imprudent loan” that inquiry/investigation initiated by NAB, was illegal and without jurisdiction; and that accused persons had challenged only the jurisdiction of NAB authorities---Inquiry/investigation initiated by NAB authorities, was with jurisdiction and they had legally taken the cognizance of the case---NAB authorities could not be precluded or restrained to conduct inquiry/investigation under National Accountability Ordinance, 1999---Mere filing of civil suit by the Bank against accused persons for recovery of loan, would not preclude or restrain NAB authorities for initiation of inquiry/investigation against accused persons, who allegedly obtained loan fraudulently, mis-used their authorities and committed offences of corruption and corrupt practices--- Officer so inquiring/investigating, would have all the powers as were available with the Officer-in-Charge of a Police Station under Cr.P.C.---

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Inquiry/investigation could not be initiated only by the Chairman or the Officer of the NAB, duly authorized---Interference in the inquiry/investigation of NAB authorities would seriously prejudice the right of prosecution---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed---Judgment inquiry of the offence---Impugned judgment being well reasoned and well founded, no interference was warranted---Impugned judgment of Chief Court was maintained---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed. **[2016 GBLR 174]**

---S. 9---Criminal Procedure Code (V of 1898), S. 497(5)---Corruption and corrupt practices---Bail, cancellation of---Chief Court allowed bail to the accused---Prosecution case was that accused being Principal Accounts Officer, was involved in the offence of corruption and corrupt practices regarding Illegal appointments of more than 23 officials in the Excise and Taxation Department---Co-accused, was also granted bail by the Chief Court---Special Prosecutor, could not point out any illegality and infirmity in the impugned judgment passed by the Chief Court---Leave to appeal against the judgment of Chief Court, was refused, in circumstances. **[2017 GBLR 82]**

---Ss. 9, 15(a) & 25(b)--- Corruption and corrupt practices, disqualification to contest elections, plea bargain---Effective date of accepting plea bargaining---Application of petitioner/accused for plea bargaining was approved by Chairman NAB on 21-10-20 and petitioner deposited amount which was accepted by the Chairman NAB---Plea of petitioner was accepted vide order dated 29-3-2017 and his name was deleted from the Reference in question by acquitting him from the charges levelled against him--- Petitioner being aggrieved with the effective date of accepting plea bargaining called in question that it should be reckoned from the date, the petitioner had discharged his liabilities and approved by the Chairman NAB on 21-10-2004; plea of petitioner was dismissed on the ground that plea bargaining would be effective from the date of order passed by the Trial Court i.e. 29-3-2017--- Ambiguity existed in the order of the Trial Court as to whether plea bargaining would be effective from the date of the approval by the Chairman NAB or from the date of order passed by the Trial Court---Ambiguity had not been clarified by both the Trial Court and the Chief Court---Validity---Effective date would be reckoned from the date the petitioner discharged his liability i.e. 21-10-2004---Petition for leave to appeal was converted into appeal and was allowed---Impugned order passed by the Chief Court and that by the Trial Court to the extent of effective date, were set aside. **[2017 GBLR 339]**

----Ss. 9(a) & 31-A---Criminal Procedure Code (V of 1898), S. 497(5)---Corruption and corrupt practices---Abscondance to avoid service of warrant---Petition for cancellation of bail--- Accused who had been convicted for 3 years under S. 31-A of National Accountability Ordinance, 1999, was to be dealt with accordingly--- Order passed by the Chief Court was well reasoned and well founded and no indulgence was warranted---If any material evidence, against accused would come on record regarding his involvement in commission of crime, NAB authorities could approach Chief Court for cancellation of his bail---Petition for leave to appeal was converted into appeal and was dismissed and impugned order passed by Chief Court was affirmed, in circumstances. [2017 GBLR 345]

----S. 12---Impounding of vehicle---Chief Court had directed the National Accountability Bureau to hand over the vehicle in question to the respondent without any delay by obtaining a simple undertaking from the respondent that he would produce said vehicle before Accountability Court as and when so ordered--- Bureau being aggrieved of said order of the Chief Court filed petition for leave to appeal---Contentions of Special Prosecutor NAB, were that NAB Authorities were entitled to seize the vehicle under S. 12 of National Accountability Ordinance, 1999; that only remedy available to respondent was to approach Trial Court for seeking Superdari--- Validity---Respondent had no nexus with the offence and vehicle in question was not used in the commission of offence---Vehicle in question, was not in the ownership of any of accused, and there was no rival claimant of said vehicle---Special Prosecutor NAB had failed to point out any illegality and infirmity in the impugned judgment of the Chief Court---No interference into said order of the Chief Court was warranted---Petition for leave to appeal was converted into appeal and was dismissed--- Impugned judgment of the Chief Court was affirmed, in circumstances. [2017 GBLR 9]

----S. 15(a)---See National Accountability Ordinance (XVIII of 1999), S. 9. [2017 GBLR 339]

----S. 25(b)---See National Accountability Ordinance (XVIII of 1999), S. 9. [2017 GBLR 339]

----S.31-A---See National Accountability Ordinance (XVIII of 1999), S. 9(a). [2017 GBLR 345]

#### **Northern Areas Governance Order, 1994---**

----Preamble---See Chief Court Establishment Order (1998), Art. 8. [2010 GBLR 322]

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---Arts. 17(1), 19-A & 27---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13). [2010 GBLR (e) 1]

---Art. 19-A---See Constitution of Pakistan (1973), Art. 4. [2010 GBLR (i) 1]

---Arts. 19-A & 27---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. [2010 GBLR (d) 1]

---Art. 19-A---Petition for leave to appeal---Civil service---Suit filed by employees was dismissed as time barred, but in appeal they succeeded as Appellate Court had decreed the suit---Authorities/employers being aggrieved by the judgment and decree of the Appellate Court filed revision, which was dismissed by Chief Court---Petitioners had filed petition for leave to appeal---Counsel for employers had not been able to point out from the record that either the initial appointment of the employees in BPS-7 or their subsequent upgradation/ appointment in BPS-9 on regular basis was illegal or was not in accordance with law---Order of upgradation/appointment of employees in BPS-9 was passed by the competent authority; and same having taken effect had created valuable right in their favour---Subsequent withdrawal of such order, would be out of the ambit of power of competent authority---Authorities having not been able to point out any material illegality or jurisdictional defect in the judgment of the Chief Court calling for interference of the Supreme Court, petition for leave to appeal was dismissed. [2010 GBLR (b) 92]

---Arts. 19-A, 27 & 45(2)---Fatal Accidents Act (XIII of 1855), S. 1---Fatal accident---Suo motu notice---Payment of compensation---Four innocent young persons were travelling in a car on road during the night and while crossing the bridge when reached in the centre of bridge, their car due to the breakage in the bridge fell in the river, three of them lost their lives; whereas fourth one sustained serious injuries-- Said accident was not due to fault of the victims, but they lost their lives due to negligence of public functionaries who were responsible to maintain the road and bridge---Degree of carelessness about the life of people was cruel and criminal--- Matter relating to the right of life of the people in terms of Art. 9 of Constitution of Pakistan read with Art. 19-A of the Northern Areas Governance Order, 1994, was of public importance and Supreme Appellate Court exercising the power under Art. 45(2) of Northern Areas Governance Order, 1994 Was concerned to take cognizance of the matter---Careful examination of the statements of the witnesses had shown that on the day of incident, neither the road leading through bridge was closed for traffic nor any sign board that bridge was out of order, was put on the road---General

Manager of National Highway Authority, had not been able to bring on record any evidence in support of version that necessary precautions were taken to close the road for traffic to avoid any incident--- Clipping of newspaper and statements of the witnesses, had clearly shown that the damage caused to the bridge concerned due to the breakage of its pillars, was well within the knowledge of National Highway Authority, but said Authority knowingly had omitted to block the road and close it for traffic, so much so that no sign board indicating “danger” was installed on the road on either side of the bridge to warn the public--- Failure of Authority to take the precautionary measures for the safe journey on the road was a gross negligence for the purpose of civil as well as criminal liability and aggrieved persons at their choice could surely avail the appropriate remedy provided under the law---Suo motu notice was disposed of with direction that National Highway Authority .... would pay compensation in the sum of Rs. five lac for each deceased to his legal heirs and same amount to the injured and Authority would bear the expenses to the treatment of injured. **[2010 GBLR (a) 36]**

---Art. 27---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. **[2010 GBLR (f) 1]**

---Art. 28(3)---Civil Procedure Code (V of 1908), S. 20--- Dismissal from service---Employee was dismissed from service after issuing him show-cause notice and holding inquiry against him on allegations of financial irregularities and misappropriation---Employee assailed order of his dismissal from service before Chief Court in a writ petition, which petition was allowed with direction of reinstatement of employee in service---Contentions of the employer/Bank firstly was that it was a private Bank and Staff Service Rules of the Bank were not statutory rules to be enforced through the process of writ petition, secondly that relation between the Bank and employee being that of master and servant, writ petition before Chief Court was not maintainable---Validity--- Petitioner/Muslim Commercial Bank, admittedly was a private Bank---Alleged financial irregularities were committed by the employee at ‘Skardu’ and inquiry into those irregularities was held at Islamabad whereas the final order of dismissal of employee from service was also passed by the circle office at Islamabad---Notwithstanding the fact that transaction of misappropriation happened at Skardu where petitioner-Bank also carried business, the cause of action would certainly arise in favour of employee out of the order of his dismissal from service which was passed at Islamabad and not at Skardu where transaction of misappropriation of money took place during his tenure as manager--- Cause of action in such cases could be referred to the grounds on the

basis of which relief was sought and not only with reference to the place of transaction on the basis of which an action was taken---Cause of action wholly or partly arose in favour of the employee within the local limit of courts at Islamabad---Mere fact that the transaction of misappropriation took place in the Skardu branch of the Bank---Contentions would not give rise to the cause of action for the purpose of invoking the jurisdiction of courts in Northern Areas---Employee was aggrieved of the action taken against him by the Bank at Islamabad and final order of dismissal from service was also passed within the local limits of courts at Islamabad---Courts in Northern Areas would have no jurisdiction to adjudicate the matter---Chief Court being not competent to entertain the writ petition and adjudicate the matter for want of jurisdiction, impugned judgment was set aside---Petition was converted into appeal and allowed by Supreme Appellate Court. [2010 GBLR 88]

**Northern Areas Legal Practitioners and Bar Councils Order, 2000---**

---S. 2---Supreme Appellate Court Gilgit-Baltistan Rules, 2008, O. IV, R. 2---Enrollment as advocate of Supreme Appellate Court Gilgit-Baltistan---Gilgit-Baltistan Bar Council and the enrollment committee constituted thereunder---Legality---Petitioner contended that the said enrollment committee was functioning in sheer violation, derogation and contravention of the rules and procedure provided by the Northern Areas Legal Practitioners and Bar Councils Order, 2000; that the Gilgit-Baltistan Bar Council was a Provincial Bar which was not a substitute or parallel body to the Pakistan Bar Council and its domain/powers/functions were restricted to the Chief Court Gilgit-Baltistan only for the enrollment of the advocates; that the Gilgit-Baltistan Bar Council could not function in dual capacity i.e., Provincial as well central body at one and the same time---Validity---Supreme Appellate Court suspended the enrollment committee constituted by the Gilgit-Baltistan Bar Council till the necessary amendments were made in the Northern Areas Legal Practitioners and Bar Councils Order, 2000, and directed that the advocates who had already been issued “Fitness Certificates” by the Chief Court and their cases were pending before the said enrollment committee should be referred to the Supreme Appellate Court to consider their enrollment as an advocate of the Supreme Appellate Court. [2017 GBLR (b) 1]

**Northern Areas Transport Company Service Rules, 2009----**

---R. 25 (as amended Vide Notification dated 29-9-2009)--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60

& 71---Matter of terms and conditions of service of employees of a private limited company---Writ petition--- Maintainability---Scope--- Retirement age limit of 60 years having been changed into 55 years by amendment in R.25 of the Service Rules of the company, the petitioners/employees challenged such amendment in writ petition--- Chief Court vide impugned judgment allowed writ petition and declared order of retirement of the petitioner as illegal and without lawful authority---Validity---Employees of company, were neither civil servants nor their services were governed by statutory rules--- Issue relating to the service of company, could not be adjudicated by Chief Court in writ jurisdiction, despite the fact that a registered company under the law carried the status of a legal person with a right to sue and liability to be sued through its Chief Executive; but mere fact that a company was a legal person, could not necessarily; be subject to the writ jurisdiction of Chief Court in respect of its internal affairs, rather than an aggrieved person could avail the appropriate remedy before a court of general jurisdiction in respect of his grievance against the company---Writ jurisdiction of Chief Court, in absence of an alternate remedy, could be invoked by the employees of the statutory bodies in the matters relating to their terms and conditions of service, but employees of private limited company being governed by the relationship of “master and servant”, could not avail the remedy of writ jurisdiction of Chief Court in respect of their terms and conditions of service; and also could not question the vires of Service Rules of the company in writ petition before the Chief Court; and could avail the remedy before the Civil Court or before the Labour Court, as the case may be, in accordance with law---Employees of non-statutory bodies were governed by the relationship of master and servant, the employees could not be able to maintain writ petition in respect of terms and conditions of their service---Petition was converted into appeal and was allowed. [2011 GBLR (d) 515]

## O

### **Oaths Act (X of 1873)---**

----S. 6---See Civil Procedure Code (V of 1908), O. VI, R. 17. [2012-14 GBLR 63]

### **Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979)---**

----S. 14---See Penal Code (XLV of 186P), S. 457. [2017 GBLR 61]



----S. 17---See Penal Code (XLV of 1860), S. 436. [2017 GBLR 52]

**Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)---**

----S. 9---See Penal Code (XLV of 1860), s. 365-B. [2012-14 GBLR 203]

----S. 14---See Penal Code (XLV of 1860), s. 365-B. [2012-14 GBLR 203]

## P

**Pakistan Arms Ordinance (XX of 1965)---**

----S. 10---Return of licensed surrendered arms---During clean up operation of arms and ammunition in the year 2005 to get rid of illegal arms and ammunition from the city and maintain the law and order situation, citizens were required to surrender their licensed arms and ammunition---Respondent approached the authorities for return of surrendered gun and on refusal of authorities, filed civil suit for recovery of the gun or Rs. 20,000 as price of the same---Suit was decreed and judgment of Trial Court was upheld by appellate court and the Chief Court---Validity--- Advocate General could not point out any illegality or infirmity in the impugned judgments of courts below---Judgments of the Chief Court as well as of two courts below were well reasoned and well founded---Leave to appeal was refused and impugned judgments were affirmed. [2017 GBLR 26]

----S. 13---See Penal Code (XLV of 1860), S. 302. [2012-14 GBLR 61]

----S. 13---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Foreigners Act (XXXI of 1946), Ss. 3 & 4---Possessing unlicensed arms---Act of terrorism---Reappraisal of evidence---Jurisdiction of Anti-Terrorism Court---Scope---Appeal to Supreme Appellate Court against judgment of Chief Court had arisen out of order, whereby conviction of accused recorded under S. 7(h) of Anti-Terrorism Act, 1997 by the Trial Court was set aside by maintaining sentence under S. 13 of Arms Ordinance, 1965---Trial Court had mistakenly taken cognizance of case under S.6(2)(i) of Anti-Terrorism Act, 1997---Mere existence of mens re a was not offence without actus reus---Trial Court had no jurisdiction to try the case under Foreigners Act, 1946 as well as under Pakistan Arms Ordinance, 1965 and had withdrawn the

charges against accused under Foreigners Act, 1946 as it had no jurisdiction to try the same---Trial Court having taken cognizance of said offence wrongly and inadvertently as the offence under Pakistan Arms Ordinance, 1965 was not included in the schedule of Anti-Terrorism Act, 1997---Mere possession of illegal weapon by a person would provide no ground for invoking the jurisdiction of Anti-Terrorism Court against him---Trial Court lacked jurisdiction to try the cases under Foreigners Act, 1946 as well as under Pakistan Arms Ordinance, 1965---Question of jurisdiction, could be raised at any stage of the case---Impugned judgment passed by the Chief Court and that by the Anti-Terrorism Court, were set aside. [2017 GBLR 143]

**Pakistan Electronic Media Regulatory Authority Ordinance (XIII of 2002)----**

----Ss. 30, 33, 34, 35 & 37---Overriding effect of Ordinance--- After promulgation of the Pakistan Electronic Media Regulatory Ordinance, 2002, same being a special law, had exclusive jurisdiction and Authority under the said Ordinance could take cognizance of offences committed by Media Channels in violation of PEMRA Laws and Rules thereunder---In presence of penal provisions, Authority under the Ordinance could suspend, cancel licence; prosecute and impose fine, whosoever would violate the PEMRA Laws and Rules, thereunder--- Pakistan Electronic Media Regulatory Authority Ordinance, 2002 had an overriding effect upon other previous enacted special laws---Every case was to be decided on its own merits--- Order accordingly. [2016 GBLR (b) 280]

**Pakistan Citizenship Act (II of 1951)----**

----Preamble---See Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009, Art. 95. [2010 GBLR (b) 81]

**Penal Code (XLV of 1860)----**

----S. 100---Right of private defence---Right of private defence, could be extended where reasonable apprehensions of danger had arisen from an attempt or threat to life---Private defence was a right of protection and not of aggression. [2015 GBLR (b) 1]

----S. 153-A---Anti-Terrorism Act (XXVII of 1997), Ss. 8, 9 & 25--- Criminal Procedure Code (V of 1898), Ss. 196 & 417(2)--- Promoting enmity between different groups, act of terrorism--- Appeal against acquittal---Case was registered on information with the delay of almost 20 days---Procedure---Police Officer was duty bound to send report to the Magistrate concerned forthwith---Police Officer did not

send any such report to the Magistrate, which had caused a serious doubt about the secret information and proceedings by the Police Officer---Case could not be registered with promptitude, which had made the case of prosecution doubtful---Prosecution witnesses had stated that (they were never associated with the investigation of the case nor their statements under S.161, Cr.P.C., were ever recorded by the Investigating Officer---Inference could be drawn that witnesses had not seen accused persons while committing the offence---Whole exercise undertaken by the Investigator, while collecting the incriminating material from accused persons, was rendered futile---Such kind of evidence could not be relied upon for conviction and sentence, particularly, when appeal was against acquittal---Cognizance in the offence under S.153-A, P.P.C., could not be taken to any court in view of S.196, Cr.P.C.---Registration of FIR in such a manner was void ab initio---Offence under S. 153-A, P.P.C., could not be termed as an offence against individual, rather it was an offence against the State---Court would take the cognizance of offence punishable under S.153-A, P.P.C., upon a complaint made by Federal Government or Provincial Government or some officer so empowered in that behalf by any of the two Governments---No sanction was accorded, entitling the Judge Anti-Terrorism Court to take the cognizance of the offence under S. 153-A, P.P.C.---Case in an offence under S. 153-A, P.P.C., could not be proceeded on the report prepared under S. 173, Cr.P.C.---Non-adherence and observance of the provisions of S.196, Cr.P.C., rendered the subsequent proceedings a nullity---Where a condition for the exercise of jurisdiction, was not fulfilled, the whole proceedings, subsequent thereto would become coram non iudice, and would have no legal effect, and would render the whole exercise, not only illegal, but also without jurisdiction--- Accused was presumed to be innocent, unless found guilty--- Supreme Appellate Court, could not substitute its own finding, unless it was found that the findings of the Chief Court, were based on mis-reading of the evidence leading to miscarriage of justice---Judgment of the Chief Court, whereby, accused persons were acquitted, was unexceptional, and did not require any interference, in circumstances. [2012-14 GBLR (c)137]

---S. 193---Perjury--- Proceeding--- Scope--- Accused was Investigating Officer of a criminal case and F.I.R. under S. 193 P.P.C. was registered against him for recording a false statement of a witness during the investigation---Validity---Action under S.193 P.P.C. could only be taken against any person after conclusion of trial---Any action taken during trial or at investigation stage would be violative of law--- Neither accused had given any false statement on oath before any court of law nor he resiled from any previous statement made by him--

-Accused as an Investigating Officer had only recorded a statement of witness under S.161, Cr.P.C. and mere recording of statement given by witness did not in any way constitute an offence punishable under S.193, P.P.C., nor it was scheme of law to launch a prosecution of perjury against any person before conclusion of trial---Trial against the accused had not even commenced and the case was at investigation stage---Chief Court should have differentiated investigation and trial before taking any action or giving its findings---Chief Court did not appreciate relevant provision of law properly and had predetermined guilt of accused---Judgment passed by Chief Court was set aside and F.I.R. against accused was quashed---Appeal was allowed. **[2010 GBLR 266(2)]**

---Ss. 221, 222, 223, 224 & 225---Anti-Terrorism Act (XXVII of 1997), Ss. 6, 7, 21-1 & 21-L---Intentional omission to apprehend on the part of public servant bound to apprehend, escape from confinement or custody negligently suffered by public servant, resistance or obstruction by a person to his lawful apprehension, resistance or obstruction to lawful apprehension of another person, act of terrorism---Reappraisal of evidence---Court competent to try case---Provisions of Ss. 6 & 7 of the Anti-Terrorism Act, 1997, were not attracted and applicable to the case---Chief Court had rightly held that the case was triable under the ordinary jurisdiction of the competent court of law i.e. the Sessions Court---Advocate-General, could not point out any illegality and infirmity in the impugned judgment, which was well reasoned and well founded---Impugned judgment passed by the Chief Court was affirmed---Sessions Court was required to hear and dispose the case on merits---Order accordingly. **[2016 GBLR 196]**

---Ss. 279, 427 & 337-M---Rash driving or riding on a public way, mischief causing damage, hurt not liable to qisas--- Appreciation of evidence---Prosecution witnesses, who were accompanying the complainant in the vehicle in question, deposed that they heard voice of collusion from the rear side of the vehicle (car); whereafter they became unconscious, consequently both had not seen as to who hit the vehicle---Other prosecution witnesses also stated that when they reached at the place of occurrence, they saw colluded vehicles---Conviction could not be recorded on hearsay evidence without any corroboration; as prosecution witnesses present in car had become unconscious and had not seen as to who hit the car of complainant---Petition was converted into appeal and was allowed---Impugned judgment passed by Chief Court, was not sustainable and was set aside---Judgment/order passed by Judicial Magistrate, holding that prosecution had failed to produce any material on record warranting conviction of accused was maintained---No inference could be drawn

that accident of the car was due to rash driving and negligence of accused, in circumstances. [2015 GBLR 320]

---Ss. 295-B & 295-C---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 11. [2011 GBLR (r) 121]

---Ss. 295, 295-A, 295-B, 295-C, 298, 298-A, 300 & 302--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 49--  
-Blasphemy, Sectarian hatred and difference of opinion in religious matters, qatl-i-amd---"Blasphemy"--- Concept---Sectarian hatred and difference of opinion in religious matters, was not as such an offence, whereas sectarian violence or killing for difference of religious opinion, or sectarian hatred, was an offence within the ambit of "terrorism"---Imposing or spreading a religious opinion on others by force and violation, was also a crime of the nature of terrorism; and sectarian crimes accordingly could be categorized with reference to the nature of transaction---No conception of division of Muslims in different sects or religious difference existed in Islam---Killing of each other on account of difference of opinion was 'Fasad-fil-ardh', which was a serious crime, and was strongly prohibited in Islam---Use of derogatory and insulting language, showing disrespect to the sacred and Holy persons, was religious offence under the law, and in general was called 'Blasphemy'---Person by using derogatory words against the sacred and Holy persons, would commit an offence of 'Blasphemy', and were not be entitled to any concession in law; or did not deserve any leniency in the matter of punishment---Religious offences, were not compoundable--- "Blasphemy" was irreverence towards God, religion, Holy persons, and things considered sacred--- "Blasphemy", was malicious revilement of God, and religion, which was considered a crime---Insult of Holy Prophet (PBUH), was a most serious offence in Islam---If an act of "Blasphemy" in respect of Holy Prophet (PBUH) was committed by a Muslim by faith, he was 'Murted', and was Wajab-ul-Qatl in Islam---Insult of Holy Prophet (PBUH), was an offence under S.295-C, P.P.C., which was punishable with death or life imprisonment---Blasphemer of Holy Prophet (PBUH), was liable to the punishment of death or life imprisonment under S.295-C, P.P.C.---State in a Muslim Community was obliged to set the law at motion against the person who committed an act of "Blasphemy" of Holy Prophet (PBUH)---Islamic Injunctions on "Blasphemy" detailed by Supreme Appellate Court. [2012-14 GBLR (b) 10]

---Ss. 295-A, 298-A & 34---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, S. 95---Criminal Procedure Code (V of 1898), S.403---

Deliberation and malicious acts intended to outrage religion feelings of any class by insulting its religion or religious beliefs, use of derogatory remarks in respect of Holy personages, common intention, act of terrorism--- Appreciation of evidence---Double jeopardy--- Accused persons were prosecuted almost in all the four provinces of Pakistan; most of the cases registered on the same set of allegations, same set of fact and the same set of evidence and many of the FIRs had been quashed; in two cases accused were acquitted---No body could be prosecuted and punished twice for the same offence in violation of Fundamental Rights of accused persons---Provisions of Art. 13(a) of Constitution of Pakistan, read with Art. 95 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 and S. 403, Cr.P.C., as well as S.26 of the General Clauses Act, 1897, were fully attracted in the case---Order accordingly. **[2016 GBLR (a) 280]**

---S.302---Criminal Procedure Code (V of 1898), S.164--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)---Qatl-e-amd---Prosecution contended that Chief Court failed to evaluate confessional statements of two accused duly recorded under S.164 Cr.P.C. and that Chief Court did not take into consideration the recovery of Kalashnikov from accused, the empties and fourteen live rounds positively opined by Forensic Science Department--- Prosecution further contended that confessional statement supported by recoveries, as incriminating articles, were sufficient to sustain conviction order by Trial Court---Effect---Leave to appeal was granted by Supreme Appellate Court to consider the contentions of prosecution. **[2010 GBLR (a) 256]**

---S.302---Reappraisal of evidence---Benefit of doubt---Recovery memo---Statements of witnesses---Conviction and sentence awarded to accused by Trial Court was set aside by Chief Court---Validity--- Although law required immediate dispatches soon after recovery in separate parcels but the said provisions of law had been violated by investigation officer---Out of two marginal witnesses of recovery memo, one witness was not examined while statement of the other was contradictory on material points to recovery memo as well as to the statement of Investigating Officer---In absence of other evidence, mere recoveries would not be sufficient to furnish a foundation for a conviction on capital charge---Prosecution failed to prove the guilt of accused beyond reasonable doubt therefore, judgment passed by Chief Court was maintained---Appeal was dismissed. **[2010 GBLR (e) 256]**

---Ss. 302/324/109/34---Anti-Terrorism Act (XXVII of 1997) Ss. 6 & 7---Qatl-e-amd; attempt to commit qatl-e-amd and abetment---Delay in conclusion of trial---Case was pending for the last 4/5 years without

any progress---Trial Court was directed to submit report to the Registrar of Supreme Appellate Court regarding inordinate delay in conclusion of the trial within a fortnight for perusal of the Supreme Appellate Court and order in chamber. **[2010 GBLR 280]**

---S. 302(1)---Anti-Terrorism Act (XXVII of 1997), Ss. 6/7--- West Pakistan Arms Ordinance (XX of 1965) S. 13---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)--- Qatl-e-amd, terrorism and possessing arms--- Appraisal of evidence Trial Court convicted and sentenced accused, but Chief Court set aside judgment of the Trial Court and acquitted accused by giving him benefit of doubt---Appeal against acquittal---Prosecution had established accusation of accused beyond shadow of doubt by producing cogent and concrete evidence, which had rightly been considered by the Trial Court---Defence Counsel could not succeed to shatter the veracity of the statement of the prosecution witness who narrated facts arid directly connected accused with the commission of offence---Weapon of offence, 30 bore pistol was recovered immediately after the arrest of accused from his personal possession--- In presence of recovery memo, delay in lodging of F.I.R. under S. 13 of West Pakistan Arms Ordinance, 1965, had no effect at all on the merits of the main case---Crime empty shell and live cartridges were sent to ballistic expert, which were examined and found to have been fired from the pistol recovered at the instance of accused---Number and type of weapon was the same, which was shown in the recovery memo---No fabrication or alteration of recovery memo.---Version of prosecution witnesses was consistent, confidence inspiring and worthy of credence which had rightly been taken into consideration and they by no stretch of imagination, could be labelled as interested witnesses--Prosecution had substantiated the allegations against accused beyond any shadow of doubt---Case against accused, in circumstances was fit for life imprisonment---Impugned judgment of Chief Court was set aside and that of the Trial Court was restored to meet the ends of justice. **[2010 GBLR (a) 550]**

---S.302(b)--- False implication---False implication had almost become a phenomenon---Generally, it was found that while reporting the crime, an informant when happened to be a relative of deceased or otherwise, an interested person, he includes among the real culprits, the name of head of that family; or family members, enjoying respect and influence, to eliminate the aid and assistance, likely to be given to accused--- Friends of accused or enemy of complainant, were roped in---Such a practice was most detestable, yet it was difficult to get rid of that evil. **[2010 GBLR (c) 550]**

----S.302(b)---Gilgit-Baltistan(Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Qatl-e-amd,---Leave to appeal was granted to accused by Supreme Appellate Court to reappraise the evidence in order to appreciate the legal and factual aspects of the controversy in the case. **[2010 GBLR (a) 139]**

----S.302(b)---Qatl-e-amd---Appraisal of evidence---Sentence, reduction in---Ocular account of occurrence being truthful inspired confidence---Occurrence had taken place in broad daylight---F.I.R. having been lodged without any delay had eliminated the question of false implication---Eye-witnesses had established their presence at the scene of incident, which was not disputed by defence---Accused had been directly charged in the F.I.R. with a specific role---Ocular testimony was consistent---Relationship of eye-witnesses with the deceased was no ground to discard their evidence---Motive for the occurrence had been proved on record---Conviction of accused was maintained---Parties were closely related to each other having no previous enmity with the deceased---Minor, contradictions existed between medical and other circumstantial evidence---Death sentence of accused was converted into imprisonment for life with reduction in fine, in circumstances. **[2010 GBLR (c) 139]**

----S. 302(b)---Qatl-e-amd---Appreciation of evidence---Contradiction in ocular and medical evidence---Effect---Contradictory medical evidence cannot discard the confidence inspiring ocular testimony furnished by truthful witnesses. **[2010 GBLR (b) 139]**

----S. 302(b)---Qatl-e-amd---Maxim ‘Falsus in uno falsus in omnibus’---Applicability---Maxim had no universal application and it was bounden duty of the court to sift the grain from the chaff---For the elaboration of said maxim, it could be safely said that ordinarily integrity of a person was considered as indivisible; he was to be believed or disbelieved as in whole--- Superior courts of subcontinent had frequently declined to follow the principle as in their vast experience, it was found that many a time, innocent persons were roped in to settle the account of old enmities---It was deemed expedient and just to undertake an exercise of sifting the grain of truth from the chaff of falsehood---If the courts would adhere to the rule “Falsus in uno falsus in omnibus” same would result in full holiday to the culprits. **[2010 GBLR (b) 550]**

----S.302(b)/34---Qatl-e-amd---Appraisal of evidence---Sentence, reduction in---Mitigating circumstances---Evidence of prosecution witnesses was truthful, real inspiring and trustworthy and did not suffer from any material defect or contained any describable



contradictions and discrepancies to create a slight doubt regarding the guilt of accused---Case of co-accused who was acquitted was distinguishable from the case of accused---Ocular evidence and injuries caused by accused to the deceased were supported by medical report, eye-witnesses and other circumstantial evidence---Eye-witnesses fully corroborated to each other on material points without any contradiction---Motive for the offence had been proved beyond any shadow of doubt---Statements of all the three eye-witnesses though had been recorded after six days of the occurrence without any explanation for such delay, but two other witnesses could be relied upon as their names appeared in the F.I.R. regarding the occurrence; and reliance could be placed on their statements---Occurrence had taken place on broad daylight, and F.I.R. having been lodged without delay, question of false implication would not arise in the case---Eye-witnesses had shown their presence on the spot of occurrence---Accused was directly charged in the F.I.R. with specific role---Ocular evidence of prosecution witnesses was consistent and the defence counsel could not collect a single iota of a word after lengthy cross-examination which could benefit the accused--- However, there were some extenuating circumstances---Both the parties were closely related and there existed no background of any previous enmity or deep rooted hostility between accused and the deceased---Present was not a preplanned case, but by chance meeting of both the parties, resulted in a sudden fight in which accused caused death of deceased--Minor contradictions in the medical and other circumstantial evidence, were available on the record---Said factors having made out a case for mitigation of sentence, lesser punishment of life imprisonment would meet the ends of justice---Death sentence awarded to accused by the Trial Court was converted into imprisonment for life and appeal against acquittal of co-accused was dismissed, in circumstances. [2010 GBLR 576]

----S. 302---Gilgit-Baltistan(Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Leave to appeal was granted by Supreme Appellate Court to consider; whether in absence of post-mortem report for ascertainment of cause of death, recovery of incriminating article on pointation of accused and reliable piece of ocular evidence, it was a fit case for acquittal; and if prosecution story was believed, application of S. 302, P.P.C. was unwarranted as occurrence was not result of pre-meditation but it was result of sudden impulsions. [2011 GBLR (a) 360]

----Ss. 302 & 319---Qatl-e-Amd, Qatl-e-Khata---Re-appraisal of evidence---Benefit of doubt---Cause of death---Proof---Postmortem, non-conducting of---Free fight took place between both the parties and

all of them pelted stones on one another--- Deceased died due to a stone blow effected by accused---Trial Court convicted the accused under S.302(c), P.P.C. and sentenced him to ten years imprisonment but Chief Court converted the conviction into S. 302 (b) P.P.C. and sentenced him to imprisonment for life---Validity---Accused had committed offence of Qatl-e-Khata---Supreme Appellate Court convicted the accused under S. 319, P.P.C. and also imposed Diyat on the accused---Appeal was allowed. **[2011 GBLR (b) 360]**

---S.302/34---Gilgit-Baltistan(Empowerment and Self-Governance) Order, 2009, Art. 65---Qatl-e-amd---Review of judgment by Supreme Appellate Court---Sentence---Entire evidence in the case was dilated upon in comprehensive manner and neither any material fact was ignored nor it was a case of misreading or non-reading of the evidence---Legally, sentence had been awarded to, accused---Supreme Appellate Court normally would not interfere in review with the quantum of sentence, if the same had been imposed having taken into consideration all the material available on record; and keeping in view the intrinsic value of the evidence produced by the prosecution---In the present case, there was a brutal murder and the crime was committed by accused alone---Review petition was dismissed, circumstances. **[2011 GBLR (b) 118]**

---S. 302/34---See Gilgit-Baltistan (Empowerment Governance) Order, 2009, Art. 60(11). **[2011 GBLR 228]**

---Ss. 302/34 & 324---Anti-Terrorism Act (XXVII of 1997), Ss. 6/7---West Pakistan Arms Ordinance (XX of 1965), S. 13(d)--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Qatl-e-amd, attempt to commit qatl-e-amd, common intention, act of terrorism and possessing unlicensed arm---Three crime empties of 30 bore pistol and 8 crime empties of Kalashnikov, recovered during spot inspection, were handed over to Inspector police without preparing sealed parcel and said Inspector was not produced to prove the safe custody of crime empties in the Police Station---Withholding of crime empties at Police Station and not sending to the Forensic Science Laboratory, would be a relevant fact to create a serious doubt qua the credibility of evidence of recovery---Accused were neither shown armed with pistols nor they were attributed the specific role of firing at the deceased and injured witnesses---Neither any Kalashnikov was recovered nor it had been explained that apart from the accused as to who was armed with pistol and who had the Kalashnikov---No explanation was for the coming as to the empties of Kalashnikov recovered at the scene of occurrence and as to who made firing with Kalashnikov---Driver of the vehicle and Police Constable, given up

witnesses, were in direct range of firing of accused, but none of them were injured; and also the complainant and another one were sitting immediately behind the driver seat, were not injured---First version of the prosecution case as disclosed in the F.I.R., and narrated by prosecution witnesses in their statement under S.161, Cr.P.C. was purposely changed at the trial on the basis of recovery of pistol from accused---Occurrence did not take place in 'the manner as had been narrated, and the prosecution knowingly by withholding the most important and natural witnesses had suppressed the material facts which had created a serious doubt qua guilt of accused---Statement of injured witness under S.161, Cr.P.C. was recorded in the hospital after 20 days of occurrence, wherein it was not mentioned that accused were armed with pistol and remaining eye-witnesses also made a similar statement, but subsequently they made improvements in their statements---With the exclusion of said improved version in the statements of witnesses, there was no other reliable evidence on record---No independent corroborative evidence of unimpeachable character was found in the case---Serious defects existed in the prosecution case---Crime empties were kept at Police Station without sealed parcel till the recovery of pistol and were sent together with pistol to the Forensic Science Laboratory for expert opinion---Possibility of tampering with empties could not be ruled out, in circumstances---Failure of the prosecutor to point out the defect in the investigation and reason of distinguishing the case of accused from remaining accused would seriously reflect upon his conduct and fairness of Investigating Officer---Conviction and sentence awarded to accused by the Trial Court, were set aside, in circumstances. **[2011 GBLR (a) 486]**

---Ss. 302/34 & 324---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60--- Qatl-e-amd and attempt to commit qatl-e-amd---Appraisal of evidence-----Circumstantial evidence---Doubtful character of circumstantial evidence could not provide corroboration to doubtful character, of evidence of ocular account. **[2011 GBLR (d) 486]**

---Ss. 302/34 & 324---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Qatl-e-amd and attempt to commit qatl-e-amd---Appraisal of evidence---Presumption of guilt---Guilt or innocence of an accused was always determined on the basis of facts of a particular case and in criminal justice system, there was no concept of raising presumption of guilt without proof of the relevant facts---Assumption of fact merely on the basis of attending circumstances, could cause injustice; the court, in circumstances, must give anxious consideration to the evidence to dig out the truth of the matter---General trend was the society was that innocent persons were

implicated in criminal cases along with the actual offenders---In the interest of safe criminal administration of justice, the courts following the rule of the appraisal of evidence, must not raise presumption of fact and guilt without strong evidence on record---Such was the duty of the prosecution to prove the charge against accused beyond all reasonable doubt and court in absence of confidence inspiring evidence, could presumption of innocence of an accused, but was not supposed to raise presumption of guilt, unless strong circumstances were present in support of such a presumption---Conclusion of the evidence in the facts and circumstances of each case was to be drawn on the basis of settled principles of law. [2011 GBLR (f) 486]

---Ss. 302/34 & 324---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Qatl-e-amd and attempt to commit qatl-e-amd---Appraisal of evidence---Principles---Conviction on basis of mere presumption---Benefit of doubt--- Law of criminal administration of justice was that different piece of evidence produced by prosecution in a case, could not be considered in isolation, rather cumulative effect was to be given to the entire evidence; and any benefit of doubt arising out of evidence, was to be extended to the accused as of right--- Conviction on the basis of mere presumption without reliable direct evidence or a strong circumstantial evidence of unimpeachable character, could result in injustice and defeat the concept of law---Strict adherence to law was mandatory requirement in criminal cases involving capital punishment; and courts must not take any exception to the said rule of law--- Principles of appraisal of evidence in all fairness, was that in a case in which there were more than one accused and all were alleged to have played similar role, in the occurrence, the court must be careful in distinguishing the role of individual accused in the light of principle of sifting the grain from the chaff--- Such was duty of the court for safe administration of justice to make scrutiny of the testimony of eye-witnesses on the basis of other evidence of unimpeachable character, if the ocular account alone was not sufficient to maintain conviction---Rule of independent corroboration was a rule of abundant caution and was not necessarily to be followed in each case, but in the cases in which on the basis of same set of circumstances and facts the prosecution by pick and choose, put one set of accused to face the trial and exonerated other set of accused, it was mandatory for the court to strictly apply the rule of independent corroboration with case; and unless very strong and unimpeachable character of corroborative evidence was available, the conviction on the basis of shaky and doubtful character of evidence, was not legal. [2011 GBLR (g) 486]

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----Ss. 302/34 & 324---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60--- Qatl-e-amd and attempt to commit qatl-e-amd---Appraisal of evidence---Medical evidence---Evidentiary value---Medical evidence could identify the nature of fire-arm injury to the extent of whether it was caused by a bullet or a pellet, but medical evidence could not identify that bullet injury was caused with pistol or Kalashnikov. **[2011 GBLR (b) 486]**

----Ss. 302/34 & 324---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Qatl-e-amd and attempt to commit qatl-e-amd---Appraisal of evidence---Non-production of most material and independent witness---Effect---Prosecution was not bound to produce each witness before the court, but non-production of most material and independent witness, could impeach the credibility of the prosecution evidence; and could create doubt qua the truthfulness of the story. **[2011 GBLR (i) 486]**

----Ss. 302/34 & 324---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Qatl-e-amd and attempt to commit qatl-e-amd---Appraisal of evidence---Quality of evidence---Quality and not the quantity of the evidence was required to prove the guilt of accused---Fate of trial, in the case of direct evidence, would depend on the ocular evidence and the credibility of evidence was to be ascertained on the basis of appraisal of evidence in accordance with the principles of administration of justice---Where direct evidence alone was not considered sufficient to determine the guilt of an accused facing trial, the court could following the rule of corroboration look for corroborative evidence of unimpeachable character. **[2011 GBLR (c) 486]**

-----Ss. 302/392/34---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Qatl-e-amd, robbery---Reduction of sentence---Occurrence was unseen one and the only evidence in proof of guilt of accused was circumstantial evidence---Both prosecution witnesses had fully supported the prosecution version of the case and said witnesses were not only impartial, but were natural also---Both said witnesses had no enmity or ill-will with any of the accused---No chance for falsely involving accused in the case---All prosecution witnesses who were impartial, their integrity could not be shattered in any way, although they were subjected to a lengthy cross-examination---Said reliable prosecution evidence was sufficient to record conviction of accused for the offence of murder of two deceased---Trial Court sentenced accused to undergo imprisonment for 25 years, twice for murder of both deceased and also awarded ten years R.I. to accused in offence under S. 392, P.P.C.---

Chief Court had enhanced the sentence into death penalty---Validity--- Chief Court had adopted the wrong standard in appraising the prosecution evidence, without any real effort to adjudge the credibility of witnesses and failed to discuss each and every crucial issue regarding the enhancement of sentence awarded by the Trial Court vide its judgment---According to the prosecution's own case, it was not the accused alone who remained involved in murder of innocent persons, as to whether his companion also Contributed in said murder, remained in dark---Benefit of lesser sentence was to be given to accused in circumstances and instead of extreme penalty of death, accused could be awarded lesser penalty for life---Case was fit for alternation of sentence---Petition for leave to appeal was converted into appeal and was allowed, with the reduction of sentence of death into the imprisonment for life under S.302(c), P.P.C.; whereas conviction of accused under S.392, P.P.C. was set aside as lower courts did not provide fair chances to the accused to face legal consequences of S.392, P.P.C.---Order accordingly. **[2011 GBLR (a) 322]**

---S. 302(b)---Qatl-e-amd---Re-appraisal of evidence---Related witness---Substitution theory---Mere relationship of witness with deceased is no ground for discarding his evidence, if he otherwise appears to be truthful and his presence at place of occurrence is probable---Mere relationship of witness with any of the parties does not render him as an interested witness--- Related, witness sometimes, particularly in murder cases, may be found more reliable because such witness on account of relationship with deceased would not let go the real culprits or substitute an innocent person for him. **[2011 GBLR (c) 366]**

---S. 302(b)---See Anti-Terrorism Act (XXVII of 1997), S. 7(a). **[2011 GBLR (a) & (b) 366]**

---S. 302(b)/34---Anti-Terrorism Act (XXVII of 1997), S.7(a). West Pakistan Arms Ordinance (XX of 1965), S.13(d)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Qatl-e-amd, common intention, act of terrorism and possessing unlicensed arms---Appraisal of evidence--- Prosecution instead of producing sole eye-witness of the occurrence, relied upon the circumstantial evidence---Star witness of prosecution being not an eye-witness of the occurrence, had no direct knowledge of the involvement of any accused in the case---Said witness got information regarding involvement of accused and his co-accused in the occurrence by a person who was not produced as witness by the prosecution--- Statement of said witness, was hearsay, which was not admissible in

evidence to be made basis of conviction of accused---Non-production of a sole eye-witness, would not only create serious doubt qua the guilt of accused, but would also demolish the entire prosecution case---Motive of sectarian hatred had been attributed in, the case, but no reliable evidence, direct or circumstantial had been produced in support thereof--- Prosecution did not produce any public witness of the recovery of pistol from the accused person---Crime empties, of 30 bore pistol, four in number recovered on the day of occurrence from the spot, had been kept at the Police Station, till recovery of the pistol and both were sent together to the Forensic Science Laboratory for expert opinion, without any explanation-withholding of crime empties at Police Station, would create a serious doubt in respect of credibility of that piece of evidence as the possibility of tampering with the empties, would not be ruled out, and no sanctity would be attached with the report of Forensic Science Laboratory---With the exclusion of statement of prosecution witness and evidence of recovery, medical evidence and motive alone, would not prove the guilt of accused---Petition for leave to appeal was converted into appeal, and was allowed---Conviction and sentence awarded to accused by the Trial Court was set aside, in circumstances. **[2011 GBLR (a) 475]**

---S.302(b)/34---Qatl-e-amd, common intention---Appreciation of evidence---Medical evidence---Relevance---Medical evidence was relevant only to the extent that the deceased sustained firearm injuries on his person, but that evidence neither could identify the assailant nor would be helpful in proof of the fact that the recovered pistols were used in the occurrence. **[2011 GBLR (f) 475]**

---Ss. 302 & 34---Anti-Terrorism Act (XXVII of 1997), Ss. 6, 7 & 27---Pakistan Arms Ordinance (XX of 1965), S. 13---Qatl-i-amd, common intention, act of terrorism, possessing unlicensed arms---Appreciation of evidence---Trial Court vide its judgment acquitted accused---Chief Court, on appeal, not only maintained the impugned judgment of the Trial Court, but imposed Diyat on State for defective investigation, instead of taking action against Investigating Officer under S.27 of Anti-Terrorism Act, 1997---State Counsel, could not point out any infirmity and illegality in both the judgments of the courts below, and admitted that there was no eye-witnesses; and that recovery of pistol was not effected in presence of independent witnesses from the house of accused---Matching of empties fired from recovered pistol lost its evidentiary value rather became doubtful in circumstances---Orders passed by the Trial Court and Chief Court were maintained, in circumstances. **[2015 GBLR 247]**

---Ss. 302, 109 & 34---Pakistan Arms Ordinance (XX of 1965), S. 13---Qatl-i-amd, abetment, common intention, possessing unlicensed arms--- Appreciation of evidence---Prosecution witnesses, who saw the occurrence at the spot daylight, had given ocular account---Said witnesses consistent with each other and had fully described the role of accused persons---Medical evidence had supported the version of prosecution---Accused had admitted the occurrence and the injuries on the head of the deceased---Nothing could be brought on record to show that prosecution witnesses and the eyewitnesses had any malice, or any animus against accused, so as to falsely implicate them in the case---Occurrence had taken place as at the site stated by the prosecution---Medical evidence supported the ocular version---Report of Fire-arms Expert with regard to pistol recovered from accused was positive--- Chemical Examiner also examined hatchet recovered from accused and same was found covered with human blood---Said part of evidence supported prosecution evidence and it could not be discarded merely for non-association of private witnesses---Prosecution had successfully proved motive for the murder--- Statements of prosecution witnesses recorded under S.164, Cr.P.C., before Judicial Magistrate were in line with the statement recorded by prosecution witnesses before the Trial Court---Prosecution having failed to prove conspiracy against one of accused persons, co-accused was rightly acquitted from the charge---Prosecution version, which was fully proved against both accused persons, was more probable---Right of private defence, as pleaded by accused, could not be given--- Supreme Appellate Court in view of mitigating circumstances, converted death sentence awarded to accused into imprisonment for life, while conviction and sentence of co-accused was set aside. **[2015 GBLR (a) 1]**

---Ss. 302, 324 & 34---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Criminal Procedure Code (V of 1898), Ss. 132 & 197---Qatl-i-amd, attempt to commit qatl-i-amd, common intention, act of terrorism---Appreciation of evidence---Two persons were killed in the incident and FIR was lodged against the petitioners, but said FIR was discharged by Police---Complainant party, dissatisfied with the order of Police, filed a private complaint against the petitioners before the court of Special Judge, Anti-Terrorism, which was also dismissed by the Anti-Terrorism Court---Complainant being dissatisfied with the order of Special Judge, Anti-Terrorism filed revision petition before Chief Court---Chief Court set aside order of Special Judge Anti-Terrorism Court and private complaint was transferred to Additional Sessions Judge for disposal of the same under ordinary jurisdiction in accordance with law---Validity---Judgment passed by the Chief Court



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was based on facts and law and same required to be maintained---Said order passed in revision by the Chief Court, was well reasoned and well founded, as no infirmity and illegality had been pointed out by the petitioner, which was upheld---Petition for leave to appeal was converted into appeal and was dismissed being meritless---Petitioner, however, would be at liberty to seek legal remedies during trial by moving application under S. 265-K, Cr.P.C., for their acquittal. **[2015 GBLR 330]**

---Ss. 302, 324, 337-A & 34---See Criminal Procedure Code (V of 1898), S. 345. **[2015 GBLR 190]**

---S. 302---See Penal Code (XLV of 1860), S.295. **[2012-14 GBLR (b) 10]**

---Ss. 302, 34, 109 & 114---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Pakistan Arms Ordinance (XX of 1965), S. 13---Criminal Procedure Code (V of 1898), S. 345---Qatl-i-amd, common intention, abetment, act of terrorism, possessing unlicensed arms---Reappraisal of evidence---Compromise--- Complainant moved application seeking permission for compounding the offence and release of accused persons on the ground of “compromise”---Chief Court sought the report regarding the genuineness of compromise effected between the parties---Trial Court, complied with the order, of the Chief Court and submitted the report---Statements of the Jirgah members, along with statements of the legal heirs of the deceased, verified the genuineness of the compromise, and submitted that they had no objection, if accused persons, were released from the judicial lock-up on the basis of the compromise, effected between the parties---Jirgah members, present in the court also assured that they were confident that compromise between the parties was genuine, and would be long lasting, and also peace and tranquility would prevail in the area--- Present was a good case for compounding the matter--- Accused persons, were ordered to be released from the judicial lock-up and were acquitted from the charges. **[2012-14 GBLR 61]**

---Ss. 302, 109, 114 & 34---Criminal Procedure Code (V of 1898), S. 164---Qatl-i-amd, abetment, common intention--- Reappraisal of evidence--- Circumstantial evidence---Requirements--- Confession--- Scope---Incident was an unseen occurrence, and entire case of prosecution, rested upon circumstantial evidence---In order to prove the case on the basis of circumstantial evidence, there should have been full chain of circumstances of the case, and chain should be such that there even a single knot of the chain should not be missing and be linked with each other, so that it could form such a continuous chain,

that its one end should be so linked with the other that the first touching the dead body, and the other would rope the neck of accused--If any link of chain was missing, that would create a serious doubt and the benefit of the same, was to go to accused---No nexus of one link with the other existed and it did not make the complete chain for the conviction of accused---In order to prove the case through circumstantial evidence, not only there, should be link with each knot of chain, rather every link should be corroborated through independent source, which must be confidence inspiring and truthful---Delay of 18 days in registration of case, and none was named in the FIR---Investigation of the case was so defectively conducted that evidence collected by the investigator and produced in the court, was not worthy of credence at all---Statement of accused, which was read against co-accused, had no evidentiary value at all---Confessional statement of accused was recorded with a delay of 9 days--- Such belatedly recorded statement in violation of S.164, Cr.P.C., would be discarded and would not be taken into consideration at all---Accused was not provided atmosphere free from fear, so that accused could get her confessional statement recorded, truthfully and voluntarily---Accused retracted from the confessional statement the earliest possible opportunity, much before the commencement of trial---Circumstances in which confessional statement was recorded, suggested that it was not free from duress and coercion---No supporting evidence was on record connecting accused with the crime for reliance on confessional statement--- Courts below had not given any reason, while accepting the retracted confessional statement of accused---Conviction could not be based on such like scanty evidence---Prosecution having failed to prove its case against accused, beyond reasonable doubt, conviction and sentence awarded to accused by courts below, were set aside and accused was acquitted of the charge and was released, in circumstances. **[2012-14 GBLR (b) 106]**

---Ss. 302, 109, 114 & 34---Criminal Procedure Code (V of 1898), S.367(2)---Qatl-i-amd, abetment, common intention---Duty of court--- Trial Court had passed the judgment in a hasty manner---It had not been specified as to under what offence, accused was convicted and sentenced---Courts were required to render the judgment after application of judicious mind, and court should remain conscious and it could well assess the evidentiary value of the statements of the witnesses, because the evidence of the witnesses was recorded in the presence of the Trial Court---imperative duty of the court under S.367(2), Cr.P.C. to specify the offence under which accused was being convicted and sentenced---Court was under legal obligation to mention the sections of P.P.C., or any other law, under which accused

was convicted, punished---Trial Court while rendering the judgment, in the present case, lost sight of the relevant provisions of law---Expeditious trial and quick disposal of cases, though were always appreciable, but same should not be detrimental to legal interest of accused, nor it should be done at the expense of justice---Court had adopted hasty steps to conclude the trial which could not be appreciated---Court, was to be careful while showing anxiety to dispose of the case; and it must be bridled with care and caution---Fundamental duty of the court was to see that the case of accused should not be prejudiced in any manner. [2012-14 GBLR (a) 106]

---Ss. 302,309,310,323&332---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 3 & 60---Constitution of Pakistan, Art. 9---Offences relating to human body---Compounding of offence---Security of person---In Islam, offences relating to human body, were not only against the victim, but also were against the society; and Islamic State in addition to protect the right of an individual, was responsible to protect the interest of society---Offences relating to the human body under Chapter XVI, P.P.C. were compoundable, but State Authorities or courts were not empowered to grant pardon to the offenders, or compound an offence in the cases of qatl or hurt without the intervention of legal heirs of deceased or a victim---Legal heirs of a deceased in case of qatl and a victim of hurt, had the right to grant pardon to an offender, with permission of court; and without intervention of State, with or without payment of compensation, but the court or State could not give pardon to an offender or a convict---Person, who was responsible for causing death, or bodily injury to a fellow person, in addition to the normal punishment, was also responsible for payment of compensation---Whereas in an Islamic State, in the light of concept of State responsibility of protection of life, liberty and property of its citizens, in case of failure of State machinery to maintain peace in the society, payment of compensation for the loss of life and property of people, could be direct liability of State---Responsibility of State Authorities was to enforce law and administer the affairs of State for protection of citizens---Rulers in an Islamic State being guardian of citizens were responsible for the protection of life and property of the citizens---State machinery must also provide legal aid and help in the matter of recovery of compensation in the case of loss, caused to a person as a result of criminal act of a fellow person---Victim, could have legal right to claim compensation from the Government, particularly if loss, was caused to the life or property of a person as a result of an act of State or due to the failure of State machinery to control law and order situation to maintain peace and administer criminal justice in the

society; and loss caused in unforeseen circumstances to the life or property of a person as a result of natural disaster or act of God--- Guarantee of life and liberty subject to law, was fundamental right of every citizen provided under Art. 3 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 and Art. 9 of the Constitution of Pakistan---Government, in circumstances, was liable to make payment of Diyat and compensation to the legal heirs of deceased and to victim, in hurt cases, in accordance with law. **[2012-14 GBLR (c) 10]**

---S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Accused was directly nominated in the promptly lodged FIR for the commission of murder---Prompt lodging of FIR, ruled out the chances of consultation and deliberation or concoction of the facts for false/fake implication of accused---Ocular account provided by the prosecution witnesses, fully corroborated the prosecution story---Story given by the complainant seemed to be natural and presence of complainant and other prosecution witnesses at the venue of occurrence could not be ruled out---Mere fact that post-mortem was not conducted on the body of deceased, was not fatal to the prosecution case, in the presence of the inquest report prepared by Investigating Officer, showing two injuries of the hatchet, one on the head and other on the neck of the deceased-- Presence of eye-witnesses at the place of occurrence at the relevant time, had fully been established---Mere close relationship of witnesses with the deceased, could not be termed as interested witnesses--- Testimony of such witnesses could only be discarded, if they had some cogent reason to implicate accused falsely---Defence had not brought any evidence on the file to prove that said witnesses were interested ones as they remained consistent in their statements throughout, and the defence could not shatter the veracity of their evidence despite searching cross-examination---Defence could not bring on record any discrepancy in their statements to dislodge the case of the prosecution-- Incriminating weapon of offence i.e. hatchet; and blood-stained earth taken into possession had proved the place of occurrence beyond any doubt---Absence and weakness of the motive could hardly be a ground to disbelieve the eyewitness account, if it was otherwise found trustworthy, independent and confidence inspiring---Occurrence, could not be said to be unseen---Substitution was a rare phenomenon-- - Quality and not the quantity of evidence, which was required to prove the case with regard to the guilt of accused---Evidence of a single witness could be relied upon, if his evidence was found to be trustworthy and of impeachable character---Accused, could not bring on record anything from which it could be determined that he was juvenile at the time of occurrence---Findings of the Trial Court were not based on misreading or non-reading of evidence---Impugned

judgment was based on correct application of law and proper evaluation of evidence---Defence had failed to point out, any material discrepancies and contradictions in the statements of eye-witnesses--- Judgment of Chief Court was maintained and upheld, in circumstances. **[2012-14 GBLR 215]**

---Ss. 302(b), 300, 322 & 331---Criminal Procedure Code (V of 1898), Ss. 164, 364, 537 & 417---Qatl-i-amd, qatl-bis-sabab, payment of diyat---Confession, recording of---Appeal against acquittal--- Reappraisal of evidence---Prosecution had based its case mainly on confessional statement of accused, and last seen evidence---No sanctity could be attached to confessional statement, because methodology of recording confessional statement as laid down in Ss. 164 & 364, Cr.P.C., had not been adopted by the Magistrate--- Magistrate had not put any question to the statement maker/accused regarding any torture by Police---Magistrate had admitted that the confessional statement of accused was recorded on oath--- Accused was not assured by the Magistrate that he would not be remanded to Police lock-up, in case he would decline to make confessional statement---Non-fulfilment of such requirements, while recording confessional statement of accused, would lead to an illegality not curable under S.537, Cr.P.C., as provisions of Ss. 164 & 364, Cr.P.C. were mandatory in nature--- Confessional statement of accused, could not be a basis for conviction---Chief Court, therefore, had rightly ruled the same out of consideration---Some impartial and disinterested witnesses had deposed before the Trial Court that they had seen the deceased and accused, while proceeding to mountain, wherefrom the dead body of the deceased was recovered---Said piece of evidence was believable, but it could not be sufficient for awarding major penalty as provided under S.302(b), P.P.C., in absence of other corroborative evidence i.e. medical or other---Possibility, could not be ruled out that accused took the deceased to the mountain, and left her over there; and deceased being a woman folk could not ascend from there and became prey of wild beast, or due to some other descend she lost her life--- Taking the deceased to a mountain and leaving her there, was the cause of death of deceased within the mischief of Qatl-bis-Sabab as defined in S.321, P.P.C.---Accused was convicted under S.322, P.P.C. for committing Qatl-bis-Sabab, which provided payment of Diyat--- Order accordingly. **[2012-14 GBLR 48]**

---Ss. 302(b) & 302(c)---Criminal Procedure Code (V of 1898), S.342- --Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60--- Qatl-i-amd--- Reappraisal of evidence---Sentence, reduction in---Defence version introduced in the statement under S. 342, Cr.P.C., was not supported by any evidence, oral or circumstantial and

was not spelt out from the prosecution evidence---No presumption of aggression of deceased could be raised on the basis of mere assertion in the defence version,---In absence of any direct evidence as to in what manner the occurrence took place and how the deceased sustained fire-arm injury on his person, presumption would be that accused was responsible for the unnatural death of deceased---Medical evidence, by itself would not suggest that the injury was caused to the deceased during the course of scuffling, rather, in the prevailing situation, the presumption would be that accused having pistol in his possession, committed act of aggression---Rule of acceptance or rejection of statement of accused under S.342, Cr.P.C., as a whole, was not attracted in the peculiar circumstances of the case---To use a portion of statement of accused containing his admission of occurrence in confirmation of his guilt with exclusion of remaining portion containing the defence plea was not permissible in law---Admission of accused at the maximum could be used for the purpose of corroboration---No plausibility in the defence version being available, same was excluded from consideration---Witnesses of last seen, were quite natural and independent---Evidence of last seen with the evidence of recovery of pistol, which was used as weapon of offence, and recovery of an empty with live bullets from the vehicle, coupled with medical evidence and attending circumstances, would be independently sufficient to prove the guilt of accused beyond any doubt---Plea of accidental death as a result of resistance of accused to the aggression of deceased was not convincing---Circumstances leading to the occurrence, clearly suggested that something suddenly happened between accused and deceased---Accused had ample opportunity to remove the deceased out of the vehicle at a deserted place in the dark, but he preferred to rush to hospital to save the life of deceased---Such conduct of accused, was a relevant fact---Occurrence was result of sudden flare-up and it was not an intentional or a premeditated murder to bring the same within the ambit of S.302(b), P.P.C., rather it would be a case under S.302(c), P.P.C. for the purpose of punishment--- Sentence of death awarded to accused by the Trial Court under S. 302(b), P.P.C., was converted into imprisonment of fifteen years under S. 302(c), P.P.C., in circumstances. **[2012-14 GBLR (b) 1]**

---Ss. 302(b), 309, 310 & 338-E---Criminal Procedure Code (V of 1898), S. 345--- Qatl-i-amd--- Compromise between the parties--- Complainant, present in court, had verified the contents of the compromise proceedings---Complainant had no objection, if accused was acquitted from the charge, he verified that the compromise was effected in the best interest of the parties as they were closely related

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and co-villagers--- Accused was ordered to be acquitted and released; in circumstances. [2012-14 GBLR 72]

---S. 302(c)---See Penal Code (XLV of 1860), S. 302(b). [2012-14 GBLR (B) 1]

---S. 302---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Arms Ordinance (XX of 1965), S.13---Qatl-i-amd, act of terrorism, possessing unlicensed arm--- Reappraisal of evidence---Sentence, reduction in---Life imprisonment awarded to accused by the Trial Court, was reduced to 14 years imprisonment by the Chief Court, while maintaining other sentences awarded by the Trial Court--- Recoveries of crime, were neither sent to the Arms Expert for verification, nor same were exhibited---Recovery witnesses had turned hostile--- Autopsy report was not produced in the Trial Court--- Evidence of the eye-witnesses of the case, were contradictory in nature---State did not move revision for enhancement of sentence of accused persons---Eye-witness had admitted that the deceased was a weak and unhealthy person and his wife resided with him; whereas other eye-witness who was close relative of the deceased was an interested witness---Said witness was not present, and had not seen the alleged firing upon the deceased by accused persons, which had created serious doubts in the prosecution case---Prosecution had failed to prove its case against accused persons beyond reasonable doubt--- Judgment, by the Chief Court was set aside by Supreme Appellate Court and accused persons were ordered to be released forthwith. [2016 GBLR 131]

---S. 302---Arms Ordinance (XX of 1965), S. 13--- Juvenile Justice System Ordinance (XXII of 2000), S.7--- Qatl-i-amd, possessing unlicensed arms---Age of accused---Determination of---Accused, during pendency of the case, filed application before the Trial Court claiming juvenility and the Trial Court declared accused as juvenile on the basis of academic certification and the assessment certificate by the Doctors--- Chief Court upheld the order of the Trial Court--- National Identity Card (CNIC), issued by the National Data Base and Registration Authority (NADRA) had been deliberately concealed by accused---National Identity Card showed that age of accused was 18 years at the time of commission of alleged offence, which had been verified by 'NADRA'---Order of the Chief Court was set aside, in circumstances. [2016 GBLR 158]

---S. 302(b)---Qatl-i-amd---Appraisal of evidence---Sentence, reduction in---Ocular account furnished by the complainant, fully supported the prosecution version as mentioned in the FIR---

Complainant was put under lengthy cross-examination, but defence had failed to shatter his evidence---Defence had not denied the presence of accused at the place of occurrence--- Crime weapon was recovered from accused on his pointation--- Inquest report supported the version of the complainant--- Motive part of evidence was not denied by the defence---Place of occurrence, presence of accused and complainant, eyewitnesses was not disputed by the defence--- Application filed under S.22-A, Cr.P.C., for registration of FIR against the complainant and others filed by co-accused, and defence taken by accused before the Trial Court in his statement recorded under S.342, Cr.P.C., was contrary in nature---Fact disclosed before the Trial Court under S.342, Cr.P.C., had not been mentioned in the said application--- Said co-accused after dismissal of his application under S.22-A, Cr.P.C., due to non- prosecution, had neither moved application for its restoration nor filed any private complaint against the complainant party for the occurrence as narrated by accused in his statement recorded in the Trial Court under S.342, Cr.P.C.---All said efforts of co-accused seemed to be an afterthought, which were disbelieved by the Trial Court---Prosecution had successfully proved its case beyond any shadow of doubt in bringing home the guilt for committing murder of the deceased by accused and co-accused through a credible and corroborative evidence on record---Failure in conducting post-mortem of the deceased at the request of his legal heirs as per their custom, would not cause any adverse effect to the prosecution case--- Judgment, passed by the Trial Court was well reasoned and well founded being passed in line with the facts of the case while appreciating the evidence on record and same was upheld--- Judgment passed by the Chief Court was set aside--- Convictions and sentences awarded to accused by the Trial Court were maintained by the Supreme Appellate Court---Death sentence, awarded to accused, was converted into life imprisonment with benefits of S.382-B, Cr.P.C. [2016 GBLR 398]

---Ss. 302(b) & 109---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7  
---Arms Ordinance (XX of 1965), S.13---Qatl-i-amd, abetment, act of terrorism, possessing unlicensed arms--- Appreciation of evidence--- Trial Court, convicted accused, but acquitted the co-accused by giving him benefit of doubt, despite the said co-accused was found fully involved in making the accused escaped from the jail---Prosecution had successfully proved its case against accused and the acquitted co-accused beyond any shadow of doubt---Counsel for accused could not point out any illegality and infirmity in concurrent judgments passed by two courts below to the extent of accused--- Judgments by the both courts below were maintained to the extent of accused by the Supreme



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Appellate Court---Murder reference was confirmed---Supreme Appellate Court to meet the ends of justice and in view of material on record, issued show-cause notice to the acquitted co-accused to appear in person or through his duly briefed counsel to explain as to why he be not convicted and sentenced in the case in accordance with law---Order accordingly. **[2016 GBLR 139]**

---Ss. 302(b), 114 & 34---Qatl-i-amd, abetment, common intention---Appreciation of evidence---Sentence, reduction in---Trial Court awarded death sentence to accused---Chief Court, on appeal, reduced the death sentence into life imprisonment---Complainant, in his appeal against judgment of the Chief Court alleged that case was that of brutal murder--- Validity---Prosecution had successfully proved its case against accused beyond any shadow of doubt---Motive of committing murder of the deceased was proved through material on record---No mitigating circumstances existed to reduce the sentence awarded to accused by the Trial Court---Appeal filed by the complainant was allowed by the Supreme Appellate Court---Judgment by Chief Court and sentence awarded to accused was modified from life imprisonment to death sentence---Chief Court was directed by the Supreme Appellate Court to answer the murder reference in positive. **[2016 GBLR 152]**

---Ss. 302(b), 324 & 34---Qatl-i-amd, attempt to commit qatl-i-amd, common intention--- Appraisal of evidence--- Counsel for the complainant had submitted that; it was a day light occurrence and FIR had been registered promptly; that Accused persons had been attributed a specific and direct role in commission of brutal murder and injuring a lady; that witnesses, had directly charged accused persons attributing them the specific roles; and that prosecution had proved its case beyond any reasonable doubt by producing eye-witnesses, recovery of blood-stained earth from the scene of occurrence, inquest report, Chemical Examiner's Report, Fire Arm Expert's Report, report of Radiologist and the recovery of weapon of crime on the pointation of accused persons---Trial Court convicted and sentenced accused persons and appeal against the judgment of the Trial Court was dismissed---No illegality, infirmity or mis-appreciation of evidence was pointed out in the concurrent findings of the courts below which were maintained, in circumstances. **[2016 GBLR 209]**

---S. 302---Qatl-i-amd---Appeal against acquittal---Reappraisal of evidence---Deceased and accused parties had no previous enmity rather they had good relationship with each other---Admittedly, an altercation took place between the parties at the place of occurrence,

while playing cricket---Both parties quarrelled again on the next day which ended with the intervention of the complainant/father of the deceased and other people present at the place of occurrence---Accused, in the meantime, rushed towards the place of incident and opened fire with a 30 bore revolver, targeting deceased which hit him on his left side of chest, resultantly he succumbed to fatal injury---Person who lodged the FIR and eye-witnesses of the offence, could not be examined due to their death before recording their statements---Three prosecution witnesses, were abandoned and declared hostile on the request of the prosecution---One of the prosecution witnesses was examined, who narrated the story and charged accused directly attributing him specific role in murder of the deceased---Statement of said witness had been corroborated by the post mortem report, the site-plan and recovery of the weapon of offence on the pointation of accused---Petition for leave to appeal was converted into appeal and was allowed---Conviction and sentence awarded to accused, were maintained and impugned judgment of acquittal by Chief Court was set aside, in circumstances. **[2017 GBLR 226]**

---Ss. 302& 34---Qatl-i-amd---Common intention---Appeal against acquittal---Reappraisal of evidence---Deceased was murdered by accused persons and wife of the deceased in preplanned manner---Confessions of both accused persons, recorded under S.164, Cr.P.C., were inculpatory in nature---Accused persons were attributed specific role in the murder of deceased--- Dead body of the deceased and the crime weapons i.e. stone and axe, were recovered on the pointation of accused persons--- Prosecution evidence produced in court was confidence inspiring--- Prosecution had successfully proved its case against accused persons, beyond any shadow of doubt---One of accused was minor/juvenile at the time of commission of murder of the deceased---No separate trial of said accused was carried out in line with the juvenile law, who had already suffered agony of protracted trial---Accused being juvenile at the time of occurrence; since no trial was separately conducted against him under the Juvenile Law, his acquittal ordered by the Chief Court was maintained---Conviction to other accused was maintained, however, death sentence awarded to him was converted to life imprisonment.**[2017 GBLR 136]**

---Ss. 302 & 109---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Qatl-i-amd---Abetment---Act of terrorism---Reappraisal of evidence--- Trial Court, convicted co-accused which judgment was upheld up to the Supreme Appellate Court, and co-accused was executed; whereas accused was acquitted by the Trial Court---No appeal was filed, either by the State or by accused before the Chief Court or before the Supreme Appellate Court---Supreme Appellate Court, set aside

acquittal order of accused and remanded case to the extent of accused to the Trial Court to hear and decide case on merits in accordance with law---Accused subsequently filed application before Trial Court for maintaining acquittal order earlier passed by the Trial Court; which application having been dismissed, accused filed appeal before Chief Court; which was dismissed, with observations that matter which had finally been decided by the apex court could not be adjudged---Accused, in his petition for leave to appeal had prayed that impugned judgment of Chief Court, be set aside being not well reasoned and well founded---Counsel for accused, could not point out any illegality and infirmity in the judgment passed by the Chief Court---Petition for leave to appeal was converted into appeal, and was dismissed. [2017 GBLR 307]

---Ss. 302, 310, 427, 435, 431, 353, 186, 147, 148, 149, 109 & 114---Anti-Terrorism Act (XXV of 1997), Ss. 6, 7 & 21-L--- Criminal Procedure Code (V of 1898), S. 345---Qatl-i-amd, attempt to commit qatl-i-amd, mischief, assault or criminal force to deter public servant from discharge of his duty, obstructing public servant in discharge of public functions, common object, rioting, abetment, act of terrorism---Compromise---Accused were charged for commission of alleged offences and parties entered into compromise through the notables---Parties patched-up the matter by pardoning accused in the larger interest of peace and tranquility in the area---Statements of the parties were recorded by the Trial Court and the compromise was allowed; which was upheld by the Chief Court vide impugned order---Advocate General pleaded that some of the legal heirs, had not participated while compounding the case---No legal heirs came forward to challenge the compromise, either in the Trial Court, the Chief Court or before the Supreme Appellate Court---Plea taken by the Advocate General had no force---Advocate-General, even otherwise, could not point out any illegality and infirmity in the judgment/order of the Chief Court---Criminal appeal was dismissed and order passed by the Chief Court, was affirmed, in circumstances. [2017 GBLR 183]

---Ss. 302 & 316---Qatl-i-amd, qatl-i-shibh-i-amd---Reappraisal of evidence---Alternation in ' the charge---Application was filed to alter the charge from S.302, P.P.C., to S.316, P.P.C.; which was accepted and charge under S.316, P.P.C., was framed---Trial Court finding accused guilty for committing offence under S.316, P.P.C. proceeded to pass sentence of payment of diyat amount against accused---Chief Court, reversed the judgment of the Trial Court by remanding the case to the Trial Court for de novo trial under S.302, P.P.C.---Validity---Incident was a day light occurrence and accused was charged, directly by the independent eye witnesses, who attributed specific role to

accused in commission of alleged offence---Crime article i.e. cricket bat used in committing offence, had been recovered on the pointation of accused---Other corroborative evidence connecting accused with the commission of crime was also available on record---Medical evidence also corroborated ocular account---Accused had intentionally and deliberately hit the deceased with a bat due to which he died---Murder being intentional and not by mistake (qatl-i-khata), Trial Court had wrongly and illegally altered the charge of S. 302, P.P.C., into S. 316, P.P.C., which was rightly reversed by the Chief Court---Accused, could not point out any illegality, irregularity and infirmity in the order by the Chief Court---Appeal was dismissed and order passed by the Chief Court was maintained. **[2017 GBLR 38]**

---Ss. 302, 324, 109 & 34---Anti-Terrorism Act (XXVII of 1997), Ss. 6, 7 & 12---Pakistan Arms Ordinance (XX of 1965), S.13-Criminal Procedure Code (V of 1898), S.561-A---Qatl-i-amd, attempt to commit qatl-i-amd, abetment, possessing unlicensed arms, act of terrorism---Inherent jurisdiction of the Chief Court---Scope---Anti-Terrorism Court sent case of accused under Pakistan Arms Ordinance, 1965 to the court of Judicial Magistrate, who acquitted accused on the ground that prosecution failed to produce prosecution witnesses, despite lapse of considerable period---Appeal before the Chief Court against said order was allowed--- Validity---Case under Pakistan Arms- Ordinance, 1965 against accused was part of the main case which was pending adjudication before Anti-Terrorism Court---Transfer of said case to the Judicial Magistrate, was not sustainable; as it was a corroborative piece of evidence in the main case, which had rightly been reversed by the Chief Court in appeal---Chief Court had inherent powers under S.561-A, Cr.P.C., to pass any order as could be necessary to give effect to any order under Cr.P.C.; or to prevent abuse of the process of any court; or otherwise to secure the ends of justice---Chief Court had rightly observed that Judicial Magistrate, had not followed the procedure provided under Ss. 68 to 93-C, Cr.P.C., for procuring attendance of the witnesses---Transfer of case under S. 13 of Pakistan Arms Ordinance, 1965 by the Anti-Terrorism Court to court of Judicial Magistrate was not only illegal, but was also unwarranted--Counsel for accused, could not point out any infirmity in the impugned judgment---Petition for leave to appeal was converted into appeal and same was dismissed---Impugned judgment passed by the Chief Court, was affirmed in circumstances. **[2017 GBLR 266]**

---Ss. 302, 324, 427 & 34---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Criminal Procedure Code (V of 1898), S.22-A---Qatl-i-amd, attempt to commit qatl-i-amd, mischief, common intention, act of terrorism---Reappraisal of evidence---Application to Justice of

Peace for registration of criminal case---FIR was registered against the respondents/accused persons on account of alleged act of dacoity/terrorism and attempt to murderous assault on Police Mobile team---During said act of terrorism one Police constable received bullet injuries---Police in defence and safety opened fire, resultantly two alleged terrorists were killed while one was injured--- Respondents/ accused persons, also filed application under S.22-A, Cr.P.C., for registration of criminal case against the police officials which application was allowed directing to lodge FIR against petitioner police official in accordance with law---Said order was upheld by the Chief Court, which was sought to be set aside being without jurisdiction---Advocate General, Could not point out any illegality and infirmity in the judgment of the Chief Court---Impugned judgment being well reasoned and well founded, warranted no interference---Leave to appeal was refused accordingly. **[2017 GBLR 71]**

---Ss. 302 & 364-A---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Qatl-i-amd---Kidnapping or abducting a person under age of ten--- Act of terrorism---Reappraisal of evidence---Accused had allegedly committed brutal murder of an innocent child aged about three and half years---Prosecution had proved its case on the confessional statement of accused recorded voluntarily, which was corroborated by independent witnesses and circumstantial and medical evidence---Site plan of the place of occurrence was prepared by Investigation Officer on the pointation of accused in presence of Executive Magistrate and private witnesses---Accused who was sound minded man, would never take a plea of his insanity during the trial of his case---Evidence of independent witnesses was corroborative in nature and his statement remained un-rebutted---Chief Court had minutely appraised the prosecution evidence/material on record and discussed in detail the provisions of law, its application and dilated upon with diligence and legal wisdom---No infirmity or mis-appreciation of prosecution evidence, was pointed out in the said judgment---Prosecution had proved its case and guilt of accused without reasonable doubt---petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was dismissed---Conviction and sentence awarded to accused by the Trial Court and upheld by Chief Court, were maintained, in circumstances. **[2017 GBLR 240]**

---S.302(b)--- Qatl-i-amd--- Benefit of doubt--- Appeal against acquittal---Reappraisal of evidence---Murder of two persons by unknown accused---Trial Court convicted and sentenced accused, but Chief Court accepting appeal filed by accused persons set aside judgment of Trial Court, extending them benefit of doubt---Case of

prosecution was based on evidence of a child eye-witness, who was examined by the court without holding legally required test of competency to record evidence---Crime weapons and empties, were not sent to the Ballistic Expert and postmortem of the deceased persons, was not conducted to ascertain the cause of their death---No enmity was established and proved between the deceased and accused--Prosecution had failed to prove its case against accused persons beyond reasonable doubt---Prosecution evidence produced in the court was contradictory, ambiguous and not inspiring confidence---No infirmity or mis-appreciation of prosecution evidence, had been pointed out---Impugned judgment was well reasoned and well founded and no interference was warranted---Appeal against acquittal, was dismissed and judgment of the Chief Court was affirmed. **[2017 GBLR (a) 154]**

---Ss. 302(b) & 34---Anti-Terrorism Act (XXVII of 1997), S. 7(a)---Qatl-i-amd, common intention; act of terrorism---Appeal against acquittal---Reappraisal of evidence---Evidence of prosecution witnesses, who were independent witnesses, was inspiring confidence--Medical and circumstantial evidence was corroborative in nature which connected the chain in proving commission of brutal murder of innocent girl against accused persons---Evidence of one of the prosecution witnesses who was independent witnesses, was corroborative in nature---Statements of prosecution witnesses, remained un rebutted and their credibility was also not challenged by the defence counsel---No question was asked by defence counsel in disbelieving their testimony---Opinion of the Medical Board after exhumation and postmortem of the deceased, was also corroborative in nature, which had been exhibited through prosecution witnesses, who on cross-examination, deposed that cause of death was not hanging, but it was due to homicidal strangulation---Prosecution had proved its case against accused persons for the brutal murder of the deceased beyond any shadow of doubt---Petition for leave to appeal was converted into appeal and was allowed---Impugned judgment passed by Chief Court was set aside; whereas judgment passed by Trial Court was maintained---Conviction and sentences awarded by the Trial Court, were maintained and murder reference was, answered in the positive. **[2017 GBLR 108]**

---Ss. 303 & 324---See Criminal Procedure Code (V of 1898), S. 497. **[2012-14 GBLR 231]**

---Ss. 308, 316, 319, -322&323---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60 & 71---Qatl-i-Khata, payment of Diyat---Concept---State filed petition against order of Chief Court,

whereby Chief Court had maintained the order of the Trial Court regarding payment of Diyat to the legal heirs of deceased by the State and dismissed the appeal---Respondents were tried in a case registered against them under Ss. 427, 148, 149, 302 & 34, P.P.C. and having been found not guilty, were acquitted---Complainant got registered case that he along with 10 others, were proceeding in a vehicle, and having come to know about tension in the area, they were reluctant to go further, but the Magistrate on special duty, with Police Squad gave them assurance of safe crossing of the sensitive area; instructed them to follow the Police Van; and they proceeded accordingly---At some distance a group of persons armed with lethal weapons opened fire and pelted stones at the Vehicle; as a result whereof a few passengers sustained injuries, and one passenger died--- Magistrate and Police Officials present at the spot remained silent spectators, and did not bother to take any action to prevent the offence and did not protect the life of passengers--- Trial Court, found the case of Qatl-i-Khata, punishable under S.319, P.P.C.---Since driver of vehicle proceeded to cross the sensitive area on the instructions of the Magistrate, the Magistrate and Police Officials, who did not interfere to prevent the commission of offence, were equally found responsible for the incident; and having not taken any preventive measures, were found guilty of criminal negligence---Trial Court, directed the officials for payment of Diyat to the legal heirs of the deceased---State, without challenging the acquittal of accused officials, questioned the legality of order of payment of Diyat---Government of Pakistan and Gilgit-Baltistan, being trustees for the discharge of sovereign functions and responsible for all the affairs of the State, had legal obligation to provide protection to life and property of State subjects on the basis of State responsibility--- Concept of Diyat, Arsh, and Daman in Islam was different from the law of compensation in civil, criminal and general law---Diyat was defined in S.323, P.P.C., payable by the offender to the legal heirs of deceased---Diyat was not a simple compensation, in lieu of damages, rather it was a sort of punishment, which was not only payable in the cases in which the offence was not liable to the enforcement of qisas, or qisas was not enforceable---Diyat was a compensation/blood money as specified in Injunctions of Islam; and was payable in case of qatl-i-amd, if it was not liable to qisas or qisas was not enforceable---Diyat was also payment as punishment in cases of Qatl-i-Khata or Qatal-Bis-Sabab, because those offences were not liable to qisas---In addition to the individual responsibility of offender Government in Islamic State being responsible to provide full protection to the life and property of its citizens, was directly or indirectly responsible to pay compensation for the damage caused to the life or property of a citizen in accordance with the Injunctions of

Islam---Petition filed by the State against the judgment of Chief Court, was dismissed, in circumstances. **[2012-14 GBLR (a) 10]**

----S. 309---See Penal Code (XLV of 1860), S. 302. **[2012-14 GBLR (c) 10]**

----S. 309---See Penal Code (XLV of 1860), S. 302(b). **[2012-14 GBLR 72]**

----Ss. 316, 323 & 331---Criminal Procedure Code (V of 1898), S.544-A---Federal Government Notification No. S.R.O. 717(1)/2006, dated 10-7-2006---Qatl-e-Shibh-i-amd and payment of Diyat---Re-appraisal of evidence---Payment of Diyat--- Principles---Deceased used hot words towards accused who inflicted single blow on the head of deceased and weapon of offence was an iron bar---Trial Court convicted the accused under S.316, P.P.C. and sentenced him to fourteen years imprisonment with payment of Diyat of Rs. 400,000 but Chief Court altered the sentence and imposed payment of Rs. 14,00,000 as Diyat---Plea raised by accused was that the value of Diyat was to be determined according to the price when the offence was committed in year, 2006---Validity--- Accused was liable to pay Diyat under S.323, P.P.C. subject to the Injunctions of Islam, as calculated on the day of occurrence, which was Rs. 643,760 as per Notification No. S.R.O. 717(I)/2006, dated 10-7-2006, issued by the-Federal Government---Supreme Appellate Court set aside , the amount of Rs. 14,00,000 calculated as Diyat amount by the Chief Court and was reduced to Rs. 643,760 and amount of fine was enhanced from Rs. 30,000 to Rs. 50,000 and the same was converted into compensation under S. 544-A, Cr.P.C.---Appeal was allowed. **[2011 GBLR 352]**

----S. 319---See Penal Code (XLV of 1860), S.302. **[2011 GBLR 360]**

----Ss. 319/322---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Qatl-e-Khata and Qatl-bis-Sabab---Re-appraisal of evidence---Natural witness--- Passengers of vehicle---Conviction and sentence of payment of Diyat awarded to accused by Trial Court was maintained by Chief Court---Plea raised by accused was that prosecution failed to prove its case beyond doubt---Validity---Ocular account of occurrence furnished by prosecution witnesses inspired confidence, as they were independent and disinterested witnesses having no motive to make a false statement against the accused---Passengers of vehicle who reached at the place of occurrence were natural witnesses of the scene and their presence on the place of occurrence soon after the accident was not questioned by accused---All points raised by accused had already been discussed



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and dilated upon in concurrent findings in a comprehensive manner---Accused failed to point out any illegality or irregularity on the face of judgments passed by Trial Court and Chief Court---Leave to appeal was refused. **[2011 GBLR 378]**

---S. 322---Criminal Procedure Code (V of 1898), S. 544-A---Qatibis-Sabab---Compensation---Minor boy lost his life while fetching water from river during suspension of water supply and the death was result of negligence of authorities---Held, incident was direct result of carelessness and negligence of the authorities, therefore, reasonable compensation should be paid to legal heirs of deceased boy by the authorities---Supreme Appellate Court directed the authorities to pay a sum of Rs. 500,000 to legal heirs of the deceased child as compensation---Amount of compensation would be deposited with District and Sessions Judge for payment to the legal heirs of the deceased. **[2011 GBLR (a) 340]**

---S. 322---Criminal Procedure Code (V of 1898), S. 173--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61---Suo motu jurisdiction of the Supreme Appellate Court---Public Works Department, negligence of---Death due to pothole on a road---Compensation, payment of---Registration of FIR---Delay in sending challan to the Judicial Magistrate---Deceased, while going on a motor bike, suffered an accident due to a pothole on a road which had not been repaired by the concerned authorities for the last about one year---Deceased went into a coma on account of the head injury sustained during the accident and ultimately expired---Case was registered under S. 322, P.P.C., however the challan was not completed within the period stipulated under S. 173, Cr.P.C., and it remained pending with the investigating officer and nobody had adhered to see as to why, the challan was being kept with the police station instead of forwarding the same to the concerned court of Judicial Magistrate under the law---Supreme Appellate Court directed that the Station House Officer should submit the challan for the case within three days before the court of competent jurisdiction for further proceedings, and at the relevant Public Works Department shall make payment of Rs. two lac as compensation to the legal heirs of the deceased. **[2015 GBLR 324]**

---S. 322--- See Penal Code (XLV of 1860), S. 302(b). **[2012-14 GBLR 48]**

---S. 323---See Penal Code (XLV of 1860), S. 302. **[2012-14 GBLR (c) 10]**

---S.323---See Penal Code (XLV of 1860), S.316. **[2011 GBLR 352]**

---S. 324---Attempt to commit qatl-i-amd---Appreciation of evidence---Sentence, reduction in---Brother-in-law of accused brutally killed his wife and two children, was charged under S. 302, P.P.C.---When said brother-in-law of accused was brought to the Trial Court for extension of his remand, accused attempted to murder him with 30 bore pistol---Single shot opened by accused was deflected, thereby fire shot did not find its mark---Trial Court convicted accused and sentenced to 7 years imprisonment with fine of Rs. 3 lac---Chief Court upheld the judgment of the Trial Court---Accused who was a young man of about 22 years at time of occurrence, was badly moved by the brutal act of his brother-in-law, and on the day of occurrence attempted to do away with the killer of his sister, but failed to do so and was found guilty of S.324, P.P.C., for attempt to commit murder---Investigation of the case as well as the conviction of accused, did not suffer from any material defects---Findings of the Trial Court and Chief Court, were correct and convincing, but punishment awarded to accused, was a bit excessive in the circumstances of the case, which could be reduced---Accused had undergone the imprisonment for 3 years and 6 months---Benefit of S.382-B, Cr.P.C., had been extended to accused by two courts below---Period of 3 years and 6 months which accused had already spent behind the bars, was enough punishment for the act done by him--- Detention of accused behind the bars, was considered as sentence undergone---Fine of Rs. 3 lac, was also set aside by Supreme Appellate Court---Sentence of 3 months under S.13 of Pakistan Arms Ordinance, 1965, was considered to have been undergone---Orders of Trial Court and Chief Court, were set aside and accused was ordered to be released from the judicial lock up, in circumstances. **[2015 GBLR 145]**

---S. 324---Anti-Terrorism Act (XXVII of 1997), S.7(c)---West. Pakistan Arms Ordinance (XX of 1965), S. 13---Attempt to commit qatl-e-amd, act of terrorism and possessing unlicensed arms---Reappraisal of evidence---Sentence, reduction in---Mitigating Circumstances---Accused was directly charged in the F.I.R. by injured/complainant with a specific role of firing--- Prosecution witnesses had supported the prosecution version--- Besides ocular evidence the prosecution had produced marginal witnesses of recoveries---Defence had not been able to shatter the statement of prosecution witnesses in cross-examination--- Prosecution had successfully proved its case beyond any shadow of doubt---No infirmity or illegality was found in the impugned judgment---No sanctity could be attached to the statements of defence witnesses, which were afterthought and not confidence inspiring---Sentence passed by the Trial Court and concurred by the Chief Court, was

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maintained---Keeping in view the mitigating circumstances i.e. young age of accused, absence of the motive, the quantum of sentence was reduced from 10 years to 7 years accordingly. **[2011 GBLR 527]**

---Ss. 324, 341, 392, 148, 149, 353 & 186---Anti-Terrorism Act (XXVIII of 1997), Ss. 6 & 7---Attempt to commit qatl-i-amd, wrongful restraint, robbery, rioting, common intention, obstructing public servant in discharge of public functions---Appeal against acquittal---Reappraisal of evidence---Trial Court had acquitted accused persons from all the charges levelled against them, vide impugned judgment which was assailed before the Chief Court, both by State and complainant---Chief Court, dismissed said appeals vide impugned judgment by upholding the judgment of Trial Court---Advocate General, could not point out any infirmity or illegality in the impugned judgment---Impugned judgment and the judgment of the Trial Court, were well reasoned and well founded; no indulgence was warranted---Petition for leave to appeal was converted into appeal and same was dismissed. **[2017 GBLR 358]**

---S. 331---Diyat, payment of---Principle---Supreme Appellate Court directed that diyat amount according to S.331. P.P.C. should be paid in lump sum or instalments within a period of three years comprising of 36 equal monthly instalments from the date of pronouncement of the judgment. **[2011 GBLR (c) 360]**

---S.331---See Penal Code (XLV of 1860), S.316. **[2011 GBLR 352]**

---S. 331---See Penal Code (XLV of 1860), S. 302(b). **[2012-14 GBLR 48]**

---S. 332---See Penal Code (XLV of 1860), S. 302. **[2012-14 GBLR (c) 10]**

---S. 337-A---Criminal Procedure Code (V of 1898), Ss. 154, 155&173--- Non-cognizable cases--- Investigation in cognizable/non-cognizable cases---Procedure---Statutory duty had been cast upon Police Officer Incharge of the respective Police Station under S.154, Cr.P.C. to enter the information with regard to the commission of any “cognizable offence” in a register to be kept in the Police Station---Entry of information with regard to the cognizable offence in such a register, was commonly known as FIR---Incharge of Police Station was under legal obligation, that if any information relating to the commission of a “cognizable offence”, was given orally, he would reduce the same in writing, and obtain the signature of the informant thereon---If the information was in writing, signed by person who had given it, the substance of the same, would be entered into the

prescribed register and, thereafter he would proceed with investigation under S.156, Cr.P.C., forthwith without obtaining prior permission from the concerned Magistrate---If the information with regard to the commission of “non-cognizable offence was given, same would also be incorporated in another prescribed register, known as “Register Roznamcha”; and the informant generally was sent away without any action---If the Police Officer, was of the view that information, so recorded in ‘Roznamcha’, was required to be investigated, he would prepare an application for obtaining necessary order from the Magistrate concerned--- Police Officer, could also make an investigation, even in a “non-cognizable case”, though he could not do so without an order of a Magistrate, First or Second class, having power to try such case, or commit the same for trial--- Order/permission of the Magistrate, was not required at all in a case of commission of “cognizable offence”, Police Officer could himself proceed with investigation; and on the conclusion of the investigation, he would prepare a report under S.173, Cr.P.C., for onward submission to the court concerned for trial which could be called “challan” in common parlance---If the investigation was ordered by the Magistrate in a “non-cognizable offence”, Police Officer, after completing the investigation in all respects, would also prepare a report under S.173, Cr.P.C., and not a private complaint---Report of Police Officer mentioned in S.190(l)(b), Cr.P.C. would include even the Police report in a non-cognizable offence---Information, in the present case, related to the commission of non-cognizable offence, officer-in-charge of the Police Station would only proceed under S.155, Cr.P.C.---Investigation in non-cognizable case could not be carried out without permission of the Magistrate---Irregularities during the course of the proceedings before the Police Officer, would only affect the value attached to the evidence, but it would not vitiate the proceedings in the trial--- Complainant, was at liberty to move to court of Magistrate with fresh criminal complaint against the respondents as there was no limitation for preferring a complaint---No substance having been found in the petition on merits, which could justify the exercise of discretion of Supreme Appellate Court for granting leave to appeal---Leave to appeal was refused. [2012-14 GBLR 73]

----Ss. 337-A, 144, 427, 341, 234 & 506---Joining unlawful assembly, armed with deadly weapon, mischief, wrongful restraint, making or selling instruments for counterfeiting Pakistan coin, criminal intimidation---Appreciation of evidence---Appeal against acquittal--- Police after investigation, filed challan before the Judicial Magistrate for trial---Prosecution evidence was recorded after framing charge--- Trial Court after completion of trial acquitted accused persons---Order

of acquittal had been upheld by the Chief Court---Validity---Advocate General could not point out any illegality, irregularity and infirmity in the impugned judgment---Leave to appeal against impugned judgment was refused. **[2017 GBLR 211]**

---Ss. 337-A, 337-D, 337-F & 427---See Explosive Substances Act (VI of 1908), S. 3. **[2017 GBLR 219]**

---Ss. 341/ 353/ 147/ 186/ 430/ 506(2)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. **[2011 GBLR 541]**

---S. 342---Criminal Procedure Code (V of 1898), Ss. 196 & 561-A---Wrongful confinement---Quashing of FIR---Impugned FIR was quashed, State being aggrieved filed petition for leave to appeal to Supreme Appellate Court---FIR in question was registered in violation of the mandatory provisions of S.196, Cr.P.C.---Advocate-General could not point out any illegality and infirmity in the impugned order passed by the Chief Court---Petition for leave to appeal was refused. **[2016 GBLR 214]**

---Ss. 351 & 310---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Criminal Procedure Code (V of 1898), S. 345---Assault---Compounding of offence---First Information Report was registered against accused persons on the charge of criminal assault---After completion of investigation challan was submitted to the Anti-Terrorism Court---During the pendency of the case, accused and complainant compounded the offence---Victim/complainant had pardoned the accused---Trial Court after recording the statements of Jirga and the complainant, acquitted accused persons---State being aggrieved, filed appeal before Chief Court, which was dismissed---Validity---Contentions of Advocate General were that all other offences against accused persons were compoundable, except offences under Ss. 6 & 7 of the Anti-Terrorism Act, 1997 and that the judgments of two courts below were not sustainable and were liable to be set aside---Advocate General, could not point out any illegality and infirmity in the said impugned judgment--- Petition for leave to appeal was converted into appeal and was dismissed and impugned order passed by Chief Court was affirmed in circumstances. **[2017 GBLR 188]**

---Ss. 365-B & 114---Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979), Ss. 9 & 14---Criminal Procedure Code (V of 1898), S.561-A---Kidnapping, abducting or inducing woman to compel for marriage, abetment--- Quashing of FIR---Alleged abductee, who was recovered from the house of her father, stated

before Investigating Officer in her statement under S. 161, Cr.P.C., and also before the Judicial Magistrate under S.164, Cr.P.C., that she was not abducted by anybody and that her marriage with the complainant was performed under threats of dire consequences and against her free will---Alleged abductee had also filed a suit in the court of competent jurisdiction for dissolution of marriage--- Application filed by accused under S.561-A, Cr.P.C. for quashing of FIR was accepted by the court and FIR was quashed mainly on the ground that alleged abductee was not abducted by anybody---Alleged abductee who was star witness of the prosecution to substantiate its case in the court, having herself not supported the case of prosecution, nothing was left, except to do a futile exercise to probe further in the matter and drag the accused as well as alleged abductee--- Petition for leave to appeal had no substance, which was dismissed. [2012-14 GBLR 203]

---Ss. 371-A,371-B,337-A&420--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61--- Human rights case before Supreme Appellate Court---Matter relating to an eighteen years old girl sold out to a fifty years old man---Interest and welfare of the Victim---Victim allowed to stay with her father and brother upon an undertaking and execution of surety bonds---Investigating Officer of the present case stated before court that investigation was being carried out on priority basis and two accused persons had been arrested, and that the investigation was likely to be concluded within shortest possible time---Case had been registered against the accused persons---Father and brother of the victim appeared before the court and stated that they wanted to take the victim along with them to their home and had also given an assurance to the court, not to cause any harm to the victim, and that the victim could stay with them without any fear and she would be looked after in all respects---Victim also consented, with her free will, to go with her father and brother--- Father and brother of the victim had given an undertaking to the court that the victim would feel homely while staying with them and no threats of dire consequences would be extended to her---Interest and welfare of the victim required that she should be allowed to go with her father and brother to stay at home instead of any shelter home--- Even otherwise, parents were natural custodian of their children--- Victim was allowed to go with her father and brother, and the investigating officer of the case was directed to get executed personal surety bonds, to the tune of Rs. 50,000 each, by the father and brother of the victim, so that they may remain conscious, not to cause her any harm or humiliation at all---Investigating Officer was further directed to conduct the investigation fairly, justly, honestly and strictly in

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accordance with law, without being influenced from either of the party or any other quarter---Human rights case was disposed of accordingly. **[2015 GBLR 281]**

---Ss. 376, 377, 363, 392, 506, 337-A & 34---Anti-Terrorism Act (XXVII of 1997), Ss. 6 & 7---Rape, unnatural offence, kidnapping, robbery, criminal intimidation, causing Shajjah, common indention, act of terrorism---Reappraisal of evidence--- Sentence, reduction in--- Ocular account furnished by one of the prosecution witnesses fully corroborated the statements of other prosecution witnesses---Forensic, Serological Examination Report, also corroborated the confessional statements of accused persons---Prosecution had successfully proved its case against accused persons---Accused persons were alleged to have abducted the victim girl for committing gang rape which had created a sense of fear and insecurity in the public generally and among girls students particularly---Commission of such offence by accused persons, created the sense of insecurity in the society---Said offence was triable under the special law and the Anti-Terrorism Court had rightly tried the case and convicted accused persons by appreciating the evidence on record---Impugned judgment passed by Chief Court was set aside, whereas the judgment passed by Anti-Terrorism Court was upheld and conviction and sentences so awarded were maintained---Death sentence awarded to accused persons was reduced to life imprisonment. **[2016 GBLR 199]**

---S. 377---Sodomy---Appreciation of evidence---Prosecution, having proved its case against accused persons beyond any shadow of doubt, Trial Court convicted accused and sentenced him to undergo for 7 years rigorous imprisonment---Chief Court upheld findings of the Trial Court---Impugned judgments of the Trial Court and Chief Court were well reasoned, based on strong corroborated circumstances supported by medical evidence---No infirmity and illegality having been found or pointed out by the defence said concurrent judgments, could not be interfered with---Both judgments were maintained and leave to appeal was refused, in circumstances. **[2015 GBLR 289]**

---S.392---Qanun-e-Shahadat (10 of 1984), Art. 22---Police Rules, 1934, R.26.32--- Reappraisal of evidence---Identification parade--- Procedure---Benefit of doubt---Occurrence was alleged to have taken place at about midnight and on the basis of identification parade conducted in police station under the supervision of Naib-Thiesildar, accused were convicted under S.392 P.P.C. and were sentenced to seven years of imprisonment---Validity---In absence of any corroborative piece of evidence, prosecution should have carried out identification parade in accordance with procedure / criteria laid down

in R.26.32 of Police Rules, 1934 or guidelines laid down by superior courts of country---Procedure adopted by prosecution was novel and un-warranted in law while holding identification parade---No law authorized any investigator to hold identification parade inside police station especially when suspect / accused were Visible from the office of Station House Officer, where the identifiers were made seated and possibility to have seen the accused by identifiers before identification parade could not be ruled out---Concerned Station House Officer or Investigating Officer was required to detain the accused in jail without wasting a single moment and without showing them to identifiers--- Investigation agency instead of holding identification parade in a fair and transparent manner adopted a self-styled procedure for identification parade, inside the premises of police station in presence of Naib Tehsildar instead of Magistrate First Class---As per identification report, ten dummies were intermingled with two accused in joint identification parade while as per R.26.34 of Police Rules, 1934, nine or ten dummies of similar dress and of same religion, age and social status were required to be intermingled with one suspect/ accused but the same was not done by Investigating Officer--- Identifiers also failed to attribute any role to accused at the time of identification parade---Statements of both the prosecution witnesses were not sufficient for conviction because of non-transparent rather illegal procedure adopted by investigator while conducting identification parade and in absence of other material--- Prosecution failed to establish guilt of accused beyond reasonable doubt---Every doubt which could arise, would go in favour of accused and such conviction was not sustainable--- Supreme Appellate Court set aside the conviction and sentence awarded to accused by the Trial Court and they were acquitted of the charge---Appeal was allowed. **[2010 GBLR 249]**

---Ss. 409 & 420---Prevention of Corruption Act (II of 1947), .5(2)--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Criminal breach of trust by public servant, cheating, misappropriation and corruption---Counsel for accused without challenging the conviction of accused, had submitted that subject to the deposit of misappropriated amount, accused could be given concession in the sentence with reasonable reduction in fine and that accused with loss, of service, had been facing agony of prosecution and trial since March 1993, before the Accountability Court, which was sufficient ground for reduction of sentence to the period already served by accused in jail which was more than six months--- Special Prosecutor NAB had raised no objection to the grant of request for reduction in sentence and fine---Held, interest of justice, in



circumstances, would demand for taking lenient view in the matter of sentence---Deposit of misappropriated amount by accused, his sentence to the extent of period already undergone by him, which was more than six months with reasonable reduction in the fine, would be sufficient to meet the ends of justice---Maintaining conviction of accused his sentence was reduced to the period already undergone by him with reduction in amount of fine from Rupees 2,00,000 to Rs. 2,000. **[2011 GBLR 181]**

---S. 409---Prevention of Corruption Act (II of 1947), S. 5(2)---Criminal breach of trust by public servant---Taking illegal gratification---Appreciation of evidence---Counsel for accused submitted that he would be satisfied, if the directions were issued to the Trial Court to dispose of the case expeditiously on its merits within shortest possible time and that he could be allowed to withdraw the petition--- Accused was allowed to withdraw his case with the directives to the Trial Court that all the material prosecution witnesses be examined expeditiously within a period of 3 months positively; whereafter accused would be at liberty to move an application under S.249-A or under S.265-K, Cr.P.C., in the Trial Court. **[2016 GBLR 165]**

---Ss. 409, 420, 468 & 471---Prevention of Corruption Act (II of 1947), S.5(2)---Criminal breach of trust by public servant, cheating and dishonestly inducing delivery of property, forgery for purpose of cheating, using as genuine a forged document; taking illegal gratification---Appreciation of evidence---Benefit of doubt---Legal evidence must be on record and the crime had to be proved through cogent evidence beyond reasonable doubt---Prosecution had to stand on its own legs to prove its case beyond reasonable doubt---Where co-accused was acquitted on the same facts, evidence and question of law, accused, could not be deprived from the benefit of doubt on the principle of equity---Concept of benefit of doubt was deep rooted, it was not necessary that there should be series of circumstances creating doubt in the prosecution case; benefit of a slightest doubt, if any, must go to the accused---Prosecution had failed to prove its case against accused beyond reasonable doubt---Accused could not be convicted or sent for re-trial on the same set of allegation and same set of evidence---Accused was entitled for benefit of doubt as given to the co-accused--- Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and judgment of the Chief Court was set aside. **[2016 GBLR 148]**

---Ss. 427, 447, 506, 147 & 148---Criminal Procedure Code (V of 1898), Ss. 249-A&417(2-A)---Gilgit-Baltistan (Empowerment and

Self Governance) Order, 2009, Art. 60---Mischief causing damage, criminal trespass, criminal intimidation, rioting---Appeal against acquittal---Re-appraisal of evidence---Complainant was not present at the place of occurrence at relevant time and he was told the details of the occurrence when he reached the place of alleged venue of crime--- Name of eye-witness was not mentioned in the FIR, and the implication of accused persons in the case was on the basis of hearsay evidence---Name of person who gave the details of the occurrence, was not given---No direct evidence was available against accused persons---Prosecution obtained as many as sixteen adjournments, on one or the other pretext, but did not produce any witness at all---None of the prosecution witnesses, in pursuance ofailable warrants, turned up to appear before the court including the complainant, norailable warrants were returned---Accused persons remained in attendance, and the complainant kept on prolonging the agony of accused persons--- Prosecution failed to produce the evidence in order to substantiate its case against accused persons--- Acquittal of accused persons under S.249-A, Cr.P.C., did not suffer from any illegality or irregularity causing any miscarriage of justice, and did not warrant interference Judgment of the Chief Court being unexceptional, did not admit any interference by the Supreme Appellate Court---Petition was dismissed. **[2012-14 GBLR (a) 153]**

---Ss. 436, 435, 427, 448, 353, 147, 149 & 337---Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979), S, 17--- Anti-Terrorism Act (XXVII of 1997), Ss. 6, 7, 21-H & 21-1--- Mischief by fire or explosive substance with intent to destroy house, mischief by fire or explosive substance with intent to cause damage; mischief causing damage to the amount of fifty rupees, house-trespass, assault or criminal force to deter public servant from discharge of his duty, rioting, common object, causing shajjah, haraabah, act of terrorism--- Reappraisal of evidence---Prosecution had proved its case against all accused persons beyond any shadow of doubt by producing ocular evidence, circumstantial evidence, confessional statements of accused persons, recoveries on the pointation of accused persons, medical evidence coupled with the absconsion of accused persons--- Trial Court had rightly convicted and sentenced accused persons, who had caused heavy loss to the Government Exchequer by putting on fire the Police Station and two Government vehicles---Accused persons had taken the arms and ammunitions from the Malkhana of Police Station and were responsible for the damages caused to Government property---Supreme Appellate Court directed that costs of all the damages be recovered from the accused persons as an arrear of land

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revenue and deposited into the Government Treasury. [Majority view].  
**[2016 GBLR (a) 315]**

---Ss. 436, 435, 427, 448, 353, 147, 149 & 337---Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979), S.17--- Anti-Terrorism Act (XXVII of 1997), Ss. 6, 7, 21-H & 21-1--- Mischief by fire or explosive substance with intent to destroy house, mischief by fire or explosive substance with intent to cause damage, mischief causing damage to the amount of fifty rupees, house-trespass, assault or criminal force to deter public servant from discharge of his duty, rioting, common object, causing shajjah, haraabah, act of terrorism--- Reappraisal of evidence---Out of twelve directly named persons with the same role attributed in the FIR, Police had discharged and released ten persons under S. 169, Cr.P.C., which had demolished the prosecution story at the investigation stage--- Conviction and sentence passed by the Trial Court, actually and factually was based on S.149, P.P.C., and accused persons had been declared to be convicted as they were members of an alleged unlawful assembly, but the Trial Court did not look at the evidence on record as well as law for making an arguable foundation---Case file, did not contain any kind of evidence or even allegation that accused persons pre-planned to make an unlawful assembly with a common object to commit the specific criminal acts as charged---Accused, were neither charge-sheeted under S.149, P.P.C., in a specific way nor any evidence was produced before the Trial Court to prove and substantiate the ingredients of S.149, P.P.C., which had defeated the rights available to accused persons---Judgment of conviction under cover and domain of S.149, P.P.C., by imposing the constructive liability in a case of unproved charges had caused prejudice and injustice to accused persons---Prosecution did not produce even a single independent person as witness hailing from the locality or even a non-partisan, non-interested private person, despite about 700/800 persons were reported to be present at the place of occurrence---Trial Court, while convicting accused, had relied upon Police Officials, who were neither named in the FIR nor they could be treated as eyewitnesses in the eye of law--- Attack on Police Station by the mob must have resulted injuries to several Police Officials, but no Medico-legal Certificate about nature of injuries had been placed before the Trial Court---Statement of eye-witnesses under S.161, Cr.P.C., had been recorded after a delay of 9 to 47 days, without any explanation for such delay---Nothing was recovered from accused persons---Alleged recovery of weapons and the cartridges from accused persons had been made after a delay of 7, 8, 17 and 82 days of the occurrence respectively--- Prosecution had demolished its case by not making the Police Officials as eye-

witnesses who were specifically named by the complainant in FIR--- Appeal was dismissed and judgment passed by the Chief Court was upheld and accused stood acquitted. [Minority view]. [2016 GBLR (b) 315]

---Ss. 436, 435, 427, 448, 353, 147, 149 & 337-A---Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979), S. 17--- Anti-Terrorism Act (XXVII of 1997), Ss. 6, 7, 21-L & 19(12)---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65---Mischief, house-trespass, assault or criminal force to deter public servant from discharge of his duty, rioting, common object, causing shajjah, act of terrorism---Review of Supreme Appellate Court's judgment---Scope---Challan of the case was submitted in the Trial Court after completion of investigation---Accused persons remained in absconion for a period of more than 3 years and were convicted in absentia--- Accused persons, after their arrest filed application for setting aside judgment/conviction order passed in absentia---Said application was partly accepted to the extent of fresh trial---Fresh trial against accused persons, was started by the Trial Court--- Pending said proceedings, Supreme Appellate Court by common judgment, convicted the accused persons along with others--- Accused persons aggrieved by said judgment of the Supreme Appellate Court moved review, petitions for setting aside the order---Common judgment of Supreme Appellate Court was not tenable in law to the extent of accused persons as their case was different from other accused persons in the connected cases--- Advocate-General had not controverted the contention raised by counsel for accused persons---Review petitions were allowed and conviction/sentence awarded to accused persons were set aside---Case against accused persons was directed to be treated as pending in the Trial Court, which would proceed with the case afresh and would decide the same in accordance with law. [2017 GBLR 52]

---S. 447---See Penal Code (XLV of 1860), S. 427. [2012-14 GBLR (a) 153]

---S. 457---Offences Against Property (Enforcement of Hudood), Ordinance (VI of 1979), S. 14---Lurking house-trespass or house breaking by night---Theft---Reappraisal of evidence---Trial Court acquitted the accused and Chief Court, dismissed the appeal against order of Trial Court---Validity---Prosecution had failed to prove its case against accused---Statements of the prosecution witnesses were contradictory in nature---Advocate-General could not point out any infirmity and mis-appreciation of evidence in the impugned judgment---Impugned judgments by Chief Court and Trial Court had

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been passed in accordance with law and facts of the case, which were maintained. [2017 GBLR 61]

---S.489-F as inserted by Criminal Law (Amendment) Order, 2002] & S.420---Constitution of Pakistan, Art. 89---Dishonestly issuing cheque---Validity of Amending Ordinance---Offence under S.489-F, P.P.C. was created under Criminal Law (Amendment) Ordinance, 2002 issued on 25-10-2002 in pursuance of the Proclamation of Emergency in the Country on 12th October, 1999 which was validated by the Supreme Court and later was also given protection by Seventeenth Amendment in the Constitution and also was saved under Eighteenth Amendment---Ordinance issued by the President under Art. 89 of the Constitution of Pakistan on expiry of period of four months, would be considered as a valid law even without placing the same before the Parliament for approval as it had been given constitutional protection under Seventeenth and Eighteenth Amendment in the Constitution of Pakistan---If S.489-F, P.P.C. was not a valid law and was no more part of statute in Pakistan, it could have no legal force in Gilgit-Baltistan---Question relating to the validity and constitutionality of provision of S. 489-F, P.P.C., essentially required decision along with the question whether on the basis of dishonoured cheque, prosecution under S.420, P.P.C. was justified---First question was a pure question of law, whereas the second question was a mixed question of law and fact which must be decided by the Trial Court. [2010 GBLR (c) 567]

---S. 489-F---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 1---Constitution of Pakistan, Art. 9---Dishonestly issuing a cheque---Offence under S.489-F, P.P.C., would only be made out, if a cheque issued for payment of a loan or fulfillment of an obligation was dishonoured; and essential element to constitute offence under S.489-F, P.P.C. was that the dishonoured cheque was dishonestly issued---Purpose of insertion of said provision of law in P.P.C., was to curb the fraudulent and dishonest issuance of cheques for return of loan or discharge of financial obligations on cheques---Necessary requirement of law was to establish prima facie that cheque was dishonestly issued with the intention to fraud; and to ascertain the intention of fraud, it was essential to give notice to payee before the registration of case under S.489-F, P.P.C. for his criminal prosecution---Concept was, that a case under S.489-F, P.P.C., could not be registered against a person without the proper proof of the loan or a financial obligation for which the dishonoured cheque was issued---Police on recording oral information of commission of an offence under S.489-F, P.P.C., merely on the basis of dishonoured cheque was not obliged to straightaway proceed in the matter---At the first

instance legal duty of Police was to require the informer to bring on record some proof of loan or any other obligation required to be discharged by a person, failing which the criminal prosecution could not be legal---Despite fact that offence was non-bailable, the straightaway arrest of a person for alleged commission of offence under S.489-F, P.P.C., without permission of concerned court, would amount to curtail his liberty in violation of Art. 1 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 read with Art. 9 of the Constitution of Pakistan. **[2010 GBLR (a) 567]**

---S. 489-F---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 17---Constitution of Pakistan, Art. 25---Dishonestly issuing cheque---Burden of proof--- Discrimination---Initial burden of proving an offence under S. 489-F, P.P.C. that cheque was not dishonoured by accused's fault, but the bank was at fault, was against the basic concept of criminal law according to which an accused was considered innocent, unless he was proved guilty of charge---Placing of initial burden on accused to prove that cheque was not dishonoured by his fault in an offence under S.489-F, P.P.C., was open discrimination in terms of Art. 25 the of Constitution of Pakistan; and Art. 17 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, wherein it was provided that all were equal before law and had equal protection of law---Burden of proving dishonest issue of cheque was on the prosecution; and at the same time the burden of proving that cheque was not dishonoured for the fault of accused, but it was fault of bank, was on accused, which was against the basic principles of criminal law that prosecution beyond all reasonable doubts must prove accused guilty of charge. **[2010 GBLR (e) 567]**

---Ss. 499 & 500---See Defamation Ordinance (LVI of 2002), Preamble. **[2011 GBLR (e) 121]**

---Ss. 499, 500, 501,, 502, & 502-A---See Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009, Art. 11. **[2011 GBLR (m) 121]**

---Ss. 499 & 500---See Gilgit-Baltistan (Empowerment of Self-Governance) Order, 2009, Art. 61. **[2011 GBLR (a) 121]**

---S. 506---See Penal Code (XLV of 1860), S. 427. **[2012-14 GBLR (a) 153]**

### **Police Rules, 1934---**

---Rr. 12.21 & 12.27---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Dismissal from service---

Petition had been directed against order passed by the Chief Court whereby order of dismissal of respondent/Police constable was set aside and he was directed to be reinstated in service with back benefits---"Discharge" under R.12.21 of Police Rules, 1934 on the ground of inefficiency during probation, could have no consequence of bar on re-enrollment in Police, whereas "dismissal" of a person from service would create bar on his entry in government service; and re-enrollment in Police was not possible without special sanction of Inspector General of Police in terms of R. 12.27 of Police Rules, 1934---Superintendent of Police, instead of discharging the Police constable during his probation, dismissed him from service under R. 12.21 of Police Rules, 1934 on the basis of allegation requiring regular inquiry under Police (Efficiency and Discipline) Rules, 1975 for appropriate departmental action--- Competent authority could, if so desired, initiate regular enquiry into the conduct of the Official in accordance with law. **[2011 GBLR 332]**

---R. 12.27---See Police Rules, 1934., R. 12.21. **[2011 GBLR 332]**

---R. 26.32---See Penal Code (XLV of 1860), S.392. **[2010 GBLR 249]**

#### **Press Council of Pakistan Ordinance (XCVII of 2002)----**

---Preamble---See Gilgit-Baltistan (Empowerment of Self-Governance) Order, 2009, Art. 61. **[2011 GBLR (a) 121]**

---Fourth Sched.---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 11. **[2011 GBLR (b) 121]**

#### **Press, Newspapers, News Agencies and Books Registration Ordinance (XCVIII of 2002)----**

---Preamble Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 11---Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 having the constitutional validity has the status of special statute and subject to Art. 11 of Gilgit-Baltistan (Empowerment and Self-Governance), Order, 2009 must be followed in letter and spirit. **[2011 GBLR (f) 121]**

---Preamble See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 11. **[2011 GBLR (b), (bb) & (cc) 121]**

---Preamble---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61. **[2011 GBLR (a) 121]**

**Prevention of Corruption Act (II of 1947)----**

----S.5(2)---See Penal Code (XLV of 1860), S.409. [2011 GBLR 181]

----S. 5--- Allegation of embezzlement--- Appreciation of evidence--- Trial Court/Special Judge of Anti-Corruption, after recording prosecution evidence and hearing the parties, acquitted, petitioners/accused persons, giving them benefit of doubt as prosecution witnesses had not implicated them---Chief Court, on appeal, accepted appeal of prosecution by setting aside judgment of the Trial Court---Prosecution had failed to prove its case against accused persons; as none of the witnesses had implicated them---Trial Court had rightly acquitted accused persons by giving them benefit of doubt---Chief Court had failed to appreciate that prosecution could not produce any corroborative witness though available without any reason--- Accused persons were not bound to prove their innocence, but it was the legal duty of the prosecution to prove its case beyond reasonable doubt---Chief Court was not justified for remanding the case to the Trial Court for fresh trial---Allowing appeal, impugned judgment passed by the Chief Court, was set aside by Supreme Appellate Court and that of Trial Court was maintained, in circumstances. [2015 GBLR 181]

**Public auction----**

----Bid---Rights of a bidder---Scope---Natural justice, principles of--- Applicability. [2010 GBLR (f) 467]

**Public Procurement Regulatory Authority Ordinance (XXII of 2002)----**

----Preamble---Public Procurement Rules, 2004---Breach of contract--- Effect---Rights and obligations of contractor--- Scope---Public procurement contracts are governed by the Public Procurement Regulatory Authority Ordinance, 2002 and Rules framed thereunder, which is a special law on the subject-- Failure of contractor to supply the goods at agreed price according to the schedule of supply may be a breach of contract which may cause delay the main project, therefore, Procuring Agency is obliged under the law to proceed against the contractor for appropriate action including cancellation of contract at his cost and risk in accordance with law--- Contractors are not entitled to any claim beyond the scope of contract and law unless it is provided in the contract for payment of extra cost on the basis of acceleration of price if project is not completed within contract period and no such claim is entertainable without determination of cause of delay or the reason of non-completion of project within time---Extra payment on



the basis of acceleration of prices in the normal circumstances is undue favour to the contractors, which amounts to misappropriation of government funds on the part of concerned officials, therefore, the officials involved in such matters must face the consequence of criminal charge and also departmental action for misconduct--- Supreme Appellate Court observed that Chief Secretary, Government of Gilgit-Baltistan in cases of extra payment at the cost of burden on the exchequer may hold inquiry into the cause of delay or justification of extra payment to a contractor set the law at motion for action in accordance with law. **[2010 GBLR (t) 467]**

---S. 2(j)--- Public Procurement Rules, 2004, Rr. 48, 35, 36, 37 & 38  
---Northern Areas Governance Order, 1994, Art. 3---Constitution of Pakistan, Arts. 258 & 1 (2) (d)---Public Procurement Regulatory Authority Ordinance, 2002 and Public Procurement Rules, 2004 having overriding effect on the departmental instructions or the Rules of Business of Government of Gilgit-Baltistan, would govern all procurement contracts in Gilgit-Baltistan and the Chairman Northern Areas and Secretary KA & NA Division would have exclusive jurisdiction to deal with the matter and no other departmental authority in the Provincial or Federal Government was competent to interfere in the matter---Chairman Northern Areas being controlling authority would be competent to interfere in the affairs of Government of Gilgit-Baltistan and the representation in the form of a complaint under Rule 48 Public Procurement Rules, 2004 before the Procuring Agency was rightly entertained by him in exercise of power under Article 3 of Northern Areas Governance Order, 1994---Secretary KA&NA Division being in charge of administrative Division could competently deal with the complaint under Rule 48 of the Rules, 2004---Power and procedure of rejection or acceptance of bid elucidated. **[2010 GBLR (j) 467]**

---Preamble---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 75. **[2012-14 GBLR 169]**

### **Public Procurement Rules, 2004---**

---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 75. **[2012-14 GBLR 169]**

---S. 2(e)(o)--- See Public Procurement Rules, 2004, R. 42(c)(iii). **[2015 GBLR (c) 252]**

---Rr. 2(g) & 42(d)(iii)--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61(1)--- Suo motu jurisdiction of the Supreme Appellate Court---Matter relating to the contract awarded to

the Northern Areas (now Gilgit-Baltistan) Transport Company (NATCO), by the Food Department of Government of Gilgit-Baltistan for wheat carriage from Pakistan Agricultural Storage and Services Corporation (PASSCO) centers situated in the province of Punjab and other areas to Base Godown, Islamabad and thereafter to Gilgit-Baltistan---Public procurement contract, transparency of--- Contract in question was awarded to NATCO without inviting tenders vide publication in the newspapers on account of a purported emergency by invoking provision of R. 42(d)(iii) of the Public Procurement Rules, 2004--- Legality---Contention of Food Department that two lac wheat bags had to be lifted within the shortest possible time in an emergency as PASSCO authorities had allocated the said wheat bags with an agreement that the bags would definitely be lifted before a certain time---Validity---Word “emergency” as defined under R. 2(g) of the Public Procurement Rules, 2004, meant natural calamities, disasters, accidents, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment---Minutes of the meeting which formed the basis for the award of contract to NATCO, and the contract document itself did not mention any natural calamity, disaster, accident, war or operational emergency---No mention of the word “emergency” itself, was present either in the contract document or in the minutes of the meeting---If, at all, two lac wheat bags were required to be lifted within the shortest possible time in an emergency, the tender through negotiations could be given to such extent only, but for the remaining bags the scheme of law was to be adopted to make it more transparent---Further, the Government had failed to state the appropriate forum which had the authority to declare an “emergency” and the public functionaries also could not show from the record to have declared the same---No emergency situation, whatsoever, was thus available in the present case to award the contract to NATCO under R.42(d)(iii) of the Public Procurement Rules, 2004, which provision even otherwise was not applicable in the facts and circumstances of the present case---Contract awarded to NATCO in the present case, was illegal, invalid and was executed in violation and contravention if the provisions of Public Procurement Rules, 2004---Supreme Appellate Court directed the Food Department to reinitiate the de novo process to award the contract for transportation of wheat strictly in accordance with the provisions of the Public Procurement Regulatory Authority Ordinance, 2002 and the Public Procurement Rules, 2004---Suo motu case was disposed of accordingly. [2015 GBLR (e) 252]

---R. 42(c)(iii)---Public procurement contract---Direct contracting without inviting tenders---Scope---Exemption given in R. 42(c)(iii) of the Public Procurement Rules, 2004, was of no legal effect or consequence if the process of execution of a contract had not been done in a fair, legal and transparent manner. **[2015 GBLR (d) 252]**

---R. 42(d)(iii)---See Public Procurement Rules, 2004, 2(g). **[2015 GBLR (e) 252]**

---R. 42(c)(iii)---Public Procurement Regulatory Authority Ordinance (XII of 2002), Ss. 2(e) & (o)---Gilgit-Baltistan Empowerment and Self-Governance) Order, 2009, Art. 61(1)---Suo motu jurisdiction of the Supreme Appellate Court---Matter relating to the contract awarded to the Northern Areas (now Gilgit-Baltistan) Transport Company (NATCO), by the Food Department of Government of Gilgit-Baltistan for wheat carriage from Pakistan Agricultural Storage and Services Corporation (PASSCO) centers situated in the province of Punjab and other areas to Base Godown, Islamabad and thereafter to Gilgit-Baltistan---Public procurement contract, transparency of---Contract in question was awarded to NATCO by direct contracting under R. 42(c)(iii) of the Public Procurement Rules, 2004, without inviting tenders vide publication in the newspapers---Legality---Contention of complainant that the rate offered by him for the carriage of wheat from Islamabad to Gilgit-Baltistan was much less than the rate on which the contract was awarded to NATCO, therefore, the award of contract to NATCO was not in the public interest because the payment for the carriage of wheat was to be made from the public exchequer---Validity---Public Procurement Regulatory Authority Ordinance, 2002 and the Public Procurement Rules, 2004, were applicable in Gilgit-Baltistan--- Transportation of wheat from Islamabad to Gilgit-Baltistan would be termed as “service” (as defined under S. 2(o) of Public Procurement Regulatory Authority Ordinance, 2002), and wheat fell within the ambit of “goods” (as defined under S. 2(e) of the said Ordinance of 2002)---Minutes of the meeting, which formed basis of award of the contract to NATCO, smacked volumes of favouritism, arbitrariness and were not free from the elements of unfairness, unjustness and unreasonableness---Public exchequer could not be doled away in such a manner which was allocated to be used for the welfare and betterment of the public at large---Departure from an open bidding was undertaken in the present case while invoking the exemption purportedly under R. 42(c)(iii) of Public Procurement Rules, 2004 without assigning any reason whatsoever or mentioning any circumstances for which wheat carriage contract was awarded to NATCO without publication for inviting tenders---Exemption provided under R. 42 (c)(iii) of Public Procurement Rules, 2004 was

not attracted to the facts and circumstances of the present case as the execution of the contract with NATCO had not been done in a fair, legal and transparent manner---No date of execution of the contract had been given nor any amount of security was required to be deposited by the contractor in order to ensure compliance with the conditions of the contract---Only date available on the contract along with the signature of one of the witnesses, was 2 months post from the date of start of execution of the contract, therefore, the whole exercise emerged to be farcical--- Signatures of the contracting parties had been obtained but their names and addresses were not given---Signatures of the witnesses (to the contract) had also been obtained but neither their addresses nor their designations were mentioned--- Contract had been drafted and signed by the parties in such a casual manner which could not be said to be a contract sustainable in law---Contract awarded to NATCO, in file present case, was illegal, invalid and was executed in violation and contravention of the mandatory provisions of Public Procurement Regulatory Authority Ordinance, 2002 as well as the provisions of Public Procurement Rules, 2004---Supreme Appellate Court directed that Food Department should reinitiate the de novo process to award the contract for transportation of wheat in a fair, just, reasonable, rational and transparent manner, strictly in accordance with the provisions of the Public Procurement Regulatory Authority Ordinance, 2002 and the Public Procurement Rules, 2004; that the Food Department should afford sufficient opportunity to all the interested parties who qualified to participate in the fresh contract awarding process and all efforts should be made in order to lessen the burden on public exchequer---Suo motu case was disposed of accordingly. [2015 GBLR (c) 252]

---Rr. 48, 35, 36, 37 & 38---See Public Procurement Regulatory Authority Ordinance (XXII of 2002), S.2(j). [2010 GBLR (j) 467]

### **Punjab Land Acquisition Rules, 1983---**

---R. 14---Acquisition and returned of land to the owner--- Procedure---Suit for declaration---Acquisition of land---Suit filed by the plaintiff having been decreed by the Trial Court, defendant filed appeal before Appellate Court below which was dismissed---Revision against concurrent findings before Chief Court was also dismissed---Validity---Procedure adopted for the unutilized land and its return to the plaintiff, had properly been followed---Courts below had rightly come to the concurrent conclusion in their findings and no infirmity was found in findings of the courts below---Defendant had no locus standi to contest the matter---Defendant had gone into a wild goose chase for an issue which was no concern of his---No substance was

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found for interference as there was no irregularity in the matter---  
Petition for leave to appeal was converted into appeal and was  
dismissed, in circumstances. [2015 GBLR 404]

## Q

### **Qanun-e-Shahadat (10 of 1984)---**

----Art. 22---See Penal Code (XLV of 1860), S. 392. [2010 GBLR  
249]

----Arts. 38 & 39---Criminal Procedure Code (V of 1898), S. 164---  
Anti-Terrorism Act (XXVII of 1997), S.21(H)--- Confession---  
Admissibility---Scope---Confession made before judicial officer and  
before police---Evidentiary value---Scope---Confession made before a  
Judicial Officer, subject to the credibility of statement, was admissible  
in evidence, whereas a confession made before a Police Officer or any  
other person in authority or a private person, could have no legal  
sanctity and could hardly be treated as extra judicial confession in law--  
-- Confession of an accused under custody before a Police Officer,  
could not be free from undue influence and coercion; as Police  
custody itself was considered coercion and a statement during custody  
could not be voluntary---Accused of an offence, could not be  
compelled to be witness against himself; and in that context the  
judicial confession made by accused voluntarily before a Magistrate,  
which was recorded after fulfilment of legal requirements, could be  
admissible as evidence against him, but a conviction made before  
Police Officer, could not be equated with the confession before  
Magistrate because no presumption of its being voluntary, could be  
attached with such a statement---Court was under compulsion to  
accept the confessional statement of accused recorded by a Judicial  
Officer or a Police Officer, but confession made before a Judicial  
Officer had evidentiary value to be accepted as evidence, whereas a  
confession made before a Police Officer was not considered legal  
evidence---Official authority of a Police IS Officer, could create an  
impression of compelling accused to make confession---Retracted  
Judicial confession, if found confidence inspiring, could alone be  
sufficient for conviction, but the retracted judicial confession, if was  
not found confidence inspiring, court could not give much weight to  
such confession; or make it basis for conviction, rather could use it as  
a corroborative evidence, if other direct or circumstantial evidence  
brought on record was of the standard of independent evidence of  
unimpeachable character. [2011 GBLR (c) 475]

---Arts. 38 & 39---See Criminal Procedure Code (V of 1898), S. 164. [2011 GBLR (b) 475]

----Arts. 41 & 43---See Criminal. Procedure Code (V of 1898), S. 164. [2010 GBLR (c) 256]

----Art. 46--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61(1)---Sworn affidavit--- Evidentiary value--- Scope---Person who had made the sworn affidavit had died, thus, he could neither be produced to authenticate his testimony nor he could be made available for cross-examination---Such an affidavit would, thus, lose its evidentiary value---Affidavit sworn by the deceased was also endorsed by two marginal witnesses, who had also not been produced in order to prove the affidavit---Reliance on the testimony of such kind of affidavit could not be taken into consideration for the just decision of a case---Suo motu case was disposed of accordingly. [2015 GBLR (c) 339]

----Art. 71---Hearsay evidence---Admissibility---Hearsay evidence was not admissible to be made basis of conviction, because such evidence in the light of the principles of criminal administration of justice was not a legal evidence---Said type of evidence could be helpful to trace the link in the chain of circumstantial evidence. [2011 GBLR (e) 475]

----Arts. 72, 100, 117 & 120---Specific Relief Act (I of 1877), S. 42. ---Suit for declaration---Gift deed---Onus to prove---Thirty years old document---Presumption---Plaintiffs claimed to be owners of suit land, on the basis of gift-deed executed in their favour more than thirty years ago---Trial Court decreed the suit in favour of plaintiffs but Lower Appellate Court remanded the matter to Trial Court---Chief Court in exercise of revisional jurisdiction set aside the judgment passed by Lower Appellate Court and restored that of Trial Court---Validity---Photocopy of gift-deed in question was available on record but its contents were not visible and it did not disclose Khasra number, Khewat number, as well as any number of mutation in respect of land in question---Plaintiffs failed to produce marginal witnesses of gift-deed in question before Trial Court as witness---Gift-deed written in Persian was disputed among the parties and onus was on the plaintiffs who entirely based their civil suit on the footing of simple gift-deed but plaintiffs failed to prove actual execution of gift---deed---Not only the document was not produced in original, even permission to lead secondary evidence was neither asked for, nor granted---Matter of secondary evidence was of secondary importance as the original gift-deed was not even produced in Court, therefore, no advantage under

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Art, 100 of Qanun-e-Shahadat, 1984, could be claimed---Supreme Appellate Court set aside the judgments and decrees passed by the Courts below and suit filed by plaintiffs was dismissed---Appeal was allowed. **[2011 GBLR (a) 345]**

---Arts. 72 & 76---See Specific Relief Act (r of 1877), S.42. **[2010 GBLR (b) 285]**

---Art. 79---See Specific Relief Act (I of 1877), S.39. **[2010 GBLR 69]**

---Arts. 85, 90 & 91---Official document not produced at proper stage in evidence---Effect---Official document which was not produced at proper stage in evidence from official custody in proper manner, could not be considered as part of evidence and judicial record. **[2010 GBLR (a) 424]**

---Arts. 90 & 91---See Qanun-e-Shahadat (10 of 1984), Art. 85. **[2010 GBLR (a) 424]**

---Art. 100---See Qanun-e-Shahadat (10 of 1984), Art. 72. **[2010 GBLR (a) 345]**

---Art. 100---Thirty years old document---Presumptions--- Required presumption is completely rebuttable and it is attached only to a document, which purports to or is proved to be thirty years old---Such document must come from proper custody and court has discretion to presume that signature and every other part of such document, which purported to be in the handwriting of any person, is in that person's handwriting and further that it was duly executed by the person by whom it purports to be executed---Such old document must be before the Court in original. **[2011 GBLR (b) 345]**

---Art. 114---Gilgit-Baltistan (Empowerment and Self-Government) Order, 2009, Art, 60---Estoppel---Concept---Applicability---Principle of estoppel, was a rule of evidence and not a cause of action, or a source of title---Principle of estoppel would debar a party from approbating and reprobating a statement given in respect of a specific fact---Estoppel could not be extended to prevent an action of law even, if a party had allowed or consented by conduct any authority to pass an order to take an action, if said order or action taken by the authority was against law of without lawful authority---In the present case, the petitioners turned the contract services of the respondents into visiting faculty without lawful authority in derogation of judgment of Supreme Appellate Court which had binding force---Impugned judgment of the

Chief Court, suffered from no infirmity of law, petition for leave to appeal was refused. [2012-14 GBLR 177]

---Art. 114---Estoppel---Principle and application of---Principle of estoppel, was a rule of evidence and not a cause of action or a source of title---Estoppel, debars a party from approbating and reprobating a statement given in respect Of a specific fact---Principle of estoppel could not be extended to prevent an action of law, if a party had allowed or consented by conduct any authority to pass an order or to take an action, if the same order or action taken by the Authority was against law and without lawful authority. [2015 GBLR (c) 107]

---Art. 117---See Qanun-e-Shahadat (10 of 1984), Art. 72. [2011 GBLR (a) 345]

---Art. 120---See Qanun-e-Shahadat (10 of 1984), Art. 72. [2011 GBLR (a) 345]

---Art. 129 (e)---Official document---Presumption---If official letter was brought on record and exhibited in evidence without any objection to its genuineness or admissibility, then in absence of such objection, the presumption of correctness was attached with such official document and the same would be read in evidence. [2010 GBLR (a) 285]

---Arts. 132, 133 & 150---Examination and cross-examination of witness---Right of cross-examination of a prosecution witness by the defence was very valuable right conferred by law in relation to the relevant facts stated by a witness in his examination-in-chief which was not only confined to the testimony of witness in examination-in-chief, but defence could put any relevant question to the witness in cross-examination to impeach his credibility---After cross-examination of a witness by the defence, the court could permit re-examination of a witness, if considered proper and necessary on a material question; which had been omitted by the prosecution to bring on record in his examination-in-chief, but the prosecution was not allowed to cross-examine the witness after cross-examination of defence in respect of the facts narrated by him either in his examination-in-chief or cross-examination---Party which called a witness, could cross-examine him, if he suppressed the truth in his examination-in-chief; and could also re-examine such witness, if a material fact had been omitted to bring on record in his examination-in-chief, but the party calling a witness could not cross-examine his own witness after cross-examination by the adverse party to impeach the credibility by his statement in cross-examination on any ground including the ground that witness in his cross-examination had made a



contradictory statement adverse to the interest of prosecution--- Court under Art. 150 of Qanun-e-Shahadat, 1984, could in its discretion permit the party which called a witness to put any question to him which might be put in cross-examination by the adverse party, if the witness during examination-in-chief, deliberately conceded or suppressed a fact; and such witness was a hostile witness in terms of Art. 150 of Qanun-e-Shahadat, 1984. [2010 GBLR (a) 560]

---Arts. 133 & 151---Criminal Procedure Code (V of 1898), S. 540--- Calling a witness for re-examination---Declaring a witness hostile--- Court at any stage in order to get the particular fact explained or remove the doubt, if any in respect of a fact of its own or on request of a party; could call a witness for re-examination, if dictates of justice and equity so required, but no such permission could be given to either party to fill in lacuna in the case or cover a gap in the evidence, adverse to the interest of other party---Court could exercise the power of recalling a witness for re-examination, if was of the view that recall and re-examination of a witness was necessary for just decision of the case to meet the ends of justice---Law having taken care of a situation in which an ambiguity was created in the statement of a material witness had empowered the court under S.540, Cr.P.C. to recall a witness for re-examination and permit the adverse party to cross-examine the witness after re-examination---If a witness in examination-in-chief would make a statement adverse to the interest of the prosecution, the court could on the request of prosecutor, declare the witness hostile; and permit him to exercise the right of cross-examination of the witness, but there was no concept of declaring a witness hostile during his cross-examination by the defence---Right of cross-examination of defence was very valuable right; and if the witness knowingly or otherwise, in cross-examination would make a statement which would create doubt qua the truthfulness of prosecution case, the benefit of such doubt was always given to accused and could not be withheld in favour of prosecution---Hostility was a term which was relevant to the statement in examination-in-chief; and if a witness was allowed to be cross-examined by the prosecution after the cross-examination by the defence, the whole purpose of right of cross-examination of defence in the concept of criminal administration of justice and law of evidence, would be defeated; and provisions of Arts. 133 & 151 of Qanun-e-Shahadat, 1984 relating to the examination and cross-examination of a witness; and impeachment of his credibility would be negated---Court could permit the prosecution to impeach the credibility of statement of its own witness, if the statement made by a witness in examination-in-chief was in deviation to his previous statement; or the statement was

adverse to the interest of prosecution; but no such permission could be granted to the prosecution on the basis of averment of the statement of witness in cross-examination by defence---Logic of law was not in favour of grant of permission to the prosecution to cross-examine a witness after cross-examination of defence to impeach the credibility of his statement made by him in cross-examination. [2010 GBLR (c) 560]

---Art. 150---See Qanun-e-Shahadat (10 of 1984), Art. 132. [2010 GBLR (a) 560]

---Art. 151---Impeaching credit of witness---Credibility, of a witness could be impeached by the party who called the witness; or by the adverse party---Adverse party subject to Qanun-e-Shahadat, 1984 could put any question to witness to impeach his credibility and court could also allow the party which called the witness to impeach his credibility by cross-examination, if the witness suppressed truth in examination-in-chief. [2010 GBLR (b) 560]

---Art. 151---See Qanun-e-Shahadat (10 of 1984), Art. 133. [2010 GBLR (c) 560]

## R

### **Regulation of Mines and Oil Fields and Mineral Department (Government Control) Act (XXIV of 1948)----**

---Preamble---See Mining Rules, 1948, R. 79. [2015 GBLR 114]

### **Representation of the People Act (LXXXV of 1976)---**

---Ss. 7, 11, 14(5), 99 & 108--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 37(c), 60 & 61---Bye-election--- Rejection of nomination papers---Petition for leave to appeal was directed against impugned order passed by Election Tribunal whereby the Tribunal set aside order passed by Returning Officer for rejection of the nomination papers of the candidate and he was declared as qualified candidate to contest the bye-election---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was disposed of with directions that: Election Commission was to announce fresh schedule of bye-election to fill in the vacant seat of the constituency; that Election Commission would issue notifications thereto strictly in terms of Ss. 11, 14(5), 108 of the Representation of the People Act, 1976 and earlier notification, if any issued in violation

of said provisions of law, would be considered illegal, void ab initio and without lawful authority; that notification No. ELC-1(1)/2014-GBLA dated 28-4-2016 appointing Mr. Justice Malik Haq Nawaz as Member Election Tribunal in place of Mr. Justice Yar Muhammad (being on leave), was set aside being illegal, void ab initio and without lawful authority and judgment passed by the Election Tribunal, was set aside; that stay order, by single Judge of Chief Court was set aside and Chief Court was directed to decide appeal on its merits within a period of 2 weeks; that Election Commission was directed to appoint Returning Officer in terms of S.7 of the Representation of the People Act, 1976 and in case the contesting candidates would show any reservation, a Judicial Officer not below the rank of Additional District Judge be appointed with the consultation of the Chief Judge, Gilgit-Baltistan Chief Court. **[2016 GBLR 218]**

---S. 52-Election petition---Petitioner/unsuccessful candidate, in his election petition had challenged election of respondent/returned candidate, alleging that he was not “sadiq and amen” in terms of the Representation of the People Act, 1976 as he had submitted a false degree equivalent to Master Degree issued by Wafaq-ul-Madaras and bogus experience letter---Petitioner had also levelled various other allegations of corruption and corrupt practices committed by said returned candidate---Election Tribunal dismissed the election petition---Validity---Counsel for the petitioner had conceded that degree produced by the returned candidate, was never challenged at the time of filing nomination papers, either in the earlier election held in 2009 or in the present general election held in 2015---Counsel also could not substantiate through any evidence on record regarding the allegations of rigging in the election by casting bogus votes in collusion and connivance with the Poling Officer, Assistant Returning Officer, District Returning Officer and Election Commission---Prosecution witnesses also admitted that neither in the earlier election of 2009 nor in the present election of 2015, they raised any objections regarding the fake degree and bogus certificate of the returned candidate at the time of submission of his nomination papers for contesting election---Allegations of the petitioner against the returned candidate were baseless, hearsay, ill-founded and general in nature---Petitioner, had failed to prove his case/claim as alleged---Allegations raised at the time of filing petition, without supporting evidence or material on record was rightly discarded by the Election Tribunal---Impugned judgment of the Election Tribunal being well reasoned and well founded, no interference was warranted by the Supreme Appellate Court---Petition for leave to appeal was converted into

appeal and same was dismissed--- Impugned judgment passed by the Election Tribunal, was affirmed. [2017 GBLR 310]

### **Rule of law---**

---Scope---Rule of law is based on the concept of administration of justice---Principles. [2010 GBLR (e) 160]

### **Rules of Business (Gilgit-Baltistan), 2009---**

---Sched., I, Col. 3---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60. [2010 GBLR (d) & (r) 160]

## **S**

### **Specific Relief Act (I of 1877)---**

---S.8---See Specific Relief Act (I of 1877), S. 42. [2010 GBLR 271]

---Ss. 8 & 42---See Civil Procedure Code (V of 1908), O. VI, R. 17. [2012 GBLR (a) 571]

---Ss. 8 & 42---Civil Procedure Code (V of 1908), O. I, R. 10(2) & O. VI, R. 17---Suit for declaration and possession---impleading of party amendment of pleadings---Respondents in the case filed suit for declaration and possession before the Civil Judge---Respondents, during pendency of suit, filed application under O. I, R.10(2) & O. VI, R. 17, C.P.C., for amendment of pleadings and impleading of party; which application having been allowed, petitioners filed revision petition against said order, which was dismissed---Petitioners availed writ jurisdiction of Chief Court against the concurrent findings of Civil Judge and Additional District Judge---Chief Court dismissed writ petition---Validity---Held, concurrent findings of courts below need not to be interfered as all the impugned orders were in accordance with law, having no material irregularity---Liberal view was to be taken to allow applications under O. VI, R.17 and O. I, R.10(2), C.P.C.; unless said amendments might change the nature of the suits or would create new cause of action---Petitioners had failed to establish that amendment sought, could create a new cause of action in the suit; or it could change nature of the suit altogether---Points raised by the petitioners being devoid of substance, leave to appeal was refused accordingly. [2015 GBLR 322]

---Ss. 8 & 42---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61---Suit for declaration and possession---

Contention of the plaintiff was that she being the sister of the father of defendants, was entitled to get possession of her sharie share from the defendants---Plaintiff having passed away during pendency of the suit, her legal heirs were arrayed as plaintiffs---Trial Court de-suited the plaintiff's holding that defendants had proved that plaintiff (deceased) had given her sharie share to father of the defendants vide gift-deed---Appellate court below accepted appeal and decreed the suit in favour of plaintiffs---Chief Court dismissed the revision against order of Appellate Court below---Validity---Trial Court was not justified in law by relying on a document/gift-deed, which was neither original nor registered; by dint of such document a co-sharer lady could not be ousted from her share, unless it was proved that she had transferred her share without any reasonable doubt or undue influence---Unless a solid proof was available on record that a pardanasheen lady had withdrawn from her share without any coercive and undue influence, she could not be deprived of her legal share---Father of the defendant/brother of the plaintiff, being male was in a position to have undue influence over the plaintiff/his sister and to compel her not to claim her share and might also use unfair means to deprive his sister from her share---Plaintiff (sister) was not excluded by any custom prevailing at the relevant time when her father died---Plea of custom, unless proved beyond any shadow of doubt with solid evidence being acted upon for time immemorial in a particular area, could not be a pretext to deprive a female co-sharer from her sharie share---Petition for leave to appeal dismissed with costs, in circumstances. [2015 GBLR 244]

---Ss. 8 & 42---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 61 & 65---Suit for declaration and possession---Plaintiff filed suit contending that the suit land was rented out by her father to the father of the defendant through agreement deed in his life time; that father of the defendant paid rent Rs. 2 per month as stipulated in the rent agreement; that suit land was retained by the defendant as legal heir of her father after his demise; that defendant not only had denied to pay the rent to the plaintiff, but also let the land on rent to another person; that plaintiff being legal heir of her deceased father, claimed rent from the defendant and demanded to vacate the land, as she had defaulted by sub-letting the suit land and by denying to pay the rent to the plaintiff---Defendant, rejected the claim of plaintiff, posing herself owner of suit land---Defendant denied the ownership of the plaintiff with the plea that suit land was gifted to her father by the father of the plaintiff in his life time; that her father remained in possession of suit land as donee; that after his death she was in possession of suit land as owner, being the legal heir of the

donee---Trial Court decreed the suit filed by the plaintiff and judgment of the Trial Court was upheld by the appellate court, in appeal---Concurrent findings of two courts below, were upheld by Chief Court in revision---Defendant had filed petition for leave to appeal, which was also dismissed by the Supreme Appellate Court, converting the same into appeal and defendant had filed review petition---Validity---No legal infirmity was noticed in the concurrent findings, as the counsel for defendant, could not explain any legal error by the courts below and no appeal before the Supreme Appellate Court was competent, unless defendant/appellant would refer a vital legal question floating on the face of the impugned judgment, overlooked by the courts below---Plea of misconceiving or misunderstanding of facts of the case by the lower courts, was hardly a ground before Supreme Appellate Court---Defendant having admitted the initial ownership of the father of the plaintiff, could not be the owner of the suit land, unless she would prove plea of alleged gift in favour of her father---Defendant failed to prove the issue in regard to alleged gift; no single documentary or oral evidence, was available on the record of the case to prove the plea of gift---Plea of non-payment of the rent by the defendant to the plaintiff, had no substance; as “once a tenant, always a tenant”---Tenant could not claim the ownership over the rented property---Ownership, was needed to be proved otherwise---Rent deed filed by the plaintiff, being more than 30 years old, was admissible in evidence, which proved relationship of tenant and owners between the parties--- Possession of the defendant over the suit land was permissive and constructive possession lay with the plaintiff being the legal heir of the owner/her father and no limitation would run in favour of the defendant---When it was proved that the defendant was in possession of the suit land as tenant, question could be raised that, the matter was triable by the Rent Controller under Rent Restriction Ordinance, 1959 for ejection of the tenant--- Supreme Appellate Court observed that point, though had not been taken ,in appeal, but there being point of limitation touching the jurisdiction, same needed to be discussed accordingly for future guidance of lower courts; that in a simple case for ejection of tenant, Rent Controller under the Rent Restriction Ordinance, 1959 had exclusive jurisdiction to entertain the matter and the general jurisdiction of the civil courts, was barred by the special law, but when a person would claim himself owner of the disputed property and were denied relationship of tenant and owner and would make the title disputed, civil courts, would have jurisdiction to determine the title between the parties---Petition for review was dismissed being meritless and concurrent findings of the lower courts were maintained. [2015 GBLR 176]

---Ss. 8 & 42---Muslim Personal Law (Shariat) Application Act (V of 1962), S.2---Suit for declaration and possession---Right of inheritance of Muslim female---Suit by plaintiff/daughter of deceased owner was decreed by the Trial Court---Appellate court below, allowed appeal and set aside the judgment by the Trial Court---Appeal against judgment of the appellate court below was allowed by the Chief Court---Contention of defendant was that at the relevant time Muslim Personal Law was not applicable in Gilgit-Baltistan and females were not getting their share from inherited property under prevailing customs and usage---Plaintiff, in circumstances, had no right from the legacy of her father and brothers---Validity---Chief Court had rightly admitted the claim of the plaintiff to be based on the Sharia laws and that right of inheritance given to a Muslim female in Holy Quran, could not be taken away by any law, authority, custom and usage---Extinguishment of such right was not recognized in Islam; notwithstanding the application of such rights under the custom, the Muslim female, would be entitled to inherit the property in accordance with the law of Sharia and the custom---Custom was contrary to the Injunctions of Islam---Judgment by the Chief Court, was well reasoned and no illegality and infirmity had been pointed out which called for interference by the Supreme Appellate Court. **[2015 GBLR 218]**

---Ss. 8 & 42---Suit for declaration and possession---Original owner of property had died issueless and his two sisters remained as legal heirs---One of the sisters was living in the house of her husband, while other sister/petitioner was residing with his late brother---Hereditament of the deceased, remained with the petitioner (sister) who was residing with her brother---Other sister of the deceased having died, after death of her brother---Legal heirs of said sister had filed suit for declaration and possession, claiming legal share out of the hereditament of deceased brother of their mother---Petitioners in his written statement denied legal right of the plaintiffs with the specific contention of the gift made by her late brother in respect of his legacy---Civil Court had concluded that plaintiffs were entitled to the decree partially (to the extent of cancellation of some mutations and de-suited the plaintiffs in regard to their prayer “declaration cum possession” of the disputed land)--- Petitioners, re-iterated the plea of gift in favour one of the sister by her late brother and referred the document and the statements of the marginal witnesses---Said document was the photocopy, which was not admissible under Qanun-e-Shahadat, 1984---Document, in question, even if was original paper, could not be relied upon as it was un-registered---Executor of said document was Muslim and under Islamic Law he was bound to

execute a 'will' in respect of 1/3rd of his estate--- Document, (gift) in circumstances was void under Islamic Law---Petitioners, had failed to persuade the court to grant leave to appeal---Petition was dismissed. **[2015 GBLR 373]**

---Ss. 8 & 42---Suit for possession and declaration---Suit was decreed by the Trial Court and judgment and decree passed by the Trial Court, was upheld by the appellate court below--- Defendants/respondents filed revision petition against said concurrent judgment and decree passed by two courts below before the Chief Court which was accepted and judgments of both the courts below were reversed--- Validity---Judgment passed in revision by the Chief Court was well reasoned and well founded---No illegality and infirmity had been pointed out by the counsel for the petitioners in the impugned judgment, leave to appeal was refused---Order/judgment passed by the Chief Court, was maintained, in circumstances. **[2015 GBLR 364]**

---Ss. 8 & 42---Civil Procedure Code (V of 1908), O. IX, R.13--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for possession and declaration---Ex parte decree, setting aside of---Defendant/respondent after appearing before the Trial Court remained absent---Trial Court after proceeding ex parte against the defendant, allowed the plaintiff/petitioner to prove his case through evidence and the Trial Court passed ex parte decree in favour of the plaintiff--- Defendant after expiry of limitation, filed application under O. IX, R.13, C.P.C., for setting aside ex parte decree which was dismissed by the Trial Court---Appellate court below having upheld the judgment/order of the Trial Court---Chief Court, in revision accepted the petition and set aside both judgments/orders of the courts below and also set aside ex parte decree and ordered for de novo trial-- -Validity---Defendant had failed to substantiate his non-availability in the city---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed, setting aside the judgment/order of the Chief Court and maintaining judgments/orders of lower courts. **[2016 GBLR 229]**

---Ss. 8 & 42--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60 & 71---Suit for declaration and possession---Inspection by the Civil Judge and disposal of the suit--- First appeal before Additional District Judge was accepted and judgment/decree passed by the Civil Judge was set aside and case was remanded to the Civil Judge for fresh determination of the rival claims of the parties---Parties filed separate appeals before the Additional District Judge, whereby appeal filed by the plaintiff was accepted and that of defendant dismissed---Chief Court maintained the judgment



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and order passed by District Judge---Judgment passed by First Appellate Court as well as impugned judgment passed by Chief Court, were well founded---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was dismissed---Trial Court was required to hear and decide the case on its merits expeditiously within a period of three months. [2016 GBLR 223]

----Ss. 8 & 42---Suit for possession and declaration---Plaintiff, claimed that he was the owner of suit land which was given to the defendant temporarily to take the benefits from its grass etc., with the commitment that the defendant would pay the entire amount of Rs. 25,000 plus Rs. 10,000 mark up to the 'Zarai Taraqati Bank'; that the defendant paid only Rs. 14,000 to the Bank and failed to pay the whole amount as per commitment---Plaintiff, alleged that the defendant with the connivance of Tehsildar fraudulently prepared bogus documents of the suit land in his name and declared himself as owner of the land---Defendant resisted the suit contending that defendant had paid amount of Rs. 14,000 to the Bank on behalf of the plaintiff against his loan and the plaintiff had failed to pay the same---Defendant contended that the claim of the plaintiff that the suit land was given to the defendant as Amanat, just to take benefits in shape of grass, was baseless---Defendant had successfully proved his case through credible evidence which had rightly been appreciated by courts below; whereas the plaintiff had failed to produce any evidence in support of his contentions---Two courts below had rightly dismissed the suit---Plaintiff could not point out any illegality, infirmity and misappreciation of evidence in the concurrent findings of the three courts below---Appeal was dismissed by the Supreme Appellate Court. [2016 GBLR 185]

----Ss. 8, 42 & 54---Suit for possession, declaration and perpetual injunction---Plaintiffs filed suit against the defendants/respondents for declaration and possession to the effect that they were the owners of suit land which was in possession of defendants without any legal authority---Plaintiffs had also prayed for perpetual injunction restraining the defendants from constructing and alienating the suit land---Parties were inter se relatives---Plaintiffs claimed that they were owners of the suit property being the donees as their mother and sister had gifted said property in their names and the mutation was also duly prepared and attested by the concerned authorities---Plaintiffs could not produce any evidence of alleged gift-deed in support of their contention--- Defendants were the legal heirs of sons of the alleged donors and entitled to their shari share in the suit property---Trial Court, decreed the suit, but appellate court below and the Chief Court concurrently dismissed the suit---No illegality and infirmity could be

pointed out in the impugned order/judgment of the Chief Court---No interference was warranted---Judgment passed by the Chief Court was maintained by the Supreme Appellate Court. **[2016 GBLR 424]**

---S. 8---Civil Procedure Code (V of 1908), S. 12(2)---Suit for possession---Application under S. 12(2), C.P.C. on plea of fraud and misrepresentation---Suit was decreed by the Trial Court---Appeal against judgment and decree passed by the Trial Court, was dismissed by the appellate court below---Revision was also dismissed by the Chief Court and judgment/decree of the Trial Court attained finality---Judgment-debtors filed application under S.12(2), C.P.C., challenging the validity of the judgment/decree of the Trial Court which was dismissed---Validity---Counsel for the petitioners, had not controverted that the proceedings on record of suit and the revision was in the knowledge of the petitioners, rather they participated in the said proceedings---Judgment of the Chief Court was well reasoned as no infirmity and illegality was pointed out by the counsel for the petitioners---No interference of Supreme Appellate Court was warranted into the said judgment--- Petition for leave to appeal was converted into appeal and was dismissed---Judgment passed by the Chief Court, was affirmed, in circumstances. **[2017 GBLR 354]**

---S. 8---Suit for possession---Petitioners/plaintiffs, had filed suit for possession claiming that land in question was in their possession from the time of their grand forefathers without any interruption---Trial Court dismissed the suit holding that land utilized by the respondents, was 'Khalisa-Sarkar'---Petitioners, being aggrieved, filed first appeal before the Chief Court, which was dismissed---Counsel for the petitioners, could not point out any illegality and infirmity in the impugned order, passed by Chief Court---No interference was warranted in circumstances---Petition for leave to appeal was converted into appeal and was dismissed--- Impugned order, passed by the Chief Court was affirmed. **[2017 GBLR 204]**

---Ss. 8 & 42---Civil Procedure Code (V of 1908), Ss. 47 & 151---Suit for declaration and possession---Execution of decree---Suit having been decreed, plaintiffs/decree holders filed execution application---Defendants/judgment-debtors filed objection petition under Ss. 47 & 151, C.P.C., with the plea that decree holders in their suit had only sought declaration and not the relief of possession---Decree in question was not executable---Decree holders, however, in their amended plaint had sought possession--- Judgment-debtors, could not agitate, after the decree had gained finality---Executing Court could not go beyond the decree---Where there was no ambiguity, the court was bound to execute the decree in its true sense--

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-Objection petition was rightly dismissed in circumstances--- Findings/judgments of courts below being based on cogent and plausible conclusion warranted no interference--- Petition for leave to appeal was dismissed in circumstances. [2017 GBLR 57]

---Ss. 8 & 42---Suit for possession and declaration---Originally, the suit land was the property of one “B”, who had three daughters---After death of said “B”, his legacy was devolved upon his three daughters--- Custom (Riwaj) at the relevant time prevailed in the area, the disputed land remained with descendents of the real brother of “B”---Earlier, the property in question had been divided between the two brothers, but possession of land of “B” came to the respondents/plaintiffs; because “B” had no male issue---Plaintiffs claimed 1/2 share of the landed property devolved upon “B”---Trial Court partially decreed the suit against some of the defendants and dismissed the same against rest of the defendants/respondents---First appeal against judgment of the Trial Court was dismissed by appellate court and the Chief Court upheld the judgment of Appellate Court---Judgment of the Chief Court as well as concurrent findings of courts below, were well founded as , no infirmity and illegality was pointed out by counsel for the petitioners in the same---Petition for leave to appeal was converted into appeal, and same was dismissed---Judgment passed by Chief Court was affirmed, in circumstances. [2017 GBLR 277]

---Ss. 8 & 42---Suit for possession, declaration with consequential relief---Contentions of the plaintiff are that defendants took the possession of suit land taking the benefit of absence of the plaintiff; that defendants had also received the compensation amount of Rs. 80,000 on the suit land during pendency of suit--- Suit filed by the plaintiff, was dismissed being barred by limitation, which judgment of the Trial Court was upheld by appellate court below and also by the Chief Court---Record had revealed that plaintiff was tenant and not the owner---Status of the grandfather of the plaintiff was tenant; whereas respondents/ defendants, were the owners of the suit property vide mutation--- Defendants had rightly been paid the compensation--- Petition for leave to appeal was converted into appeal, and was dismissed--- Impugned judgment of Chief Court was upheld, in the circumstances. [2017 GBLR 87]

---Ss. 8, 42 & 54---Suit for possession, declaration and permanent injunction---Suit filed by respondent/plaintiff, was concurrently decreed by the Trial Court, appellate court below and the Chief Court---Plaintiff had filed suit with contention that, her father had no male heir and plaintiff and her one sister, were sole heirs of movable and immovable property of their deceased father--- Plaintiff's sister

expired childless---Plaintiff, had alleged that the defendants, who were third class heirs of her deceased father, were in possession of suit land as trustee, had no right to possess suit land---Plaintiff further alleged that defendants had transferred suit land in their names through bogus mutation, which was illegal, ineffective and ab initio void---Defendants in their written statement denied, claim of the plaintiff---Trial Court, decreed the suit filed by the plaintiffs as prayed for---Said judgment and decree passed by the Trial Court, was upheld by appellate court below and the Chief Court---Concurrent judgments and decrees passed by three courts below, were well reasoned on solid grounds---In absence of any infirmity and illegality, same could not be interfered with---Petition for leave to appeal was converted into appeal and was dismissed. [2017 GBLR 208]

---Ss. 8 & 42---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 71---Suit for declaration and possession---Revisional jurisdiction of Chief Court---Scope--- Plaintiff instituted civil suit claiming the possession of the suit land as being the sole owner of the legacy of his mother with further prayer of cancellation of mutation in respect of suit property, which allegedly was got sanctioned by the defendant in his name illegally, fraudulently and in connivance with the Revenue staff---Claim of the plaintiff was that suit property devolved upon him as being the sole legal heir of his deceased mother and that the defendant in connivance with the revenue staff got entire mutation sanctioned in his favour to deprive the plaintiff of his valuable right of which he had become the sole legal owner of his ancestral property---Claim of the defendant was that mother of the plaintiff had gifted out half of the share of her property in the name of father of the defendant in his life time and since then he was in peaceful and uninterrupted/ possession of the same---Defendant, who could not bring any evidence on the record in support of his assertion, had conceded that he had no witness to produce before the court to prove the factum of gift allegedly made by the mother of the plaintiff in her life time---Defendant had admitted that there was no such documentary evidence in that regard---Defendant, in circumstances, had failed to prove the factum of gift claimed by him, which was very basis of his claim---Trial Court as well as the first Appellate Court, without reverting to the real controversy between the parties, dismissed the suit of the plaintiff---Chief Court, setting aside concurrent judgment and decree passed by the courts below, decreed the suit---Validity--- Mere sanction of mutation, would not confer any title on a party relying upon the same---Beneficiary of mutation was under legal obligation to prove the same through cogent and convincing evidence---Defendant failed to prove that the mutation in

question (as claimed by him) was the result of compromise effected by the parties before entering and sanctioning the mutation---Marginal witness to the mutation, conceded that he was absolutely ignorant as to what was mentioned in the mutation---Both the Trial Court and Appellate Court below, were not justified in law to rely upon the witness while dismissing the suit of the plaintiff---Chief Court had ample powers in its revisional jurisdiction to interfere in the judgments of both the courts below, when the courts had passed the judgment in disregard to the material evidence---Purpose of revisional jurisdiction was always correction of irregularities and illegalities committed by the courts below in exercise of their jurisdiction--- Such jurisdiction was meant to correct the error , and to see the material irregularities; and Chief Court was quite competent to make such orders in the case as it deemed fit---Trial Court as well as the first Appellate Court failed to read the evidence on the record in its true perspective to reach a just conclusion--- Powers of revisional jurisdiction vested in the Chief Court, having been exercised by the Chief Court justly, fairly and in accordance with law appeal was dismissed, in circumstances. **[2012-14 GBLR (a) 187]**

---S. 12---Contract Act (IX of 1872), S. 2---Civil Procedure Code (V of 1908), O. VII, R. 11(a) & O. XXXIX, Rr. 1, 2--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Suit for specific performance of contract for transportation of wheat from Bulk Depot to other areas--- Plaintiff claiming to be a lowest bidder, prayed for restraining Government from awarding contract to other contractors--- Application for grant of temporary injunction accepted by Trial Court and upheld by Appellate Court was set aside in revision by Chief Court, which also rejected plaint for not disclosing cause of action---Validity---Suit contract contained a clause to the effect that Government would have right to appoint one or more additional contractors for such purpose; and that Government would have right to terminate contract without assigning any reason by giving one week's notice to contractor---Government as per such clause of contract had legally and rightly appointed one or more contractors for such supply---Plaintiff had no locus standi to challenge awarding, of supply contract to other contractors---Plaintiff had refused, to implement conditions of contract---Party not accepting offer could not claim to have accrued to him legal right to file suit for specific performance of agreement---Any transaction without acceptance would not be lawfully enforced nor could declaration of any right be made on its basis--- Plaintiff's suit for being incompetent and baseless, had been rightly rejected through impugned order---Supreme Appellate Court

dismissed petition for leave to appeal, in circumstances. **[2011 GBLR (a) 235]**

---S. 12---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1 & 2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for specific performance of contract---Interlocutory order---Petitioners urged that impugned interlocutory order, passed by Chief Court, seemed to be without jurisdiction, and being nullity in the eyes of law, Supreme Appellate Court had power to set aside the same without going into the procedural hurdles and that Supreme Appellate Court had ample powers to ignore the procedural hurdles in the way of substantial justice---Validity---Impugned order was not an order without jurisdiction and nullity---Single Judge of Chief Court, having exercised his discretion properly, procedural hurdles could not be ignored---Rules of the Supreme Appellate Court did not allow the petition for leave to appeal against an interim order passed by Chief Court. **[2012-14 GBLR 183]**

---Ss. 39 & 42---Qauun-e-Shahadat (10 of 1984), Art. 79---Limitation Act (IX of 1908), Arts. 120, 142 & 144---Gift deed---Proof---Limitation---Fraud---Plaintiffs assailed gift deed on the plea of fraud---Trial Court dismissed the suit but Lower Appellate Court decreed the same in favour of plaintiffs---Chief Court reversed the findings of Lower Appellate Court and dismissed the suit---Validity---Donor denied execution of gift deed and any involvement in transaction of disputed land with defendant---Marginal witness of registered deed stated that he had never put his signatures upon the deed thus the registered gift deed was forged one---Plaintiff instituted suit on the basis of title in year, 1997, the same year when cause of action accrued to him--- Defendant admitted the same as adverse possession within a period of three months by submitting a written statement on 16-3-1998--- Suit filed by plaintiffs was governed by Art. 144 of Limitation Act, 1908, for possessory relief and declaratory relief governed by ancillary relief under Art. 120 of Limitation Act, 1908---Chief Court reached at wrong conclusion by misconception of Limitation Act, 1908---In case of fraud, suits might be filed within a period of 12 years from the date of discovery of fraud, thus suit was well within time---Defendant had been paying Ajara/Batti to donor and admitted by him and corroborated by plaintiffs witness---Donor had granted permission to defendant to enjoy certain privileges, therefore, defendant had permissive possession over the property occupied by him but at no stage he acquired a right to claim adverse possession---Plea of adverse possession was not tenable in the eye of law as such suit of plaintiffs was not hit by Art. 142 of Limitation Act, 1908---Supreme Appellate Court set aside the judgment and decree

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passed by Chief Court and restored that of Lower Appellate Court--- Appeal was allowed. [2010 GBLR 69]

---Ss. 39 & 42---Civil Procedure Code (V of 1908), O. VII, R. 11--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)--Suit for declaration and cancellation of gift-deed--- Rejection of plaint---Plaintiff having died during pendency of suit, his remaining legal heirs other than defendants, who were sons of deceased, filed application for pleading them as plaintiffs---Trial Court instead of impleading said remaining legal heirs as plaintiffs, rejected plaint under O. VII, R. 11, C.P.C.---Said order passed by the Trial Court was reversed in appeal and upheld by Chief Court, which directed the Trial Court to proceed with the matter after impleading the legal heirs in the array of plaintiffs---Validity---On death of a plaintiff, suit filed by him would not abate and the court in such circumstances on the application made in that behalf could cause the legal representatives of deceased plaintiff, to be made a party and would proceed with the matter in accordance with law---Male descendants of the deceased plaintiff, in the present case, on the basis of gift-deed claimed the ownership in the disputed property in exclusion of right of other legal heirs of deceased---In case of non-impleading the other heirs as plaintiffs the gift-deed would go unchallenged depriving the other legal heirs of the deceased of their, shari share in the legacy left by their late father; as every Muslim descendant had his/her right in the legacy of his/her propositus irrespective of any sex---No reason was available for interference in the findings recorded by Chief Court---Impugned judgment not suffering from any legal or factual infirmity, was maintained and petition for leave to appeal was dismissed. [2011 GBLR 273]

---Ss. 39, 42 & 54---Civil Procedure Code (V Of 1908), O. VII, R. 11(a) & O. XXXIX, Rr. 1, 2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)--Suit for declaration, permanent injunction and cancellation of supply order issued to private defendant---Rejection of plaint-invitation of tenders by Government for supply of medical equipments---Issuance of supply order by Government to private defendant for being lowest bidder--- Plaintiff claiming to be a lowest bidder alleged such supply order to be illegal--- Application for grant of temporary injunction, by plaintiff--- Order of Trial Court dismissing such application upheld by Appellate Court was set aside in revision by Chief Court while declaring impugned supply order as illegal and directing Government to re-advertise tenders---Validity---Nothing on record to show plaintiff to be a lowest bidder---Plaintiff before Appellate Court had conceded that he was not a lowest bidder, but was a second lowest bidder---Second

lowest bidder could not claim to be entitled for acceptance of his bid--- Plaintiff had failed to establish a case for grant of temporary injunction within four corners of O. XXXIX, Rules 1 & 2, C.P.C.--- Plaintiff for being a second lowest bidder was not Entitled to any relief in suit--- Plaintiff had instituted suit without having any cause of action, thus, same was not maintainable---Supreme Appellate Court set aside impugned order and rejected plaint under O. VII, R. 11, C.P.C. **[2011 GBLR (a) 276]**

---S. 39--- See Civil Procedure Code (V of 1908), O. IX, R.13. **[2012-14 GBLR (a) 172]**

---S. 39---See Specific Relief Act (I of 1877), S. 42. **[2017 GBLR 315]**

---S.42---Civil Procedure Code (V of 1908), O. VII, R. 11---Suit for declaration---Rejection of plaint---Framing of preliminary issues---Principle---Jurisdiction of court---Application for rejecting of plaint was dismissed by Trial Court but Lower Appellate Court reversed the finding and directed plaintiff to deposit disputed money in court otherwise plaint would stand rejected---Chief Court dismissed second revision filed by plaintiff resultantly suit was dismissed---Validity---Trial Court dismissed the application filed by defendant without framing of issues---In appealable cases findings should be given after framing of issues, even though it might be un-necessary to decide the same for the purposes of decision arrived at but courts below failed to frame preliminary issue regarding “jurisdiction of civil court”---Findings/judgments of Lower Courts did not have any legal sanctity in accordance with law--- Universally recognized principle of law to frame issues and followed by judgment based on discussing every issue in detail had been overlooked by both the courts below---Courts should not travel beyond pleadings/record available on file, decision should be based on the case as pleaded---Chief Court had travelled beyond the scope and object of case pleaded by parties---Supreme Appellate Court set aside the judgment and the decree passed by Chief Court and remanded the matter to Trial Court for decision afresh---Appeal was allowed. **[2010 GBLR 317]**

---S. 42---Civil Procedure Code (V of 1908), O. XXIII, R. 1---Withdrawal of suit---Principle---Lower Appellate Court, during pendency of appeal did not allow plaintiff to withdraw his suit with permission to file fresh but Chief Court allowed the same---Validity---Unconditional withdrawal of suit, under O. XXIII, C.P.C. was possible only in exceptional cases in which no prejudice was caused to opposite party in respect of rights in the subject matter of the suit---Withdrawal



of suit at appellate stage with permission to file fresh suit on the same subject was not proper and legal---Permission of unconditional withdrawal would be fair to safeguard the interest of parties--- Supreme Appellate Court modified the judgment passed by Chief Court and set aside order regarding amendment of application for withdrawal of suit and directed for unconditional withdrawal of suit--- Appeal was allowed. **[2010 GBLR 84]**

---S. 42---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1 & 2--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Suit for declaration---Interim injunction, grant of--- Raising of construction on the basis of undertaking by defendants--- Validity---In view of the statements made by parties, Supreme Appellate Court modified the order of Chief Court with the direction that defendants might complete construction on an area of two kanals of disputed land at their own cost and risk, subject to the condition that on final disposal of suit, building would be treated as property of decree holder and if decree was passed against defendants, they without claiming ownership of building would be allowed to remove their movables and machinery from the premises--- Supreme Appellate Court directed the parties to maintain status quo regarding ownership and character of land in dispute except construction on specified area of land, pending final disposal of suit---Petition was disposed of accordingly. **[2010 GBLR 138]**

---S.42---Qanun-e-Shahadat (10 of 1984), Arts. 72 & 76---Suit for declaration---Document, existence of---Proof---Secondary evidence--- Presumption---Concurrent findings of fact---Misreading of material evidence---Trial Court decreed the suit in favour of plaintiff and declared his degree of B.A. to be genuine but Lower Appellate Court reversed the finding with regard to genuineness of degree---Judgment and decree passed by Lower Appellate Court was maintained by Chief Court--- Validity---Without proof of loss or non-availability of original document," secondary evidence of such document was not permissible but no presumption regarding non-existence of genuine B.A. degree with plaintiff could be raised without examination of original record on the basis of which letter was issued by Controller of Examinations of the University concerned---In absence of any evidence in rebuttal to the letter in question the existence of valid B.A. degree in possession of plaintiff stood proved beyond doubt through the certificate of the Controller of Examinations---Concurrent findings of two courts on the issue of genuineness of the degree was the result of non-reading of material evidence and such findings had no significance as the same were the result of non-reading of material evidence---Supreme Appellate Court set aside the concurrent findings

of two courts below and restored that of Trial Court---Appeal was allowed. **[2010 GBLR (b) 285]**

---S. 42---See Land Acquisition Act (I of 1894), S.4. **[2010 GBLR 107]**

---S. 42---Suit for declaration---Royalty, percentage of---Determination---Concurrent findings of fact by the courts below---Authorities demanded 100% additional royalty from plaintiffs for extracting and transporting timber-Suit and appeal filed by plaintiffs were dismissed by Trial Court and tower Appellate Court respectively--Chief Court in exercise of revisions jurisdiction maintained the concurrent findings of two Courts below---Validity---Authorities had reviewed/reconsidered their earlier decision regarding enhancement of royalty and had enhanced the rate of royalty on timber by 25% instead of 100% and such authorities could not levy 100% royalty on the timber extracted and transported by plaintiffs---Such crucial point was not discussed by the Chief Court in its judgment, wherein it had been wrongly held that plaintiffs did not challenge the vires of decision regarding enhancement of royalty and from perusal of plaint it appeared that the whole case revolved around such point---Levy of 100% royalty on timber extracted and exported by plaintiffs was not justifiable and the same was declared illegal and authorities plight charge the royalty by 25% instead of 100%---Supreme Appellate Court set aside the judgments and decrees passed by three courts below and decreed the suit in favour of plaintiffs---Appeal was allowed. **[2010 GBLR 79]**

---Ss. 42 & 8---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Suit for declaration--- Revoking of agreement---Concurrent findings of fact by two courts---Non-compliance of order passed by Chief Court--- Defendant made part payment and took over the possession of plaintiff's property and thereafter he was delaying payment of remaining consideration amount---Plaintiff filed suit for revoking the agreement and also for recovery of his property---Suit was decreed in favour of plaintiff by Trial Court but Lower Appellate Court set aside the judgment and decree passed by Trial Court---Chief Court in exercise of second appeal, set aside the judgment and decree passed by Lower Appellate Court and restored that of Trial Court---Plea raised by defendant was that plaintiff had failed to provide him agreed area of land--- Validity-- -Defendant was in knowledge that except the patch of land in his possession, plaintiff had no other land in the vicinity---Defendant was in possession of the land along with house, cattle sheds and was enjoying benefits of the land by using delaying tactics---Defendant

also failed to comply with the order of Chief Court, wherein he was directed to deposit certain amount till a specific date but he failed to comply the order of the Court rather he tried to misrepresent the case-- Supreme Appellate Court agreed with the judgment and decree passed by Chief Court and the same was maintained--- leave to appeal was refused. **[2010 GBLR 271]**

---S. 42---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1, 2--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Suit for declaration---Temporary injunction grant of--- Suit related to the inheritance of grandfather of the parties---Plaintiffs being daughters of son of deceased grandfather of parties filed suit for declaration that despite death of their father during life time of their grandfather they were entitled to get share in the property left by their grandfather---Pending suit, plaintiffs sought interim relief in the form of restraining order that defendant should not change the character of the property; or transfer their share in the property, in any manner to any person till final disposal of the suit--- Question whether grandfather had left any property or not; and whether plaintiffs were entitled in his inheritance or not in accordance with Sharia, was a mixed question of law and facts which could not be decided without recording the evidence of the parties---Prima facie, plaintiffs had a strong arguable case for grant of temporary injunction, and element of balance of convenience and irreparable loss in the given facts would be in favour of grant of interim relief---Petition for leave to appeal was converted into appeal and allowed by Supreme Appellate Court, with direction that pending final disposal of suit the parties would maintain status quo and defendant would not change the character of the property; or dispose it of by way of sale, exchange or gift or in, any other manner adverse to the right of interest of plaintiffs. **[2011 GBLR 288]**

---S.42---Gilgit-Baltistan (Empowerment and Self-Governance) Order; 2009, Art. 60(13)---Suit for declaration of title---Nonpayment of batai by defendant asserting to have become owner of suit-land by adverse possession---Proof---Defendant in written statement had admitted that suit-land remained in possession of his father as tenant--- Jamabandi and mutation pertaining to suit-land showed that suit-land had been given to defendant's father as tenant-at-will---Suit-land after death of plaintiff's father was mutated in his name being legal heir of deceased, owner---Defendant's father and subsequently defendant himself had never objected to attestation of inheritance mutation in favour of plaintiff---Possession of defendant over suit-land was permissive from its inception, thus, mere non-payment of rent or "batai" would not mean that he had become owner on account of

adverse possession--- Tenant would always remain a tenant and could not dispute title of landlord during subsistence of tenancy---Tenant denying title, of landlord in respect of demised land must have to show that he had done something more to denial of landlord's title---. Tenancy once created would continue till its determination in a manner provided under law---Clear and unequivocal evidence of assertion of hostile title was not available in present case---Suit was rightly decreed in circumstances---Petition for leave to appeal was dismissed. **[2011 GBLR 175]**

---S .42--- See Civil Procedure Code (V of 1908), S.47. **[2011 GBLR 229]**

---S. 42---See Qanun-e-Shahadat (10 of 1984), Art. 72. **[2011 GBLR (a) 345]**

---Ss. 42 & 54---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1, 2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Suit for declaration and injunction---Temporary injunction, grant of---Plaintiffs and defendant being legal heirs of deceased landlady, were co-sharers in the property left by their deceased mother---Defendant sold an area of land out of joint property to another person without the consent and permission of the plaintiffs--  
-Plaintiffs filed suit seeking declaration that mutation of inheritance entered only in the name of the defendant as sole legal heir with the exclusion of the plaintiffs, was ineffective to their rights---Plaintiffs also sought injunctive order against the vendee to the effect that he be restrained from changing the character of the land pending final disposal of the suit---Trial Court granted temporary injunction, but Appellate Court below vacated said order granting temporary injunction---Chief Court maintained order of Appellate Court below---  
Validity---Mutation of inheritance in respect of land left by deceased owner in the name of the defendant only, with exclusion of other legal heirs of deceased owner and sale of valuable portion of land by defendant to another person without partition and consent of other legal heirs, would have no adverse effect to the rights of plaintiffs, in joint property---Change of character of the suit land pending decision of suit, would cause irreparable loss to the plaintiffs as they could not be able to get share in the suit land, which was a valuable property---  
Supreme Appellate Court directed that vendee of the suit land from defendant pending suit would not change the character of property and he was restrained from raising any further construction on the suit land---Petition for leave to appeal was converted into appeal and was disposed of accordingly. **[2011 GBLR 320]**

---Ss. 42 & 54---Civil Procedure Code (V of 1908), O. XIV, Rr. 3 & 5---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Suit for declaration--- Non-framing of important and necessary issues---Plaintiffs filed declaratory suit with consequential relief to the effect that they were owners in possession of suit land which was duly allotted to them---Plaintiffs also prayed that the defendants be restrained from interfering and forcibly taking possession of suit land--- Suit was resisted by the defendants who denied the plea of ownership of the plaintiffs and also the plea regarding undisputed possession of the plaintiffs over the suit land--- Both courts below and Chief Court concurrently decreed the spit--- Validity---During pendency of second appeal before the Chief Court, Deputy Commissioner and Tehsildar concerned conducted an inquiry regarding allotment order of the plaintiffs--- Inquiry revealed that allotment made in favour of the plaintiffs was fake and bogus---Chief Court though made said inquiry report as part of the file, but did not consider the same---Both courts below including Chief Court had failed to apply their mind towards framing of important and necessary issues regarding the allotment order---Important issues and material questions should have been solved in first round of litigation--- Framing of issues followed by judgment based on discussion on each and every issue in detail was a recognized principle, but courts below had violated the same---Justice had neither been done in the case nor seemed to have been done as entire exercise adopted by the courts below was without framing of necessary and core issues, which was abuse of process of law--- Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and was allowed--- Impugned judgments and decrees of the courts below were set aside and case was remanded to the Trial Court with direction to decide the suit after framing of important and necessary issues. [2010 GBLR 582]

---Ss. 42 & 54---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Declaration of title--- Concurrent findings of fact by the courts below---Supreme Appellate Court, jurisdiction of---Reappraisal of evidence--- Trial Court after recording of evidence decreed the suit in favour of plaintiffs, which judgment and decree was also maintained by Lower Appellate Court as well as by Chief Court---Validity---Contention of defendants amounted to request for re-appraisal of evidence to reach different conclusions on the questions of facts different than those arrived at by three courts below---Supreme Appellate Court did not consider it an appropriate case for reappraisal of evidence---No error on question of law was pointed out by defendants for determination and interference

with the judgments and decrees passed by the courts below---Leave to appeal was refused. [2010 GBLR 104]

----S. 42---See Specific Relief Act (I of 1877), S. 8. [2015 GBLR 322]

----S. 42---Suit for declaration---Inheritance---Plea of gift--- Proof--- Requirements---Suit having been dismissed by the Trial Court, plaintiffs filed appeal before appellate court below, which was accepted holding that plaintiffs were equally entitled for inheritance in property left by their late father---Father of the plaintiff, who was duff, dumb and died at age of 90 years--- Defendant, could not produce any witness with regard to the gift-deed allegedly executed by the deceased in favour of the defendant--- Revision petition was dismissed by the Chief Court---Validity---Orders passed by the Chief Court as well as by appellate court below were well reasoned and well founded as no infirmity and illegality was pointed out by the counsel for defendants/petitioners---Said orders were maintained, by the Supreme Appellate Court holding that appellate court below had rightly reversed the judgment passed by the Trial Court--- Petition for leave to appeal was converted into appeal and dismissed. [2015 GBLR 184]

----S. 42---Suit for declaration---Suit was decreed by the Trial Court--- Appeal was also dismissed by the appellate court below and order of Trial Court was maintained---Revision was dismissed by the Chief Court maintaining the judgments of both the courts below---Validity--- Judgments/decrees of the three courts below, were well reasoned and no infirmity and illegality was pointed out by the defendant---Petition for leave to appeal was converted into appeal and was dismissed by the Supreme Appellate Court, in circumstances. [2015 GBLR 194]

----S. 42---Suit for declaration in respect of disputed land the basis of inheritance---Said suit was concurrently decreed by the Trial Court and appellate court below---Revision filed by the petitioners, was also dismissed by the Chief Court---No illegality and infirmity had been pointed out by the counsel for the petitioners---Concurrent findings of the three courts below were well reasoned and well founded---Leave to appeal was refused and the judgments of the three courts below were maintained by the Supreme Appellate Court. [2015 GBLR 213]

----Ss. 42 & 54---Civil Procedure Code (V of 1908), S.9, O. VI, R.17 & O. VII, R. 11---Co-operative Societies Act (VII of 1925), Ss. 54, 70 & 70-A---Suit for declaration and perpetual injunction---Rejection of plaint---Defendants filed application under O. VII, R. 11, C.P.C., for rejection of plaint on the ground that under Ss. 54, 70 & 70-A, Co-operative Societies Act, 1925 and S. 9, C.P.C., the civil court had no jurisdiction to entertain cases against Registrar Co-operative Societies

and Co-operative Banks in the cases/disputes pertaining to the business of society---Trial Court dismissed the plaint/suit of the plaintiff---Plaintiff being aggrieved by said order, appealed to the Chief Court, which in absence of the defendants accepted the appeal, and remanded the case to the Trial Court--- Defendants' contention was that order/judgment be set aside as the same was passed on the basis of misconception of law--- Validity---Judgment of the Trial Court, was well reasoned and well founded---No infirmity and illegality had been pointed out by the counsel for the plaintiff--- Judgment/decreed passed by the Trial Court was upheld and the impugned order passed by the Chief Court was set aside. **[2015 GBLR 346]**

---Ss. 42 & 54---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61---Suit for declaration and permanent injunction---Plaintiffs/appellants, who claimed entitlement to suit property, had no evidence regarding title of said land with them and they filed application before the Assistant Commissioner on the basis of hearsay which had no evidentiary value---Plaintiffs had admitted that suit land was "Khalisa-e-Sarkar", and did not challenge the order of the Assistant Commissioner before District Collector but filed suit for declaration and permanent injunction, which was dismissed by the civil court being not maintainable---Appeal was dismissed by the appellate court below and the Chief Court--- Validity---Courts below had rightly and correctly dismissed case of the plaintiff---Counsel for the plaintiff could not point out any illegality and infirmity in the impugned judgments of the courts below including the Chief Court---Petition for leave to appeal was converted into appeal by Supreme Appellate Court and dismissed---Judgments passed by the Chief Court and both the courts below, were maintained, in circumstances. **[2015 GBLR 335]**

---Ss. 42 & 54---Suit for declaration and perpetual injunction--- Plaintiff had claimed that property (subject matter of the suit) was allotted to him vide allotment order by the competent authority and he was in possession of the same--- Petitioners/defendants opposed the suit, contending that only two fields of land measuring about 24 kanals had been allotted to the plaintiff, but he had encroached pasture of village measuring about 200 kanals---Defendants, at the very outset abandoned all other points raised in their petition, but pressed the single point and urged that the plaintiff had encroached a huge chunk of land measuring 200 kanals belonging either to the inhabitants of village or to the Provincial Government as shamilat-e-deh---Point raised by the defendants/petitioners, was devoid of legal substance for the reasons; that counsel for the defendants had himself conceded that

no land of the defendants had been encroached by the plaintiff, defendants, in circumstances, had no locus standi to ask the courts of law to make an order of ejectment of the plaintiff from excess land, if any in his possession; that no suit had been filed by the defendants to get decree of possession of the plaintiff from any land allegedly encroached by the plaintiff, no decree of dispossession/ejectment against the plaintiff and in favour of the defendants could be passed; even if, it was proved that the plaintiff was encroacher of the land; and that alleged encroached land in possession of the plaintiff belonged, either to the Provincial Government, or to the inhabitants of the village--- Defendants, were neither representative of the people of the village, nor they represented the Provincial Government---Defendants had failed to point out any important legal aspect against the impugned judgment---Petition for grant of leave to appeal, was refused, in circumstances. [2015 GBLR 376]

---Ss. 42 & 54---Suit for declaration with consequential reliefs that the defendants be dispossessed from a partial part of the disputed property, and also be restrained from interference into the remaining suit property perpetually---Trial Court dismissed the suit filed by the plaintiffs on merits---Appeal filed against judgment of the Trial Court, was also dismissed by the appellate court below---Chief Court on revision set aside judgments and decrees passed by the both courts below and remanded the case to the Trial Court with the direction to implead Government in the list of the defendants---Validity-Dispute between the parties started since 1997, first it was taken before the Revenue Authorities, then before the civil courts; finally before the Chief Court in the year 2013, but the custodians of the Provincial Government remained mum; no claim from their side reached into the record of the case, asking to be party to defend the Provincial Government which had shown that the Government had no interest in the disputed land---Supreme Appellate Court, disagreed with the finding of the Chief Court in the matter---Petition for leave to appeal was converted into appeal, and judgment passed by the Chief Court, was set aside and those of the Trial Court and the appellate court below were restored---Case was remanded to the Chief Court for adjudicating the revision petition on merits. [2015 GBLR (a) 269]

---Ss. 42, 54 & 56(d)---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 2 & 3---Suit for declaration and perpetual injunction---Application for temporary injunction---Contentions of the plaintiff were that it had constructed a class-D stand after getting licence from competent authority and carrying its business of transport since then; that authorities were causing hindrances and preventing the plaintiff from the use of the stand for its vehicles; that authorities had directed



the plaintiff to shift its business to the Bus Stand constructed by the authorities outside the Municipal limits of the city---Plaintiff, filed application under O. XXXIX, Rr. 2 & 3, C.P.C. for grant of temporary injunction against the authorities restraining them from dislodging the plaintiff from the Stand in question---Trial Court initially granted ad interim injunction against the authorities, but later on vacated the same---Appellate court below and Chief Court, refused to grant temporary injunction--- Validity---Authorities had not prevented the plaintiff from carrying on the business of transport, as to run a business was a Fundamental Right of a citizen, but at the same time, administrative authorities were to avoid administrative problems creative of the business---Authorities faced traffic problems with the passage of time---Authorities had asked the plaintiff to shift its business to Bus Stand constructed outside the Municipal limits to control the traffic flow into the city---Plaintiff, had failed to establish balance of convenience, which was required for grant of temporary injunction---Application for grant of injunction was rightly refused under S.56(d) of the Specific Relief Act, 1877---Courts below, in circumstances, had applied their judicial mind in refusing the remedy-- - Concurrent findings, need not to be interfered---Petition for leave to appeal was dismissed by the Supreme Appellate Court. **[2015 GBLR 249]**

---Ss. 42 & 54---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Suit for declaration and permanent injunction---Authorities issued letter to the plaintiff for recovery of amount as arrears of land revenue---Feeling aggrieved with said letter, plaintiff filed suit on the ground that amount in dispute was not recoverable as arrears of land revenue as the Provincial Government did not declare through notification the alleged dues as arrears of land revenue---Trial Court framed few issues without applying its mind towards the main and core issue of jurisdiction of Authorities to order the collection of dues as land revenue and dismissed the suit---Appellate Court maintained the judgment and decree of die Trial Court---Chief Court accepted the revision and concurrent findings of the courts below were set aside---Validity--- Both courts below including the Chief Court had failed to apply its mind towards framing of important and necessary issue regarding jurisdiction exercised by the Authorities---Said findings of the courts, had no legal sanctity at all---Courts having failed to frame important and necessary issues regarding “jurisdiction”---Impugned judgment and decree passed by Chief Court were set aside and case was returned to the Trial Court with direction to decide “question of jurisdiction in the matter after framing of necessary issues”. **[2010 GBLR (a) 336]**

---Ss. 42 & 54---See Civil Servants Act (LXXI of 1973), S.10. [2010 GBLR 95]

----Ss. 42, 54 & 56---Civil Procedure Code (V of 1908), O. VII, R. 11, O. XXXIX, Rr. 1 & 2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60 (13)---Interim injunction, grant of---Official business---Supply of vehicles--- Dismissal of plaint--- Failure to reject plaint---Plaintiff was aggrieved of awarding of contract for supply of vehicles to defendant and sought bifurcation of supply of vehicles on the basis of lowest bids in different categories of vehicles--- Validity---Vehicle-wise bid was called in tender notice and contract was to be awarded accordingly, was not supported by any evidence on record rather condition of increase or decrease of vehicles on the basis of future need would show that Authorities had reserved the right to change the terms of bid or the contract---Courts were not supposed either to change the terms of tender notice or bifurcate the contract on the basis of vehicle-wise bid---Interim injunction in the form of restraining order in the contract of supply of vehicles might disturb official business of concerned department which was against the policy of law, therefore, the same was rightly refused---Supreme Appellate Court declined to interfere in such order---Trial Court while disposing of application for temporary injunction without rejecting the plaint also dismissed suit, such summary dismissal of suit without rejecting the plaint was not legal and the same was set aside--- Supreme Appellate Court remanded the matter to Trial Court for decision in accordance with law---Petition was disposed of accordingly. [2010 GBLR 314]

----S. 42--- Civil Procedure Code (V of 1908), S.151 & O. XXXIX, Rr. 1, 2---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for declaration, with consequential relief--- Plaintiffs/petitioners filed suit for declaration with consequential relief against the defendants/respondents, along with an application under O. XXXIX, Rr. 1, 2 read with S.151, C.P.C., for grant of temporary injunction---Trial Court, dismissed application for grant of temporary injunction and fixed main case for hearing on its merits---Appellate Court below on appeal, instead of deciding application filed under O. XXXIX, Rr. 1, 2, C.P.C., dismissed main suit pending in the Trial Court---Chief Court dismissed the revision against judgment of the lower appellate court---Validity---Prima facie, both questions of facts and law were involved in the case, which could only be resolved/decided after framing of issues and recording of evidence of the parties thereto---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed---Judgment by the Chief Court and appellate court below, were set aside, and case

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was remanded to the Trial Court to proceed with the case accordingly. **[2016 GBLR 240]**

----S. 42---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for declaration---Petition for leave to appeal---Conversion of petition into appeal---Suit for declaration filed by the plaintiffs was dismissed by the Trial Court, declaring the same as vague and without proof--- Plaintiffs feeling aggrieved and dissatisfied with the judgment of the Trial Court filed first appeal before the Chief Court for setting aside the judgment of the Trial Court---Said appeal was accepted and judgment passed by the Trial Court was set aside being without force---Defendant being aggrieved, filed petition for leave to appeal for setting aside the judgment of Chief Court---Validity---Chief Court had rightly set aside the judgment/decreed of the Trial Court as the same was the result of misconception of law and misreading of the facts of the case---No infirmity and illegality having been found in the judgment passed by the Chief Court, no interference was warranted---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Judgment of the Chief Court was maintained, in circumstances. **[2016 GBLR 15]**

----S. 42---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for declaration---Respondents/plaintiffs claimed that they were owners of suit property which was gifted to them by their late father and filed suit seeking declaration that they were the owners of the suit property---Trial Court dismissed the suit being meritless---Appellate Court dismissed the appeal against judgment of Trial Court--- Respondents challenged said judgment before Chief Court; which allowed the revision setting aside both the judgments of the courts below---Validity---Concurrent findings of the Trial Court and appellate court below were well reasoned, which have been maintained by the Chief Court---Judgment of Chief court was set aside---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and allowed. **[2016 GBLR 171]**

----S. 42 Gilgit-Baltistan (Empowerment and Self-Governance Order) 2009, Art. 60---Suit for declaration---Suit was dismissed by trial Court and appeal filed by the plaintiff against judgment of the Trial Court was also dismissed by appellate court below being meritless---Chief Court allowed the revision setting aside concurrent judgments of the Trial court and appellate court below---Validity---Suit premises which was owned by government, initially was allotted to the plaintiff, but later on same was allotted to the defendant/petitioner by the competent authorities, as the plaintiff had been posted out to their tehsil where he

was residing in a rented house--- competent authorities had rightly cancelled the allotment order of suit house in plaintiff's favour--- Petition for leave to appeal was into appeal by the Supreme Appellate Court and allowed order of Chief Court was set aside and judgments of Trial Court and Appellate Court below, being well reasoned, were maintain. Trial Court was directed to proceed with the suit and decide on its merits. **[2016 GBLR 124]**

---42---Suit for declaration---Plaintiff claimed to be lineal descendants of one who was alleged to be the owner of the property in question and migrated to other district about 200/250 years ago and his property remained with the off-spring of his brothers undivided--- Plaintiffs claimed that the like defendants were getting the "Malikana/Royalty" from the property of their forefathers, but some of the denied payment of said royalty to them for the last 5-6 years --- Plaintiffs had sought Declaration that they were also entitled to get 'Maalikana/Royalty' and other benefits---Suit filed by the plaintiffs was dismissed being barred by time---Appellate court below set aside judgment of the Trial Court, but Chief Court---Validity---Alleged owner of the suit land who had migrated to another place, never turned up and claimed the rights of 'Royalty/Maalikana', nor his first generation claimed the said collective rights---All of a sudden and after lapse of a considerable period of two and half century, the third and fourth generation of said owner had alleged that they had the rights of 'Royalty/Maalikana---Plaintiffs, could not even prove their ancestral property, owned, possessed and looked after by any of their relatives at the said village---Trial court had held that the suit of the plaintiffs was barred by time; which was rightly upheld by the Chief Court---Plaintiffs had themselves admitted that their forefathers had willfully abandoned the rights long ago, which could not be regained without obtaining its basic source---Plaintiffs, themselves were ignorant about the actual quantity of land and its status---Plaintiffs could not point out any illegality, infirmity and mis-appreciation of evidence on record--- Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Impugned judgment passed by the Chief Court and that of the Trial Court, were maintained, in circumstances. **[2016 GBLR 189]**

---S. 42---Suit for declaration---Plaintiff/respondent filed suit for declaration that he had a right to continue his service in the defendant Bank as Officer Grade-1; that he was entitled to pay and other benefits and that order of his termination of service be ordered to be cancelled---Defendant Bank contested the suit with assertion that the plaintiff had tendered resignation---Trial court dismissed the suit of the plaintiff---Appellate Court below partially accepted the suit be setting

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aside judgment/decree of the Trial Court which was upheld by the Chief Court---Validity---Chief Court had rightly held that resignation was forcibly procured from the plaintiff by introducing the downsizing scheme---No illegality and infirmity could be pointed out in the judgment passed by the Chief Court---Plaintiff having not tendered resignation willfully and voluntarily, judgment of the Chief Court was affirmed by the Supreme Appellate Court. **[2016 GBLR 410]**

---Ss. 42 & 8---Suit for declaration and possession---Suit was filed on the basis of gift and as alternative their shari share which was decreed by the Trial Court to the extent of 4/7<sup>th</sup> share.... Appeal against the judgment of Trial Court was dismissed by appellate court and revision was also dismissed by the Chief Court---Validity---Factum of gift had been admitted---defendants/petitioners, could not point out any illegality and infirmity in the impugned judgment passed by the Chief Court---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Judgment of the Chief Court was maintained. **[2016 GBLR 183]**

---Ss. 42, 8 & 39---Suit for declaration, possession and cancellation of gift-deed---Plaintiff/respondent filed suit against the defendants/petitioners for declaration, possession and cancellation of gift-deed regarding his share in property--- Defendants contested the suit with the plea that mother of the plaintiff had already gifted out her Shari share in favour of father of defendants vide a deed---Trial Court decreed the suit in favour of the plaintiff---First appeal filed against the judgment of the Trial Court was partly accepted by the appellate court below---Revision against judgment of appellate court was dismissed by the Chief Court--- Validity---Counsel for petitioners could not point out any illegality and infirmity in the impugned order passed by the Chief Court---No interference was warranted in the judgment of the Chief Court---Orders passed in revision by the Chief Court, as well as by the appellate court and that of the Trial Court, were maintained by Supreme Appellate Court, in circumstances. **[2016 GBLR 193]**

---Ss. 42 & 39---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for declaration and cancellation of mutation---Plaintiffs took the plea that suit property was a Shamilat deh and in their possession since ancient time and that interference in their possession on behalf of the government was illegal---Plaintiffs contended for restraining the defendants from interference over the property in question---Trial Court had dismissed the suit, which was upheld up to the Chief Court---Validity---Counsel for the plaintiffs, could not point out any illegality, infirmity and mis-

appreciation of evidence on record in the concurrent findings of the three courts below---Leave to appeal was refused by the Supreme Appellate Court and concurrent judgments of the three courts were maintained. **[2016 GBLR 413]**

---Ss. 42 & 54--- Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for declaration and permanent injunction---Petition for leave to appeal---Suit having been decreed by the Trial Court, defendants filed first appeal before the appellate court below for setting aside the judgment of the Trial Court, which was partially accepted---Plaintiff feeling aggrieved, filed revision in the Chief Court against the judgment of appellate court below; which was accepted and Chief Court set aside impugned judgment of the appellate court below, declaring the same being based on mere conjectures and suffering from misreading of evidence---Judgment of the Trial Court was maintained by the Chief Court---Defendants had filed petition for leave to appeal against the judgment of the Chief Court ---No infirmity and illegality had been pointed out in the well-reasoned judgment passed by the Chief Court---No interference being warranted in the judgment of the Chief Court, petition for leave to appeal was dismissed and leave was refused. **[2016 GBLR 22]**

---S. 42---Suit for declaration---Petition, had arisen out of impugned judgment passed by Chief Court; whereby revision filed by respondents (plaintiffs), was allowed and case was remanded to the Trial Court for de novo trial, by setting aside impugned judgments passed by Courts below---Plaintiffs/respondents (Forest Department) and other had filed suit for declaration, which was dismissed by the Trial Court and Appellate Court maintained judgment of the Trial Court---Plaintiffs/respondents filed revision petition before the Chief Court, which was allowed and judgments of courts below were set aside---Validity---Chief Court had rightly held that Government Department could not sue any person without arraying the Provincial Government as plaintiff---Trial Court as well as Appellate Court below had failed to take notice of that fact---No illegality/infirmity could be pointed out in the impugned judgment---Petition for leave to appeal was converted into appeal and same was dismissed---Impugned judgment passed by the Chief Court, was maintained. **[2017 GBLR 46]**

---S. 42---Suit for declaration---Plaintiffs contended that authorities were bound to appoint the plaintiffs as fisheries watcher in presence of order of Deputy Director Fisheries---Trial Court dismissed the suit being meritless, which dismissal order was upheld by appellate court

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below---Revision in the Chief Court, which was converted into writ petition by invoking the supervisory power and same was allowed and concurrent findings of two courts below were set aside---Validity---Deputy Director Fisheries was not competent authority to appoint the plaintiffs and their appointment was not made as per Service Rules and after completing of the codal formalities---Order passed by incompetent authority was void ab initio, illegal and without lawful authority--- Petition for leave to appeal was converted into appeal and was allowed---Impugned order passed by the Chief Court was set aside, and judgment by Trial Court and appellate court below, were maintained. **[2017 GBLR 248]**

---Ss. 42 & 54---Suit for declaration and permanent injunction---Chief Court dismissed revision petition by maintaining the concurrent findings of the courts below---Petitioners/plaintiffs, contended that suit land was given to them by the then 'Raja Gupis' in lieu of services rendered by petitioner and he was in possession of said land since 1965---Suit was dismissed by the Trial Court vide judgment declaring the disputed land as "Khalisa Sarkar"---Said judgment of the Trial Court, was upheld upto the Chief Court---Petitioners/plaintiffs, had failed, either to produce any evidence with regard to the allotment or the gift deed allegedly effected by the then "Raja"---Mere possession of land, would not create right of ownership---Counsel for the petitioners, could not point out any illegality and infirmity in the impugned judgment passed by the Chief Court---Petition for leave to appeal was converted into appeal and was dismissed---Judgment passed by the Chief Court, was maintained. **[2017 GBLR 261]**

---S. 42---Suit for declaration and recovery of pensionary benefits---Suit filed by respondents, was decreed by the Trial Court as prayed for and said judgment of the Trial Court was upheld upto the Chief Court---Counsel for the petitioners, could not point out any infirmity and mis-appreciation of evidence on record in the impugned judgments---Petition for leave to appeal, otherwise being time barred for 1 month and 19 days, could not be granted---Leave to appeal was refused, in circumstances. **[2017 GBLR 181]**

---S. 42--- Suit for declaration with consequential relief---Petitioner/plaintiff, contended that he was owner of suit land and respondents had no right to construct shops on the suit property without his permission that respondents be restrained to transfer the property in question to any other person---Petitioners sought possession of suit land along with shops and the rent thereof---Respondents denied the claim of the petitioner---Trial Court, dismissed the suit with costs and appeal against said judgment was

dismissed on the ground of being time barred, which order was having been upheld by the Chief Court---Validity--- Respondents contended that petitioner had failed to produce any documentary and oral evidence in support of his claim; respondents claimed that suit land was their property and they were in possession of the same since long--Impugned order was well reasoned as no infirmity was pointed out in the impugned order---Petition for leave to appeal was converted into appeal, and dismissed and impugned order of Chief Court, was affirmed. **[2017 GBLR 236]**

---Ss. 42 & 54---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1 & 2---Suit for declaration and permanent injunction---Suit filed by the petitioners, was dismissed by the Trial Court and said dismissal was upheld up to the Chief Court---Petitioners, contended that Chief Court as well as the two courts below fell into error while passing impugned orders which were not sustainable and said concurrent findings of three courts below, could be set aside---Counsel for the petitioners, could not point out any infirmity and non-appreciation of evidence on record in the impugned judgments---Petition for leave to appeal, otherwise being barred by 26 days, was dismissed. **[2017 GBLR 185]**

---Ss. 42, 54 & 39---Suit for declaration and permanent injunction--- Trial Court dismissed the suit being meritless which view was upheld up to the Chief Court---Validity---Judgment of the Chief Court as well as concurrent findings of courts below, were well reasoned and well founded---No indulgence of Supreme Appellate Court in circumstances was warranted---Petitioner could not point out any infirmity in the judgment of the Chief Court---Petition for leave to appeal was converted into appeal, and dismissed. **[2017 GBLR 212]**

---Ss. 42 & 54---Suit for declaration and permanent injunction--- Plaintiff had contended that he was the real owner of suit land on the basis of allotment order and No Objection Certificate; that he had made certain improvements on the suit land by erecting boundary wall etc. while investing handsome amount thereto and that cancellation of allotment of suit land by the authorities was void and illegal---Suit was; dismissed by the Trial Court, and dismissal order was upheld upto the Chief Court---Validity---Allotment of plaintiffs was recalled by the authorities due to the misrepresentation and fraud on the part of the plaintiffs---Counsel for the petitioners, could not point out any illegality and infirmity in the said judgment---Impugned judgment being well reasoned, no indulgence of Supreme Appellate Court was warranted---Petition for leave to appeal was converted into appeal and dismissed--- Judgment of the Chief Court, was affirmed in circumstances. **[2017 GBLR 269]**



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---S. 42---See Specific Relief Act (I of 1877), S.8. **[2012-14 GBLR (a) 187]**

---Ss. 42 & 54---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for declaration and permanent injunction---Trial Court dismissed suit, but Appellate Court below decreed the same---Chief Court, on appeal, accepted appeal, setting aside judgment of Appellate Court below, upheld the judgment passed by the Trial Court---Validity---Board duly constituted with free will of the parties had decided the, dispute between the parties---All concerned parties along with members of the Board signed the document and matter was resolved---Written agreement between the parties was made ‘Rule of the Court’---Petition for leave to appeal was disposed of as per “agreement” and the “Rule of the Court”. **[2012-14 GBLR 96]**

---Ss. 42 & 54---See Civil Procedure Code (V of 1908), O. IX, R. 13. **[2012-14 GBLR 92]**

---Ss. 42, 54 & 39---Suit for declaration, injunction and cancellation of order---All three courts below i.e. Trial Court, appellate court below and the Chief Court, concurrently decreed the suit filed by respondent/plaintiff---Advocate General contended that concurrent judgments/decrees passed by three courts below, were incorrect and baseless---Contention of Advocate General was repelled as all three courts below had arrived at correct conclusion of the case and had rightly applied their judicial mind in refusing the contentions of the defendants---Concurrent findings needed no interference by the Supreme Appellate Court. **[2017 GBLR 315]**

---S. 54---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1 & 2---Suit for perpetual injunction---Temporary injunction, refusal of---Petitioner/plaintiff sought perpetual injunction against the respondents by restraining them from interfering into the disputed property perpetually---Trial Court, Appellate Court below and Chief Court, refused to grant the temporary injunction as prayed for by the petitioner---Validity---Petitioner sought to restrain the respondents, till final disposal of the suit from using a path over the ancestral property, adjacent to the disputed property---Plaintiff had sought an order to the effect that respondents be restrained from trespassing his ancestral property---Petitioner, in fact, intended to prevent the respondents from using her ancestral property as path to the “subject matter” of the suit--Petitioner, had lost sight of the fact that the ancestral property or the path over the same, had not been made “subject matter” in the suit---Possession over the suit land was disputed, which was yet to be proved

through cogent and reliable testimony of the witnesses in that regard--- Order XXXIX, Rr. 1, 2, C.P.C., spoke about the “subject matter” of a suit and gave discretion to the courts to pass temporary orders during pendency of suits, if court was convinced that the subject matter of the suit was in danger of being wasted/damaged or alienated by any party to the suit--- Courts had no power to grant temporary injunction in respect of any property which was not “subject matter” of the suit”--- Petitioner had failed to establish a prima facie case to get temporary injunction against the respondents---Other two ingredients i.e. balance of convenience and irreparable loss to the subject matter of the suit which were prerequisite for grant of temporary injunction had also not been established---Petition not carrying any substance to grant leave to appeal, was dismissed, and leave was refused. **[2012-14 GBLR 158]**

---S. 54--- See Civil Procedure Code (V of 1908), O. IX, R.13. **[2012-14 GBLR (a)172]**

---S. 54---See Specific Relief Act (I of 1877), S. 42. **[2012-14 GBLR 96]**

---S. 54---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Suit for damages and restraining defendants from interfering in the suit land---Plaintiffs filed suit against the defendants claiming damages for destructing boundary wall of the suit land and for restraining defendants from interfering in the suit land--- Suit was concurrently dismissed by three courts below--- Validity--- Concurrent findings of three courts below, were well reasoned and no infirmity and illegality was pointed out by the counsel for the plaintiffs---Courts below, had rightly applied their judicious mind to come to the conclusion of the case---Said concurrent findings needed no interference---Petition for leave to appeal was converted into appeal and was dismissed, in circumstances. **[2017 GBLR 67]**

---S. 54---See Specific Relief Act (I of 1877), S. 42. **[2010 GBLR (a) 336]**

---S. 54---See Specific Relief Act (I of 1877), S. 42. **[2010 GBLR 314]**

---S. 56---See Specific Relief Act (I of 1877), S. 42. **[2010 GBLR 314]**

---S. 54---See Specific Relief Act (I of 1877), S. 42. **[2015 GBLR 335]**

---S. 54---See Specific Relief Act (I of 1877), S. 42. **[2015 GBLR 346]**

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---S. 56(d)---See Specific Relief Act (I of 1877), S. 42. [2015 GBLR 249]

**Suit for damages---**

---Defamation---Plaintiff filed suit for recovery of Rs. 10 million as damages for defamation was decreed ex parte by the Trial Court without framing issues---Order of the Trial Court was upheld by the Chief Court by dismissing appeal of the defendant---No summons/notice was served upon the defendant by the Trial Court or by the plaintiff---Legal requirements having not been fulfilled by the Trial Court as well as the Chief Court, order of the Chief Court and that of the Trial Court, were not well reasoned and well founded---Petition for leave to appeal was converted into appeal and allowed---Orders passed by the Trial Court and Chief Court, were set aside and case was remanded to the Trial Court to hear and decide the same afresh in accordance with law. [2017 GBLR 286]

**Supreme Appellate Court Gilgit-Baltistan Rules, 2008---**

---O. XIII---See Gilgit-Baltistan Judicial Service Rules 2010 R. 6. [2010 GBLR 366]

**Supreme Appellate Court, Service Structure (Modified/Re-enacted) Rules, 2009---**

---Rr. 3, 5 & 11---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, R. 21(2)(3)(4) Civil Servants Act (LXXI of 1973), S. 11---Appointment of Assistant Registrar (Judicial) in the Supreme Appellate Court on ad hoc basis--- Termination of service---Services of the employee were regularized and was upgraded along with four other officers--- No terms and conditions were laid down in the order of his up-gradation for probation period---Services of the appellant when he was on probation were terminated without issuance of show-cause notice and explanation---Appellant was informed telephonically about his termination---Appellant challenged his termination as unlawful, void and against the principles of natural justice---Validity---Under S. 11 of Civil Servants Act, 1973, services of a civil servant, could be terminated without notice during the initial or extended period of his probation--- Under R.5 of Supreme Appellate Court Service Structure (Modified/Re-enacted) Rules, 2009, no reasonable opportunity of showing cause, would be given, when the Chief Judge or the Registrar, was satisfied that in circumstances of the case, it was not expedient in the public interest to give such opportunity--- Appellant, who was on probation, competent authority was authorized to terminate his services without any notice on account

of his being on probation---Competent authority was empowered to decide, whether an employee was fit to be retained in service or not such being an administrative matter---No illegality in such exercise of power by the competent authority was noticed---Appeal was not maintainable as no penalty, major or minor had been imposed on him, but he was terminated during probation period, which did not require any show-cause notice prior to termination---Administration appeal being not maintainable, was dismissed by Supreme Appellate Court, in circumstances. **[2010 GBLR 167]**

---R. 11---See Supreme Appellate Court, (Modified/Re-enacted) Rules, 2009, R. 3. **[2010 GBLR 167]**

---O. V, R. 1(7)---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13). **[2012-14 GBLR 180]**

---O. XIII, R. 1---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13). **[2012-14 GBLR 123]**

---O. XXVI---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. **[2012-14 GBLR 100]**

---O. XXVII, R. 6---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 75. **[2012-14 GBLR 169]**

---O. XIII---See Gilgit-Baltistan Judicial Service Rules, 2010, R. 6. **[2015 GBLR 366]**

---Rr. 3, 5 & 11---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, R.21(2)(3)(4)---Civil Servants Act (LXXI of 1973), S. 11---Appointment of Assistant Registrar (Judicial) in the Supreme Appellate Court on ad hoc basis--- Termination of service--- Services of the employee were regularized and was upgraded along with four other officers---No terms and conditions were laid down in the order of his up-gradation for probation period---Services of the appellant when he was on probation were terminated without issuance of show-cause notice and explanation---Appellant was informed telephonically about his termination---Appellant challenged his termination as unlawful, void and against the principles of natural justice---Validity---Under S. 11 of Civil Servants Act, 1973, services of a civil servant, could be terminated without notice during the initial or extended period of his probation---Under R.5 of Supreme Appellate Court Service Structure (Modified/Re-enacted) Rules, 2009, no reasonable opportunity of showing cause, would be given, when the Chief Judge or the Registrar, was satisfied that in circumstances of the case, it was not expedient in the public interest to give such

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opportunity--- Appellant, who was on probation, competent authority was authorized to terminate his services without any notice on account of his being on probation---Competent authority was empowered to decide, whether an employee was fit to be retained in service or -not, such being an administrative matter---No illegality in such exercise of power by the competent authority was noticed---Appeal was not maintainable as no penalty, major or minor had been imposed on him, but he was terminated during probation period, which did not require any show-cause notice prior to termination---Administration appeal being not maintainable, was dismissed by Supreme Appellate Court, in circumstances. **[2015 GBLR 167]**

---R. 11---See Supreme Appellate Court, Service Structure (Modified/Re-enacted) Rules, 2009, R. 3. **[2015 GBLR 167]**

---O. IV, R. 2, Proviso---Advocate Chief Court Gilgit-Baltistan enrolled for less than ten years---Enrollment as advocate of Supreme Appellate Court Gilgit-Baltistan---Scope---Petitioner, who was an advocate of the Chief Court Gilgit-Baltistan, had been practicing law in the Chief Court for the last more than nine years and had been competently conducting his cases with legal wisdom, knowledge, ability and experience in all branches of law--- Petitioner was also elected as President of the Chief Court Bar Association and enjoyed good reputation among the lawyers-fraternity, judiciary and general public---Petitioner qualified to be enrolled as an advocate of the Supreme Appellate Court, Gilgit-Baltistan---Supreme Appellate Court by exercising powers vested under Proviso to R. 2 of O. IV of the Supreme Appellate Court Gilgit-Baltistan Rules 2008, allowed enrollment of petitioner as an advocate of the Supreme Appellate Court, and directed office to issue him an enrollment certificate. **[2017 GBLR (a) 1]**

---O. IV, R. 2---See Northern Areas Legal Practitioners and Bar Councils Order, 2000, S. 2. **[2017 GBLR (b) 1]**

---O. IV, R. 23---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Petition for leave to appeal against a practicing Advocate---Advocate-General, submitted that since present petition had been filed against a practicing Advocate, all the Bar Associations of Gilgit-Baltistan were supporting the respondent and the Advocates-on-Record had refused to take up the case of the petitioner/State---Petition was moved along with application under O. IV, R.23 of Gilgit-Baltistan Supreme Appellate Court Rules, 2008 for special leave and presenting the matter before the Supreme Appellate Court--- Advocate-General contended that no

one should be condemned unheard and every one had the constitutional guarantees to be represented through counsel of his own choice---Petitioner/State, had been deprived to file petition through an Advocate-on-Record---Advocate General prayed that application under Gilgit-Baltistan Supreme Appellate Court Rules, 2008, be allowed in the interest of justice---Application for filing special leave to appeal was allowed accordingly. [2017 GBLR 202]

---O. XXIII, R. 7---See Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 65. [2017 GBLR 296]

---O. XXXIII, R. 5---See Civil Procedure Code (V of 1908), S. 151. [2017 GBLR 70]

**Supreme Court Judges Leave, Pension and Privileges Order (No. 2 of 1997) [as adapted by Gilgit-Baltistan]---**

---Paras. 2(a), 14, 20-A & 25---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Arts. 60(9) & 60(10)---Review of judgment of the Supreme Appellate Court---Pensionary benefits of ex-Chief Judge, Supreme Appellate Court---Registrar of Supreme Appellate Court, Gilgit-Baltistan filed summary that the judgment dated 24.03.2011 in Suo Motu Case titled “Pension of Ex-Chief Judge, Supreme Appellate Court” was required to be reviewed (amended) to make the same practicable and to bring it in consonance with the Art. 60(10) of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009---Amendments sought were that “in definition clause i.e. Art. 2 of adopted Presidential Order No. 2 of 1997, “Acting Chief Justice” has been defined as “a Judge appointed under Art. 180 of the Constitution to act as Chief Justice”, which is required to be replaced as:- “ Acting Chief Judge” means a Judge appointed by the Chairman of the Gilgit-Baltistan Council under Art. 60(9) of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 read with Order dated 07.09.2017 in C.A. No. 15/2015 titled “Muhammad Ismail and others v. Chairman PARC and others by Supreme Appellate Court, Gilgit-Baltistan”; that “the Note at the end of Para 2 of the adopted Order 1997 may kindly be amended as:- the Expressions “ Chief Justice”, “Supreme Court”, Supreme Court of Pakistan” and “High Court” in Order 2 of 1997 may be read as “Chief Judge”, “Supreme Appellate Court” Supreme Appellate Court Gilgit-Baltistan” and “Chief Court respectively”; that “in Para 14 of the Order 2 of 1997, the word “lea” may kindly be read as “leave” and word “president” may kindly be replaced and read as “Governor” “Gilgit-Baltistan”; that “in Para 20-A, the word “Islamabad” may kindly be replaced with word “Gilgit”; that “in Para 25 of the Order 2

of 1997, in other Benefits after the word “contingent” may kindly be read as words “contingent or regular”; and that “in Paragraph 4(iii) at 6th line the words “only one vehicle” be read as “any one vehicle” and the words “of the engine capacity of 1800: CC” in the same line, may kindly be omitted from the judgment dated 12.04.2016”; Held, Advocate General Gilgit-Baltistan and the Deputy Attorney General for Pakistan at Gilgit waived notices and conceded to the suggested amendments---Amendments sought by the Registrar of the Supreme Appellate Court were allowed and office was directed to amend and notify the same forthwith accordingly. **[2017 GBLR 23]**

---Para. 14---See Supreme Court Judges Leave, Pension and Privileges Order (No. 2 of 1997) [as adapted by Gilgit-Baltistan], Para. 2(a). **[2017 GBLR 23]**

---Para. 20-A---See Supreme Court Judges Leave, Pension and Privileges Order (No. 2 of 1997) [as adapted by Gilgit-Baltistan], Para. 2(a). **[2017 GBLR 23]**

---Para, 25---See Supreme Court Judges Leave, Pension and Privileges Order (No. 2 of 1997) [as adapted by Gilgit-Baltistan], Para. 2(a). **[2017 GBLR 23]**

## T

### **Tort---**

---Malicious prosecution---Suit for damages---Petitioner against whom criminal cases were got registered by the respondents, having been acquitted, petitioner had filed suit for damages for malicious prosecution, on the ground that he being a respectable pensioner of Pakistan Army, was roped in criminal cases on account of malice, which caused mental agony and torture, besides forcing him to suffer monetary loss and lowered his image and dignity in the estimation of the society--- Trial Court dismissed the suit filed by the petitioner--- Appeal and review by the petitioner against order dismissing suit was dismissed by the Chief Court---Validity---Law, in case of the petitioner, provided two remedies, one was a heavy cost and the other was damages for malicious prosecution---Cost incurred on litigation could be claimed by a separate suit after decision of the lis---Suiter in the main case, could furnish the bill of the cost, or the court could grant the damages on the basis of assessment of the evidence and the stance taken by the courts below---”Acquittal” and “honourable acquittal”, would carry no different meaning, but, if something had

been rendered in the judgment that accused suffered prosecution on account of malice or ill-will, that would strengthen the case of the suiter, yet the independent evidence brought on record to dislodge the finding, could not be ignored altogether---Chief Court, in the present case, had lost sight to consult the record for the points and grounds taken in the memorandum of appeal---Disposal of cases in slipshod manner, was totally unwarranted by law--- Petition for leave to appeal, was converted into appeal and was allowed---Judgments/orders, passed by the Chief Court, being not sustainable at law, were set aside, and case was remitted to the Chief Court with the direction to decide the matter afresh in accordance with law. **[2012-14 GBLR (a) 128]**

#### **Transfer of Property Act (IV of 1882)---**

---Ss. 53, 60, 67 & 68---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60---Mortgage of property---Redemption of mortgage---Mortgagee failed to pay mortgage amount within stipulated time, mortgaged land was transferred through sale---Mortgagor being aggrieved filed suit for redemption and possession of mortgaged property, which was decreed in his favour subject to payment of specified amount---Appeal against the judgment of the Trial Court was rejected by Appellate Court and revision against judgment of Appellate Court was dismissed by the Chief Court---Validity---Petitioners/vendees had contended that on failure of mortgagor to pay debt amount to mortgagee within the stipulated time, mortgagee who had become the real owner of the land in question, had rightly sold out land in question to them--- Contentions of respondents were that “once a mortgage always a mortgage” and that the petitioners/vendees were well aware about the transaction of the suit land, who malafidely entered into the illegal purchase of the land in question; that responsibility of such illegal transaction was on the petitioners/vendees as respondents could not be held accountable for such illegal deal---Petitioners/vendees could no point out any illegality and infirmity in the judgment of Chief Court---Impugned judgment was well reasoned and well founded having been passed in accordance with law and facts o the case, and no interference was warranted---Petition for leave to appeal was converted into appeal by the Supreme Appellate Court and dismissed---Impugned judgment by the Chief Court was maintained. **[2016 GBLR 2016]**

---Ss. 60 & 91---Redemption of mortgaged property, suit .for---Respondent/plaintiff, who mortgaged suit property with petitioner/defendant, filed suit for redemption against the petitioner/ defendant---Trial Court decreed the suit and on filing appeal by the petitioner/defendant against the judgment of the Trial Court, Appellate



Court set aside said judgment---Respondent/plaintiff filed second appeal before Chief Court, which set aside findings of Appellate Court below and maintained the judgment/decreed of Trial Court---Validity---Judgments/decrees passed by Trial Court and the Chief Court, were well reasoned, no infirmity and illegality was pointed out by the counsel of petitioner/defendant--- Petition for leave to appeal was converted into appeal and was dismissed. [2017 GBLR 84]

---S. 91--- See Transfer of Property Act (IV of 1882), S.60. [2017 GBLR 84]

## W

### **West Pakistan Arms Ordinance (XX of 1965)---**

---S. 13(d)---See Penal Code (XLV of 1860), S.302(b)/34. [2011 GBLR (a) 475]

### **West Pakistan Family Courts Act (XXXV of 1964)---**

---S.5 & Sched.---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 61---Suo motu jurisdiction of Supreme Appellate Court---Recovery of maintenance allowance and delivery expenses---Reconciliation proceedings between husband and wife---Husband having complied with the directions of the court---Effect---Husband, on directions of the Supreme Appellate Court, was paying Rs. 5000/month as maintenance to the wife and in addition also paid an amount of Rs. 16,600 to meet the expenses, of delivery of the child-- Reconciliation proceedings between the parties, through the elders of the family with the intervention of the Ismaili Regional Council, were also in progress---Further proceedings in the case were closed, in circumstances---Case was disposed of accordingly. [2011 GBLR (d) 555]

### **West Pakistan Land Revenue Act (XVII of 1967)---**

---Ss. 80 & 81---See Land Acquisition Act (I of 1894), S.4. [2011 GBLR 373]

### **West Pakistan Urban Rent Restriction Ordinance (VI of 1959)---**

---Ss. 13(3) & 15---Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, Art. 60(13)---Ejectment of tenant on ground of personal requirement of landlord---Landlord filed ejectment application against tenant in respect of shop in question on ground of

his personal requirement for carrying on his own business therein as he had been retired from government service---Rent Controller allowed ejectment application filed by the landlord on the sole ground of personal requirement---Appellate Court below having maintained order of ejectment passed by Rent Controller, tenant invoked the revisional jurisdiction of Chief Court---Chief Court setting aside concurrent findings of both courts below allowed tenant to retain shop in question enhancing rate of rent---Validity--- Personal bona fide need of the landlord in respect of premises, was a question of fact; and two courts below on the basis of evidence on record had concurrently agreed that shop in question was bona fide required by the landlord to settle a business therein---Nothing was on record to substantiate the plea of mala fide as alleged by tenant---Tenant in his own statement before the Trial Court had not said anything regarding mala fides on the part of landlord---Prerogative of the landlord to choose any one of the shops for his business, provided his requirement was for bona fide, purpose---Since the tenant had failed to establish his plea of mala fide, in absence of any proof, it could safely be said that requirement of landlord was bona fide and genuine---Landlord having successfully made out a case for ejectment of tenant, impugned judgment passed by Chief Court was set aside by Supreme Appellate Court and order passed by Rent Controller and that of Appellate Court below, were maintained, in circumstances. **[2011 GBLR 242]**

---Ss. 13 & 15---Application for ejectment of tenant---Dismissal of application---Ejectment application was concurrently dismissed by the Rent Controller, Appellate Authority and by the Chief Court---Counsel for petitioner/tenant, had submitted that he on the instruction of the tenant, would not press petition any further, if the petitioner/tenant was given five months time to vacate the shop in question---Respondent/landlord, in attendance, agreed to give five months time for vacation of the shop---In view of agreement between the parties, and the statement at Bar of the Counsel for the petitioner, shop would be vacated within five months as agreed upon---Petitioner/tenant was directed to vacate the shop within the stipulated time agreed between the parties, and would hand over the vacant possession of the shop to the respondent/landlord, without any hesitation---Order accordingly. **[2012-14 GBLR 66]**

---Ss. 13 & 15---Ejectment of tenants on the ground of default in payment of rent---Rent Controller, after determination of fair rent of the premises in question, directed the tenants to deposit same before 15th of each month---Tenants who failed to comply with the orders passed by the Rent Controller, rendered themselves as “wilful defaulter”---Trial Court, accepted ejectment petition of the landlords

and struck off the defence of the tenants, and the landlords were ordered to be put into possession---Said ejectment order was upheld by Appellate Authority and the Chief Court---Contention of the tenants was that predecessor of the landlords, had given the tenants assurance that in case of reconstruction of the shop, tenants would never be called to pay rent at the market value; and that they would never be liable to be ejected---Validity---Any agreement which was violative of public policy, was never specifically enforceable and the clause in agreement to that extent was always If voidable---Rent of the shop in question initially was fixed Rs. 60 per month and the tenants wanted to feel obliged to pay the same rent after the expiry of almost 41 years time, when the whole scenario, was absolutely changed---Concurrent findings of the courts below, being neither perverse, nor arbitrary warranted no interference. [2012-14 GBLR 86]

---S. 13---Ejectment of tenant on grounds of default in payment of rent and bona fide personal need---Landlord filed ejectment of tenant from shop on grounds of default in payment of rent and bona fide personal need---Tenant denied to be the tenant, and claimed to be the owner of the demised shop---Ejectment petition filed by landlord was dismissed by the Trial Court---Appeal filed against the judgment of the Trial Court, was accepted by setting aside the judgment of the Trial Court---Tenant had failed to produce evidence in support of his claim that property in question was allotted to him---Mutation, produced by the tenant in support of his claim, was not genuine as per revenue record---Counsel for the tenant, could not point out any illegality and infirmity in the impugned order---Petition for leave to appeal was converted into appeal, and dismissed---Impugned order passed by the Chief Court, was affirmed, in circumstances. [2017 GBLR 141]

---Ss. 13 & 15---Tenants sought possession of Shops on the basis of agreement with the landlord---Rent Controller, allowed the petition, which order was upheld by the First Appellate Court---Chief Court, in second appeal, set aside the findings of the two courts below---Validity---Chief Court had failed to apply its judicial mind while accepting appeal of the tenants---Concurrent findings of both the courts below, were well reasoned and well founded having been passed in accordance with law facts of the case---Judgment of Chief Court was set aside by the Supreme Appellate Court and concurrent findings of two courts below, were maintained. [2017 GBLR 364]

# Z

## **Zakat and Usher Ordinance (XVII of 1980)---**

---S.9---Embezzlement of zakat fund---Administrator Zakat had explained the matter relating to the embezzlement of zakat fund in two districts stating that lacs of rupees had been misappropriated from Zakat Fund by the Chairman District Zakat-Committee; that according to the Audit Report the funds had been distributed without the nomination of Local Zakat Committee; that the matter had been brought to the notice of Chief Secretary and that further distribution of funds to the Chairman of respective District Zakat Committee, had been stopped---Stoppage of funds for a longer period could deprive the deserving persons from their share in zakat---Chief Secretary in his capacity as Chairman of Provincial Zakat Council could make alternate arrangement of the distribution of zakat fund in the relevant areas so that the deserving persons could not suffer---Being already under process for appropriate action in accordance with law complaint stood disposed of accordingly.[2011 GBLR 317]

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