IN THE HIGH COURT OF SINDH, KARACHI

Present
Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Muhammad Junaid Ghaffar

1. Const. Petition No.D-3757/2013

Yaqoob Ahmed ……..…….….Petitioner

2. Const. Petition No.D-3758/2013

Javed Ahmed ……..….Petitioner

3. Const. Petition No.D-3759/2013

Iqbal Ahmed ……..….Petitioner

4. Const. Petition No.D-4071/2013

M/s Faisal Ahmed ……...…..….Petitioner

5. Const. Petition No.D-4072/2013

Maliha Faisal ……...…..….Petitioner

6. Const. Petition No.D-4164/2013

Abdus Samad ……...…….….Petitioner

7. Const. Petition No.D-4229/2013

Abdul Aziz Rafiq and others ……..……..….Petitioners

8. Const. Petition No.D-4230/2013

Aly M. Rawjee and others ……..……..….Petitioners

9. Const. Petition No.D-4231/2013

Al-Noor Akbar and others ……..……..….Petitioners

10. Const. Petition No.D-4232/2013

Amin A Hashwani and others ……..……..….Petitioners

11. Const. Petition No.D-4233/2013

Rehmat Ali Rauf and others ……..……..….Petitioners

12. Const. Petition No.D-4234/2013

Sohail Tai and others ……..……..….Petitioners

13. Const. Petition No.D-4235/2013

Syed Nadeem Ahmed and others ……..……..….Petitioners

14. Const. Petition No.D-4236/2013

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15. Const. Petition No.D-4255/2013

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16. Const. Petition No.D-4270/2013

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17. Const. Petition No.D-4274/2013

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18. Const. Petition No.D-4275/2013

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19. Const. Petition No.D-4276/2013

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20. Const. Petition No.D-4277/2013

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21. Const. Petition No.D-4278/2013

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22. Const. Petition No.D-4279/2013

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23. Const. Petition No.D-4280/2013

Amjad Iqbal & others ……...……..….Petitioners

24. Const. Petition No.D-4281/2013

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25. Const. Petition No.D-4301/2013

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26. Const. Petition No.D-4306/2013

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27. Const. Petition No.D-4307/2013

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28. Const. Petition No.D-4308/2013

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29. Const. Petition No.D-4310/2013

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30. Const. Petition No.D-4311/2013

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31. Const. Petition No.D-4312/2013

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32. Const. Petition No.D-4313/2013

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33. Const. Petition No.D-4314/2013

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34. Const. Petition No.D-4315/2013

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35. Const. Petition No.D-4316/2013

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36. Const. Petition No.D-4317/2013

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37. Const. Petition No.D-4318/2013

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38. Const. Petition No.D-4319/2013

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50. Const. Petition No.D-4368/2013

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78. Const. Petition No.D-6684/2016

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80. Const. Petition No.D-6686/2016

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130. Const. Petition No.D-1023/2017

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138. Const. Petition No.D-1106/2017

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159. Const. Petition No.D-1304/2017

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172. Const. Petition No.D-1453/2017

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173. Const. Petition No.D-1475/2017

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176. Const. Petition No.D-1480/2017

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177. Const. Petition No.D-1514/2017

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178. Const. Petition No.D-1535/2017

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179. Const. Petition No.D-1536/2017

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181. Const. Petition No.D-1579/2017

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182. Const. Petition No.D-1610/2017

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183. Const. Petition No.D-1624/2017

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187. Const. Petition No.D-1679/2017

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188. Const. Petition No.D-1693/2017

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189. Const. Petition No.D-1694/2017

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190. Const. Petition No.D-1695/2017

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191. Const. Petition No.D-1696/2017

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192. Const. Petition No.D-1697/2017

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193. Const. Petition No.D-1744/2017

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194. Const. Petition No.D-1757/2017

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197. Const. Petition No.D-1907/2017

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198. Const. Petition No.D-2002/2017

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199. Const. Petition No.D-2006/2017

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200. Const. Petition No.D-2048/2017

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203. Const. Petition No.D-2130/2017

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204. Const. Petition No.D-2154/2017

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205. Const. Petition No.D-2155/2017

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206. Const. Petition No.D-2172/2017

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207. Const. Petition No.D-2173/2017

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208. Const. Petition No.D-2185/2017

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209. Const. Petition No.D-2186/2017

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210. Const. Petition No.D-2276/2017

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211. Const. Petition No.D-2277/2017

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213. Const. Petition No.D-2327/2017

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214. Const. Petition No.D-2328/2017

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221. Const. Petition No.D-2406/2017

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222. Const. Petition No.D-2407/2017

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223. Const. Petition No.D-2427/2017

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230. Const. Petition No.D-2691/2017

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231. Const. Petition No.D-2702/2017

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232. Const. Petition No.D-2796/2017

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233. Const. Petition No.D-2797/2017

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234. Const. Petition No.D-2803/2017

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237. Const. Petition No.D-2884/2017

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238. Const. Petition No.D-2885/2017

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239. Const. Petition No.D-2917/2017

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240. Const. Petition No.D-3111/2017

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241. Const. Petition No.D-3504/2017

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242. Const. Petition No.D-3787/2017

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243. Const. Petition No.D-3788/2017

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244. Const. Petition No.D-3790/2017

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245. Const. Petition No.D-4247/2017

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246. Const. Petition No.D-4249/2017

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247. Const. Petition No.D-4563/2017

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248. Const. Petition No.D-4996/2017

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249. Const. Petition No.D-5362/2017

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250. Const. Petition No.D-5391/2017

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251. Const. Petition No.D-5405/2017

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252. Const. Petition No.D-6205/2017

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253. Const. Petition No.D-6206/2017

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254. Const. Petition No.D-6357/2017

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255. Const. Petition No.D-6546/2017

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256. Const. Petition No.D-6972/2017

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257. Const. Petition No.D-7368/2017

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258. Const. Petition No.D-8049/2017

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259. Const. Petition No.D-8174/2017

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260. Const. Petition No.D-8439/2017

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261. Const. Petition No.D-8441/2017

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262. Const. Petition No.D-8144/2018

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265. Const. Petition No.D-8388/2018

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269. Const. Petition No.D-8524/2018

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274. Const. Petition No.D-162/2019

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275. Const. Petition No.D-268/2019

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276. Const. Petition No.D-269/2019

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277. Const. Petition No.D-352/2019

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278. Const. Petition No.D-353/2019

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279. Const. Petition No.D-354/2019

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280. Const. Petition No.D-553/2019

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281. Const. Petition No.D-907/2019

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282. Const. Petition No.D-984/2019

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283. Const. Petition No.D-1287/2019

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284. Const. Petition No.D-1288/2019

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285. Const. Petition No.D-1394/2019

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286. Const. Petition No.D-1396/2019

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287. Const. Petition No.D-1397/2019

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288. Const. Petition No.D-1561/2019

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289. Const. Petition No.D-1598/2019

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290. Const. Petition No.D-1599/2019

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292. Const. Petition No.D-1601/2019

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293. Const. Petition No.D-1602/2019

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294. Const. Petition No.D-1603/2019

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295. Const. Petition No.D-1645/2019

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296. Const. Petition No.D-1646/2019

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297. Const. Petition No.D-1647/2019

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298. Const. Petition No.D-1690/2019

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299. Const. Petition No.D-1751/2019

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300. Const. Petition No.D-1752/2019

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303. Const. Petition No.D-1811/2019

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304. Const. Petition No.D-1841/2019

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305. Const. Petition No.D-1854/2019

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306. Const. Petition No.D-1855/2019

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307. Const. Petition No.D-1856/2019

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308. Const. Petition No.D-2098/2019

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309. Const. Petition No.D-2109/2019

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310. Const. Petition No.D-2181/2019

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311. Const. Petition No.D-2248/2019

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312. Const. Petition No.D-2249/2019

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313. Const. Petition No.D-2287/2019

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314. Const. Petition No.D-2555/2019

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315. Const. Petition No.D-2668/2019

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316. Const. Petition No.D-2685/2019

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317. Const. Petition No.D-2761/2019

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318. Const. Petition No.D-2762/2019

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319. Const. Petition No.D-2768/2019

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321. Const. Petition No.D-2793/2019

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324. Const. Petition No.D-2820/2019

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325. Const. Petition No.D-2849/2019

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326. Const. Petition No.D-2888/2019

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327. Const. Petition No.D-2892/2019

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328. Const. Petition No.D-2893/2019

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329. Const. Petition No.D-2942/2019

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330. Const. Petition No.D-3028/2019

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332. Const. Petition No.D-3051/2019

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333. Const. Petition No.D-3077/2019

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334. Const. Petition No.D-3082/2019

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335. Const. Petition No.D-3147/2019

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336. Const. Petition No.D-3274/2019

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338. Const. Petition No.D-3277/2019

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339. Const. Petition No.D-3278/2019

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340. Const. Petition No.D-3279/2019

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341. Const. Petition No.D-3280/2019

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342. Const. Petition No.D-3281/2019

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343. Const. Petition No.D-3282/2019

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344. Const. Petition No.D-3283/2019

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345. Const. Petition No.D-3287/2019

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346. Const. Petition No.D-3346/2019

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347. Const. Petition No.D-3347/2019

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348. Const. Petition No.D-3348/2019

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349. Const. Petition No.D-3387/2019

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350. Const. Petition No.D-3443/2019

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351. Const. Petition No.D-3450/2019

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352. Const. Petition No.D-3451/2019

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353. Const. Petition No.D-3452/2019

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354. Const. Petition No.D-3473/2019

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355. Const. Petition No.D-3474/2019

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356. Const. Petition No.D-3475/2019

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357. Const. Petition No.D-3476/2019

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358. Const. Petition No.D-3482/2019

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359. Const. Petition No.D-3483/2019

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360. Const. Petition No.D-3484/2019

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361. Const. Petition No.D-3485/2019

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362. Const. Petition No.D-3486/2019

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364. Const. Petition No.D-3524/2019

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365. Const. Petition No.D-3531/2019

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366. Const. Petition No.D-3532/2019

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367. Const. Petition No.D-3545/2019

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368. Const. Petition No.D-3546/2019

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369. Const. Petition No.D-3559/2019

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370. Const. Petition No.D-3565/2019

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371. Const. Petition No.D-3597/2019

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372. Const. Petition No.D-3598/2019

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373. Const. Petition No.D-3599/2019

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374. Const. Petition No.D-3600/2019

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375. Const. Petition No.D-3606/2019

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376. Const. Petition No.D-3620/2019

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377. Const. Petition No.D-3626/2019

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378. Const. Petition No.D-3627/2019

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379. Const. Petition No.D-3640/2019

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380. Const. Petition No.D-3651/2019

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381. Const. Petition No.D-3674/2019

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382. Const. Petition No.D-3679/2019

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383. Const. Petition No.D-3692/2019

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384. Const. Petition No.D-3696/2019

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385. Const. Petition No.D-3711/2019

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386. Const. Petition No.D-3712/2019

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387. Const. Petition No.D-3713/2019

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388. Const. Petition No.D-3714/2019

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389. Const. Petition No.D-3715/2019

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390. Const. Petition No.D-3725/2019

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391. Const. Petition No.D-3737/2019

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392. Const. Petition No.D-3747/2019

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393. Const. Petition No.D-3757/2019

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394. Const. Petition No.D-3758/2019

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395. Const. Petition No.D-3764/2019

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396. Const. Petition No.D-3765/2019

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397. Const. Petition No.D-3767/2019

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398. Const. Petition No.D-3784/2019

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399. Const. Petition No.D-3785/2019

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400. Const. Petition No.D-3796/2019

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401. Const. Petition No.D-3797/2019

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402. Const. Petition No.D-3798/2019

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403. Const. Petition No.D-3800/2019

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404. Const. Petition No.D-3809/2019

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405. Const. Petition No.D-3817/2019

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406. Const. Petition No.D-3818/2019

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407. Const. Petition No.D-3820/2019

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408. Const. Petition No.D-3821/2019

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409. Const. Petition No.D-3844/2019

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410. Const. Petition No.D-3853/2019

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412. Const. Petition No.D-3878/2019

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413. Const. Petition No.D-3882/2019

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414. Const. Petition No.D-3889/2019

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415. Const. Petition No.D-3900/2019

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417. Const. Petition No.D-3905/2019

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418. Const. Petition No.D-3906/2019

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419. Const. Petition No.D-3907/2019

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420. Const. Petition No.D-3908/2019

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421. Const. Petition No.D-3909/2019

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422. Const. Petition No.D-3910/2019

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423. Const. Petition No.D-3915/2019

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425. Const. Petition No.D-3957/2019

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426. Const. Petition No.D-3958/2019

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427. Const. Petition No.D-3961/2019

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428. Const. Petition No.D-3962/2019

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429. Const. Petition No.D-3978/2019

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430. Const. Petition No.D-3990/2019

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431. Const. Petition No.D-3992/2019

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432. Const. Petition No.D-3993/2019

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434. Const. Petition No.D-4000/2019

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435. Const. Petition No.D-4001/2019

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436. Const. Petition No.D-4022/2019

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437. Const. Petition No.D-4036/2019

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438. Const. Petition No.D-4042/2019

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439. Const. Petition No.D-4043/2019

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440. Const. Petition No.D-4044/2019

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441. Const. Petition No.D-4054/2019

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442. Const. Petition No.D-4057/2019

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444. Const. Petition No.D-4067/2019

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447. Const. Petition No.D-4070/2019

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448. Const. Petition No.D-4071/2019

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450. Const. Petition No.D-4090/2019

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451. Const. Petition No.D-4096/2019

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452. Const. Petition No.D-4103/2019

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453. Const. Petition No.D-4104/2019

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454. Const. Petition No.D-4110/2019

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455. Const. Petition No.D-4111/2019

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456. Const. Petition No.D-4125/2019

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457. Const. Petition No.D-4126/2019

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458. Const. Petition No.D-4135/2019

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459. Const. Petition No.D-4136/2019

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460. Const. Petition No.D-4138/2019

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461. Const. Petition No.D-4139/2019

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462. Const. Petition No.D-4146/2019

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463. Const. Petition No.D-4153/2019

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464. Const. Petition No.D-4154/2019

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465. Const. Petition No.D-4168/2019

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466. Const. Petition No.D-4172/2019

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467. Const. Petition No.D-4175/2019

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468. Const. Petition No.D-4176/2019

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469. Const. Petition No.D-4177/2019

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470. Const. Petition No.D-4178/2019

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471. Const. Petition No.D-4179/2019

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472. Const. Petition No.D-4186/2019

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473. Const. Petition No.D-4205/2019

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474. Const. Petition No.D-4212/2019

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475. Const. Petition No.D-4214/2019

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476. Const. Petition No.D-4224/2019

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477. Const. Petition No.D-4225/2019

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478. Const. Petition No.D-4226/2019

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479. Const. Petition No.D-4252/2019

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480. Const. Petition No.D-4253/2019

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481. Const. Petition No.D-4262/2019

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483. Const. Petition No.D-4269/2019

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484. Const. Petition No.D-4270/2019

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485. Const. Petition No.D-4275/2019

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486. Const. Petition No.D-4276/2019

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487. Const. Petition No.D-4277/2019

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488. Const. Petition No.D-4278/2019

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490. Const. Petition No.D-4280/2019

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491. Const. Petition No.D-4281/2019

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492. Const. Petition No.D-4283/2019

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493. Const. Petition No.D-4289/2019

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494. Const. Petition No.D-4297/2019

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495. Const. Petition No.D-4305/2019

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496. Const. Petition No.D-4306/2019

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497. Const. Petition No.D-4307/2019

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498. Const. Petition No.D-4316/2019

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499. Const. Petition No.D-4324/2019

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500. Const. Petition No.D-4331/2019

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501. Const. Petition No.D-4332/2019

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502. Const. Petition No.D-4341/2019

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503. Const. Petition No.D-4342/2019

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504. Const. Petition No.D-4347/2019

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505. Const. Petition No.D-4348/2019

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506. Const. Petition No.D-4349/2019

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507. Const. Petition No.D-4350/2019

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508. Const. Petition No.D-4360/2019

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509. Const. Petition No.D-4361/2019

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510. Const. Petition No.D-4362/2019

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511. Const. Petition No.D-4368/2019

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512. Const. Petition No.D-4370/2019

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513. Const. Petition No.D-4377/2019

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514. Const. Petition No.D-4391/2019

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515. Const. Petition No.D-4403/2019

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516. Const. Petition No.D-4404/2019

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517. Const. Petition No.D-4405/2019

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518. Const. Petition No.D-4409/2019

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519. Const. Petition No.D-4456/2019

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520. Const. Petition No.D-4503/2019

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521. Const. Petition No.D-4565/2019

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522. Const. Petition No.D-4577/2019

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523. Const. Petition No.D-4578/2019

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524. Const. Petition No.D-4590/2019

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525. Const. Petition No.D-4591/2019

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526. Const. Petition No.D-4638/2019

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527. Const. Petition No.D-4641/2019

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528. Const. Petition No.D-4664/2019

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529. Const. Petition No.D-4671/2019

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530. Const. Petition No.D-4672/2019

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531. Const. Petition No.D-44676/2019

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532. Const. Petition No.D-4687/2019

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533. Const. Petition No.D-4688/2019

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534. Const. Petition No.D-4692/2019

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535. Const. Petition No.D-4785/2019

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536. Const. Petition No.D-4786/2019

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537. Const. Petition No.D-4791/2019

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538. Const. Petition No.D-4876/2019

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539. Const. Petition No.D-4877/2019

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540. Const. Petition No.D-4878/2019

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543. Const. Petition No.D-5023/2019

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544. Const. Petition No.D-5062/2019

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545. Const. Petition No.D-5063/2019

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546. Const. Petition No.D-5080/2019

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547. Const. Petition No.D-5097/2019

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548. Const. Petition No.D-5228/2019

Mrs. Rukhsana ……..……Petitioner

549. Const. Petition No.D-5266/2019

Imran ……..……Petitioner

550. Const. Petition No.D-5391/2019

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551. Const. Petition No.D-5405/2019

Fayazuddin ……..……Petitioner

552. Const. Petition No.D-5426/2019

Muhammad Yousuf Ahmed ……..……Petitioner

553. Const. Petition No.D-5708/2019

Mst. Hawa Hameed Adamjee ……..……Petitioner

554. Const. Petition No.D-5709/2019

Mst. Anjum Adamjee Ahmed ……..……..…Petitioner

555. Const. Petition No.D-5710/2019

Asmat Zakir Zaffar ……..……..Petitioner

556. Const. Petition No.D-5711/2019

Mst. Ferial Adamjee Hamid ……..……..….Petitioner

557. Const. Petition No.D-5712/2019

Nadeem Ali Adamjee ……..…….…….Petitioner

558. Const. Petition No.D-5714/2019

Badaruddin …….….Petitioner

559. Const. Petition No.D-5744/2019

Muhammad Yahya ……..……..Petitioner

560. Const. Petition No.D-5802/2019

Ahmed Jamal Mir ……..……..….Petitioner

561. Const. Petition No.D-5868/2019

Rehana Salman ……..……..….Petitioner

562. Const. Petition No.D-5917/2019

Muhammad Zakaria ……...…….….Petitioner

563. Const. Petition No.D-5918/2019

Hafiz Javed Jalil ..……...…….Petitioner

564. Const. Petition No.D-5943/2019

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565. Const. Petition No.D-5944/2019

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566. Const. Petition No.D-6007/2019

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567. Const. Petition No.D-6114/2019

Hussain Hassan Ali Hashwani .. ……..…….……Petitioner

568. Const. Petition No.D-6179/2019

Shahid Aziz ……..…….……Petitioner

568. Const. Petition No.D-6203/2019

Mian Pervez Akhtar … ……..…….……Petitioner

570. Const. Petition No.D-6546/2019

M/s. Universal Express Karachi Ltd. …….…..…….……Petitioner

571. Const. Petition No.D-6959/2019

Shakil Ashfaq ……..…….……Petitioner

572. Const. Petition No.D-8349/2019

Irshad Begum ……..…….……Petitioner

573. Const. Petition No.D-8441/2019

Mst. Sumera ……..…….…….Petitioner

574. Const. Petition No.D-1558/2020

Mian Muhammad Rashid ……..…….…….Petitioner

575. Const. Petition No.D-1855/2020

Kamlesh Kumar ……..…….…….Petitioner

576. Const. Petition No.D-1857/2020

Ms. Hamida Fatin Niazi ……..…….…….Petitioner

Versus

Federation of Pakistan and others …….Respondents

FOR THE PETITIONERS.

M/s. Dr. Farough Naseem, Abid H. Shaban, Naveed A. Andrabi, Hyder Ali Khan, Ali Almani a/w Sami-ur-Rehman, Mushtaque Hassan Qazi, Arshad Siraj a/w Asif Ali Lakhair, Umaima Mansoor Khan, Mustafa Lakhani, Nasir Latif, Khalid Mehmood Siddiqui, Muhammad Aleem, Amin M. Bandukhda, Salman Aziz, Adil Saeed, Abdul Khaliq Khatri, Muhammad Ajmal Khan, Atir Aqeel Ansari, Naeem Suleman, Arshad Shehzad, Imran Iqbal Khan, Muhammad Waleed, S. Mohsin Ali, Manzar Hussain, Muhammad Faheem Bhayo, Muhammad Din Qazi, Aizaz Ali, Sofia Saeed, Ameeruddin, Shams Mohihuddin Ansari, Saifullah holding brief for Salman Mirza, Ajeet Sundar, Ovais Ali Shah, Qazi Umair Ali, Ghazanfar Ali Jatoi, Zafar Hussain, Rizwan Ali Junejo, Fazle Rabbi, Dil Khurram Shaheen, Gazain Zafar Magsi, Daanish Ghazi, Sufiyan Zaman, M. Zeeshan Merchant, Munir Qidwai, Shahid Iqbal Rana, Syed Muhammad Ahsan, Kashif Hanif, Muhammad Arshad Qaiser, Taimoor Ahmed Qureshi, Jawaid Farooqi, Usman Alam, Advocates.

FOR THE RESPONDENTS

M/s. Amjad Jawaid Hashmi a/w Shahid Ali, Dr.Shahnawaz Memon, Ameer Baksh Metlo, Muhammad Aqeel Qureshi, Syed Riazuddin, S. Mohsin Imam, advocate, S. Asif Ali, Muhammad Taseer Khan, Muhammad Khalid, Mr.Zubair Ahmed Hashmi, Pervez Ahmed Memon, Haider Naqi, Advocates.

Mr. Salman Talibuddin, Additional Attorney General for Pakistan.

Mr. Mir Hussain, Assistant Attorney General.

Mr. Aminullah Siddiqui, Assistant Attorney General.

Date of hearing : 16.12.2013, 10.02.2014, 26.09.2014, 27.05.2015, 19.10.2015, 11.12.2015, 07.03.2016, 09.03.2017, 12.03.2018, 15.10.2018, 15.03.2019, 27.06.2019, 01.10.2019, 06.03.2020, 16.03.2020, and 29.06.2020.

Date of judgment : **02.07.2020.**

J U D G M E N T

Aqeel Ahmed Abbasi, J: Through this common judgment, we intend to dispose of the aforesaid petitions, which are divided in two categories. In the **first category** of petitions, imposition of income support levy at the rate of 0.5% on the value of **Net Moveable Assets** through Income Support Levy Act, 2013, has been challenged for having been introduced through Finance Act in terms of Article 73 of the Constitution, whereas, it does not possess the characteristic of a tax, and also for being discriminatory as it creates unreasonable classification within the same class, hence, ultra vires to the Constitution. Whereas, in the **second category** of petitions, Notices issued and assessment orders passed in terms of Section 5 of Income Support Levy Act, 2013, after repeal of the aforesaid Act through Finance Act, 2014, have been challenged by the petitioners for being illegal, without lawful authority, mainly on the ground that in the repealing enactment there is violation or no saving clause provided to revive the provisions of Income Support Levy Act, 2013. Since large number of petitions have been filed by the petitioners, who felt aggrieved by such imposition of Income Support Levy Act, 2013, therefore, number of counsel shown appearance on behalf of the petitioners, however, M/s. Dr. Farough Naseem, Naveed A. Andrabi along with Anwar Kashif Mumtaz, Arshad Siraj, Abid H. Shaban, Hyder Ali Khan along with Ali Almani, Ovais Ali Shah, Mustafa Lakhani and Abdul Rahim Lakhani, Advocates, have mainly argued the matter at length on behalf of petitioners, whereas, most of the Advocates adopted their arguments and filed brief synopsis of written arguments. Learned Additional Attorney Mr. Salman Talibuddin and M/s. Amjad Javaid Hashmi, Dr.Shahnawaz Memon, S. Mohsin Imam, Haider Naqi, Muhammad Aqeel Qureshi, Muhammad Taseer Khan and Ameer Bukhsh Metlo, have made their submissions on behalf of Federation and the respondents respectively. The arguments advanced by the learned counsel for the petitioners and respondents can be summarized as under:-

2. It has been argued by the learned counsel for the petitioners that the impugned Income Support Levy Act, 2013, whereby, a tax has been levied at the rate of 0.5% on the net value of moveable assets is ultra vires to the Constitution, illegal and has been introduced without lawful authority as, according to learned counsel, the provisions of Income Support Levy Act, 2013, are not inconformity with the provisions of Article 73 read with Article 78 of the Constitution of Islamic Republic of Pakistan, 1973, hence, cannot be introduced through a Money Bill. It

has been further argued that Income Support Levy Act, 2013, besides being ultra vires to the Constitution, is also discriminatory in nature, and also amounts to double taxation, as according to learned counsel, through Income Support Levy, a tax has been imposed on the accumulated wealth of an individual, which represents the income already subjected to tax or exemption, as the case may be, under the Income Tax Ordinance, 2001. Per learned counsel, the discrimination while imposing the aforesaid levy is manifest on the face of its enactment, as according to learned counsel, through impugned enactment only such individuals who are already in the tax net i.e. existing taxpayers, have been subjected to the charge of income support levy, whereas, similarly placed individuals, who do not pay any income tax i.e. non-filers of income tax returns, are excluded from the purview of subject levy, which fact alone, makes the impugned levy as discriminatory. It has been argued that the subject levy cannot be introduced through Money Bill in terms of Article 73 of the Constitution, whereas, no reasonable classification has been created by the legislature for the purposes of imposition of Income Support Levy, as according to learned counsel, a large number of persons, who have acquired huge assets and accumulated wealth have not been brought into the net of income tax, have been conveniently excluded from the charge and imposition of Income Support Levy. On the contrary, only such individuals, who are already making payment of income tax, have been subjected to further tax in respect of the accumulated wealth, however, after payment of income tax on such income from which such wealth has been accumulated. Learned counsel for the petitioners have further argued that the Income Support Levy Act, 2013, is a colourable legislation as it has been introduced through Income Support Levy Act, 2013, which was embedded in the Finance Act, 2013 and has not been introduced and passed as a separate legislation through process of being presented before both the houses as per Constitutional mandate. Learned counsel further argued that the income support levy is also violative of Article 25 of the Constitution, whereas, no reasonable nexus to the object sought to be achieved has been created. On the other hand, it creates a hostile discrimination between citizens, who own and possess the same amount of moveable assets, however, only existing taxpayers have been subjected to

additional burden of income support levy, whereas, non-taxpayers, are excluded from such charge, which amounts to discrimination, even if it may be treated as a class in itself. In this regard reference has been made to the provisions of Section 3 of the Income Support Levy Act, 2013, which is a charging section, and speaks of a "levy, in respect of value of net moveable asset" therefore, according to learned counsel, income support levy is on a person, who owns net moveable wealth exceeding Rs.1.00 Million, therefore, it is a targeted legislation and violation of Article 25 of the Constitution. According to learned counsel, the term net moveable assets has been defined in Section 2(b) of Income Support Levy Act, 2013, which means "the amount by which the aggregate value of the moveable assets belonging to a person as declared in the wealth statement for the relevant tax year, is in excess of the aggregate value of all the liabilities owed by that person on the closing date of the tax year." Further reference has been made to the provisions of Section 4 of the Income Support Levy Act, 2013, whereby, time and manner of payment of levy have been defined, according to which, "a person who is liable to pay the Levy under this Act shall pay the levy along with wealth statement". According to learned counsel, the above provision of Section 4 of the Income Support Levy Act, 2013, inter-alia means, that ISL is a levy on such individual who owns Net Moveable Wealth of more than Rs.1.00 M at the end of tax year and files wealth statement. In other words, if an individual owns net moveable wealth of Rs.1.00 M but does not file Wealth Statement, or he is not required to file Wealth Statement under Section 116 of the Income Tax Ordinance, 2001, then he will not be liable to pay income support levy, whereas, the Income Support Levy Act, 2013, does not contain any provision of law, whereby, a non-existing taxpayer, or a person who does not file his income tax return, can be asked to file Wealth Statement.

3. To support hereinabove contention, learned counsel for the petitioners have cited two examples in the following terms:-

(i) *if two brothers A and B both own net moveable assets each of Rs.20,00,00,000/- but brother A has Income of Rs.10,00,001and as such as per requirement of Section 116(2) of the Income Tax Ordinance 2001 is required to file Wealth Statement and whereas, brother B has Income of*

Rs.9,99,999 and as per provisions of Section 116(2) of the Income Tax Ordinance 2001 is NOT required to file Wealth Statement; brother A will be subjected to Income Support Levy and brother B owning same value of net moveable assets will not have to pay Income Support Levy. This surely is discrimination.

(ii) *Another example of brother C who owns same value of net moveable assets of Rs.20,000,000 but has taxable income of Rs.3,90,000 which is below the threshold of taxable income of Rs.4,00,000, hence he was not required by law to file his Income Tax Return and thus Wealth statement. As such brother C would not be required to ISL although he owns same amount of net moveable assets as brother A who has to pay ISL."*

In view of above cited examples, learned counsel for the petitioners concluded that Income Support Levy Act, 2013, is not only ultra vires to the Constitution of Islamic Republic of Pakistan, 1973, but also discriminatory, as it create unreasonable classification between individuals having same net moveable assets exceeding Rs.1.00 M (One Million), who file wealth statement along with their Income Tax Return (existing taxpayers) and excludes the individual, who do not file Wealth Statement and the Income Tax Return (non-existing taxpayers). According to learned counsel, it also discriminates within class in itself, a many similarly placed persons having net moveable wealth exceeding Rs.1.00 M (One Million), are being dealt with dis-similarly, whereas, there is no rationale for this obvious discrimination within the same class of persons. Learned counsel for the petitioners have further argued that the Income Support Levy does not fall within the definition of tax, as according to learned counsel, tax is a common burden upon public at large for raising revenue for the State for the use of general purposes, whereas, the subject levy is for a specific purpose for specified persons, whereas, it does not create common burden upon public at large. The nature of Income Support Levy, as per learned counsel for the petitioners, is for the specific purpose i.e. social welfare and financial assistance to displaced persons and families, which according to learned counsel, is beyond the legislative competence of legislature after 18th amendment, whereby, concurrent list has been abolished, hence the same is now

within the legislative competence of provincial legislature. Learned counsel for the petitioners have also referred to relevant portion of the budget speech of Finance Minister, extract of which is reproduced hereunder:-

> *"51. It is incumbent on all of us who are blessed with exceptional favor from Allah (SWT) to contribute to the welfare of those not so fortunate. Many of us who may have earned our assets while working abroad have negligible tax liability under the existing laws and double taxation treaties. Yet we must share the burden of helping our weaker segments of population. In order to mobilize additional resources for enhancing the Income Support Program for the poorest families in Pakistan, it is proposed to impose a small levy on such persons. This levy shall apply on net moveable assets of persons on given date @ of 0.5%. The receipts under this head will be credited to Income Support Programme of the Government. Voluntary contribution will also be solicited to mobilize additional resources. Let me admit that I shall be amongst first one's who will be hit this Levy. According to my estimation, I will have to pay an additional Rs.2.5 Million on this count this year, but I will be too happy to make this contribution for the welfare of our poor people."*

While making reference to hereinabove passage of the budget speech of the Finance Minister, learned counsel for the petitioners have submitted that the Income Support Levy is not a tax as it has been levied for specific purpose. In other words, a voluntary contribution for the welfare of poor people, whereas, receipts under this head will be credited to the Income Support Programme of the Government, which means the said amount will not go in the common pool of the Federation and would not be expanded for the purposes mentioned under Article 81 of the Constitution of Islamic Republic of Pakistan, 1973, hence it does not come within the ambit of Money Bill, therefore, the same could not be introduced through Money Bill/Finance Act. In addition to hereinabove submissions, it has been further argued that all the moveable assets are acquired primarily from the income of a taxpayer, which is already subjected to income tax, whereas, the moveable assets are accumulated by the taxpayer as his savings in the end of financial year, and there is no provision of law which allows the savings of a taxpayer to be taxed. To highlight the element of discrimination amongst the individual required to pay Income Support Levy, it has been argued that the basis for levy of Income Support Levy as per Section 3 & 4 of the Income Support Levy, 2013, an individual "who

has net moveable assets of Rs.1.00 M (One Million) provided that individual is filing Wealth Statement, whereas, according to learned counsel, a person can have net moveable assets of billions of rupees but he is not required to file Wealth Statement then as per provisions of Income Support Levy Act, 2013, such individual is not required to pay Income Support Levy," which amounts to clear discrimination within the same class of person i.e. individuals having not moveable assets over Rs.1.00 M, hence such levy is ultra vires to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. To conclude the above submissions of the learned counsel for the petitioners, it has been prayed by the learned counsel for the petitioner that imposition of Income Support Levy Act, 2013, through Finance Act, 2013, may be declared to be illegal, ultra vires to the Constitution for being discriminatory and beyond the legislative competence of Federal Legislature.

4. It has been argued by learned counsel for the petitioner that prior to the Amendments introduced vide Finance Act 2013, if the Income of an Individual filing normal return of Income was more than Rs.10 lacs as per provisions of section 116(2) filing of Wealth Statement was mandatory. And unless the Wealth Statement was filed the Return of Income would not be complete. Subsection (2) of Section 116 of Income Tax Ordinance 2001 had been modified vide Finance Act 2013 now making it mandatory for every Individual Resident Tax Payer to file WEALTH STATEMENT. Similarly, according to the learned counsel, if an Individual having Final Taxable Income and if the tax deduction of Final Taxable Income streams was more than Rs.35,000, as per provisions of section 116(4) filing of Wealth Statement was mandatory. And unless the Wealth Statement was filed the Return of Income would not be complete. It has been further argued that vide Finance Act 2013 amendment in sub section (4) to Section 116 of Income Tax Ordinance 2001 every person (Individual) filing statement u/s 115(4) FTR (Final Tax Regime) has been mandated to file a WEALTH STATEMENT, whereas, through **SRO 978(1)/2013 dated 13th Nov 2013, amendments were made in section 116(2)** of Income Tax Ordinance 2001 and now only Individuals having income of more than Rupees 1 Million are required to file wealth statement.

Further, SRO 978(1)/2013 dated 13th Nov 2013 was issued amending section 116(4) of the Income Tax Ordinance 2001 and now restricting filing of wealth statement only to Individuals who have tax deduction of Rs.35000 or more under various income streams covered under Final Tax Regime. According to learned counsel for petitioners, as per data of total number of Return of Income filed was 7,11,933 in Tax Year 2012 and this data was shared by FBR with Press at the time of selection of cases for Audit through Random computer Balloting. The total number included company Returns as well as AOPs, whereas, **according to Member Tax Policy FBR statement dated 28 Nov 2013 for Tax Year 2012 about:**

10,280 Non Salary Returns (ie business, property etc income streams) Wealth Statement were filed
63,800 Salary Returns Wealth Statement were filed.

Income Support Levy as was imposed originally about 6,80,000 Individuals (711933 minus AOP and Company Returns) would have filed Wealth Statements and as such if they had net moveable assets of more than Rs.10,00,000 they would have been subjected to ISL levy. After issuance of SRO 978(I)2013 dated 13 Nov 2013,which has restricted filing of Wealth Statement to position as it existed for Tax Year 2012, now only about 75,000 Individuals will file Wealth Statements and if their net moveable assets of more than Rs.10,00,000 they would have been subjected to ISL levy. **And what is the basis for levy of ISL: an Individual who has net moveable assets of over Rs.10 lacs But this is tied with that Individual filing Wealth Statement. So person can have net moveable assets of Billions of Rupees but if (s)he is not required to file a Wealth Statement, (s)he as per provisions of Income Support Levy Act 2013 is not required to pay Income Support Levy. This is clear discrimination and violation of Article 25 of the Constitution.** So in a country of 200 Millions with 24,66,049 Commercial Electric connections, 121 Million mobile phone subscribers, 89 TV channels, Rs.19,35,248 Million currency in circulation ,Rs.83,47,600 Million monetary Asset Stock,13 Motor vehicles per 1000 persons (World Bank estimate), through a discriminatory law, ISL has been imposed *defacto* on 75,000 Individuals who file Wealth

Statements and if they have net moveable assets of over Rs.10,00,000. Individuals who have net moveable assets over Rs.10,00,000 but do not file wealth statements, will not have to pay ISL. This ISL levy is arbitrary, unintelligible, unreasonable and has no reasonable nexus to the object sought to be achieved and as such it creates a hostile discrimination between citizens owning same amount of moveable assets hence a discrimination even as a class in itself.

5. In addition to hereinabove legal submissions, learned counsel for the petitioners have further argued that the subject levy introduced through Income Support Levy Act, 2013, pursuant to its preamble is a social welfare law and not a tax, therefore, cannot be introduced through Finance Act in terms of Article 73 of the Constitution. Contention of the learned counsel for the petitioners in the light of case law relied upon by the petitioners can be summarized in the following terms:-

(i) ***I.A. Sherwani v. Government of Pakistan (1991 SCMR 1041)***

"that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;"

(ii) ***Inamur Rehman v. Federation of Pakistan (1992 SCMR 563)***

There can be no cavil against this proposition as it is a well-recognized rule of Constitutional interpretation that there is a presumption in favour of the Constitutionality of a legislative enactment but if there is on the face of a statute no classification at all and no visible differentia, with reference to the object of the enactment as regards the person or persons subjected to its provisions, then the presumption is displaced. We cannot he asked to presume that there must be some undisclosed or unknown reasons for subjecting certain individuals to discriminatory treatment, for, in that case we will be making a travesty of the fundamental right of equality before law enshrined in the Constitution.

(iii) ***Dr.Mobashir Hasan v. Federation of Pakistan (PLD 2010 SC 265)***

"50. There is no cavil with the proposition that Article 8 of the Constitution provides that any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void; and the State shall not make any law which takes away or abridges, the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void. Needless to observe that Article 8 of

the Constitution is covered under Chapter I of the Constitution, which deals with fundamental rights. Article 25 of the Constitution, being one of the important Articles of the Constitution, professes that all citizens are equal before law and are entitled to equal protection of law.

58. It is important to note that as per the command of Article 4 of the Constitution all the citizens without any discrimination shall be dealt with in accordance with law, so enforcement of the law leaves no room for creating any distinction between the citizens, except a particular class, on the basis of intelligible differentia. The principal challenge to the NRO, 2007, is of its being discriminatory in nature. It is the case of the petitioners' that the NRO, 2007, being violative of Article 25 of the Constitution, deserves to be declared void ab initio, non est, thus never took birth, therefore, nothing, which is the product of the NRO, 2007 or done in pursuance of it or under it, ever came into existence or survive. It is also contended that the NRO, 2007 is void because it is a fraud on the Constitution. According to the learned counsel for the petitioners, the NRO, 2007 has violated the dictum laid down by this Court in Mahmood Khan Achakzai's case (PLD 1997 SC 426) improved upon in Syed Zafar Ali Shah's case (PLD 2000 SC 869), wherein, after a great deal of efforts, the Court eventually came to treat Article 4 of the Constitution as `due, process clause'. So far as the provision of Article 25 of the Constitution is concerned, it has been discussed time and again by this Court in a good number of cases, reference to which may not be necessary, except the one i.e. Azizullah Memon's case (PLD 1993 SC 341), wherein inconsistency of the provisions of Criminal Law (Special Provisions) Ordinance, 1968 were examined on the touchstone of Articles 8 and 25 of the Constitution, and ultimately appellant's (Government of Balochistan) appeal was dismissed, declaring the Criminal Law (Special Provisions) Ordinance, 1968, to be void being inconsistent with the fundamental rights enshrined in Article 25 of the Constitution. In this judgment, with regard to `reasonable classification.”

As far as `intelligible differentia' is concerned, it distinguishes persons or things from the other persons or things, who have been left out. The Indian Supreme Court, while relying upon the statement of Professor Willis in Charanjit Lal v. Union of India (AIR 1951 SC 41), observed that "any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest u upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed".

Same principle has been highlighted in Shazia Batool v. Government of Balochistan (2007 SCMR 410).

59. Thus, keeping in view the above principles and the definition of classification "intelligible differentia" means, in the case of the law differentiating between two sets of the people or objects, all

such differentiations should be easily understood as logical and lucid and it should not be artificial or contrived.

(iv) Elahi Cotton Mills Ltd. and others v. Federation of Pakistan (1997) 76 Tax 5 (S.C. Pak).

"31. From the above case and the treatises, inter alia the following principles of law are deducible:-

iv) That the Legislature is competent to classify persons or properties into different categories subject to different rates of tax. But if the same class of property similarly situates is subject to an incidence of taxation, which results in inequality amongst holders of the same kind of property, it is liable to be struck down on account of infringement of the fundamental right relating to equality. (Undertaking provided for emphasis) …….P: 159

xxiv) That the word 'reasonable' is a relative generic term difficult of adequate definition. It inter alia connotes agreeable to reason; conformable to reason; having the faculty of reason; rational; thinking, speaking, or acting rationally; or according to the dictates of reason; sencible; just; proper & equitable or to act within the constitutional bounds. ***Pg 161***

xxv) xxvi) That levy of building tax on the basis of the covered area without taking into consideration, the class to which a particular building belongs, the nature of construction, the purpose for which it is used, its situation and its capacity for profitable use and other relevant circumstances bearing on the matters of taxation is not sustainable in law for want of reasonable classification. Pg. 161 …

xxxi) The though the Legislature has prerogative to decide the questions of quantum of tax, the conditions subject to which it is levied, the manner in which it is sought to be recovered, but if a taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of the tax or that is confiscatory, the Court may strike down the impugned statute as unconstitutional. ***Inamur Rehman v. Federation of Pakistan 1992 SCMR 563.***

(v) Pak Ocean & others v. Government of Pakistan 2002 PTD 2850 (HC. Karachi) Para 39, 40, 43, 45, 46, 48 pg 2868-2872

"43. Ratio of the judgment in the case of State of West Bengal v. Anwar Ali 1952 SCR 284, was also referred which reads as follows:-

"In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguished those that are grouped together from others and (2) that that differentia

must have a rational relation to the object sought to be achieved by the Act."

44. A Division Bench of this Court in the case of Pakistan Petroleum Workers' Union v. Ministry of Interior, 1991 CLC 13 (Karachi) considered the scope and connotation of the expression "equality before law" and "equal protection of law" under Article 25 of the Constitution of Islamic Republic of Pakistan, Saleem Akhtar, J. (as his lordship then was) observed that the concept of equality before law and principle of equal protection in law were for the first time given and firmly practised by the Holy Prophet (p.b.u.h)". He further held that: "Therefore, it can be traced as far back as 1,400 years, i.e. much before the Magna Carta, 14th Amendment of American Constitution, Declaration of Human Rights and the Theory or Rule of Law as enunciated by the Western Jurists".

45. It was further held as under:---

"The Constitution guarantees equality before law and equal protection of law to every citizen. Any arbitrary discrimination or unreasonable classification of classes are completely alien to the notions of equality before law and equal protection of law. The Constitution is not meant to serve any individual, it serves the nation and the country. Constitution envisages development of institutions and not individuals or class of individuals. It gives Government of Law and not individual. It is in this perspective that the provisions of the Constitution have to be interpreted to make it a living document which may accommodate the past, satisfy the present and serve the future.

The equality should not be in terms of mathematical calculation and exaction. The equality must be amongst the equals. The equality has to be between persons who are placed in the same set of circumstances. Article 25 does not envisage absolute equality of treatment to all persons in disregard of the attending circumstances. Article 25 forbids class legislation but not reasonable classification. However such classification should have some just and reasonable nexus with the object of the Act and cannot be arcade without any basis. Where any enactment provides different treatment, based reasonable classification having proper relation with the object of the Act and unfettered discretion has not been conferred on the administering agency it is not hit by Article 25.

Article 25 incorporates the concept of the rule of law. It prohibits, curtails and restricts enforcement of law or exercise of power under law which confers arbitrary powers with unfettered discretion. The law or the discretion conferred by it should be such that a citizen should know in the normal course and circumstances what the decision possibly could be. Every citizen has a right to know where he stands. This is another way to afford equal protection of law to every citizen."

46. A Division Bench of the Lahore High Court held in the case of Government of Pakistan v. Zafar Iqbal 1992 CLC 219, that, the equal protection theory prevents discriminate treatment of individual or a group of individuals at the expense of other individuals or classes of the people similarly situated. Evenhanded, fair treatment to every citizen is ordained by the Constitution.

47. Applying the above principles to the facts of the eases under consideration, we find that the scrap imported in shredded form, bundled form and loose form are by and large used for the same purpose. The only difference is that the scrap in the shredded and bundled form is imported by the big investors and those having the facility of Furnace. On the other hand, the scrap in loose form is imported by the small investors and traders and such persons who do not have the facility of Furnace at their own disposal. However, the end-product produced from the scrap in shredded form, bundle form and loose form is the same. Prior to the impugned Notification, dated 27-6-1991 there was no difference in the duty structure on the import of scrap in any of the three forms referred to above. Mere difference in PTC heading is inconsequential. The comments filed by the respondents does not disclose any basis for different classification of shredded and bundled scrap in one category and loose form in another category. Mr. Khalid Anwar has rightly argued with vehemence that in the absence of sufficient material justifying the change in duty structure, treatment meted out to the petitioners becomes arbitrary and mala fide with the result that the entire exercise stands vitiated being violative of equal protection of laws guaranteed by Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan. We further find substance in the contention of Mr. Khalid Anwar, that regulatory duty has been imposed on the import of scrap in loose form without any reason and there is not a single word to suggest that it has been imposed with the intention of protecting any local industry.

48. After a very careful consideration of the entire facts and the principles governing the equal protection of law and against the discriminatory treatment, enshrined in the Constitution of Islamic Republic of Pakistan, we are, of the considered opinion that, the change in the duty structure introduced through the two impugned notifications, dated 27-6-1991 under sections 39 and 18(2) of the Customs Act, 1969, whereby the custom duty on the import of shredded and bundled waste and scrap has been reduced to Rs.500 P.MT and the custom duty of 1500 PMT has been left intact on import of scrap in loose form and regulatory duty of Rs.1500 PMT has been imposed on the import of scrap in loose A form only, excluding import of scrap in shredded and bundles form suffers from arbitrariness. The Federal Government, has failed to specify any reasonable basis for separate classification of the import of scrap in bundled and shredded form in one category and the import of scrap in loose form in the other category. The effect of the impugned notification is that the small investors and trader, in porting scrap in loose form shall be totally ruined under the crushing burden of the duties so imposed and the big importers and investors having

facility of furnace at their disposal all earn huge profit which cats be termed as a windfall profit. The action is totally discriminating against the small investors and importers and provides undue advantage to big capitalists and investors. It creates such an imbalance which has no justification at all, except that for the reasons best known to the competent authorities undue advantage is being dolled out to the big investors/capitalists at the cost of small investors, importers and traders. It is against the principle of free competition guaranteed under Article 18 of the Constitution, and the equal protection of law enshrined in Article 4 of the Constitution and militates against the principles of equality before law and entitlement for equal protection in law firmly ingrained in Article 25 of the Constitution of Islamic Republic of Pakistan. On the face of it", the impugned action is arbitrary, devoid of any reason, made of reasonableness and such arbitrary act cannot be termed but mala fide and colourable. An act which is established to be mala fide and colourable cannot be regarded as an action in accordance with the law and the rights guaranteed under the Constitution. If, an act is not reasonable and is without any basis and justification, it is always for extraneous and irrelevant consideration and is bound to be struck down being manifestly against the fundamental rights guaranteed in the Constitution. Such an act of discrimination cannot be countenanced in an Islamic polity. The Islam lays great emphasis on the equality before the law, equal protection under the law, equal treatment in law, equal opportunities, free competition in the regulation of trade, commerce and industries. No discrimination of any kind is sustainable in a country, the Constitution thereof provides that the State shall exercise its power and authority in accordance with the principles of freedom, quality, social justice and guarantees the fundamental rights and opportunity before law and economic justice.

49. We are, constrained to observe that, in spite of guarantees provided in the Constitution, the details whereof, we need not to dilate here, there is a constant tendency on the part of authorities concerned to violate the fundamental rights and the basic and fundamental principles under which the State should be governed and the conduct of the Government is to be regulated qua the citizens. Most unfortunate aspect is, that, when one set of people are out of power, they are grilled, oppressed and discriminated against by the men-in-authority. At that time they rush to the Courts for redress of their grievances, remembering, and reminding all the principles of equality before law, justice, equity and the fundamental rights guaranteed in the Constitution and they get relief from the Courts. However, when the same set of people are fortunate enough to occupy the driving seat and are saddled with the responsibility of running the State, they forget all those lofty principles of law, justice and equity and indulge in more worst kind of arbitrariness, discrimination and illegalities, for petty benefits, which they themselves had faced at the hands of other persons calling the shots.

- **Syed Nasir Ali vs Pakistan**
  2010 PTD 1924 (HC. Karachi) Para 39, 40 41 (IDPT case) pg 1958

39 "……In the case of Zaman Cement Company (Pvt.) Ltd. v. Central Board of Revenue and others (2002 SCMR 312) the honourable Supreme Court has held as under:---

"Additionally, while there is a power in the Legislature and other taxing authorities to classify persons or properties into categories and to subject them to different rates of taxes, there is none to target incidence of taxation in such a way that similarly placed person are dealt with only dissimilarly but discriminately. (See Ellahi Cotton Mills Ltd v. Federation of Pakistan (PLD 1997 SC 582).

40. In the above cited judgments the honourable Supreme Court has clearly held that though the Legislature and other taxing authorities have the power to classify persons or properties into categories and to subject them to different rates of taxes, however, that incidence should be based in a way that similarly placed persons should not be dealt with dissimilarly or discriminately. In the present case only the corporate employees, who are receiving salary income of One Million rupees or more, have been charged with this tax on bonus which does not appear to be a rational and reasonable classification as employees working in others sectors and drawing salary income in the same slab have been left out. The term "employee" has also been defined in the Ordinance as per section 2(20) of the Ordinance according to which "employee" means any individual engaged in employment. Perusal of section 12 of the Ordinance would reveal that this section deals with employees meaning thereby that there is no discrimination or distinction between the employees working in the corporate sector and the employees working in any other sector.

41. It is a trite law that tax laws should be imposed on the similarly p placed persons as the honourable Supreme Court in the case of I.A. Sharwani and others v. Government of Pakistan and others (1991 SCMR 1041) has specifically held that "persons equally placed be treated alike not only in privileges conferred but also with regard to the liabilities imposed." However, in this case the liabilities imposed on corporate employees have been enhanced as compared to the similarly placed employees in other organizations. It is also a trite law that while interpreting fiscal statutes the Courts have the authority to strike down those laws which are violative of Article 25 of the Constitution which are not found to be established on any reasonable distinction and classification and which are discriminatory in nature. Reference in this regard may be made to PLD 2005 Karachi 55."

In case reported **as PLD 2005 Kar 55 at pg 103** it was held:

"preamble serves as a guiding tool to unfold the true intent and purpose of a Statute. It is infact umbrella of a statute, which displays what subject matter, topic or activity is covered and what is the intent and purpose of Statute."

In case **of Ismaeel vs The State reported as 2010 SCMR 27 in para 5**, the Hon. Supreme Court of Pakistan held:

> "*It is a settled law that preamble and object is always be kept in mind by interpreting the provisions of the Act on well known principles that preamble is key to understand the Act. According to the Chief Justice Dyer, preamble is the key to open minds of the makers of the Act, the mischief of which they intend to redfress, see Stowel v Lord Zouch (1965) I PLOWD.*

Similar ratio was laid down in cases reported as :

- **2007 SCMR 571 para 5**
- **AIR 1957 SC 478 at pg. 485/486**
-

i) The Finance Minister while introducing Income Support Levy Act 2013 as part of Finance Bill 2013 , in his budget speech averred: Para 51 of Budget speech:

"Introduction of Income Support Levy:
Mr. Speaker,
51. It is incumbent on all of us who are blessed with exceptional favors from Allah (SWT) to contribute to the welfare of those not so fortunate. Many of us who may have earned our assets while working abroad have negligible tax liabilities under the existing laws and double taxation treaties. Yet we must share the burden of helping our weaker segments of population. In order to mobilize additional resources for enhancing the income support program for the poorest families in Pakistan, it is proposed to impose a small levy on such persons. This levy shall apply on net moveable assets of persons on a given date @ of 0.5%. The receipts under this head will be credited to income support program of the government. Voluntary contributions will also be solicited to mobilize additional resources. Let me admit that I shall be amongst the first ones who will be hit by this levy. According to my estimation, I will have to pay an additional Rs.2.5 Million on this count this year, but I will be too happy to make this contribution for the welfare of our poor people." (Underlining provided for emphasis)

The Courts have held that the budget speech of Finance Minister can be used as aid for Interpretation. Reliance is placed on ratio of decisions of cases reported as:

1. **AIR 1976 SC 879**
2. **AIR 1981 SC 1922 at pg 1930**
3. **AIR 1976 SC 10 at pg 21-23**
4. **AIR 1972 SC 614**
5. **(1981) 131 ITR 597 (SC) K.P Varghese Vs ITO**
6. **(1965) 101 ITR 234 (SC) Sole Trustee, Loka Shikshana Trust VS CIT.**
7. **(1975) 101 ITR 796 (SC) Indian Chamber of Commerce case.**
8. **(1980) 121 ITR 1 (SC)**

Supreme Court of India in K.P. Varghese (1981) 131 ITR 597 (SC) had examined the relevance of Budget Speech and held that Budget Speech which states the circumstances in which the amendment came to be passed, explains the reason for the introduction of the Bill, can always be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted.

ii) The **Senate of Pakistan** while giving it's recommendation on Finance Bill 2013 in para 109, 110 of the recommendations recommended:

"109.
The Senate recommends to the National Assembly that all those sections and clause included in the Finance Bill, 2013 that are not within under the purview of a Money Bill should be dropped.

110.
The Senate recommends to the National Assembly Income support levy should either be withdrawn or amended as a tax, so that revenues collected to go to the Federal Divisible pool. So that the provinces get their due share."

iii) The Finance Minister in a public TV program AAJ KAMRAN KHAN KE SAATH on 3 DEC 2013 clearly stated **"Income Support Levy is not a tax"** and stated the collection of levy will be put in separate fund.
SOCIAL WELFARE was covered in ENTRY 25 of the Concurrent List to the Constitution of Pakistan and the Concurrent List was omitted vide the Eighteenth Amendment to the Constitution.

After Eighteenth Amendment, no Federal Legislation can be made in respect of SOCIAL WELFARE by the Federation except recourse to Article 144(1) of the Constitution."

The Hon. Supreme Court of Pakistan in case of **Air League of PIAC Employees vs FOP** reported as **2011 SCMR 1254 at page 1272** held while deciding the issue relating to Labour matters:

> ***"It is to be noted that presently, no Federal Legislature can be made on labour matters except recourse to the provisions of Article 144(1) of the Constitution".***

It is to be noted that 'Welfare of labour' was contained in Entry 26 of the Concurrent List which was omitted through Eighteenth Amendment.

iv) **(i) The Preamble to the Income Support Levy Act 2013,**

(ii) The Budget speech of the Finance Minister while Introducing the Finance Bill 2013,

(iii) The Recommendations of the Senate on the Finance Bill 2013,
(iv) The public statement of the Finance Minister on 03-December 2013 in TV Talk show all clearly show and support the submission that Income Support Levy Act 2013 is a SOCIAL WELFARE legislature. AND which after omission of the Concurrent List (Entry 25) vide Eighteenth Amendment, the Federal Legislature has no Constitutional authority to pass.

v) Under Article 142 (C) to the Constitution, there are only THREE subjects left which both the Provincial Assembly and Majilis e Shoora has simultaneous powers to make laws. The same being: (i) Criminal laws,(II) Criminal procedure,(iii) evidence.

SOCIAL WELFARE subject is NOT covered under Article 142 (C) of the Constitution of Pakistan in respect of which both the Provincial Assembly and Majis e Shoora have powers to pass laws**. Social Welfare laws is an Exclusive domain of Provincial Assemblies to pass laws after Eighteenth Amendment to the Constitution.**

vi) **Reliance of the Respondent Counsel during last round of hearing in written submissions made at the time of first hearing(s) in December 2013 on Indian Constitution is totally misplaced** as the provisions of Constitution of Pakistan are different than those of the Indian Constitution and it is the provisions of Pakistan Constitution that are to be followed in Pakistan. In Indian Constitution, Article 246 (4) provides authority to the Federal Parliament to pass laws that fall in domain of the States. The Article 246(4) is reproduced for ready reference:

> "*246(4): Parliament has powers to make laws with respect to any matter for any part of their territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State list"*

Article 248 of the Indian Constitution provides Residuary powers to the Federal Legislature. The Article 248 is reproduced for ready reference:

> "*248: (1) Parliament has exclusive powers to make any law with respect to any matter not enumerated in the Concurrent list or State List.*
> *(2) Such power shall include the power of making any law imposing tax not mentioned in either of those list."*

It is respectfully submitted that such provisions of law do exist in the Constitution of Pakistan.

vii) Article 144 of the Constitution of Pakistan clearly lays down the procedure for Majlis-e-Shoora to pass an Act not covered under Federal Legislature List. clearly this has not been done while passing Income Support Levy Act 2013

Even the use of the word "levy" is deliberate as it has been clearly stated by the Finance Minister and also the Senate in their recommendations, the Income Support Levy extractions/ receipts will be credited to Income Support program of the Government. Hence receipts of ISL have been earmarked for specific purpose in view of Article 160 of the Constitution when taxes mentioned therein are part of "Net proceeds." known as Divisible Pool? And how can ISL be taken out of Divisible Pool? And how can ISL be taken out of Divisible Pool for exclusive and specific utilization for Social Welfare? Another question that remains unanswered is what measures and steps have been taken to ensure funds from ISL will be directly transferred to SPECIAL FUND created for this purpose.

The Hon. Supreme Court of Pakistan in case of Iqbal Zafar Jhagra vs FOP reported as **2009 SCMR 1399** in respect of levy of CARBON TAX, suspended the operation of levy of Carbon Tax as no mechanism for deposit of Carbon Tax and other conditions for specific levy were not present. The Federal Government subsequently withdraw the Carbon Tax.

viii) Based on the above submissions, it is respectfully prayed that Income Support Levy is a SOCIAL WELFARE law and the same falls under the domain of Province and as per Article 142 (c) of the Constitution only the Provincial Assembly has powers to pass laws in respect of any matter not enumerated in Federal Legislature list (save as per procedure provided under Article 144.).Clearly SOCIAL WELAFARE laws do not fall under Federal Legislature List, be declared inconsistent to the provisions of the Constitution and illegal and void ab-initio.

The question whether a levy is a tax , cess, duty, tax or levy per se is of academic interest.

A levy is defined as a temporary, measure to raise revenue and provide for a Social purpose or mitigate a crises which is generally supported and understood by Society. (Paul Kenny Australian Tax 2013 page 30)..

Every tax is a levy. BUT all levies are not tax.

Fiscal statute generally has certain marked attributes.

Firstly, charging incident or event. Charging incident discloses what subject matter, topic or nature of activity is the target or on what and on whom, such levy is imposed.

S**econdly**, at what point in time, threshold or on happening or doing of what event/activity the levy is clinched, inflicted or imposed.

Thirdly, the yardstick or the manner of assessment, quantification and calculation of the levy is given.

Fourthly, the mechanism and machinery for the collection of levy is provided.

Income Support Levy is a levy pure and simple. As submitted supra , the world levy has deliberately used to keep the collection out of Federal divisible pool. It is not a tax as it is for a special purpose and will be deposited in special fund and not divisible pool under Article 160 of the Constitution. The Senate recommendations para 110 makes it also clear that ISL is not a tax. And Finance Minister is on record to state ISL is NOT A TAX.

C) Doctrine of Colourable Legislation and Income Support Levy Act 2013

i) As has been respectfully submitted supra, Income Support Levy Act 2013 is a SOCIAL WELFARE law which was covered under entry 25 of the Concurrent List to the Constitution. The Concurrent list was omitted vide Eighteenth Amendment to the Constitution. Now powers to pass laws in respect of Social Welfare are in domain of provincial legislature as per Article 142 (C) of the Constitution.

The only recourse available for Majlis-e-Shoora to pass legislature not covered in Federal Legislature List is by recourse to Article 144 of the Constitution. In case of ISL Act 2013 this was not done.

The Constitution lays down procedure to introduce and pass bills and the same is contained in Article 70 of the Constitution.

ii) Income Support Levy Act 2013 was embedded in Money Bill and passed as Money Bill under Article 73 in violation of mandate of Article 144 and Article 70 of the Constitution. The Senate in para 109 of it's recommendations protested and recommended : *" The Senate Recommends to the National Assembly that all those sections and clauses included in the Finance Bill 2013 that are not within under the purview of Money Bill should be dropped".*

iii) Income Support Levy Act 2013 was a colorable Legislature and hence illegal and void ab-initio.

iv) It may be made clear at the outset that the **doctrine of Colorable Legislation** does not involve any question of malafide or bonafide on part of Legislature. The whole question of doctrine of Colorable Legislation resolves itself into question of competence of a particular legislature to enact a particular law.

The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by Majlis-e-Shoora or the Provincial Assemblies should be within the Constitutional Mandate.

The Hon Supreme Court of Pakistan in **FOP vs Shaukat Ali Mian PLD 1999 SC 1026 in para 26** held:

> "*From the above treaties on the case law, it is evident that a Colorable Legislation is that which is enacted by a legislature which lacks the legislature powers, or is subject to Constitutional prohibition, but it is framed in such a way that it may appear to be within the legislature power or to be free from Constitutional prohibition or where the object of the law is not what is contemplated under the Constitutional provisions pursuant whereof it is framed."*

In case of Indian Jurisdiction **AIR 1987 SC 579** (Dr.D.C.Wadhwan vs State of Bihar) it was held:

> *"It is a settled law that a Constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a Constitutional provision inhibiting the Constitutional authority from doing an act, such provisions cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud in the Constitutional provision."*

Reliance is also placed on the following cases where similar ratio was laid down:

- **2013 PLC 143**
- **AIR 1953 SC 375**
- **AIR 1952 SC 252**

v) a) In case of **Workers Welfare Funds M/O Human Resource Development VS East Pakistan Chrome Tannery (Pvt) Ltd and Others- (2016) 114 TAX 385 (Supreme Court of Pakistan)**

The Honourable Supreme Court of Pakistan held:

"Any Bill which does not fall within the purview of Article 73(2) of the Constitution would not constitute a Money Bill and cannot be passed under the legislative procedure (mandate) provided by Article 73, by bypassing the Senate, rather the regular legislative procedure under Article 70 would be required to be followed. In the instant matters, the relevant sub-article is (2)(a) of Article 73, which pertains to the imposition, abolition, remission, alteration or regulation of any tax, read with sub-article (2)(g) which relates to any matter incidental to any of the matters specified in sub-articles (2)(a) to (f). Thus we must consider whether the levies/contributions in question under the various laws are in the nature of a tax: which would render the amendments thereto through the Finance Acts valid and lawful.

There are no two opinions about the fact that a tax is basically a compulsory exaction of monies by public authorities, to be utilized for public purposes. However its distinguishing feature is that it imposes a common burden for raising revenue for a general as opposed to a specific purpose,#; the latter being one of the key characteristics of a fee".(Page 403/404)

"…..None of the subject contributions/payments made under the Ordinance of 1971, the Act of 1976, the Act of 1923, the Ordinance of 1968, the Act of 1968 and the Ordinance of 1969 possess the distinguishing feature of a tax, i.e. a common burden to generate revenue for the State for general purposes, instead they all have some specific purpose, as made apparent by their respective statutes, which removes them from the ambit of a tax. Consequently, the amendments sought to be made by the various Finance Acts of 2006, 2007 and 2008 pertaining to the subject contributions/payments do not relate to the imposition, abolition, remission, alteration or regulation of any tax, or any matter incidental thereto (tax). We would like to point out at this juncture that the word 'finance' used in Finance Act undoubtedly is a term having a wide connotation, encompassing tax. However not everything that pertains to finance would necessarily be related to tax. Therefore merely inserting amendments, albeit relating to finance but which have no nexus to tax, in a Finance Act does not mean that such Act is a Money Bill as defined in Article 73(2) of the Constitution. The tendency to tag all matters pertaining to finance with tax matters (in the true sense of the word) in Finance Acts must be discouraged, for it allows the legislature to pass laws as Money Bills by bypassing the regular legislative procedure under Article 70 of the Constitution by resorting to Article 73 thereof which must only be done in exceptional circumstances as and when permitted by the Constitution. The special legislative procedure is an exception and should be construed strictly and its operation restricted. Therefore, we are of the candid view that since the amendments relating to the subject contributions/payments do not fall within the parameters of Article 73(2) of the Constitution."(Page 410 "M").

The Honourable Supreme Court favorably quoted from the judgment of **Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another Vs. Durrani Ceramics and others (2014 SCMR 1630):**

> *"Whereas 'tax' is a common burden for raising revenue and upon collection becomes part of public revenue of the State, 'fee' is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. However, the benefit so accrued may not be measurable in exactitude."*

The Honourable Supreme Court of Pakistan further held:

"There are no two opinions about the fact that a tax is basically a compulsory exaction of monies by public authorities, to be utilized for public purposes. However its distinguishing feature is that it imposes a common burden for raising revenue for a general as opposed to a specific purpose,#; the latter being one of the key characteristics of a fee".(Page 404 "B")

"….. a common burden to generate revenue for the State for general purposes, instead they all have some specific purpose." (page 410)

"While a fee is obviously not a tax, there was absolutely no need to try and squeeze the contributions/payments into the definition of a fee, when all that is required is to take them out of the ambit of a tax."(Page 411 "O")

"The discussion above that the subject contributions/payments do not constitute a tax is sufficient to hold that any amendments to the provisions of the Ordinance of 1971, the Act of 1976, the Act of 1923, the Ordinance of 1968, the Act of 1968 and the Ordinance of 1969 could not have been lawfully made through a Money Bill, i.e. the Finance Acts of 2006 and 2008, as the amendments did not fall within the purview of the provisions of Article 73(2) of the Constitution."(Page 412)

b) In case of **M/O Petroleum and Natural Resources and another Vs. Durrani Ceramics and others - (2014) 110 TAX 145 (SCP) t**he Honourable Supreme Court of Pakistan laid down the ratio:

> "19. Upon examining the case law from our own and other jurisdictions it emerges that the 'cess' is levied for a particular purpose. It can either be tax or fee depending upon the nature of the levy. Both are compulsory exaction of money by public authorities." Whereas tax is a common burden for raising revenue and upon collection becomes part of public revenue of the State, fee is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. However, the benefit so accrued may not be measurable in exactitude."(Page 166/167)

> "23. It follows from the above that GIDC is not a tax but a fee. Having held so, the same could not have been introduced as Money Bill under Article 73 of the Constitution. However, we now take up the other contentious issue between the parties, namely whether GIDC can be considered a tax under one or more of Entries 49, 51 and 52 of Part-I of the Federal Legislative List and if so would it not offend the provisions of Article 160 of the Constitution providing for distribution of taxes by the order of the

President of Pakistan on the recommendations of the NFC between the Federal and Provinces"(Page 169)

"The basic rule for interpretation of statutes is to give the words their ordinary and natural meaning. Deviation from this rule is permissible only when it becomes necessary, for example to avoid or overcome absurdity or render certain words meaningless. This exercise is undertaken when assigning the words their ordinary meaning does not reflect the true intention of the Legislature."(Page 173/174)

"…….All taxes are levied by an Act of Parliament or under its authority by any other body. Raise according to the Black's Law Dictionary means to gather or collect and levy as the imposition of a tax. Once a tax is levied by the Parliament, its collection is left to other authorities. The word raise therefore appearing in Article 160(3) of the Constitution CAs refers to taxes levied by or under the authority of Parliament. The said Article does not provide for imposition of tax but refers to tax that are collected and gathered under the authority of the Parliament."(Page 178)

vi) Income Support Levy which is a Social Welfare law can only be passed by Provincial Legislation. Income Support Levy as discussed supra is not a tax and as such Majlis-e-Shoora lacked Constitutional Mandate to legislate the same as part of Money Bill .Income Support Levy Act 2013 was embedded as part of Finance Bill 2013 and passed under Article 73 whereby by passing the approval of Senate, requirement of Article 144 and bar placed in Article 147.

vii) **The gist** of the above case is : **A Legislature lacking legislative power or subject to a Constitutional prohibitions may frame its legislative so as to make it appears to be within its legislative powers or to be free from the Constitutional prohibitions. Such a law would be illegal and a colorable legislation, meaning that while pretending to be a law in exercise of undoubted powers, it is in fact a law on a prohibited field as per Constitution. Income Support Levy as discussed supra is not a tax and as such Majlis-e-Shoora lacked Constitutional Mandate to legislate the same as part of Money Bill.**

(D) As inter alia held in Dr Mobashir Hussain's case (aka NRO case) by Hon Supreme Court of Pakistan **PLD 2010 SC 265:**

In order to pass the test of permissible classification. TWO conditions are to be fulfilled.

(i) the classification must be founded on a intelligible differentia which distinguishes person or a things that are grouped together from others left out of the group

AND

(ii) the differentia must have a rational relation to the object sought to be achieved by the statute.

(E) Income Support Levy fails the above test as submitted supra. The Courts in Pakistan have held that "equal protection law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed."

Income Support Levy target incidence of taxation in such a way that similarly placed persons are dealt with not only dissimilarly but discriminatory, thus it requires to be struck down being manifestly against the fundamental rights of equal protection guaranteed by the Constitution.

The Honourable Supreme Court and Hon High Court(s) in Pakistan have consistently held that any law or levy in violation of fundamental rights guaranteed by the Constitution especially Article 25 ,the Courts have authority to Strike down such laws violating Article 25 and reliance is placed on the ratio of following case law:

- 1991 SCMR 1041 I.A SHERWANI case
- PLD 2005 Kar 55
- 2010 PTD 1924 (HC Kar) Para 39, 41. (IDPT case)
- 2002 PTD 2850 (HC Kar)
- PLD 1999 SC 1026 FOP vs Shawkat Ali Mian
- WP No 17099 of 1996 dated 17-1-2002

(F) Intelligible differentia must have rational nexus to the object sought to be achieved by such classification as held by apex court in *Elahi Cotton Mills Ltd and Other v FOP* (1997) 76 TAX 5 (S.C. Pak.) and *Dr. Mobashir Hassan v. Federation of Pakistan and others* PLD 2010 SC 265 and many other cases cited above. This rule has been gravely violated making ISL liable to be struck down.

For the simple reason that the Petitioner has to file wealth statement having income more than Rs. One Million, Income Support levy becomes payable while many others not paying income tax or declaring income less than Rs. One Million though having more wealth (NET MOVEABLE ASSETS) would escape this charge as they would not file their Wealth Statement. This is the worst kind of discrimination one can imagine.

The impugned levy has only targeted the existing taxpayers (and within the tax payer those who have to file their Wealth Statement) and encouraged tax evaders (non-filers and under-filers) to remain outside the cause of contributing for "economically distressed persons and their families"/social welfare. It is a cardinal principle of application of Article 25 of the Constitution that equal protection of law does not envisage that every citizen should be treated alike in all circumstances, but it contemplates that persons who are similarly placed are to be treated alike. The Petitioner, declaring income exceeding Rs. One Million, is similarly placed with all other persons having net moveable assets exceeding rupees One Million, yet in their case condition of filing wealth statement has been waived that has virtually facilitated them to escape liability under Income Support Levy Act, 2013. Many persons keeping Millions in banks, national saving centres and investment banks etc will escape the charge [though information in their case is readily available] as they are either not enrolled by Federal Board of Revenue or if enrolled, declare income less than Rupees One Million hence escape the requirement of filing Wealth Statement.

Grave hostile discrimination has been committed through the impugned levy and further aggravated through SRO 978(I)/2013 dated 13 November 2013 in that only persons declaring taxable income exceeding Rs. One Million have been asked to fund the "economically distressed persons and their families" whereas all other persons having the same quantum of net moveable assets being non-taxpayers or tax payers declaring Income below Rs One Million thus not having to file Wealth Statement, have been excluded from this levy. The charge should have been on all the persons possessing net moveable assets exceeding rupees One Million. Any exclusion from this criteria and restricting the charge only to persons who file wealth statement is plainly discriminatory within a class and violates Article 25 of the Constitution. Charging all of them could have fulfilled the constitutional command of equality that is creating a reasonable classification based on intelligent differentia. It is respectfully submitted that Income Support Levy Act 2013 has to be struck down being violative of fundamental right of equal protection as enshrined in Article 25 of the Constitution of Pakistan.

6. Learned counsel for the petitioners after having made their submissions in support of their challenge to the vires of the Income Support Levy Act, 2013, for being unconstitutional and have also challenged the legality of proceedings initiated by Tax Authorities, issuing notices and orders passed under Income Support Levy Act, 2013, after its repeal by Finance Act, 2014 (Act IX of 2014), for being illegal and without jurisdiction, as according to learned counsel for petitioners, in the absence of any saving or validation clause in the repealing Act, its affect is governed by Section 6 of the General Clauses Act, 1897, according to which, after repeal of an enactment in the absence of any saving or validation clause, repealed Act ceases to have effect, and no fresh proceedings, including issuance of notice or passing an assessment order, can be initiated under such repealed Act. The gist of the arguments of the learned counsel for the petitioners and the case law relied upon to this effect can be summarized as under:-

According to learned counsel for petitioners, the Income Support Levy 2013 was repealed vide Finance Act 2014. It is a simple repeal without any saving

clause/provision. Hence it was a REPEAL without any saving clause/provision. A repealing Act is in the nature of a legislative scavenger. Its sole object is to get rid of a certain quantity of obsolete matter. The word "repeal" connotes the abrogation of one Act by another **AIR 1950 Hyd 20**. The normal effect of repealing a statute is to obliterate it from a statute book as completely as it had never been passed- it must be considered as a law that never existed**. (Kamakhya Narain Singh Vs State of Bihar AIR 1981 PAT 236 at Page 242**).

Stroud's Judicial Dictionary Volume 3 Page 2553:

"Repeal as not to be taken in absolute, it appears upon the whole Act to be used in a limited sense. But the general rule is "that when an Act of Parliament is "repealed it must be considered as it had never existed""

In case of "**Sadasheo Jagannath AIR 1958 BOM 507 @ pg. 509**:

> "A special saving clause dealing with effect of repeal serves as an exception to the general rule that the normal effect of repeal is to obliterate the repealed Act from the statute book as if it had never been passed."

Also similar ratio was laid down in case of **Kamakhya Narin Shah case AIR 1981 PAT 236**.

Since a repealed enactment has no application in future, the things, left incomplete before an Act is repealed, must, on repeal therefore, be left in status quo. **Thakur Damji Raghavji V Jamiyadram AIR 1954 Sau 77, 79**

Any proceedings started after repeal of an enactment is null and void:

- **AIR 1952 SC 405**
- **AIR 1953 PAT 302**
- **1972 MPLJ 264 @ 270-271**

Punjab High Court - in the case of **National Planners Limited v. Contributories** reported in **AIR 1958 Punjab Page 230**:

*"When an action is brought under a statute, which is afterwards **repealed**, the High Court loses the jurisdiction of the suit pending under the **repealed** Act and is unable to deliver the judgment therein. The effect of **repealing** a statute is to obliterate it as completely from Parliament as if it had never been passed. It must be construed as law that never existed, except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law. If a statute is unconditionally **repealed without** a saving clause in favour of pending suits, all actions must step where the **repeal** finds them and if final relief has not been granted before the **repeal** goes into effect, it cannot be granted afterwards. A similar principle applies to a law conferring jurisdiction. It has been held repeatedly that the **repeal** of a statute giving jurisdiction to a Court deprives it of the right to pronounce judgment in a proceeding previously pending. According to Blackford J., whenever a statute from which a Court derives" its jurisdiction in particular cases is **repealed** the*

*Court has no right to proceed under the **repealed** statute even in suits pending at the time of the **repeals**, unless the right is expressly **save**d by the **repealing** Act or by a General Act, regulating the **repeals**. To mitigate this harsh rule of common law, the legislature considers it expedient from time to time to enact saving clauses which expressly provide that whenever a statute shall be **repealed**, such **repeal** shall not affect pending actions founded thereon".*

The Assam High Court in the case **of Sythat Co-op. Central Bank Limited v. Dhirendra Nath** reported in **AIR 1956 Assam Page 66**:

"The repeal of an Act completely wipes out the law which is the subject-matter of the repeal. It is to be deemed as having existed only for those actions which were commenced, prosecuted and concluded. Even pending actions cannot be continued. The High Court quoted with approval the view of Lord Tenterden:

"When an Act of Parliament is repealed,-it must be considered (except as to transactions past and closed), as if it had never existed".

"The effect of repealing a statute is to obliterate it as completely from the records of Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which commenced, prosecuted and concluded whilst it was an existing law".

The Hyderabad High Court in the case of **Waheed Hasam Khan v. State of Hyderabad** reported **in AIR 1954 Hyderabad Page 204**:

"When an Act is repealed, it is the same thing as if it had never existed except with reference to such parts as are saved by the repealing statute".

Punjab High Court - in the case of **National Planners Limited v. Contributories** reported in **AIR 1958 Punjab Page 230**:

"When an action is brought under a statute, which is afterwards repealed, the High Court loses the jurisdiction of the suit pending under the repealed Act . and is unable to deliver the judgment therein. The effect of repealing a statute is to obliterate it as completely from Parliament as if it had never been passed. It must be construed as law that never existed, except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law. If a statute is unconditionally repealed without a saving clause in favour of pending suits, all actions must step where the repeal finds them and if final relief has not been granted before the repeal goes into effect, it cannot be granted afterwards. A similar principle applies to a law conferring jurisdiction. It has been held repeatedly that the repeal of a statute giving jurisdiction to a Court deprives it of the right to pronounce judgment in a proceeding previously pending. According to Blackford J., whenever a statute from which a Court derives" its jurisdiction in particular cases is repealed the Court has no right to proceed under the repealed statute even in suits pending at the time of the repeals, unless the right is expressly saved by the repealing Act or by a General Act, regulating the repeals. To mitigate this harsh rule of common law, the legislature considers it expedient from time to time to enact saving clauses which expressly provide that whenever a statute shall be repealed, such repeal shall not affect pending actions founded thereon".

What is the effect of **repeal** and what should be the line of approach of Court in case of **repeal** has been succinctly brought out in the case of **State of Punjab v. Mohar Singh Pratap Singh AIR 1955 S.C. 84**. In para 6 learned Judge noticed the Law of England as it stood prior to the Interpretation Act of 1889

and also noticed the consequences of the Interpretation Act, 1889. Learned Judge observed as under:

> *"Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of **repealing** a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law: Vide Craies on Statute Law : 5th edn. page 323. A **repeal** therefore **without** any saving Clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the **Repealing Act** and not already prosecuted to a final judgment so as to create a vested right; Vide Crawford on Statutory Constitution pp. 599-600. To obviate such results a practice came into existence in England to insert a saving clause in the **repealing** statute with a view to preserve rights and liabilities already accrued or incurred under the **repealed** enactment."*
>
> In past when fiscal laws in Pakistan were repealed, there was a saving clause, for example:
>
> - **Gift Tax (Repeal) Order 1985, Presidential Order No. 28 of 1985**.
>
> There was saving clause.
>
> - **Finance Ordinance 2000, (2000) 82 TAX 28 (Statutes)**
>
> Discontinuing Levy of Wealth Tax under Wealth Tax Act 1963 w.e.f. 01-07-2001.

While concluding their arguments by placing reliance the above submissions and the case law as referred to herein above, it has been prayed by learned counsel for petitioners that Income Support Levy 2013 was repealed by the Finance Act 2014 without saving clause, the Income Support Levy 2013, thus as a result, stands abrogated and completely obliterated from the statute books as completely as it had never been passed …. it must be considered as a law that never existed.

7. M/s. Amjad Javaid Hashmi, S. Mohsin Imam, Dr. Shahnawaz Memon, Haider Naqi, Muhammad Aqeel Qureshi, Muhammad Taseer Khan and Ameer Bukhsh Metlo, learned counsel representing the Tax Department have also made their submission, which can be summarized in the following terms:-

It has been argued by learned counsel for the respondents that Entry No.50 of the Federal Legislative List in Fourth Schedule authorizes the Federation to levy taxes on Capital Value of moveable assets, which may be generally for the welfare of the State or for any specific purpose. As matter of fact, purpose is not relevant. It may be for any purpose. Further, the article 260 of the Constitution provides that "taxation" includes the imposition of any tax or duty, whether general, local or

special, and “tax” shall be construed accordingly. Furthermore, special purpose tax has been held to be valid in Constitution provides that “taxation” includes the imposition of any tax or duty, whether general, local or special, and “tax” shall be construed accordingly. Furthermore, special purpose tax has been held to be valid in **Syed Nasir Ali’s case (2010 PTD 1924 Sindh DB)** in which Internally Displaced Persons Tax (IDPT) was imposed for special purpose. The term ‘Money Bill’ is wider than ‘Finance Bill’. Money Bill is defined in Article 73(2) of the Constitution which provides that a Bill shall be deemed to be Money Bill if it contains provisions dealing with all or any of the matters from sub-clause (a) to (g) and question as to whether Bill is Money Bill or not, the decision of Speaker of National Assembly shall be final. It is submitted that Income Support Levy (ISL) is a tax as it has all elements of a tax, therefore, can be imposed through Money Bill, which has been competently levied. Further, it has been argued by the petitioners that Article 77 of the Constitution speaks about ‘No tax without Act of Parliament’ and ISL has not been imposed an Act of Majlis-e-Shoora (Parliament) which as per Article 50 of the Constitution includes, President, National Assembly and Senate. Whereas, Income Support Levy Act, 2013, has not been passed by the Senate. It is submitted that Article 260 of the Constitution provides definition of “Act of Majlis-e-Shoora (Parliament)” means an Act passed by **Majlis-e-Shoora** (Parliament) **or** the **National Assembly** and assented to or deemed to have assented to, by the President. Therefore, the petitioners’ this argument is without merit.

According to learned counsel for respondents, the Constitution allows a reasonable classification and this principles is followed in all tax statutes. As such, legislature is competent to impose any tax on a class of income holders. It has been argued that Income Support Levy Act, 2013, is not discriminatory because is liable to be recovered from all persons having moveable assets in excess of One Million. It is, therefore, submitted that ISL is not discriminatory and contention of petitioners’ counsel is not tenable.

It has been further argued that there can be different taxes on same commodity or income as the legislature is fully competent to levy different taxes on same income. The ISL is a special tax on moveable assets in excess of One

Million of a class of person. Whereas, income tax is a separate tax recoverable from a class of persons liable to income tax at the rate of applicable tax slab. Therefore, this argument is also without any force.

While making rebuttal of arguments of the counsel for the petitioners in 2nd category of petitions to the effect is that after the repeal of the Income Support Levy Act, 2013, by Finance Act, 2014, ISL could not be recovered from petitioners in absence of saving clause in repealing Act, it has been argued that in view of section 6(c) of the General Clauses Act, 1897 read with Article 264 of the Constitution, the taxpayer is legally obliged to pay all taxes, he is liable to pay. As the payment of due tax is the duty of every person falling under tax net. According to Section 6(C) of the General Clauses Act, if any person during the currency of Income Support Levy Act, 2013, who incurred a tax liability, did not pay due tax, repeal of Income Support Levy Act, 2013, will not affect his tax liability incurred under repealed law **unless a different intention appears from the repealing law.**

According to learned counsel, Income Support Levy Act, 2013, was passed through Finance Act, 2013 and was repealed by Section 10 of Finance Act, 2014. The effect of such repeal is protected by provisions of clause (C) of Section 6 of the General Clauses Act, 1897 which saves the rights accrued or tax liability incurred under repealed Act, unless a different intention appears in the repealing Act in shape of saving clause that any tax liability incurred by any person under repealed Act shall not be recovered from him. Reliance placed on a case of **Khushiram Khialdas v. Pakist (PLD 1960 Kar. 785)** in which it is held that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for a contrary opinion.

It has been further argued that in the case of **Mehboob Industries Ltd. v. Pakistan Industrial Credit and Investment Corporation Ltd. (1988 CLC 866)**, it has been held that since the different intention is evident from clause (1) of Section 10 of the Companies Ordinance, 1984, Section 6 of the General Clauses Act will not save the right of appeal under the repealed Act, i.e. Companies Act.

The appeal is not competent before High Court as in terms of subsection (2) of Section 10 of the Companies Ordinance, 1984 the appeal should have been filed before Supreme Court.

It is, therefore, submitted that the taxpayers who have incurred tax liabilities under repealed Income Support Levy Act, 2013, in absence of any different intention appearing in repelling Act of 2014, according to Section 6(C) of General Clauses Act, 1897, are liable to ISL under Income Support Levy Act, 2013.

8. Learned Additional Attorney General for Pakistan that the Income Support Levy Act, 2013, was promulgated through the Finance Act, 2013 to 'provide for financial resources for running an income support fund for the economically distressed persons and their families' (according to the preamble of the Income Support Levy Act, 2013). According to Section 3 of the Income Support Levy Act, 2013, the levy was to be charged for the tax year commencing on and from the tax year 2013, in respect of the net moveable assets held on the last date of the tax year. By virtue of Sections 4 and 9 of the Income Support Levy Act, 2013, a levy at the rate of 0.5 percent was imposed on individuals' net moveable wealth exceeding Rupees 1 Million. In the year following its enactment, the Income Support Levy Act, 2013, was expressly repealed by Section 10 of the Finance Act, 2014 as follows: 'The Income Support Levy Act, 2013, is hereby repealed'.

According to learned Addl. Attorney General, Section 6 of the General Clauses Act, 1897 sets out in detail the effect of a repeal on a statute; and in essence, acts as a 'saving clause' particularly in cases where the legislature has not provided for one.

Reference has been made to the language of Section 6 of General Clauses Act, 1897, which has been reproduced below for ready reference:

> 6. Effect of repeal – Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect, or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or

> (c) affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed, or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.
>
> And any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

It is contended on behalf of the Federation that Section 6 of the General Clauses Act, 1897 is applicable in the present case as: (i) the repealing provision i.e. Section 10 of the Finance Act, 2014, does not provide for a saving clause; and (ii) a 'different intention' has not been set out by the Legislature – in express or implied form – in the repealing provision or otherwise which would categorize this case as falling outside the scope of Section 7 of the General Clauses Act, 1897.

Therefore, in view of the foregoing – in particular sub-clause (c) of Section 6 of the General Clauses Act, 1897 – it is the Federation's case that the rights and liabilities accrued under the Income Support Levy Act, 2013, during its operation are 'saved' even after the repeal of the Income Support Levy Act, 2013. This is due to the fact that a liability and obligation to pay the levy under the Income Support Levy Act, 2013, had already been incurred or accrued on part of the Petitioners (and indeed other individuals subject to the Income Support Levy Act, 2013, prior to its repeal in 2014. The mere fact that such levy had not been paid during the time that the Income Support Levy Act, 2013, was in operation does not affect the obligation to pay the levy, which had already crystallized on the last date of the relevant tax year(s). Moreover, according to learned Addl. Attorney General, the accrual of such obligation or liability simultaneously created a vested right in favour of the state to claim such levy, which vested right is also protected by Section 6 of the General Clauses Act, 1897. It has been further argued that the accrual of such vested right in favour of the state, or liability on part of the Petitioners to pay the levy, was not (and is not) conditional on the issuance of any notice under the Income Support

Levy Act, 2013, or otherwise; and these rights and liabilities were automatically accrued.

Conversely, and as part of the foregoing submission, it is contended that the repeal of the Income Support Levy Act, 2013, cannot confer and indeed, has not conferred) any 'right' on the petitioners (or other individuals who were subject to the Income Support Levy Act, 2013) not to pay the levy which would be capable of protection under Section 6 of the General Clauses Act, 1897, as mere repeal or absence of a liability-creating statute, does not create a fictitious or legal 'right' of its own (which never existed by operation of the law in the first place); nor does it create a remedy in favour of the petitioners. It would also not be immaterial to mentioned that had the Legislature intended to abolish the income support levy from its very inception, or to give such repeal retrospective effect, then it would have expressly stated its intention to do so whilst repealing the Income Support Levy Act, 2013.

In support of its contentions as above, the Federation relied upon:-

(i) Taza Khan v. Ahmad Khan (1992 SCMR 1371)

The Supreme Court of Pakistan has held that where there is no saving clause, the relevant provisions of the General Clauses Act would come into play (P-1379)

(ii) Kohinoor Mercantile Corporation v. Hazera Khatoon (PLD 1963 Dacca 238)

A division bench of the Dacca High Court held that one of the important purposes of Section 6 of the General Clauses Act, 1897 is to protect rights and liabilities already accrued or incurred under the repealed enactment. It also further held that Section 6 does not admit of any strictly technical interpretation which may frustrate its very purpose (P-245)

(iii) Commissioner of Income Tax, Peshawar v. Islamic Investment Bank Ltd. (2016 PTD 1339)

With respect of income tax, it was held by the Supreme Court that the liability to pay income tax accrues on the taxpayer on the last day of the accounting year. Moreover, the creation of a charge on a taxpayer becomes absolute on completion of the relevant income/accounting year. The vested right to claim tax which accrues as a result, on the last day of the accounting year, cannot be taken away even if there is no saving clause as such right, being a vested right, is independently and automatically protected under Section 6 of the General Clauses Act, 1897 (P-1353 – 1355)

(iv) M.N.H. Exports v. Secretary, Revenue Division (2008 PTD 1715)

The Supreme Court has held that if the legislature in its wisdom repeals a provision or decides not to charge tax on or after a specific

> date, it would not mean that it would become a curative or remedial law. Furthermore, a repeal does not mean that the right or liability accrued before the repeal is also affected by the repealing of the law; and Section 6 of the General Clauses Act, 1897 has taken care of such situations (P- 1718-1719).

In so far as the submissions in respect of other points at issue in the subject (and connected) proceedings are concerned, the submissions made on behalf of the respondents No.2 & 3 in the subject (and connected) petitions are hereby adopted on behalf of the Federation. In view thereof, and the submissions set out herein above, it is respectfully submitted that Section 6 of the General Clauses Act, 1897 be held applicable in the cases where liability to pay the Income Support Levy under the Income Support Levy Act, 2013, has already been incurred. It is further submitted that in view of the contentions set out herein, and on other points at issue, the subject petitions are liable to be dismissed.

9. We have heard the learned counsel for the parties at length and examined the relevant provisions of Income Support Levy Act, 2013, with their assistance as well as the case law relied upon by the parties in support of their submissions. We have also examined the relevant Constitutional provisions and the provisions of General Clauses Act, 1897, relating to effect of repeal of an enactment through a repealing act, however, in the absence of any saving or validation clause provided therein. The above petitions are divided into two categories, in the first category, petitioners have challenged the vires of Income Support Levy Act, 2013, whereby, a levy has been charged at the rate of 0.5% on the value of net immoveable assets through Income Support Levy Act, 2013, for being discriminatory and ultra vires to the Constitution of Islamic Republic of Pakistan, whereas, in the second category of the petitions, Notices issued and Assessment Orders passed under Section 5 of the Income Support Levy Act, 2013, after repeal of the Income Support Levy Act through Clause 10 of Finance Act, 2014, have also been challenged by the petitioners for being illegal and without lawful jurisdiction, mainly on the ground that in the absence of saving or validation clause in repealing Act, neither any proceedings can be initiated nor any assessment order can be passed after repeal of Income Support Levy Act, 2013. We would first decide the petitions pertaining to second category, wherein, the petitioners have challenged the issuance of Notices

and the orders passed under Section 5 of Income Support Levy Act after its repeal through Finance Act, 2014. It will be advantageous to reproduce hereunder Clause 10 of the Finance Act, 2014, whereby, the Income Support Levy Act, 2013, has been repealed, the same reads as follows:-

> "10. Repeal of Income Support Levy Act of 2013:-- The Income Support Levy Act, 2013, is hereby repealed."

10. To examine the effect of repeal, reference to provisions of Section 6 of the General Clauses Act, 1897, is relevant, the same reads as follows:-

> "6. Effect of repeal – Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not :
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect, or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed, or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

11. Income Support Levy Act, 2013, was enacted through Finance Act, 2013, whereafter, it has been repealed through clause 10 of the Act IX of 2014 dated 26.06.2014 (Finance Act, 2014) in the following manner:

> *"The Income Support Levy Act, 2013, is hereby repealed."*

The above enactment remained in field during Tax Year 2013, whereafter, it has been repealed through Finance Act, 2014, however, without providing for any saving or validation clause, therefore, to examine the effect of repeal of the Income Support Levy Act, 2013, in the aforesaid manner, the only clauses of Section 6 which could be relevant are clauses (c) and (e) of the General Clauses Act, 1897.

Perusal of clause (c) of Section 6 shows, unless a different intention appears, repeal of an enactment shall not affect any right, privilege, obligation or liability, acquired, accrued or incurred under the repealed enactment, whereas, clause (e) of

Section 6 of General Clauses Act, 1897, provides that the repeal does not affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty or forfeiture acquired, accrued or incurred under the repealed law.

In the above petitions falling under the second category, admittedly, no Notices were issued, nor any proceedings were initiated against the petitioners, prior to the repeal of the Income Support Levy Act, 2013, through Finance Act, 2014, therefore, it cannot be said that there were any legal proceeding pending against the petitioners under Income Support Levy Act, 2013, prior to its repeal through Finance Act, 2014. In other words, no action was taken, nor any proceedings were initiated against the petitioners under Income Support Levy Act, 2013, who either did not file their return/statement under Income Support Levy Act, 2013, nor did they submit to the jurisdiction under Income Support Levy Act, 2013. It appears that while Notices were issued, proceedings were initiated, and in some of the cases, orders have also been passed under the Income Support Levy Act, 2013, however, after its repeal through Act No.IX of 2014 dated 26.06.2014, when such Act was neither in existence nor any saving or validation clause has been provided to protect or validate the Income Support Levy Act, 2013, after its repeal. In the case of Mst. Rashida Begum v. Assistant Controller, Estate Duty, Karachi (1992 PTD 1001), a Divisional Bench of this Court while examining the effect of repeal in terms of General Clauses Act, 1897, in the case of Estate Duty Act, 1950, has been pleased to hold as under:-

> “3. The first question relates to the applicability of section 6 of the General Clauses Act in the absence of a saving clause in section 3 of the Finance Ordinance which repealed the Estate Duty Act, 1950. Section 3 of the Finance Ordinance, 1979 read as follows:---
>
> > "3. Repeal of Act X of 1950.--The Estate Duty Act, 1950 (X of 1950), is hereby repealed.
> >
> > In the absence of a saving clause in the repealing provision, the Tribunal relied upon section 6 of the General Clauses Act which reads as follows:--
> >
> > > “6. Effect of repeal.--Where this Act, or any Central Act or Regulation made after the commencement of this Act,

repeals any enactment made or hereafter to be made, then, unless a different intention appears, the repeal shall not:---

(a) ----------

(b) ----------

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) ----------

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

The only clauses of section 6 which arc relevant are clauses (c) and (c) and, in our view, neither of these two clauses or any other clause of the section was applicable to the proceedings initiated by the Assistant Controller of A Estate Duty on 16-9-1980 after the Estate Duty Act had been repealed in June, 1979.

Under clause (c) of section 6, unless a different intention appears, repeal of an enactment shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment, and under clause 8 (e) the repeal does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty or forfeiture acquired, accrued or incurred under the repealed law."

12. From perusal of hereinabove provisions of the Finance Act, 2014, it appears that while repealing the Income Support Levy Act, 2013, as well as in the case of Mst. Rashida Begum *(supra)* there has been no saving or validation clause provided to protect or validate the Income Support Levy Act, 2013, after its repeal through Finance Act, 2014. It is settled legal position that if there is no saving or validation clause provided in the repealing enactment, then reference to clause 6 of the

General Clause Act, 1897 becomes relevant, which explains the effect of repealing of an enactment in such circumstances. In the case of **Muhammad Tariq Badr and others v. National Bank of Pakistan and others (2013 SCMR 314)** it has been held as under:-

> "From the above it is clear that the concept and meaning of Repeal has a wider compass and amplitude and it embodies in it, the idea/traits of omission, which in fact is an exclusion, a subtraction, 'to call back', to dismiss, to give up, to retract, to reverse a particular part of portion of the statues. When a statute as a whole is abrogated and annulled it is called "repeal" but when legislation in order to do away with a particular provision or part of a statute it uses the express, omit/omitted, delete/deleted etc. as is stipulated by section 6-A of G.C. Act, which manifests all the features and characteristics of repeal for all intents and purposes, and legal consensus and effect to attract the mischief and purview of section 6 of G.C. Act. In the book titled Principles of Statutory Interpretation by Justice G.P. Singh 7th Edition page 470 it has been scribed/opined "The use of any particular from of words is not necessary bring about an express repeal. The usual form is to use the words 'is or are hereby repealed' and to mention the Act sought to be repealed in the repealing section or to catalogue them in a Schedule. The use of words 'shall cease to have effect, is also not uncommon. <u>When the object is to repeal only a portion of an Act words 'shall be omitted' are normally used</u> (emphasis supplied)."

13. There is no cavil to the legal position that taxes can be levied upon a class of person in terms of various entries of the Federal Legislative List of IV Schedule to the Constitution through Finance Act in terms of Article 73 of the Constitution, however, unless the incidence of tax falls upon the class of person for which it has been meant, and charge is created through process of assessment while creating a liability to pay tax in accordance with law, liability to pay tax under such an enactment, even after its repeal, would not become payable by mere fiction of law, as it would violate the legal requirements, including assumption of jurisdiction to

create a charge upon such class of person, making assessment and quantification of tax liability in accordance with law.

14. In view of hereinabove facts and circumstances of the instant case in respect of 2nd category of petitions, wherein, prior to repeal of Income Support Levy Act, 2013, through Finance Act, 2014, neither any notices were issued to the petitioners nor any proceedings of assessment were pending, therefore, provisions of General Clauses Act, 1897, would not be attracted on its repeal through Finance Act, 2014, particularly, when no saving or validation clause to the repealing Income Support Levy Act, 2013, has been provided in the repealing Act. The effect of repeal of Income Support Levy Act, 2013, is that it ceased to have its existence and became obligated for further proceedings under the repeal Act. Accordingly, all the Notices and the proceedings including assessment order(s) passed by the respondents after repeal of Income Support Levy Act, 2013 under clause 10 of the Finance Act, 2014, are hereby declared to be without jurisdiction and lawful authority.

15. We may now decide the main Constitutional Petitions wherein, the petitioners have challenged the vires of Income Support Levy Act, 2013, on various grounds. It has been argued that Income Support Levy is not a tax, therefore, it cannot be introduced through Money Bill in terms of Article 73 of the Constitution. It has been further argued that Income Support Levy Act, 2013, has been imposed which is not meant to be deposited in the Federal Consolidated Fund, alternatively, it has been argued that the purpose of imposition of subject levy is in the nature of social welfare of poor person, whereas, the amounts so collected is to be used for specific purpose and not for general purpose as in the case of tax charged or collected from the public at large, therefore, the said levy cannot be introduced through Money Bill in terms of Article 73 of the Constitution of Islamic Republic of Pakistan, 1973, rather the same is required to be approved by the National Assembly and the Senate in terms of Article 70 read with Article 78 of the Constitution of Islamic of Pakistan, 1973. If the Court reaches to the conclusion that Income Support Levy is a tax, then the first ground of challenge that it cannot be introduced through Money Bill in terms of Article 73 of the Constitution would

fail, therefore, we may address this issue first. Hon'ble Supreme Court of Pakistan in the case of Workers' Welfare Funds, Ministry of Human Resources Development, Islamabad through Secretary and others vs. East Pakistan Chrome Tannery (Pvt) Ltd. through G.M. (Finance), Lahore and others (PLD 2017 SC 28) while examining the nature and scope of the WWF as amended through Money Bill (Finance Act) has dealt with all the legal issues agitated through instant petitions, in the following terms:-

> "13. Heard. The Constitution has provided the legislative procedure for the introduction and passing of Bills by Parliament. Generally, all Bills (pertaining to matters in the Federal Legislative List) though they may originate in either house, i.e. National Assembly or Senate, must be passed by both houses after which the Bill receives the Presidential Assent. However there is an exception provided by the Constitution. According to Article 73 of the Constitution, Money Bills are to originate in the National Assembly and can be passed by the Assembly whilst bypassing the Senate. What constitutes a Money Bill has been set out in Article 73(2) of the Constitution, and Article 73(3) specifically sets out what shall not constitute a Money Bill. The relevant portions of Article 73 are reproduced below for ease of reference:--
>
> > **73. Procedure with respect to Money Bills**.---(1) Notwithstanding anything contained in Article 70, a Money Bill shall originate in the National Assembly:
> > Provided
> > (1A)
> > (2) For the purposes of this Chapter, a Bill or amendment shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely:-
> >
> > (a) the imposition, abolition, remission, alteration or regulation of any tax;
> > (b) the borrowing of money, or the giving of any guarantee, by the Federal Government, or the amendment of the law relating to the financial obligations of that Government;
> > (c) the custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund;
> > (d) the imposition of a charge upon the Federal Consolidated Fund, or the abolition or alteration of any such charge;
> > (e) the receipt of moneys on account of the Public Account of the Federation, the custody or issue of such moneys;
> > (f) the audit of the accounts of the Federal Government or a Provincial Government; and
> > (g) any matter incidental to any of the matters specified in the preceding paragraphs.
> > (3) A Bill shall not be deemed to be a Money Bill by reason only that it provides-
> > (a) for the imposition or alteration of any fine or other pecuniary penalty, or for the demand or payment of a licence fee or a fee or charge for any service rendered; or

> (b) for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
> (4) .
> (5) .

Therefore any Bill which does not fall within the purview of Article 73(2) of the Constitution would not constitute a Money Bill and cannot be passed under the legislative procedure (mandate) provided by Article 73, by bypassing the Senate, rather the regular legislative procedure under Article 70 would be required to be followed. In the instant matters, the relevant sub-Article is (2)(a) of Article 73, which pertains to the imposition, abolition, remission, alteration or regulation of any tax, read with sub-Article (2)(g) which relates to any matter incidental to any of the matters specified in sub-Articles (2) (a) to (f). Thus we must consider whether the levies/ contributions in question under the various laws are in the nature of a tax: which would render the amendments thereto through the Finance Acts valid and lawful.

14. Whether the various levies/ contributions in the instant matter constitute a tax as opposed to a fee depends on whether they possess the characteristics of a tax or not. The key characteristics of a 'tax' and a 'fee' have been the subject of much debate in our jurisprudence. In the judgment reported as Government of North-West Frontier Province through Secretary Agriculture and others v. Rahimullah and others (1992 SCMR 750) it was held that:--

> "The distinction between "tax" and "fee" lies primarily in the fact that a tax is levied as a part of common burden while a fee is paid for a special benefit or privilege."

This Court in the more recent judgment reported as Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another v. Durrani Ceramics and others (2014 SCMR 1630), after taking into account considerable case law from our jurisdiction and abroad, came to the following definitive conclusion:--

> 19. Upon examining the case-law from our own and other jurisdictions it emerges that the 'Cess' is levied for a particular purpose. It can either be 'tax' or 'fee' depending upon the nature of the levy. Both are compulsory exaction of money by public authorities. Whereas 'tax' is a common burden for raising revenue and upon collection becomes part of public revenue of the State, 'fee' is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. However, the benefit so accrued may not be measurable in exactitude. So long as the levy is to the advantage of the payers, consequential benefit to the community at large would not render the levy a 'tax'. In the light of this statement of law it is to be examined whether the GIDC is a 'tax' or a 'fee'.
>
> [Emphasis supplied]

There are no two opinions about the fact that a tax is basically a compulsory exaction of monies by public authorities, to be utilized for public purposes. However its distinguishing feature is that it imposes a common burden for raising revenue for a general as opposed to a specific purpose,#; the latter being one of the key characteristics of a fee. Now let us examine each of the subject levies/contributions in light of the above touchstone.

15. According to the Preamble of the Ordinance of 1971, it was passed to provide for the establishment of a Workers' Welfare Fund, in order to provide residential accommodation and other facilities for workers and for matters connected therewith or incidental thereto. The Workers' Welfare Fund is constituted under Section 3 of the Ordinance of 1971 which, amongst other things, consists of contributions by industrial establishments. 'Industrial establishments', as defined in Section 2(f) of the Ordinance of 1971, are liable to pay to the Workers' Welfare Fund a sum equal to two percent of their total income per year, provided that the total income of which [in any year of account commencing on or after the date specified by the Federal Government in the official gazette in this behalf] is not less than five lakh rupees. Section 7 pertains to the creation of the Governing Body of the Workers' Welfare Fund to whom the management and administration whereof shall be entrusted. According to Section 10, amongst other things, the function of the Governing Body shall be:-

> (a) to allocate funds, in accordance with the principles laid down under section 9, to the Provincial Governments, any agency of the Federal Government and any body corporate for any of the purposes mentioned in clauses (a) and (b) of section 6;
>
> [Emphasis added]

Section 6 provides for the purposes to which monies in the Workers' Welfare Fund may be applied. It reads as follows:-

> **"6. Purposes to which moneys in the Fund may be applied.-** Moneys in the Fund shall be applied to -
>
> (a) the financing of projects connected with the establishment of housing estates or construction of houses for the workers;
>
> (b) the financing of other welfare measures including education training, re-skilling and apprenticeship for the welfare of the workers;
>
> (c) the meeting of expenditure in respect of the cost of management and administration of the Fund;
>
> (d) the repayment of loans raised by the Governing Body; and
>
> (e) investment in government, government guarantees, non-government securities and Real Estate."

Going further, Section 10A provides that:-

> **10A. Vesting of money allocated from the fund.---**Any money allocated under clause (a) of section 10 shall be a grant-in-aid and shall vest in the Government, agency or body corporate, to whom it is allocated under that clause, but it shall not be applied to any purpose other than that for which it is allocated, or permitted, by the Governing Body.
>
> [Emphasis added]

From the above it is clear that the Governing Body of the Workers' Welfare Fund, established to manage and administer the said fund, is supposed to do so in light of the exhaustive purposes enumerated in Section 6 ibid. Further, the Governing Body can only allocate funds to the Provincial Government, or any agency of the Federal Government and any Body Corporate for the purposes mentioned in Section 6(a) and (b) and for no other purpose, and any funds so allocated to any such body cannot be used for any purpose

other than that for which they are allocated or as permitted by the Governing Body. This clearly establishes two things: that the Government has no control over the Workers' Welfare Fund, and that the funds can only be used for very specific purposes as stated exhaustively in the Ordinance of 1971 itself, and not for general or undefined purposes. This particular feature of the contribution(s) made in terms of the Ordinance of 1971 automatically preclude them from being classified as a tax.

16. Besides there are certain other features of the contributions made to the Workers' Welfare Fund that suggest they are not in the nature of a tax. In this regard, Section 4(7) of the Ordinance of 1971 is important which reads as follows:--

> "4(7) The payment made by an industrial establishment to the Fund under subsection (1) shall be treated as an expenditure for purposes of assessment of income-tax.

Section 4(7) basically states that the payments made by industrial establishments to the Workers' Welfare Fund under the Ordinance of 1971 are to be considered as expenditure while assessing income tax. It is a necessary corollary that the contributions to the Workers' Welfare Fund cannot be a tax if they are to be considered as an expenditure while assessing income tax. This argument is bolstered by Section 60A in Part IX of Chapter III of the Income Tax Ordinance, 2001 (Ordinance of 2001) which reads as follows:--

> **"60A. Workers' Welfare Fund.**---A person shall be entitled to a deductible allowance for the amount of any Workers' Welfare Fund paid by the person in tax year under Workers' Welfare Fund Ordinance, 1971. "

A deductible allowance has been defined in Section 2(16) of the Ordinance of 2001 as "an allowance that is deductible from total income under Part IX of Chapter III", meaning thereby that any contributions made by a person under the Ordinance of 1971 will be deducted from the total income of that person. This also suggests that the contributions are not a tax, as they are being deducted from the total income, as opposed to being considered as a tax credit, in which case the contributions would be subtracted from the total tax to be paid. In the light of the foregoing, we are of the view that the contributions made to the Workers' Welfare Fund are not in the nature of a tax.

21. Finally, according to the Preamble of the Ordinance of 1969, it was enacted to fix the minimum rates of wages for unskilled workers employed in certain commercial and industrial establishments [defined in Section 2(b) and (f) respectively]. Such responsibility was pinned on commercial and industrial establishments under Section 4 of the Ordinance of 1969. Not only was this statute enacted for the aforementioned specific purpose, we fail to understand as to how the requirement of payment of minimum wages to unskilled workers can be construed as a tax, thereby permitting any amendments made to the Ordinance of 1969 to be effected through a Money Bill.

22. As we have established from the discussion above that none of the subject contributions/payments made under the Ordinance of 1971, the Act of 1976, the Act of 1923, the Ordinance of 1968, the Act of 1968 and the Ordinance of 1969 possess the distinguishing feature of a tax, i.e. a common burden to generate revenue for the State for general purposes, instead they all have some specific purpose, as made apparent by their respective

> statutes, which removes them from the ambit of a tax. Consequently, the amendments sought to be made by the various Finance Acts of 2006, 2007 and 2008 pertaining to the subject contributions/ payments do not relate to the imposition, abolition, remission, alteration or regulation of any tax, or any matter incidental thereto (tax). We would like to point out at this juncture that the word 'finance' used in Finance Act undoubtedly is a term having a wide connotation, encompassing tax. However not everything that pertains to finance would necessarily be related to tax. Therefore, merely inserting amendments, albeit relating to finance but which have no nexus to tax, in a Finance Act does not mean that such Act is a Money Bill as defined in Article 73(2) of the Constitution. The tendency to tag all matters pertaining to finance with tax matters (in the true sense of the word) in Finance Acts must be discouraged, for it allows the legislature to pass laws as Money Bills by bypassing the regular legislative procedure under Article 70 of the Constitution by resorting to Article 73 thereof which must only be done in exceptional circumstances as and when permitted by the Constitution. The special legislative procedure is an exception and should be construed strictly and its operation restricted. Therefore, we are of the candid view that since the amendments relating to the subject contributions/ payments do not fall within the parameters of Article 73(2) of the Constitution, the impugned amendments in the respective Finance Acts are declared to be unlawful and ultra vires the Constitution."

In the above cited judgment of the Hon'ble Supreme Court while holding that subject levy i.e. WWF is not a tax as it does not possess characteristic of a tax e.g. compulsory exaction of money as a common burden for raising revenue to be utilized for general public purpose by the State, the hon'ble Supreme Court, while making reference to the relevant charging provisions, has also referred to the preamble of the said enactment in order to find out the nature and scope of such levy.

16. In the instant case, we have noted that the speech of the Finance Minister in the National Assembly while introducing Income Support Levy Act, 2013 along with Money Bill clearly reflects upon the intention as well as nature of the Income Support Levy, according to which, subject levy has been introduced to mobilize additional resources for enhancing the Income Support Programme for the poor families in Pakistan, whereas, **the receipts under this head are to be credited to Income Support Programme of the Government.** The extract of the Finance Minister's budget speech in the National Assembly, has been placed on record, which reads as follow:-

> *"51. It is incumbent on all of us who are blessed with exceptional favor from Allah (SWT) to contribute to the welfare of those not so fortunate. Many of us who may have earned our assets while working abroad have negligible tax liability under the existing laws and double taxation treaties. Yet we*

> *must share the burden of helping our weaker segments of population. In order to mobilize additional resources for enhancing the Income Support Program for the poorest families in Pakistan, it is proposed to impose a small levy on such persons. This levy shall apply on net moveable assets of persons on given date @ of 0.5%. The receipts under this head will be credited to Income Support Programme of the Government. Voluntary contribution will also be solicited to mobilize additional resources. Let me admit that I shall be amongst first one's who will be hit this Levy. According to my estimation, I will have to pay an additional Rs.2.5 Million on this count this year, but I will be too happy to make this contribution for the welfare of our poor people."*

We may also examine the preamble of Income Support Levy Act, 2013, which also reflect the same intention of the legislature as summarized in following terms:

> "WHEREAS it is desirable to provide financial assistance and other social protection and safety net measures to economically distressed persons and families;
>
> AND WHEREAS under the principles of policy as given in the Constitution of the Islamic Republic of Pakistan, the State is obliged to promote social and economic well-being of the people and to provide basic necessities of life;
>
> AND WHEREAS it is expedient to provide for financial resources for sunning an income support fund for the economically distressed persons and their families through a Levy to be called Income Support Levy;"

Preamble shows that Income Support Levy has been imposed **to provide financial assistance and other social protection and safety measures to economically distressed persons and their families through a levy to be called Income Support Levy, and also to provide for financial resources for running an income support fund for economically distressed persons and their families**. Similarly, perusal of the charging provisions of Income Support Levy Act, 2013, as contained in Section 3, shows that the word **tax** has not been used while creating the charge of Income Support Levy, whereas, the terms **levy** has been used to be collected in respect of value of net moveable assets held by a person on the last date of the tax year at the rate specified and in the manner rates specified in Section 9 and in the manner specified in Section 4 of the Income Support Levy Act, 2013. Section 4 provides that a person who is liable to pay the levy under this Act, shall pay levy along with Wealth Statement, whereas, Section 5 of the Income Support Levy Act, 2013, provides that Officer of Inland Revenue shall, by an order in

writing, determine the Levy payable, and shall serve upon the person a notice of demand specifying the sum payable and the time within which it shall be paid.

17. It is pertinent to mention that copy of the proposed bill originated in the National Assembly was transmitted to the Senate in terms of proviso of sub-Article 1 of Article 73, whereafter, the Senate made its recommendations on the budget proposal 2013-2014, in terms of sub-Article 1(a) of Article 73 of the Constitution, which also included recommendations 109 and 110, which are relevant for the purposes of Income Support Levy, which reads as follow:-

> "109. The Senate recommends to the National Assembly that all those sections and clauses included in the Finance Bill, 2013 that are not within under the purview of a Money Bill should be dropped.
>
> 110. The Senate recommends to the National Assembly Income support levy should either be withdrawn or amended as a tax, so that revenues collected to go to the Federal Divisible pool. So that the provinces get their due share.

18. It is also relevant to examine the extract of budget speech 2014-2015 delivered by the Finance Minister in the National Assembly with particular reference to clause 62 (i) relating to repeal of Income Support Levy, the same reads as follows:

> "**Removal of Income Support Levy:** Income Support Levy Act was promulgated through the Finance Act, 2013. The aim was to mobilize additional resources for the economically distressed persons. However, the public at large did not accept this measure as it was considered harsh and was perceived as double taxation. The Government has decided to accept the demand and it is proposed to repeal the Income Support Levy Act, 2013."

19. The aforesaid chronology, commencing from the budget speech of the Finance Minister while introducing Income Support Levy Act, 2013, through Finance Act, 2013, perusal of the preamble and the relevant charging provisions of the subject levy, recommendations of the Senate in terms of sub-article (i)(a) of Article 73 of the Constitution, to withdraw or to amend income support levy as a tax, so that revenue collected shall go to the Federal Consolidated Fund, to be distributed to the Provinces as per their due share, as well as unceremonious withdrawal/repeal of the Income Support Levy Act, 2013, without providing for any saving or validation clause in the repealing Act is of much significance and sufficient to hold that Government lost sight of constitutional provisions relating to

imposition of taxes or levies as per Fourth Schedule to the Constitution and could not justify as to how subject levy has the characteristics of tax. While applying the ratio of the above cited judgment of the Hon'ble Supreme Court, we are of the opinion that subject levy does not possess the characteristics of a tax as it is not a common burden for raising revenue **to be utilized for general public purpose, on the contrary, it is a levy in the nature of fund to be charged and utilized for specific purpose i.e. to provide financial resources for raising income support fund for the economically distressed persons and their families**. It appears that while introducing the aforesaid enactment through Finance Act, 2013, instead of imposing tax as common burden for the collection of revenue to be utilized for general purpose, a levy in the nature of fund to be utilized for specific purpose i.e. social welfare of poor persons, has been introduced, however, without following constitutional requirements as per Article 70 read with Article 78 of the Constitution of Islamic of Pakistan 1973, which provides that a bill in respect of any matter in the Federal Legislative List may originate in either house and shall, if it is passed by the house, in which it originated, be transmitted to the other House; and, if the Bill is passed without amendment by the other House also, it shall be presented to the President for assent, and thereafter the revenue so received shall go to the Federal Consolidated Fund of Public Account, from where, it is distributed among the provinces as per their respective share and to be utilized for general public purpose.

20. While applying the ratio of the above cited judgment of the Hon'ble Supreme Court in the case of Workers' Welfare Funds, Ministry of Human Resources Development, Islamabad through Secretary and others vs. East Pakistan Chrome Tannery (Pvt) Ltd. through G.M. (Finance), Lahore and others (PLD 2017 SC 28) to the facts of the instant petition(s), the same appears to be applicable to the legal issue involved in the instant petitions i.e. as to whether the Income Support Levy is a tax or otherwise, therefore, we have reached to the conclusion that Income Support Levy does not possess the characteristic of a tax as it is not a common burden for raising revenue from public at large to be utilized for general purposes, on the contrary, it is a levy in the nature of fund to be used for the specific purposes

of welfare of poor families in Pakistan only, and to provide for financial resources for running an income support fund for economically distressed persons.

21. Without prejudice to hereinabove findings, whereby, we have held that the Income Support Levy does not possess the characteristics of a tax, we would also like to dilate upon yet another substantial legal ground challenging the vires of the subject levy by the petitioners to the effect that even if subject levy is treated as tax, the same is discriminatory, as it creates unreasonable classification between the individuals having same net moveable assets exceeding Rs.1.00 Million, however, to be charged from existing taxpayers, who are required to file their Wealth Statement under Section 116 of the Income Tax Ordinance, 2001, along with income tax return, and excludes such individuals, who are not required or do not file their Wealth Statement and income tax return (non-existing taxpayer) inspite of the fact that they might be having much higher net moveable assets exceeding Rs.1.00 Million, therefore, according to petitioners, it is a case of clear unreasonable classification which amounts to discrimination, hence, violation of fundamental right of citizens to be given equal treatment, Article 25 of the Constitution. It is pertinent to note that above factual and legal position to the effect that incidence of Income Support Levy would be upon the existing taxpayers, who are required under law to file Wealth Statement under Section 116 of the Income Tax Ordinance, 2001, along with their income tax return only, as there seems no provision under Income Support Levy Act, 2013, whereby, non-existing taxpayer, inspite of having much higher net moveable assets exceeding Rs.1.00 Million, could be required to submit wealth statement and to make payment of Income Support Levy under the Income Support Levy Act, 2013, has not been disputed by the respondents.

22. This Court in the case of **Imran Ahmed v. Federation of Pakistan through Ministry of Law and 3 others (2014 PTD 225)**, while dilating upon the Authority of the legislature to impose taxes, however, subject to constitutional mandate and scrutiny by superior Constitutional Courts i.e. High Court(s) and Supreme Court under Article 199 and Article 185 of the Constitution respectively, has been pleased to hold as under:-

"12. There is no cavil to the proposition that legislature has vast powers to levy and impose tax on the income of a person pursuant to Entry No.47 of the Federal Legislative List of the Fourth Schedule to the Constitution of Islamic Republic of Pakistan, 1973 and to prescribe the tax rates thereon by introducing the Bill in terms of Article 73 of the Constitution of Islamic Republic of Pakistan, 1973. However, such legislation has to undergo the test of constitutional constraints. Similarly, the legislative competence of imposing taxes is also subject to the scrutiny by this Court under Article 199 as well as by the Hon'ble Supreme Court under Article 185 of the Constitution of Islamic Republic of Pakistan, 1973, particularly, if a levy or enactment has been challenged for being discriminatory, confiscatory or violative of the fundamental rights as guaranteed under the constitution.

13. The concept of absolute authority to impose tax by rulers on their subjects, without having any representation of the people in such legislation, is no more available under the Modern Democratic System of Governments, which are run by the elective representative of the people under their respective Constitutions. **The unbridled powers and authority to impose tax arbitrarily, without having any rationale or reasonableness, is now being regulated under the Constitutional restraints, whereby, taxes are to be imposed reasonably**, without discrimination and in such a manner that those may not encroach upon the fundamental rights of a person as guaranteed under the Constitution. The art of taxation is regarded as the **art of plucking a goose so as to gather the largest amount of feather by causing least squealing**. **Adam Smith**, who is regarded as Father of Modern Economic System, in 18th Century in his book 'The Wealth of Nations" (1776), has defined following four cannons of taxation i.e. **(i) equality, (ii) certainty, (iii) convenience of payment and (iv) economy in collection**. While explaining the first two cannons of taxation as referred to hereinabove i.e. equality and certainty, the Author has propounded that the "*subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion of their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state*". In other words, **the incidence of tax must fall equally on all subjects with particular reference to their class without any discrimination amongst them**. Similarly, it has been further propounded that "*the tax which each individual is bound to pay*

> *ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person. The uncertainty of taxation encourages the insolence and favours the corruption of an order of men who are naturally unpopular, even where they are neither insolent nor corrupt. The certainty of what each individual ought to pay is, in taxation, a matter of so great importance, that a very considerable degree of inequality, it appears, is not so great an evil as a very small degree of uncertainty".*

In the case of ***Inamur Rehman v. Federation of Pakistan 1992 SCMR 563****, Honourable Supreme Court has been pleased to hold as under:-*

> *"That though the Legislature has prerogative to decide the questions of quantum of tax, the conditions subject to which it is levied, the manner in which it is sought to be recovered,* ***but if a taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of the tax or that is confiscatory, the Court may strike down the impugned statute as unconstitutional****."*

In the case of ***Elahi Cotton Mills Ltd. and others v. Federation of Pakistan (1997) 76 Tax 5 (S.C. Pak)****, Honourable Supreme Court has been pleased to hold as under:-*

> *iv) That the Legislature is competent to classify persons or properties into different categories subject to different rates of tax.* ***But if the same class of property similarly situates is subject to an incidence of taxation, which results in inequality amongst holders of the same kind of property, it is liable to be struck down on account of infringement of the fundamental right relating to equality****.*

23. While applying the ratio of the above cited judgments to the legal ground agitated through instant petitions relating to discrimination and unreasonable classification, we are of the opinion that Income Support Levy besides lacking the main characteristics of a tax, is also discriminatory in nature, as it creates unreasonable classification within the same class of person having net moveable assets exceeding Rs.1.00 Million. As per charging and machinery provisions of Income Support Levy Act, 2013, only such persons are liable to make payment of income support levy, who are existing taxpayers and file their Wealth Statement under Section 116 along with their Income Tax Return under Section 115 of the Income Tax Ordinance, 2001, whereas, persons who are not required or do not file their Wealth Statement along with Income Tax Return, have been excluded

from the purview of Income Support Levy Act, 2013, which amounts to clear discrimination and violation of Article 25 of the Constitution.

24. In view of hereinabove, aforesaid petitions are allowed along with all pending applications, in the following terms:-

(i) The levy imposed through Income Support Levy Act, 2013 along with Money Bill, **does not possess the characteristics of a tax**, as it is not a common burden for raising revenue to be utilized for general public purpose, on the contrary, **it is a levy in the nature of fund to be charged and utilized for a specific purpose i.e. "to provide for financial resources for raising an income support fund for the economically distressed persons and their families**". Accordingly, the Income Support Levy Act, 2013, could not be introduced through Finance Act, 2013, in terms of Article 73 of the Constitution of Islamic Republic of Pakistan, 1973, the same is hereby declared to be ultra vires to the Constitution of Islamic Republic of Pakistan, 1973.

(ii) The levy imposed through Income Support Levy Act, 2013, is hereby **declared to be ultravires to the Constitution for being discriminatory, as it creates unreasonable classification within the same class of person i.e. persons having Net Moveable Wealth exceeding Rs.1.00 M (One Million), whereas, its incidence and charge of levy falls un-equally upon the existing taxpayers only**, who file or required to file Wealth Statement under Section 116 along with their Income Tax Return under Section 115 of the Income Tax Ordinance, 2001, , however, non-existing taxpayers, who are not required under law, or do not file their Wealth Statement along with Income Tax Return, inspite of having much higher Net Moveable Wealth, exceeding Rs.1.00 M (One Million), have been excluded from the incidence and charge of such

levy, which is in clear violation of Article 25 of the Constitution of Islamic of Pakistan, 1973.

(iii) All the Notices and the proceedings, including assessment order(s) passed under Section 5 of the Income Support Levy Act, 2013 after repeal of the Income Support Levy Act, 2013, under clause 10 of the Finance Act, 2014, in the absence of any saving or validation clause to protect or validate the Income Support Levy Act, 2013 are hereby declared to be without jurisdiction and lawful authority.

J U D G E

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Nadeem