ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI.

Mr. Justice Muhammad Iqbal Kalhoro,J.
Mr. Justice Muhammad Karim Khan Agha,J.

C.P.No.D-8223 of 2017

K-Electric (Pvt.) Ltd..... Petitioner

VERSUS

The State & others .....Respondents

C.P.No.D-8224 of 2017

K-Electric (Pvt.) Ltd..... Petitioner

VERSUS

The State & others .....Respondents

C.P.No.D-8225 of 2017

K-Electric (Pvt.) Ltd..... Petitioner

VERSUS

The State & others .....Respondents

C.P.No.D-8226 of 2017

K-Electric (Pvt.) Ltd..... Petitioner

VERSUS

The State & others .....Respondents

C.P.No.D-8227 of 2017

K-Electric (Pvt.) Ltd..... Petitioner

VERSUS

The State & others .....Respondents

C.P.No.D-8228 of 2017

K-Electric (Pvt.) Ltd..... Petitioner

VERSUS

The State & others .....Respondents

Dates of hearing: **10.05.2018, 22.05.2018, 24.05.2018, 30.05.2018 and 31.05.2018.**

Date of judgment: **26.06.2018.**

Mr. Abid S. Zuberi, along with Ayyan Memon and Sana Q. Validaka Advocates for the petitioners
Mr. Abdul Samad Khattak, Advocate for Respondent No.3 in C.P.No.D-8225/2017
Mr. Muhammad Tariq, Advocate for Respondent No.3 in C.P.No.D-8228/2017
Mr. Muhammad Awais Malano, Advocate for respondent No.3 in C.P.No.D-8223/2017 & C.P.No.D-8227/2017
Mr. Salman Talibuddin, Additional Attorney General
Mr. Ali Haider Salim, D.P.G.
Mr. Jan Muhammad Khoro, AAG
Ms. Sarwat Jawahir, State Counsel.

J U D G M E N T

MUHAMMAD IQBAL KALHORO J: This judgment shall dispose of all the captioned petitions filed by K-Electric (Pvt.) Limited challenging orders (separate in each petition) passed by learned Civil Judge and Judicial Magistrate-II, Karachi West disposing of FIR(s) under 'C' class that were lodged by K-Electric under section 39 of the Electricity Act, 1910 (Electricity Act) against different private persons (respondent No.3 in each petition) for committing theft of electricity.

2. The FIR(s) have been disposed of on the grounds that the offense alleged comes within purview of chapter XVII-B containing several sections from 462G to 462P concerning offences in relation to electricity, which has been inserted in PPC vide Criminal Law (Amendment) Act, 2016 (2016 Act) and in terms of S.462P PPC thereof, this chapter has an overriding effect over anything contained in any other law for the time in force. Further under section 462O

PPC it has been provided that the court shall not take cognizance of an offence under this chapter except on a complaint by duly authorized officer (not below Grade 17) of the government or the distribution company. Therefore, cognizance, on the charge-sheet (the challan), of an offense registered under section 39 of Electricity Act through an FIR cannot be taken. Once the learned Civil Judge reached such a conclusion, he disposed of the FIR(s) under 'C' class, discharged the accused and suggested that K-Electric may file a direct complaint in the relevant court in this behalf as provided under S. 462O (2) PPC.

3. Mr. Abaid S. Zuberi learned counsel for K-Electric contended vehemently that learned Civil Judge by disposing of the FIR(s) on the ground of being non-maintainable under Electricity Act has imputed a complete redundancy to the said Act and so also to the provisions of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act). Per him, redundancy cannot be imputed to the express provisions of law and every effort shall be made to save the law rather than to destroy it; that through the impugned orders the effect of section 39 of Electricity Act has been completely nullified even though the same has not been expressly repealed by the legislature through 2016 Act and it was never the intention of legislature to give 2016 Act an over ridding effect over the provisions of Electricity Act; that the amendments in general law are never intended to override in any manner the provisions of special laws as has been held by superior courts time and again; that just because 2016 Act was introduced later in time will not give it an over ridding effect over Electricity Act because the Honourable Supreme court in the case of *Syed Mushahid Shah and others Vs. Federal Investigation Agency and others* ***(2017 SCMR 1218)*** has held that a general law shall yield to a special law and has interpreted the words ***"for the time being in force"*** used in non obstante clause in a previous particular law to apply to future enactments on the subject as well, as such by virtue of section 45 of NEPRA Act, the provisions of the Consumer Services Manual, enacted in pursuance of section 21 of NEPRA Act, as well as Electricity Act, which has been adopted in chapter 9 of the said Manual to the extent of offences against electricity, will have an overriding effect over 2016 Act. Learned counsel in support of his contentions has relied upon the case laws reported in ***2013 CLC 571, 2017 SCMR 1218, 2013 SCMR 85 and AIR 1992 SC 81.***

4. Learned counsels for the private respondent in each petition supported the impugned orders and further stated that chapter XVII-B PPC has an overriding effect over Electricity Act in view of section 462P, and since under section 462O the court is debarred from taking cognizance of the offence save on a complaint in writing made by duly authorized officer, the registration of FIR under Electricity Act would be illegal and non-maintainable. Learned counsels in support of their contentions have relied upon the case law reported in ***2003 YLR 2087.***

5. Mr. Salman Talibuddin, Additional Attorney General, Mr. Ali Haider Salim, DPG, Mr. Jan Muhammad Khoro, AAG, and Ms. Sarwat Jawahri, State Counsel all supported the impugned orders. Mr. Salman Talibubdin further maintained that the legislature has a right to alter a law already in the field by subsequent legislation; that a special law could be altered, abrogated, repealed by a later general law and as such a later general law can have an overriding effect on prior special law if both are so repugnant to each other that they cannot co-exist even though there is no specific provision in this behalf in the general law. He, however, submitted that under the provisions of 2016 Act, only authorized officer of the government or the distribution company can launch prosecution by filing a complaint in writing in the court, whereas under Electricity Act prosecution could be instituted at the instance of the government or an electric inspector, or of a person aggrieved by any offence under the said Act; that the ambit and scope for initiating prosecution under the Electricity Act is a little wider than 2016 Act in that a private person aggrieved by any offence thereunder can lodge the FIR, but no such right is available to a private person under 2016 Act. Therefore, only to that extent Electricity Act would harmonize on the subject matters with 2016 Act. He in support of his contentions has relied upon the case laws reported in ***2017 SCMR 1218, (1984) 3 Supreme Court Cases 127, (1992) 1 Supreme Court Cases 335 and PLD 2018 SC 81.***

6. We have considered contentions of the parties, perused the record and taken guidance from the case law cited at the bar. The question which K-Electric, among others, has essentially raised in these petitions is that whether chapter XVII-B of PPC introduced through 2016 Act dealing with the offences relating to electricity shall yield to Electricity Act, a special law, which also deals with the offences regarding electricity, in view of patent inconsistency between

them over punishment and procedure of initiating prosecution for the same. In this respect the main contention of learned counsel for K-Electric is that a general law shall not prevail over a prior special law; that it is a well-established principle that the provisions of a general statute must yield to those of a special one "*Generalia specialibus non derogant*" i.e. special provisions will control general provisions. Therefore, the provisions of Electricity Act and that of NEPRA Act being special enactments must prevail over this new chapter which is a part of PPC, a general law. In reply, we may say the rule that a general act is not to be construed to repeal a previous particular act is not absolute. This construction that the latter general law does no abrogate an earlier special law is not automatic but is dependent on many factors, such as intention of the legislature in the subsequent legislation, the context leading to enactment of such a law, the inconsistency between the two given laws, and the fact that whether in the latter law a reference to a previous particular law on the subject has been made. No doubt, normally the implied repeals are not imputed and it is an established rule that in the construction of statutes a subsequent act treating a subject in general terms and not expressly contradicting the provisions of a prior special statute is not to be construed as intended to affect the more particular and specific provisions of the earlier act. But when there is some express reference to the previous legislation on the subject, or there is a necessary inconsistency in the two acts standing together harmoniously. Or it is absolutely necessary to give the latter act such a construction that its words shall have any meaning at all, the rule that a subsequent act is not to be considered as intended to affect provisions of earlier particular act would not be attracted. It would be presumed that the legislature after having had its attention to a special subject and having observed all the circumstances of the case has intended by a latter general enactment to derogate from previous act and has made a special mention of its intention to do so in the latter act. We may further note in this regard that the legislature has a right to alter a law already enacted through a subsequent legislation; abrogate or repeal any special law by a later general law by express provision; and/or assign any general law an effect notwithstanding anything contained in the special law, if the two laws are so repugnant to each-other that they cannot co-exist. If any reference is needed in favour of this view, the case of ***Ajoy Kumar Banerjee and Others versus Union of India and Others (1984) 3 Supreme Court cases 127*** (supra) relied upon by learned Addl. Attorney General can be cited.

7. We may further observe here that a law which is essentially general in nature may contain some special provisions relating to certain matters and on these matters, the said law would be classified as a special law. And if there are certain provisions therein which are wholly inconsistent with the prior special law, the same would be considered to have abrogated the said special law by implication to the extent of such inconstancy. Going by such construction which their lordships have articulated in the case of ***Justiniano Augusto De Foneseca, (1979) 3 SCC 47: AIR SC 984*** referred to in ***the case of R.S. Raghunath Vs. State of Karnataka and another (AIR 1992 Supreme Court 81)*** relied upon by learned counsel for the petitioner, it would not be difficult to say that 2016 Act introducing chapter XVII-B in PPC to specially deal with the offenses in respect of electricity would be treated as a special law and on account patent inconsistency (which we have discussed in following paragraphs) it has with Electricity Ac shall prevail over the relevant provisions of Electricity Act to the extent of such inconsistency.

8. Having discussed the legal position on the subject matter as above, we now intend to examine the scope and object of 2016 Act and the need why the legislature at the first instance thought of enacting the same. Initially by Ordinance X of 2013 dated 31.12.2013, the said chapter XVII-B was introduced in PPC. Subsequently, 2016 Act was passed on 21.01.2016 and the chapter XII-B with all its provisions made a permanent part of PPC. In the statement of objects and reasons for promulgation of 2013 Ordinance filed by learned Addl. Attorney General, it has been specifically stated that the recoveries affected by the distribution companies (DISCOs) from the consumers are insufficient and inadequate to meet the cost of generated electricity. Resultantly, GoP has to provide subsidy especially to those DISCOs where leakage, pilferage, and theft is rampant. In the FY 2012-13, the total number of occurrences registered in relation to theft of electricity was around 2 million, against which 23000 FIRs were lodged, but only three ended in conviction. ***Presently the offenses, penalties and procedure in relation to the theft of electricity are provided in the Electricity Act but the mechanism therein is weak and has not resulted in any significant recoveries or deterrence.*** Against the total 7800 distribution feeders in the national grid (except KESC), as many as 4000 feeders have a loss of more than the standard figures (0-10%), which is a large

percentage when seen in the context of the total 22 million consumer base. A situation has arisen where about 15 Billion units of electricity have been lost during FY 2012-13, out of which at least 25-40% is considered to be lost due to outright theft translating into loss of up-to Rs 90 Billion. There is thus an urgent need to rectify the said situation. (Emphasis supplied)

9. We have reproduced some of the necessary facts from the statement of objects and reasons to show that this amendment in PPC was brought in by the legislature after noting failure of mechanism in Electricity Act to curb theft of electricity, etc., and the consequences emanating from such a situation. It is quite obvious that the legislature was led by such a failure to believe that Electricity Act was not producing the desired results, and which necessitated a fresh approach to the problem. In such a context a conscious departure in regard to instituting prosecution and punishment of offence of theft of electricity from the previous law i.e. Electricity Act or for that matter chapter 9 of Customer Service Manual which actually refers to Electricity Act for dealing with such an offense has been made. In section 462O PPC, which relates to 'cognizance', it has been provided that notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the court shall not take cognizance of any offence under the said chapter except on a complaint made by duly authorized officer (not below Grade 17) of government or the distribution company as the case may be. This would mean the prosecution under this chapter shall necessarily start only with a complaint and such complaint shall be filed in the court by a duly authorized officer of the government or distribution company as the case may be. The court for the said purpose has been defined in clause (a) of section 462G PPC to mean the court of sessions designated as Electricity Utilities Court empowered to take cognizance of an offence under the said chapter. Contrary to it, the offence under section 39 of Electricity Act which deals with theft of energy is a cognizable offence, the police can lodge the FIR for such an offence and there is no legal requirement to file a complaint in this regard, and the same is triable by the Judicial Magistrate as provided by section 50-A of Electricity Act. But it must be minded that as per section 50 of Electricity Act, such an FIR could be lodged only at the instance of the Government or an Electric Inspector or of person aggrieved by any act or omission contrary to the provisions of the said Act. This shows that there is a material conflict between the two laws not only in

respect of mode of launching the prosecution but how and by whom and before whom such prosecution has to be instituted. 2016 Act stipulates a complaint in the Electricity Utilities Court (the sessions court) to be filed by only duly authorized officer of the government or of a distribution company as the case may be, while Electricity Act requires registration of FIR for the same offense which not only the government or an electric inspector but any aggrieved person in this behalf can lodge and the same is triable by the Judicial Magistrate. Besides, there is a difference in the punishment provided for the said offence in the two laws which hampers their standing together harmoniously. The offense under section 39 of Electricity Act is punishable with imprisonment for a term which may extend to three years, or with a fine which may extend to five thousand rupees, or with both; while the same offence provided under section 462G PPC is punishable with imprisonment of three years or with fine up-to ten million or with both.

10. We have held in Para No. 6 above that normally the implied repeals are not favored and that in the construction of statutes a subsequent act treating a subject in general terms and not expressly contradicting the provisions of a prior special statute is not to be construed as intended to affect the more particular and specific provisions of the earlier act. But when there is some express reference to the previous legislation on the subject, or there is a necessary inconsistency in the two acts to stand together harmoniously. Or it is absolutely necessary to give subsequent act such a construction that its words shall have any meaning at all, implied repeals of a previous particular act to the extent of such an inconstancy in order to assign intended meaning and purpose to a latter law would be necessarily read. Otherwise, there would be no reason in enacting special provisions on certain matters in the latter law with a non obstante clause having a reference to the previous laws in respect of those matters. In the instant case same situation can be seen, the two acts i.e. 2016 Act and Electricity Act are conspicuously so repugnant to each other on the subject offences that they cannot coexist harmoniously. There is a patent conflict as noted above between them not only in respect of mode of launching the prosecution of the offenses but the punishment thereof, and how and by whom and before whom the prosecution has to be instituted have been differently conceptualized in the two laws. It is conspicuous that the legislature has intentionally made such a change in order to depart from the earlier law

which in its opinion failed to curb theft of electricity, line losses, effect recoveries, etc., and to give a chance to the new law in this respect. This express intention of the legislature is further articulated adequately in section 462P PPC which has laid down in specific terms that the provisions of this chapter shall have effect notwithstanding anything contained in any other law for the time being in force. Meaning thereby that this particular chapter of PPC shall prevail over any other law for the time being in force on the subject, if there is an inconsistency impeding their harmonious co-existence. Minus such construction, 2016 Act would be meaningless which will be against wisdom of the legislature who as is stated above has turned to the details of the subject consciously and has acted upon it. Before articulating such an opinion as immediately above, we have considered in the light of arguments made and the case law relied upon the other way around i.e. 2016 Act yielding to Electricity Act. This will result in a complete nullification of effects of 2016 Act which is the latest intention of the legislature on the subject and would render it wholly irrelevant and redundant. Such a construction would not only be contrary to the wisdom of the legislature as noted above but against the well-established principles concerning interpretation of effects of two competing statutes on the same subject as discussed above and, therefore, the same , in our estimation, cannot be imputed to 2016 Act.

11. For the foregoing discussion, we are of the view that the provisions of 2016 Act to the extent of such inconsistency in respect of offences relating to electricity would prevail over the provisions of Electricity Act. And in view thereof these petitions are found without any merits and are dismissed accordingly without any order as to costs. However, learned Civil Judge who has passed the impugned orders is directed to send all such FIRs, which seem to have been registered respectively by duly authorized officer of K-Electric, to the relevant Court of Sessions designated as Electricity Utilities Court which shall treat all these FIRs as complaints filed under section 462O PPC and proceed further in accordance with law.

Mohammed Karim Khan Agha J. I have had both the opportunity and the privilege to read the Judgment of my learned brother Muhammad Iqbal Kalhoro J. with which I entirely agree. The arguments of the parties, the facts of the case and the law in issue have been set out in the lead judgment and there is no need to repeat the same here. However I would like to add / emphasize / elaborate on a few points through this separate note.

2. In my humble opinion this petition mainly revolves around the following issues. (a) Parliamentary supremacy and whether one Parliament can bind another Parliament through legislation and (b) whether a **part** of a general law can be turned into special law and override another special law on the subject.

Turning to the first issue of Parliamentary supremacy and whether one Parliament can bind another Parliament through legislation.

3. Under our Constitution Parliament being an elected body representing the will of the people through their chosen representatives is the supreme law making body. It is trite law that it is for the Parliament to make law and for the judiciary to interpret that law if the need arises. If the law is clear and unambiguous then no question of interpretation arises and the courts have to apply the same. Only if the law lacks clarity or may be in conflict with a part of the Constitution can the courts venture to interpret the same. In this respect reliance is placed on the case **of Justice Khurshid Anwar Bhinder V Federation of Pakistan** (PLD SC April 2010 483.Relevant P.492 to 493) which held as under:

> "A fundamental principle of Constitutional construction has always been to give effect to the intent of the framers of the organic law and of the people adopting it. The pole star in the construction of a Constitution is the intention of its makers and adopters. **When the language of the statute is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Such language beside declares, without more, the intention of the law givers and is decisive on it. The rule of construction is "to intend the Legislature to have meant what they have actually expressed". It matters not, in such a case, what the consequences may be. Therefore if the meaning of the language used in a statute is**

> **unambiguous and is in accord with justice and convenience, the courts cannot busy themselves with supposed intentions, however admirable the same may be because, in that event they would be traveling beyond their province and legislating for themselves**. But if the context of the provision itself shows that the meaning intended was somewhat less than the words plainly seem to mean then the court must interpret that language in accordance with the indication of the intention of the Legislature so plainly given. **The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the court to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.** (bold added)

4. The Electricity Act 1910 (the Electricity Act) is a special law and its language regarding the procedure for dealing with electricity theft is clear and unambiguous and as such ordinarily it will be given effect to. The Electricity Act does not appear to have a non obstante clause when dealing with "energy" theft the detail of which appears to be set out in the National Electric Power Regulatory Authority Act 1997(NEPRA) which at S.45 does have a non obstinate clause and is bolstered by the Consumer Service Manual (CSM) which has been made and approved by NEPRA and lays down instructions in pursuance to S.21 of the Regulation for generation, Transmission and Distribution of Electric Power Act 1979 read with S.9 of NEPRA licensing (Distribution) Rules 1999.

5. However Parliament through the criminal law (Amendment) Act 2016 (the Amendment Act) added certain provisions to the Pakistan Penal Code 1860 (PPC) and amended Schedule II of the Code of Criminal Procedure 1898 (Cr.PC) which also dealt with the procedure for dealing with electricity theft. Again these amendments were clear and unambiguous and do not require interpretation. Such Amendment Act contains a non obstante clause at S.3 which reads as under;

> "S3 Overriding effect; The provisions of this Chapter shall have effect notwithstanding anything contained in any other law for the time being in force"

6. The question that arises is which procedure for dealing with electricity theft will prevail or whether they will both equally apply.

In this regard the doctrine of implied repeal in my view is relevant. Namely, that no Parliament through its legislation can bind another Parliament later in time who may either expressly repeal the earlier legislation or repeal the same by virtue of the doctrine of implied repeal.

7. Under the unwritten British Constitution the doctrine of Sovereignty/supremacy of Parliament prevailed which doctrine has been adopted through the interpretation of our constitution of 1973. This doctrine was most famously set out by the Constitutional Jurist A.V Dicey in the following terms and can be found in Constitution and Administrative Law by Hilaire Barnett 4th Ed. 2002.

> "The principle of parliamentary sovereignty means neither more nor less than this: namely, that Parliament thus defined has, under the English Constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament.
>
> A law may, for our present purpose, be defined as 'any rule which will be enforced by the court'. The principle, then, of parliamentary sovereignty may, looked at from its positive side, be thus described: any Act of Parliament, or any part of an Act of Parliament, which makes a new law, or repeals or modifies an existing law, will be obeyed by the court. The same principle, looked at from its negative side, be thus stated: "there is no person or body of persons who can, under the English Constitution, make rules which override or derogate from an Act of Parliament, or which (to express the same thing in other words) will be enforced by the courts in contravention of an Act of Parliament." [(1898), 1959, p 39]

8. From this description can be deduced three basic rules:

(a) Parliament is the supreme law making body and may enact laws on any subject matter.
(b) no parliament may be bound by a predecessor or bind a successor;
(c) no person or body – including a court of law – may question the validity of parliament's enactments.

9. One of the rationale's behind this doctrine was that since Parliament represented the chosen representatives of the people the will of the people should prevail through law made by Parliament.

10. There are similarities with this concept in the Objectives Resolution which was a part of the Preamble of successive Constitutions until it was incorporated as a substantive part of the 1973 Constitution in 1985.The Objectives Resolution in relevant part provides that;

> "Whereas Sovereignty over the entire universe belongs to Allah Almighty alone and the authority which he has delegated to the State of Pakistan **through its peopie** for being exercised within the limits prescribed by him as a sacred Trust;
>
> This Constituent Assembly representing the people of Pakistan resolves to frame a Constitution for the Sovereign Independent State of Pakistan;
>
> **Wherein the State shall exercise its powers and authority through the chosen representatives of the peopie"** (bold added)

11. The Objectives Resolution therefore recognizes a democratic state run in accordance with the will of the people. This will was reflected by Parliament being the law maker in the 1956 Constitution and the current 1973 Constitution.

12. In Constitution and Administrative Law by A.W.Bradley, K.D.Ewing and C.J.S. Knight 16th Ed 2015– p.56 the following is stated concerning implied repeal

> **"The doctrine of implied repeal.**
>
> It is for the courts to resolve this conflict because they must decide the law which applies to a given situation. If the conflict cannot be resolved in any other way, the courts apply the later Act the earlier Act is taken to have been repealed by implication to the extent of the inconsistency.
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> > **If two inconsistent Acts be passed at different times, the last must be obeyed...Every Act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment.**
>
> This doctrine is found in many legal systems, but in Britain the operation of the doctrine is sometimes considered to have special constitutional significance.
>
> > Before 1919, many public and private Acts of Parliament empowered public authorities to acquire land compulsorily and laid down differing rules of compensation. In 1919, the Acquisition of Land (Assessment of Compensation) Act was passed to

provide a uniform code of rules for assessing the compensation to be paid in future. Section 7(1) provided: The provisions of the Act or order by which the land is authorised to be acquired, or of any Act incorporated therewith, shall....have effect subject to this Act, and so far as inconsistent with this Act those provisions shall cease to have or shall not have effect. The Housing Act 1925 sought to alter the 1919 rules of compensation by reducing the compensation payable in respect of slum-housing. In **Vauxhall Estates v. Liverpool Corporation**, it was held that the provisions of the 1925 Act must prevail over the 1919 Act so far as they were inconsistent with it. The court rejected the ingenious argument of counsel for the slum-owners that S.7 (1) (and especially the words 'or shall not have effect') had tied the hands of future Parliaments so that the later Parliament could not (short of express repeal) legislate inconsistently with the 1919 Act. In a similar case, **Ellen Street Estates Ltd v. Minister of Health**, Maugham LJ said: The Legislature cannot, according to our constitution, bind itself as to the form of subsequent legislation, and it is impossible for Parliament to enact that in a subsequent statute dealing with the same subject matter there can be no implied repeal. **If in a subsequent Act Parliament chooses to make it plain that the earlier statute is being to some extent repealed, effect must be given to that intention just because it is the will of Parliament."**

Can Parliament bind its successors?
The rule that Parliament may not bind its successors (and that no Parliament is bound by Acts of its predecessors) is often cited both as a limitation on legislative supremacy and as an example of it. To adopt for a moment the language of sovereignty: If it is an essential attribute of a legal sovereign that there should be no legal restraints upon her, then, by definition, the rules laid down by a predecessor cannot bind the present sovereign, for otherwise the present holder of the post would not be sovereign. Dicey, outstanding exponent of the sovereignty of Parliament accepted this point:

The logical reason why Parliament has failed in its endeavors to enact unchangeable enactments is that a sovereign power cannot, **while retaining its sovereign character, restrict its own powers by any parliamentary enactment**.(bold added)

13. In terms of implied repeal as such it appears that those parts of the definition of S.50 and 50 (A) of the Electricity Act relating to electricity theft which are covered by the provisions in the Amendment Act are hit by the doctrine of implied repeal based on the principles laid down in the case of **State v Syed Mir Ahmed Shah and Another** (PLD 1970 Quetta 49) as it appears that the two laws on electricity theft cannot

run concurrently and in parallel. With regard to the doctrine of implied repeal reference may also be made to **"Constitutional and Administrative law" 5th Ed. by O.Hood Phillips** at P.55 (which supports and reproduces the legal proposition as discussed by Bradley, Ewing and Knight as set out earlier) and which also notes that, "The power of express repeal is so well established that it has not been contested in the courts. Lord Reid has said extra judicially: "It is good constitutional doctrine that Parliament cannot bind its successor."

14. So although **prima facie** it would appear that the Amendment Act would take precedence over the Electricity Act, NEPRA and CSM by way of implied repeal in terms of dealing with electricity theft **this leads us nicely on to the second issue which is before us namely whether a part of a general law can be turned into special law and override the special law on the subject.**

15. It is well settled under Pakistani law that a special law will override a general law whether it is earlier or later in time. In this case both the PPC and the Cr.PC are general laws and the amendments made to them by the Amendment Act would therefore prima facie apply to a general law and as such since a special law, in this case the Electricity Act will take precedence over a general law i.e. the Cr.PC and the PPC prima facie there will be no implied repeal and the Electricity Act being a special law will prevail over the Amendment Act which relates to general laws i.e. the PPC and Cr.PC.

16. The peculiar issue however which has arisen in this case is that the Amendment Act has purported to make **a part** of a general law (i.e. PPC and Cr.PC) a special law by specific intendment of the legislature.

17. In this respect in my view the statement of objects and reasons of the Amendment Act **are of crucial significance** which are reproduced as under for ease of reference.

STATEMENT OF OBJECTS AND REASONS
OFFENCES AND PENALTIES RELATING TO ELECTRICITY-
AMENDMENT IN THE PPC AND Cr.P.C.

"The Ministry of Water and Power is faced with the situation whereby the recoveries affected by the distribution companies (DISCOs) from the consumers are insufficient and inadequate to meet the cost of generated electricity. **As a result, the GoP has to provide subsidy, especially to those DISCOs where leakage, pilferages and theft is rampant primarily, this phenomenon emanates from fragile legal and enforcement structure. In the FY 2012-13, the total number of occurrence registered in relation to theft of electricity were around 2 Million against which 23000 FIRs were lodged and only three convictions were reported.**

2. **Presently offenses, penalties and procedure in relation to the theft of electricity is provided in the Electricity Act, 1910. However, this mechanism is weak and has not resulted in any significant recoveries or deterrence.** Moreover, against the total 7800 distribution leaders in the national grid (except KESC), as many as 4000 feeders have a loss of more than the standard figures (0-10%), which is a large percentage when seen in the context of the total 22 million consumer base. **A situation has arisen where about 15 Billion units of electricity have been lost during FY 2012-13, out of which at least 25.40% is considered to be lost due to outright theft translating into loss of upto Rs.90 Billion. There is thus an urgent need to rectify the present situation that the Ministry of Water and Power finds itself in.** Accordingly, a draft Bill further to amend Pakistan Penal Code 1860 (PPC) and the Code of Criminal Procedure 1898 (Cr.P.C.) has been drafted. **The draft Bill was also vetted by the Law and Justice Division.**

(KHAWAJA MUHAMMAD ASIF)
Federal Minister for Water and Power
Minister-in- Charge

18. In my view the above statement of objects and reasons of the Amendment Act make a number of things absolutely clear (a) that the Parliament was fully aware of the existence of the Electricity Act as a special law (especially as the draft bill was vetted by the Law and Justice Division and expressly refers to and considers the Electricity Act) with a procedure for dealing with electricity theft and its interplay with the NEPRA and CSM (b) that Parliament had reached the conscious and deliberate conclusion through a statistical analysis that the procedure for dealing with electricity theft under the Electricity Act, NEPRA and CSM was a complete failure and was not deterring let alone preventing electricity theft (c) that Parliament in light of (b) made a conscious and deliberate decision to change the law for dealing with electricity theft on account of the failure of the Electricity Act, NEPRA and CSM in

preventing electricity theft (d) that being aware of the Electricity Act being a special law Parliament could have instead moved to amend the Electricity Act or NEPRA in terms of its procedure for dealing with electricity theft to make it more effective but **instead** made a conscious and deliberate decision to change the law for dealing with electricity theft by the Amendment Act whilst deciding **not** to amend the Electricity Act or NEPRA which vis a vis its provisions concerning electricity theft it could have done if it had so desired (e) that as the Amendment Act was vetted by the Law and Justice Division it had been consciously and deliberately been made a special law with a non obstinate clause (which is not found in the Electricity Act) **so as to override** the procedure for dealing with electricity theft under the Electricity Act, NEPRA and CSM which was also a special law and knowing legally as a general rule special laws later in time would prevail.

19. An important aspect of this case in my view is that no party has challenged the fact that it is not possible for Parliament to enact through an amendment to a general law an amendment which has over ridding effect which will make a **part** of a general law a special law in effect making the law a hybrid one; in some parts special with overriding effect over other laws and in other parts general with no overriding effect over other laws. In my view Parliament has the power to do this and a law can be both general and special in nature depending on the particular parts/sections/provisions which are made general and those which are made special in nature. This may not be the neatest or most tidy way of passing/amending an existing law but in my humble opinion Parliament is not restricted from doing so. Thus, having found that the Amendment Act is a special law and **in part** has converted the PPC and the Cr.PC into special laws so far as they relate to the Amendment Act in terms of electricity theft

20. With respect to S.5 (2) Cr.PC since a part of the Cr.PC has been converted into a special law by the Amendment Act with the express intention of Parliament with express objectives and reasons and after being vetted by the Law and Justice Division which would have been well aware of the import of S.5(2) Cr.PC in my view S.5(2) Cr.PC in so far it relates to prosecutions under the Electricity Act will not be applicable as clearly this was the intention of Parliament and will promote the harmonious

interpretation of Statutes. Likewise S.5 PPC even if it is not restricted to Acts for punishing mutiny and desertion of officers (soldiers, sailors or airmen) in the service of the State or any special or local law (which appears to be its express intention) in my view the same considerations will apply as with S.5 (2) Cr.PC and as such neither sections 5(2) Cr.PC nor S.5 PPC will prevent the Amendment Act from prevailing over the Electricity Act in so far as they are inconsistent.

21. The next issue therefore in my view is that having found that a **part** of a special chapter/section/provision can exist within a general law when the special provisions of a general law passed later in time are inconsistent with an other special law passed earlier in time which would prevail.

22. In the case of **Syed Mushahid Shah V FIA** (2017 SCMR 1218) a detailed, exhaustive and elaborate Judgment was passed by the Hon'ble Supreme court dealing with the consequences of special laws which provided similar, if not identical provisions, and which would prevail.

23. The question of law in that case was whether the Banking Courts constituted under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the Ordinance, 2001) have exclusive jurisdiction to try the offences mentioned therein to the exclusion of the Special Courts constituted under the Offences in Respect of Banks (Special Courts) Ordinance, 1984 (the ORBO), the courts of ordinary criminal jurisdiction under the Code of Criminal Procedure, 1898 (the Code) read with the Pakistan Penal Code, 1860 (the PPC) and from inquiry and investigation by the Federal Investigation Agency (the Agency) under the Federal Investigation Agency Act, 1974 (the Act, 1974).

24. The question, it appears, was whether a special law would trump a general law which was answered in the affirmative and if two special laws were in conflict which would prevail. Generally speaking it was found that the special law later in time on the same subject matter would prevail **however other relevant factors would also need to be considered such as the object, purpose and policy of both statutes and the legislature's**

intention through the language used in the statutes before making a final determination

25. While dealing with the above proposition the Hon'ble Supreme Court seems to have reached the conclusion that where offences in ORBO were not covered in the Ordinance then the cases would proceed under the ORBO **but where the offenses were similar or the same they would proceed under the Ordinance and not under the ORBO**. In reaching this conclusion the court took into consideration factors such as which special law was later in time, the severity of the relevant law on the accused, the question of the banks being able to pick and chose their forums, legislative intent, redundancy of law, parallel proceedings, discrimination, equality before the law, the requirement of certainty in the law for the accused and implied repeal. In this respect I rely on Para's 15-17 on P.1244 onwards of the aforesaid judgment which are set out below for ease of reference.

> 15. "On the other hand, the Ordinance, 2001 established Banking Courts which deal with dispute (civil and criminal) between financial institutions and customers in respect of finances availed by the latter and investigate and try offences stipulated therein. Section 20 of the Ordinance, 2001 indicates that there are numerous elements of each offence, making such offences far more specific than those triable by the Special Courts under the ORBO. Thus, perchance if a customer commits an act which constitutes an offence under any of the provisions of section 20(1) of the Ordinance, 2001 and the same act also constitutes an offence under the ORBO, and but for the Ordinance, 2001 being in force, such customer would have been tried under the ORBO, then it could be said that there was/is a definite overlap between the two laws and the Courts established under the ORBO may not exercise concurrent jurisdiction with respect to those acts / omissions which constitute offences under the Ordinance, 2001. The examples of cases listed above, falling within the purview of the ORBO, demonstrate that they do not extend to customers who are alleged to have committed offences which fall squarely within the purview of the Ordinance, 2001; rather they are restricted to the employees of the banks, any third parties (vis-à-vis customer and financial institution) or in some instances customers but **only** when the act / omission does not fall within the ambit of the offences in the Ordinance, 2001. **Therefore, it is categorically held that the Ordinance, 2001 shall have an overriding effect on all those cases which are covered by it. Concomitantly, offences not covered by the Ordinance, 2001 would be triable under the ORBO.** A comparative analysis shows that generally, proceedings before the Special Courts under the ORBO are more onerous and relatively disadvantageous to the accused. Under the person or a report by a police officer (*as opposed to only a*

complaint by a financial institution under the Ordinance, 2001) the accused is not to be released on bail if there appear reasonable grounds of guilt (*whereas all offences apart from willful default are bailable under the Ordinance, 2001*) most offences are non-compoundable, punishment of the offences is generally of greater severity, the accused and persons acting on his behalf are barred from dealing with moveable and immovable property without permission of the Special Court, the accused can neither leave Pakistan nor be employed for any service without the permission of the Special Court, and there is presumption of guilt and the burden of proof is on the accused.

16. The learned counsel for the respondents have argued that the Banking and Special Courts under the Ordinance, 2001 and the ORBO respectively enjoy concurrent jurisdiction, giving the financial institutions/banks a choice of forum before which the trial should take place; in this behalf they have relied upon section 20(1) of the Ordinance 2001, according to which whoever commits any of the offences made out in parts (a) to (d) would be punishable to the extent mentioned therein, "without prejudice to any other action which may be taken against him under this Ordinance or any other law for the time being in force" [Emphasis supplied]. Provisions enacted 'without prejudice' to other provisions means that the former would not affect the operation of the latter. The 'without prejudice' clause reproduced above can be divided into two parts:- (i) any other action which may be taken against him under any other law for the time being in force. As regards the first part, it means that if a person commits an offence which falls within the purview of Section 20 of the Ordinance, 2001, action can be taken against him under the said Ordinance, including, inter alia, a civil suit filed by a banking company before the Banking Court under section 9 thereof quite apart from action for committing another offence. As far as the second part is concerned, when the Ordinance, 2001 came into force, the ORBO was already in existence. Would this mean that if a person committed an offence which fell within the purview of section 20 of the Ordinance, 2001, parallel action could be taken against him under the ORBO? **The answer depends on the scope of the phrase 'without prejudice'. In isolation this expression would speak to the legislature's intention that a financial institution be not confined to having recourse to only one specific remedy against a customer for offences committed by him in relation to the obligations of the finance availed, but to allow the banking company to choose its remedy. However, we cannot subscribe to this point of view. Were both laws to apply concurrently and permit of parallel platforms for the adjudication of offences under both laws then banks/financial institutions would always choose to initiate proceedings under the more onerous law, in this case the ORBO. Such an interpretation would give banks / financial institutions unbridled power to choose the forum before which trial of offences should take place, and they would obviously choose the Special Courts under the ORBO being more burdensome and prejudicial to the accused (*as demonstrated above*). A natural**

corollary is that in such circumstances the Ordinance, 2001 would, in fact, be rendered redundant. This is not permissible under any principle of interpretation of law when the Courts are trying to reconcile two potentially conflicting laws: our duty is to bridge the gap between what is and what was intended to be. We are not willing to attribute redundancy to the legislature. We do not wish to give financial institutions the unrestricted power to choose, when there has been an alleged dishonour of a cheque, between section 20(4) of the Ordinance, 2001 and section 489-F of the P.P.C., as they would of a certainty opt to initiate proceedings under the latter which offence carries a greater punishment than the former. In this context, the judgment reported as *Waris Meah v. (1) The State (2) The State Bank of Pakistan (PLD 1957 SC 157)* is relevant in which a five member bench of this Court held as under:-

> *In the present case, the question to be determined is whether the impugned Act is ex facie discriminatory, and we have no hesitation in saying that it is. Three tribunals with different powers and procedures have been set up. The Act creating them contains no indication as to which class or classes of cases are to go before a Court and which before the Tribunal and the Adjudication Officer and it does not impose upon the Central Government, the obligation, or expressly confer on it the power, of making rules with a view to classifying the cases to be tried by each of these (sic) tribunals. Nor does it define the principle of policy on which such classification may be made by the Central Government or the State Bank. The Central Government has not exercised its power of issuing any directions to the State Bank or of making any rules under section 27 for carrying into effect the provisions of the Act. The result, therefore, is that in the present state of the law no person who is alleged to have contravened any provision of the Act can know by which Court he is to be tried, and the question whether on conviction he shall be punished with imprisonment or should be punished with imprisonment and fine which may extend to any amount, or whether he should be let off with a mere penalty of three times the value of the amount involved rests entirely on the action that the Central Government or the State Bank may choose to take.*
>
> *It was contended on behalf of the State that in the present cases, it could not be said that discretion had not been exercised in a fair and reasonable manner by the State Bank, in electing to send the cases to a Tribunal. On the allegations, the cases were of a serious character, and merited severe punishment. The mischief of the Act is, however, not susceptible of so simple a cure. It confers discretion of a very wide character upon stated authorities, to act in relation to subjects falling within the same class in three different modes varying greatly in severity. By furnishing no guidance whatsoever in regard to the exercise of this discretion, the Act, on the one hand, leaves the subject, falling within its provisions, at the mercy of the*

arbitrary will of such authority, and, on the other, prevents him from invoking his fundamental right to equality of treatment under the Constitution.

The Constitution declares in Article 5 (I) that "All citizens are equal before law and are entitled to equal protection of law" and Article 4 (I) provides that "Any existing law..... in so far as it is inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void." That duty of declaring that a law is void, for violating a Fundamental Right defined in Part II rests on the Courts. That duty cannot be performed, so as to ensure that a law operates equally in relation to all persons within its mischief, if the law itself provides for differential operation in relation to such persons, not in accordance with any principle expressed or implicit in the law, not on the basis of any classification made by or under the law, but according to the unfettered discretion of one or more statutory authorities.

Here, not only is there discretion in the specified authorities whether they will proceed at all against any member of the class concerned, viz. offenders against the Act, but there is also an unfettered choice to pursue the offence in any one of three different modes which vary greatly in relation to the opportunity allowed to the alleged offender to clear himself, as well as to the quantum and nature of the penalty which he may incur. The scope of the unguided discretion so allowed is too great to permit of application of the principle that equality is not infringed by the mere conferment of unguided power, but only by its arbitrary exercise. For, in the absence of any discernible principle guiding the choice of forum, among the three provided by the law, the choice must always be, in the judicial viewpoint, arbitrary to a greater or lesser degree. The Act, as it is framed, makes provision for discrimination between persons falling, qua its terms, in the same class, and it does so in such manner as to render it impossible for the Courts to determine, in a particular case, whether it is being applied with strict regard to the requirement of Article 5(I) of the Constitution.

In our view such a law has the effect of doing indirectly i.e., by leaving the discrimination within the unguided and unfettered discretion of statutory authorities, what it could not do directly i.e. to treat unequally persons falling within the same class, upon a basis which bears no reasonable relation to the purposes of the law. The Act is, therefore, in our opinion, in relation to its discriminatory provisions, inconsistent with the declaration of equality in Article 5(I) of the Constitution."

17. **In addition to our opinion expressed above about the redundancy of the Ordinance, 2001 (see paragraph No.16), to allow forums under the Ordinance, 2001 and the ORBO to operate concurrently would offend the provisions of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution) which provides**

that all citizens are equal before the law and are entitled to equal protection of the law; there being no defined guidelines on the basis of which cases may be tried under either law, it would tantamount to conferring unfettered discretion on financial institutions to pick and choose the forum as per their free will. Allowing them to do so would be violative of the rule against discrimination therefore we deem it best to restrict the applicability of the ORBO and hold that the Ordinance, 2001 is to have an overriding effect on the former. Furthermore, Article 4 of the Constitution confers upon the citizens the inalienable right to enjoy the protection of law and to be treated in accordance with law. This provision is reflective of the seminal concept of the rule of law, one of the elements of which is, as identified by Tom Bingham, that the law must be accessible and so far as possible intelligible, clear and predictable. If both the Ordinance, 2001 and the ORBO were to enjoy concurrent jurisdiction, citizens alleged to have committed an offence in respect of finance would be left wondering which offence they would be charged with, which Court they would be tried in and under what procedure. Thus, to our minds, such a situation would also be an affront to the provisions of Article 4 of the Constitution."

26. In comparing the sections which start off a prosecution for electricity theft S.50 and 50 (A) of the Electricity Act read as under,

"**S.50. Institution of Prosecutions**. No prosecution shall be instituted against any person for any offence against this Act, or any rule, license or order there under, **except at the instance of the Government or an Electric Inspector, or of a person aggrieved by the same.** (bold added)

S.50-A. Cognizance of offences, etc.—(1) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act.
(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any Magistrate of the first class to pass any sentence authorized by this Act.

27. **Whereas S.462 (O) of the Amendment Act reads as under:**

"**462O. Cognizance.** (1) The Court shall try an offence punishable under this Chapter.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the Court shall not take cognizance of an offence under this Chapter **except on a complaint made, with reasons to be recorded in writing along with full particulars of the offence committed under this Chapter, by duly authorized officer (not below Grade 17) of the Government or the distribution company, as they case may be."**

28. Thus, it would appear from the language used in terms of initiating a prosecution that S.50 and S.50 (A) of the Electricity Act can be saved in so far as such sections will continue to apply to an aggrieved person and as such will not be rendered redundant which will also achieve a harmonious interpretation between statutes (Electricity Act, NEPRA on the one hand and the Amendment Act on the other) especially **if** KE can be seen to be an aggrieved party. As I believe we need to also take a holistic view of electricity theft I have also taken into consideration the fact that the Amendment Act will apply to the whole of Pakistan and it seems that theft by consumers is higher in Sindh as opposed to Industrialists etc and vice versa in the Punjab and being a Federal legislation since it appears that the greater amount of electricity theft occurs in the Punjab (through Industrialists/business as opposed to consumers) it may be that the Amendment Act will be more effective in that province (which is the largest province in the country and where apparently more electricity theft is made) which may lead to it achieving its overall objective of reducing electricity theft throughout Pakistan which appears to be quite rampant and causing a colossal loss to the State based on the statistics mentioned in the statement of objectives and reasons behind the passing of the Amendment Act.

29. In my humble opinion the Amendment Act is later in time, it has been passed by Parliament specifically because the provisions in the earlier Electricity Act were deemed to have failed through a statistical analysis of the effect of the prosecution of electricity theft under the Electricity Act and thus can be seen from its statement of objects and reasons the object, reasons, purpose and policy of Parliament in promulgating the Amendment Act **was to override** such provisions in the Electricity Act which Parliament had deemed to have failed in preventing electricity theft, that the language in the Amendment Act is absolutely clear and does not require interpretation and as such the intention of Parliament is also absolutely clear, that the crime is one which is of a serious nature and grave concern to the State and its citizens and needs to be dealt with through deterrence as envisaged in the Amendment Act by a harsher punishment as such in my view the Amendment Act, **when all the above factors are taken together**, will prevail over the Electricity Act , NEPRA and CSM in so far as the

Electricity Act provisions are inconsistent with the ones in the Amendment Act since this is the intention of Parliament by passing the Amendment Act into law. It is not for the courts to judge the validity of the Amendment Act based on how effective it may be in preventing electricity theft, whether its process is more cumbersome than under the Electricity Act or whether it will lead to the reduction in electricity theft through its mechanism dealing with electricity theft as opposed to the Electricity Act. This remains to be seen and if indeed the Amendment Act is considered to be a failure in achieving its objectives, reasons and purposes Parliament may, in its wisdom speaking through the will of the people, make appropriate changes, amendments or even repeal the same as it deems fit in order to successfully tackle the menace of electricity theft.

30. Thus, in my humble view the areas which are covered in terms of electricity theft in the Amendment Act will prevail over those contained in the Electricity Act in so far as they are inconsistent and such provisions of the Electricity Act will be hit by the doctrine of implied repeal. Where such provisions are **not** inconsistent then the provisions vis a vis electricity theft in the Electricity Act will remain in the field and will be applicable and as such neither pieces of legislation will be rendered redundant and both pieces of legislation will be saved as in some cases the Electricity Act will apply (through an aggrieved party) and in other cases the Amendment Act will prevail. In this respect reliance is placed on **Waqar Zafar Bakhtawari V Haji Mazhar Hussain Shah** (PLD 2018 SCMR 81).

31. **I also find that since the intention of Parliament was to make the sentences harsher under the Amendment Act for electricity theft in order to deter electricity theft which as indicated in the statement of Objects and reasons to the Amendment Act is causing a huge loss to the State and needs to be deterred that in the event that an action is taken by an aggrieved person under the Electricity Act on conviction the sentence which may be imposed on him/her/it will be those imposed under the Amendment Act as opposed to the Electricity Act as in my view the Amendment Act's intention was to be a deterrent piece of legislation and not beneficial legislation and thus the rule of beneficial interpretation will**

not apply. This will ensure equality before the law and non discrimination in terms of sentence/punishment in cases of electricity theft whether prosecuted under the Amendment Act or the Electricity Act as guaranteed by the Constitution.

32. Before parting with this note I have observed that there are many illegal electricity connections in Karachi which are quite obvious and brazenly and openly operated by way of the kunda system. They are not hidden and the areas where this takes place are well known to Karachi Electric (KE). Even if the KE is unable to successfully prosecute such offenders (which seems to be the case) at a **minimum** it should remove such illegal kunda's which are able to be removed by not entering into someone's premises to ensure that citizens who pay for their electricity are not penalized through higher bills or load shedding on account of those citizens who choose to steal and not pay for the same and fully utilize S.20 of the Electricity Act and other provisions of NEPRA and the CSM for this purpose. Likewise in terms of recovering outstanding dues from electricity defaulters the KE has sufficient powers under the Electricity Act, NEPRA and CSM to recover the same which must be applied strictly and vigorously and pursued until recovery is made or disconnection of the electricity supply is made so that the law is implemented in both letter and spirit. In terms of recovery from defaulters therefore the KE must adopt a more vigilant and robost approach as permitted by the law.

33. I find the usual excuse of KE for not taking such action against those who are brazenly stealing electricity due to a potential law and order situation unsustainable. The KE may seek the assistance of the provincial government, police and even if need be request the Rangers or any other law enforcement agency to prevent such theft (for example in the most basic case simply by cutting the illegal kunda lines down where entry on a premises is not needed) if they consider that a law and order situation may arise who can then regularly patrol the area to ensure that such kunda's are not brazenly put up again in violation of the law. If the provincial government is unable to prevent a law and order situation through the implementation of the law in areas where it is being brazenly and openly violated then in my humble opinion it should question it's ability to provide good governance to its citizens as such laxity on its part detracts from the rule of law and

only encourages citizens to break the law with impunity knowing well that they will get away Scott free with their crimes which attitude concerning obedience to the law may spread like wild fire throughout the province if not expeditiously dealt with in a firm manner. Quick prevention, if not early prosecution, is therefore possible if the will and determination exists with those at the held of affairs once a request for assistance is made by KE. This is more so since Article 5 of the Constitution provides as under;

> "5. Loyalty to State and obedience to Constitution **and Law**.
> (1) Loyalty to the State is the basic duty **of every citizen.**
> (2) Obedience to the Constitution **and law** is the [inviolable] **obligation of every citizen** wherever he may be and of every other person for the time being within Pakistan".