

SPECIAL CIVIL LAWS IN BALOCHISTAN

(Second & Enlarged Edition)



Muhammad Akbar Azad



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(Second Edition)
(Revised, Enlarged and brought up-to-date)

BY:
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BALOCHI ACADEMY
QUETTA.

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DEDICATION

To my late father

Qazi Noor Muhammad, Tehsildar

Who exhorted me to concentrate on doing justice,
rather than becoming Mr. Justice.

FOREWORD

Having known Mr. Mohammad Akbar Azad since from mid seventies, I acceded with pleasure his request that I should write Foreword of the present Edition of his Book covering and containing exhaustively the subject of Special Civil Laws in Balochistan. It is his second attempt in the relevant field. Mr. Mohammad Akbar Azad passed law graduation with distinction from the University of Karachi during the year 1969.

Concerning Balochistan, he has already contributed a lot in history, culture, traditions, literature, and law as well as in his capacity as a social and political worker. He has tremendous distinctions in his credit in the legal circle too. Law has been his specialisation which has been appreciated by all the concerned.

Balochistan has not been understood rather misunderstood especially by the high-ups which has caused and occasioned addition of multiple miseries, difficulties and troubles for the general public. Even the field of Law has not been immune. This part of the region before Referendum of 1947, and Accession to Pakistan during 1948, witnessed harmony and observance of human value and rights which deteriorated ever since and presently the law and order situation has gone from bad to worse. If the law, rule of law, is considered supreme, then law ought to be logical, reasonable containing true representation and aspiration of the people of concerned area. Dawn of era is manifested and associated with the promulgation of laws which are simple in manner and shape and are enforced and observed by the general public in spirit and essence. The laws prevalent; most of them do not serve the purpose and object. Simplicity of law in the language of a common man is likely to achieve the objects, which regulates day to day affairs in their life for which a state has vital role to play.

The Author has done his best so as to cover the past, the day's gone by. I wish that in future he would contribute so as to

put the affairs in its right directions for the benefit of all concerned.

All alike will, I am sure, welcome a book which deals with the subject thoroughly and in a simple manner utility of which would remain evergreen.

Quetta,
February 2009.

SIDDIQ BALOCH
CHAIRMAN
BALOCHI ACADEMY
SHARA-E-ADALAT, QUETTA.

PREFACE TO FIRST EDITION

Prior to Independence in 1947, in former *Riasat Kalat Shariat* was the only rule of law in all civil disputes but there was no written civil law in the State. However, upon formation of Balochistan States Union in 1952 *Dastoor-ul-Amal Diwani Riasat Kalat* had been promulgated and *Shariat* accorded judicial recognition for the adjudication of civil disputes in between the Muslim parties, extending thereby also due regard to the minorities of the area who could approach *Jirga* or *Panchayat* as regards the settlement of the controversies.

The law of "*Dastoor*" is still being administered in the former area of *Riasat Kalat*; and *Shariat* once again shown profound respect on the eve of promulgation of Balochistan Civil Disputes (*Shariat Application*) Regulation, 1976, which extended to Provincially Administered Tribal Area of Balochistan. The cumulative effect of both the statutes would indicate that the *Shariat* is adhered to so far as administration of justice is concerned. But I could not lay my hand on any book containing the subject which fact inspired me to do the task and make an effort regarding thereto.

From the view point of a jurist commentary on the law of *Dastoor-ul-Amal*, 1952 has been prepared and the comparison thereof carried out with other related substantive and procedural laws. Judged merely for academic discussion it would be of some value. The application of rules of interpretation may be of great assistance so as to see and examine its true perspective in furtherance and betterment of administration of justice, especially in the area of defunct *Riasat Kalat* where this law has since been in-force for a considerable period of time.

All the authorities of different superior Courts are in English language and they have been compiled Section-wise so as to elaborate the law laid down there under. Compilation of the precedents would find certain sections of "*Dastoor*" such as 8, 9, 10, 13, 14, 16, 18, 19, 21 and 26 without any positive result. Despite best efforts I did not come across or may be through

oversight I could not find any. Accordingly I would request my worthy readers that related therewith and also with scope of improvement of the next edition, any suggestion or assistance by them would be highly appreciated.

It is hoped that this exercise will be found a sure aid in understanding the concept and concern of this special law of *Dastoor* which is unparalleled in the annals of statutes of Pakistan, and expected to be a practical utility to the Bench and Bar as a ready referencer, as well as to the law students and fresh entrants to the legal profession also the readers who desire to grasp this peculiar enactment.

My thanks are due to my friends who allowed me to use their libraries freely. I received their valuable assistance from my colleagues without whose cooperation it would not have been possible to obtain and collect the material in such a short time.

I express my humble gratitude among others especially to Mr. Azizullah Sheikh, Barrister-at-Law, Mr. Talmiz Burney, Advocate, and Mr. Ehsan-ul-Haq Khan, Advocate, whose advice and assistance I have sought from time to time which has always been so freely given and by their beneficial guidance which has been of immense value in the completion of this book on Special Civil Laws in Balochistan.

The author expresses his deep sense of gratitude to Mr. Mohammad Khan Raisani, Principal, University Law College, Quetta for his kind permission to publish in this Edition the esteemed Foreword which he has so graciously contributed.

Expecting that the labour put in this edition will be appreciated.

QUETTA,
January, 1990

MUHAMMAD AKBAR AZAD

PREFACE TO THE SECOND EDITION

The First Edition of this Book published during 1990, since served general demand of the public and utilised by all especially the legal circle. Before publication of such kind of Book which contained Urdu version of relevant law: *Dastoor-ul-Amal Diwani Kalat*, its text was not easily available and a carbon copy thereof remained in use and requirement, during the intervening period as then Plan Paper Copier (Photostat) was in the process yet to be developed. The Book of First Edition was handy and occupiers thereof frequently changed hand to be detriment of its genuine buyers, and as per version of Mr. Jamil Ahmad, Librarian of Balochistan High Court, only one copy thereof remains available which he has since been keeping and maintaining under lock and key.

The First Edition of the Book stands exhausted whereas the need and requirement of interested persons remained unfulfilled as well as alternate on the subject reported not to be available in markets and libraries. Considering and keeping in view the requirement of the general public towards such kind of valuable and historic document related therewith Aseer Abdul Qadir Shahwani, General Secretary of Balochi Academy through a letter sought permission for the reprint and publication of the such kind of Book, which prompted and inspired this Author for reshaping and restructuring the material thus available, and has undergone exercise to add into its contents which has created and formed it in an enlarged, revised and up-to-date shape so that all the queries on the subject are answered and responded.

The developments relating to Special Civil Laws in Balochistan during these fluctuations manifest great study and close encounter in original perspective, whereas this is merely an attempt in that direction likely to be beneficial to the general public as well as legal circle.

This Book enshrines the concept of SPECIAL CIVIL LAWS IN BALOCHISTAN with latest views and dimensions with an object that public in general, especially legal circle including students

of law shall understand and appreciate the legal phenomena and procedure and implication of such kind of law. This Book is intended primarily to supply to the need of a comprehensive textbook for the researchers. The purpose of this Book is also to satisfy this demand.

I am quite save and confident that by printing and publication of such kind of Book by Balochi Academy would meet the desired object which would add further in its assets and already acquired sound reputation and esteem. The material thus incorporated in the Book is likely to serve for a considerable period of time which process likely to remain continuing when under the changed and varying circumstances till a fresh view as such emerges which probability always maintained and perceived in the annals of history.

Happy is the person who can look back upon his work, and claim that he has done a little towards this. Expecting that the labour put on this Edition will be appreciated by all the concerned.

NEW QUETTA,
February, 2009.

MUHAMMAD AKBAR AZAD

ACKNOWLEDGEMENT

The Author expresses his deep gratitude to Mr. Siddiq Baloch, Chairman, Balochi Academy for his kind permission to publish in this Edition the esteemed Foreword which he has so graciously contributed. My thanks are due to all friends who subsequent to publication of First Edition appreciated and encouraged the Author, especially Professor Abdul Saboor Baloch, Chairman Balochi Department, UoB, as well as others who made suggestions for incorporation further relevant material in the next Edition. I owe a particular debt to Aseer Abdul Qadir Shahwani, General Secretary, Balochi Academy who for and on behalf of Academy inspired and prompted me to undertake the responsibility in reshaping and restructuring the valuable and historic material and documents. Manifestly it is on account of Mr. Muhammad Baqir Majeed in turning the daydream into reality who voluntarily undertook the assignment and associated himself with the technical task and assistance of programming in the field of Microsoft, by making efforts day and night, with a view and object to render services for the humanity in the field of knowledge and literature especially law which has been his favourite subject, by acquiring LL.M. degree from University of Karachi. We come across few years back when I was Law Teacher and he happened to be my student; and in the process of completion of this Book, we joined hands to win the marathon. I owe gratitude also to Shay Ilyas who from the core of his heart has designed title cover of this Book by making it marvellous and fascinating. Last but not the least, I express my thanks to critic circle for their valuable suggestions, since embodied in evaluating the standard.

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CHAPTER 1

THE PRESENT PROVINCE OF BALOCHISTAN: AT A GLANCE

The Province of Balochistan was established on July 01, 1970. The President and Chief Martial Law Administrator, General Agha Muhammad Yahya had promulgated Dissolution of One-Unit Order (Order No. I of 1970) whereby province of West Pakistan dissolved and four new provinces including Balochistan were created. Prior to dissolution this area comprised of Quetta-Kalat Region, consisting of two revenue Divisions, which were established on the formation of One-Unit i.e. on 14th October 1955, when this region was divided into four types of areas viz. Tribal, Leased, British Balochistan and Kalat States, though commonly it was styled as Kalat States whereas the same included autonomous States of Kalat, Kharan, Mekran, and Lus Beyla. Kalat was ruled by His Highness Khan of Kalat, Kharan and Mekran by Nawabs and Lus Beyla by Jam. Kharan, Mekran and Lus Beyla had acceded to the Dominion of Pakistan by executing separate Instruments of Accession on 17th March 1948, while Khan of Kalat did so on 27th March 1948. These States enjoyed independent status meanwhile soon after creation of Pakistan. In 1951 these States joined together and formed Balochistan States Union BSU which continued functioning up till formation of One-Unit of West Pakistan.

On the occasion of partition of India this region was controlled and governed by a single person, a British stationed in Lytton Road at Quetta with four different portfolios. He acted as

Agent to the Governor General (AGG) for Tribal areas, Chief Commissioner as well as Revenue Commissioner, in revenue matters, and Judicial Commissioner in judicial cases relating to British Balochistan, Resident for Leased Area and in the capacity of 'Lord' (*Lath Sahib*) concerning princely Kalat States. He was having four different uniforms and dresses to be used and utilised by him in his capacity so necessitating for the particular occasion including meeting of the public, dignitaries and managing governmental affairs. After independence and till formation of One-Unit this infrastructure of the system continued. The Residency converted into Governor House on 1st July 1970 when Province of Balochistan came into existence which lies between longitudes 61-71° E and latitudes 25-32° N. It is bounded by Iran from the western side, Afghanistan from the north, Arabian Sea from the south and provinces of Sindh and Punjab from the east. A small area on the north of Zhob is adjacent to NWFP. Highest peak of Takhat-e-Suliman in Zhob district is 11,292 feet above sea level. The Head office of Geological Survey of Pakistan is situated at Quetta. Hottest places in Pakistan: Dhadar, Sibi, Sui, and Dalbandin are situated within. Mehrgarh civilisation dates back about 5000 years B.C. Northern part of the province falls under South East Asia region and a member of Economic Co-operation Organisation ECO. Seismic zone also covers its northern portion. About 35,000 people died during earthquake of Quetta in 1935.

As regards religio-ethnic composition, the population of Balochistan is predominantly Muslim. The word 'Balochistan' first appeared in Abul Fazal's *Akbar Nama*, compiled in 1588 A.D. A sizeable population of minority religious groups includes Christians, Hindus, Sikhs, Parsis and Bahais. The five major ethnic groups are Baloch, Pashtun, Brahvi, Kurd, and indigenous population. These ethnic groups, by and large, reside in geographically defined areas. The Pashtun reside in the northern parts, the Baloch are predominantly in the north-west to south-western part of the Province, the Brahvi inhabit the central

regions and the Kurds reside Bolan Pass. The other smaller socio-linguistic groups are Siraiki, Punjabi, Urdu, Persian, Gujrati, Sindhi and Hazargi. There is still clear polarisation among different ethnic groups in the Province. Polygamy is practised but divorce is scarce. The tribal society is based on the concept of mutual benefits and losses. The political, economic and social nucleus is the tribe, whose structure is firm and permanent for the good of every member.

Each group is divided into sub-tribes which is further sub-divided into clans and clans are made up of lineage. Each of these layers is headed by Sardar or *Malik* and *Khan* who represent the community and provide mechanisms for collective decision making and mediation of disputes within the community. The tribe is headed by chief called Sardar. During the colonial rule, Sardars were made responsible for administration of justice and maintenance of law and order and were paid by the British to raise and maintain a tribal militia force under British command. Although the government in 1976 abolished the Sardari system, the power of the tribal chiefs, derived from the vertical alignment of kinship organisation, still remains intact. Of these the Baloch and Brahvi tribal chiefs are influential in tribal affairs. The Pashtun tribe is egalitarian, without any central authority, though political organisation is based on the kinship system. Each tribe has its own culture and tradition. In rural Balochistan the norms of joint action and collective effort making have become institutionalised in the form of *hashar* (collective action to help one another at the time of high labour demand), *Bijar* or *Sargasht* (financial contribution extended to the bridegroom during marriage), *Purrs* or *Khairat* (the support given in cash or kind to the aggrieved family on the death of a member) and *Pory* or *Tawaan* (penalty in kind or cash fixed by the *Jirga*, to be given by the aggressor to the aggrieved). *Jirga* is the most important institution for conflict resolution in all the tribal organisations. The tribal society is organised around the kinship system. On occasions like weddings, births and

deaths, friends and relatives offer cash and gifts based on reciprocity. There are fissure tendencies where *badal* (revenge) leads to blood feuds. The institutions of *merh* and *namwati* provide the mechanisms for resolution of blood feuds. The persistence of tribal politics and the continuing power and influence of local Chiefs/Sardars has been seen to influence the working. The tribal set up prevailing in the Province, where resources are owned by a few wealthy people and decisions are made by the tribal chiefs, is a major hindrance in the way of people's participation and benefits distribution. Ordinary people, especially the poor and women, have least access to information, services and economic opportunities, and are thus marginalised. Physical conditions, such as long distances, scattered population and difficult terrain have further aggravated the socio-economic condition of rural people and population increase in the Province. This all has resulted in many people in the Province living below the poverty line. The poverty situation is further aggravated by the low level of awareness, illiteracy and poor system of communication.

Balochistan Province is one that is modelled on the authoritarian structures governing the relationship between men and women. The social status of women and their economic role is not fully recognised. The existing scenario is changing due to education, urbanisation, social mobility, and mass media. Studies show a poor nutritional status and a higher mortality rate amongst the women. In poor households, chronic malnutrition is more prevalent among the girls as compared to their male counterparts. Subordination of women is also reflected in the denial of women rights in matter of property and inheritance, which are recognised in Islam. The consequences of '*purdah* and restricted mobility' restricted access to education and health facilities. There has always been a less concerted effort paid to women's need for support in the productive sectors of the economy such as agriculture, livestock, fisheries, and industry. Even in family affairs and matters, which are

predominantly the concern of women, men monopolise decision making. Balochistan has an extended family structure and the size is usually large. Women are responsible for all domestic tasks and raising the family. Marriages are generally endemic. The preference for close kin is to keep and assist within the family. *Walwar* or *Lab* demands in Pashtun and among the Baloch practised only in sub-tribes vary. The *Walwar* demand is negotiable depending upon the socio-economic status of the girl's family, her age and beauty. Women's status rises with the birth of children especially a son. Girls have no real role to play in the choice and marriage contract, even though the Islamic *Shariah* permits her to reject the proposal. However, kinship and lineage play a predominant role in fixing marriages in Balochistan. Income generating pursuits, women produce handicrafts like caps local rugs, straw mats from dwarf palm, embroidered dresses, mostly for home consumption and rarely for commercial gains. The wages earned by women are not rewarding enough against their hard labour in needlecraft and agriculture. The petty cash earned is spent on food, children, and jewellery, and for buying raw material. Women's poor health affects the health status of their children. The Province is rich in herbal medicinal plants and women are custodians of indigenous herbal medication. However, traditional remedies are fading out, as a result of indiscriminate uprooting. Water is of tremendous importance in the life of rural women in Balochistan. Women have to travel long distances in repeated trips to bring water on their head, back or on the backs of donkeys. The quality of available water is often very poor. About 87% of the population in Balochistan do not have access to hygienic drinking water.

Quetta, Sibi, Mastung and Hub are multilingual cities. Inter-marriages between different ethnic groups are common, and have become the order of the day. Dignitaries of indigenous and semi-indigenous use the name of the tribe or clan as a suffix while commoners attach the name of their respective ethnic

group. Special dishes are: *Sajji, Khad-da kabab, daash-roti, La-andhi, Ro-sh, Shulli, Kok, Kormu* and *Shorambay* etc.

With the arrival of British troops and persons a vast majority of people also penetrated this part of the territory as a working force. They helped in Railway line construction of Sibi-Harnai, Katch-Bostan-Quetta, Sibi-Quetta via Bolan Pass, Quetta-Chaman and Quetta Zahidan. Among them were traders, craftsmen, men of trade as well as learned ones. They were treated as non-indigenous and expression of 'Domicile' was subsequently conceived as regards them. These non-indigenous also provided bureaucratic structure for the invaders. Hottu Ram throughout remained accompanying Robert Sandeman and based on his diaries compiled the book: *History of Balochistan*. Diwan Jamiat Rai, C.I.E., D.B., R.B., also compiled: *Customary Laws for Balochistan*.

When Sir Robert Sandeman breathed his last at Lusbella in 1892, almost whole of the region was under the control and superintendence of British Empire. His successors also played an effective role and control over the subject in the implementation of laws. Laws were supreme and no criminal ever went unpunished.

Quetta declared as capital of new province of Balochistan on 1st July 1970. Presently Quetta has been turned into cosmopolitan city, and people from every walk of life reside. It is multi-linguistic, and every regional culture and society is represented. However, the original residents are in possession of documents that show their forefathers having lived in seven - type houses, which construction was a mandatory requirement after the great earthquake of 1935 when more than 35,000 persons perished. At three minutes passed three on the morning of the last day in May, the ground under the British-Indian city heaved and pulverised itself to rubble. In the space of thirty seconds people died. Quetta, the largest garrison town in India, contained 12,000 soldiers and, the shock did not to any considerable extent penetrate to the cantonment in which they

lived. Led by their dynamic commander, Major-General Henry Karlake, they performed miracles of rescue works. The Parsis had built it from Shaal to Quetta. It is a strange incident that on the days of *Eid* only the native population can be seen, and the others since gone to their dwellings in other parts, and the streets look deserted as if the majority of the population has disappeared or gone underground.

Founder of Pakistan, Muhammad Ali Jinnah on 14th February 1948 at *Jirga* Hall Sibi, on the occasion of *Sibi Shahi Darbar*, said that under the authority of new Muslim State, while addressing members of *Shahi Jirga*, Sardars and other leaders of former British Balochistan excluding Balochistan States of Kalat, Kharan, Mekran and Lusbella who had yet to join new Dominion of Pakistan, among other matters of national importance, he had not for one moment allowed the affairs of the Balochistan to slip out of his mind. He had thought and thought, considered and pondered over the ways and means of improving the people of the Province and enabling them to secure for themselves the same position and the same political status within the polity of Pakistan which were open to their brethren in other Province as far as they could be brought about as practical position. Old Government of India had kept Balochistan divided in several parts, each with a different name and status, all bound together in shackles of backwardness consequently the people remained in a static position educationally, economically, socially and politically. In his speech he assured that all agreements and allowances would continue until such time they could be modified after consultation with them and that departure of British Authority had left several gaps in the judicial and administrative machinery. The relations of the Government of Pakistan with the tribes were reaffirmed. Orders were passed declaring that all laws that were in force in the administered areas, tribal areas including Marri and Bugti *Tumans* and Baloch areas adjoining the Dera Ghazi Khan District of Punjab (which were not

included in Balochistan) would continue to be in force and all subsidies and allowances hitherto paid would continue to be enjoyed by them. He further said the Constituent Assembly may take some time to accomplish its task of framing the Constitution of the State meanwhile something was to be done to enable the people to share the responsibilities of their Government and give them a voice in its administration. He spoke that after careful considerations had decided to make move immediately to enable the people to associate themselves with the governance of their province of setting up representative form of Government and for those purposes he had decided to constitute a Governor General's Advisory Council whose members will be nominated but will not be representative body. It will have the power to advice the Governor-General on any matter which in its opinion is connected with the good of the province. Similarly the Government will refer any matter which may come through Chief Commissioner for the opinion and advice of the Council. The budget of the province to be checked and scrutinised first by the Advisory Council in all its details and it will be free to submit its recommendation to the Governor-General. All plans for the future political, economic, social and educational development to be prepared and submitted through the Advisory Council and the Governor-General to see that all these plans were implemented.

Balochistan has been going through trial and turmoil for the last more than six decades. The British intervention in 1839 changed the entire socio-political spectrum. The partition of the sub-Continent also brought unpleasant changes. Living a tribal and traditional environment, the people could not benefit from fruits of independence. After a controversial decision of *Shahi Jirga* during June 1947 when exercise of option was oral, to join the newly created country Pakistan. Balochistan and its people continued to be ruled for a long time by representatives of Central government in disregard of political and economic rights of the people.

The Frontier Crimes Regulation, 1901 (hereinafter referred to as FCR) was promulgated on 18th September 1901, for the suppression of crime in certain frontier districts. Council-of-Elders consisted of three or more persons convened according to the Pathan, Baloch or other usage as per directions of the Deputy Commissioner concerned, or by an authority designated by him as such. Where the Deputy Commissioner was satisfied, from a police report or other information, that a dispute existed which was likely to cause a blood-feud, or murder, or culpable homicide not amounting to murder, or mischief, or breach of peace, or in which or any of the parties belong to frontier tribe, after stating the grounds of his being so satisfied, could have referred the dispute to a Council-of-Elders requiring the Council to come to a finding on the matters in dispute after making such inquiry as be necessary and after hearing the parties. On receipt of findings the Deputy Commissioner could have passed appropriate order as regards passing of decree and imposition of punishment or fine as well as could have remanded the case. This provided in a way the areas defined and demarcated "A" areas while the rest considered as "B" area. From time to time "A" area extended and enlarged where Police was the Investigation agency while in "B" areas this duty performed by Levies Force. The application of provisions of FCR had also given rise to demarcation of "A" area and "B" area. By "A" area it was understood to mean thickly populated areas such as cities, bazaars, government installations and buildings where police was generally concerned with law and order situations and incidents; while "B" area consisted of bulk area where Levies Force remained functional from lodging of the report to trial of offence by the appropriate forum, be that *Jirga* or common law courts. This institution of Levies had been introduced in this country by Sir Robert Sandeman who had known the same while posted at Dera Ghazi Khan prior to his intrude in this part of the territory. This distinction of "A" and "B" area persisted till recently when some of the notables were in receipt of allowance

having been extended by the colonial rules. When the provisions of FCR were operational it carried with it tribal responsibility and liability.

Upon formation of Balochistan States Union in 1952 *Dastoor-ul-Amal Diwani Kalat, 1952*, was promulgated which is still enforce in some parts of the former areas of Kalat States. Under the provisions thereof the *Qazi* is trial court and first appeal provided before *Majlis-e-Shoora*, whereas the second lies before High Court.

Balochistan Civil Disputes (*Shariat Application*) Regulation, 1976, has been enforced in the tribal areas. However, a suit against the government required to be instituted before a District Judge. In former British Balochistan and Leased Area, the provisions of Civil Courts Ordinance, 1962 are attracted whereunder Courts of Civil Judges and District Judges created, and before the competent forum suit required to be instituted.

By virtue of latest Notification dated 7th November, 2007 issued by the Law Department, Government of Balochistan, thirteen Judicial Districts have been established in the province. Each District is headed by District & Sessions Judge. It is principal court of original jurisdiction, usually in other civil and criminal matters acts as first appellate court. In the areas where *Dastoor-ul-Amal Diwani Kalat*, and the Balochistan Civil Disputes (*Shariat Application*) Regulation are enforced, he acts as Chairman of *Majlis-e-Shoora* with Members, the quorum requiring at least one, who join and assist in order to arrive at a decision.

Before partition of subcontinent the classification and distinction of these tribes or population whether indigenous, semi-indigenous or non-indigenous was of little importance, and consideration as great harmony existed in between them. Seeking of a job was not a difficult task then. Educational institutions were available at the required places for population. Documentation was not a necessary element as the personalities were recognized and known. Former Kalat States remained aloof

from such kind of discrimination and classification. After creation of Pakistan another class of population entered in this region, who was immigrants from India and Kashmir. The required and were in search of Pakistani Citizenship Certificates, who were issued domicile resident of Pakistan citizenship certificates, where-after 'domicile' word coined for the population which was non-local i.e. not belonging to indigenous tribes. The immigrants from Dera Ghazi Khan fell under this classification as well. The distinction between these two classes of residents still observed whereas in the all other Provinces of Pakistan Citizenship Certificate (Domicile) issued to the concerned. However, to the needy Permanent Residence Certificate PRC are issued.

Balochistan, its people and problems have generally not been understood in its true perspective rather misunderstood. This aspect of the matter also covers women's rights and legislation. Pushtoon, Baloch, Brahvi and other indigenous tribes/semi-indigenous tribes observe tribal and customary laws. Tribal societies exists not only this part of the region i.e. Balochistan, Afghanistan, Derajat and Sindh etc. but also aboriginal in Australia, Chakma tribes in Bangladesh and Red Indians in America, Eskimo in Siberia, and many others. In the areas, which are vast but population less or scare, tribalism flourished. The difference and distinction is visible from the fact that in those peculiar areas, the evidence may not be forthcoming readily, which reason and aspect has compelled the respective tribes to observe their own rules of society, best suited to their condition, needs, circumstances and environments. Inheritance problem have forced them not to enter into inter-marriages, as the aliens are likely to disturb or usurp their already limited means of resources and incomes. Where we refer women's rights which covers this aspect of the matter that no harm is caused to them or their rights being effected. Our tribal society is fortunate in the sense that women are well protected and their right based on Human Rights, throughout safeguarded. Both the partners of

life share equally in managing domestic and family affairs including their children's future. In few cases the women might have been victimised here but there cannot be a comparison with Punjab where such kind of incidents do occur, and reported frequently. There the women being disgraced publicly which is unthinkable phenomenon in the tribal society. It is untrue that here right of education being denied to them but illiteracy is on high rise but they do have no access to educational institutions and schools. Even BBC had reported that in Khanozai town girl's literacy rate is 100%. *Walwar* and *Lab* are not major problems as compared to *Jahez* for girls as far in other parts of the country. The practice of receiving bride price has diminished considerably, and the girls are married at the marriageable age whereas in cases of *Jahez* usually marriageable stands bypassed.

Siahkari or *Karokari* is a vast subject and a detailed discussion thereon not undertaken due to insufficiency of time factor and the subject being vast but suffice to say that such matters and cases are dealt with locally, and as per customary laws. Our courts are generally inapt and incompetent to solve these cases in an appropriate manner, and to settle matters which are auxiliary therewith or ancillary thereto. In former Kalat States such kind of incidents and involvement were appropriately dealt with under the provision of Kalat Penal Code, 1952, which law had been replaced by the Pakistan Penal Code, and despite arranging and holding of numerous seminars and workshop, no solution of the matter is in the sight. British rulers were conscience of the fact that in the local administration concerning *Riwaj* and customary laws, there should be less intervention, but the absolute change of legal horizon have compelled interested on certain occasion even to refrain from reporting such kind of incidents to the law enforcing agencies. Maintenance of law and order is concurrent subject as provided under the Constitution of Pakistan, and in tribal society or setup such as in this Province, promulgation of local laws by the appropriate legislature is likely to tend to minimise sufferings of

the women folk. In "B" areas the women under trial prisoners are detained in the residences of notables, and after awarding of the sentences transported to jails, and in Levies areas Women Police force has not been employed or organised. Legislation is warranted so as to safeguard and protect the rights of women in all field including Human Rights. The redeeming factor is that in this part of the region they are otherwise socially and culturally well maintained and looked-after, and apart from being individual, they are part and parcel of sub-section/selection/clan of their respective tribes.

In the great game between the British Empire and Tsarist Russia, the driving Russian ambition to reach the warm waters of the Gulf and the Arabian Sea was effectively checkmated by Britain. Before the Age of Europe dawned, trade between Asia, Europe and Africa moved mostly along the land routes. This overland trade route also brought fame and fortune to the fabled cities of Heart, Bulkh, Bukhara, Samarkand, Kashgar and others and was used to bring Silk, tea and lacquer from China and spices and textiles from the subcontinent into European markets and whet their appetite for the riches of Asia. Depending upon the conditions of war and peace of the countries along the way, some of that trade from the landmass of Asia also crossed the Persian Gulf and Arabian Sea into Arabia and through the Mediterranean ports in Levant and North Africa, would regularly arrive at various European destinations.

As the Age of Conquest started, Britain, the Netherlands, France and Russia went on acquiring territories away beyond their borders. In the subcontinent, as Britain was moving north from Calcutta, Russia had started its southward expansion from Moscow and been absorbing the Khanates of Central Asia. By the middle of 19th Century both empires had arrived to meet each other, except for the buffer, the Afghanistan. Sitting at its end point and junction with world markets, Pakistan's Arabian Sea coast along Balochistan has great potential. The jewel that had decorated the British Empire now adorns the Federation of

Pakistan. But Pakistan could benefit from this potential only when the overland route is revived and Central Asian rail and road networks and energy infrastructures are linked by its most direct route from Kushka, in Turkmenistan through Heart and Dalbandin to Gawadar.

Harnessing four separate sources of wealth and economic power—a gas pipeline, an oil pipeline, a rail link and a highway—all four assets running from Central Asia to the Arabian Sea and the Gulf coasts will ensure an outflow of oil and gas, cotton, wheat and other resources to the rest of the world and bring in consumer and industrial goods for the development of the Central Asian Republics. Such a 'four-lane economic corridor' of rail, road, oil and gas infrastructure would be no less important in its strategic and economic importance than Panama Canal linking the Atlantic and Pacific oceans or Suez Canal linking the Mediterranean with the Red Sea. A medium size port like Gawadar should handle an annual cargo of 8-10 million tons to break even on its costs and over 10 million tons in order to earn a reasonable return on its investment. Gawadar is a town with less than one hundred thousand people and without its linkages to the large Central Asian markets, it is difficult to see who will be consuming the millions of tons of cargo which the ships will unload at its berths.

Balochistan's strategic and international potential apart, a great deal of resentment in this very poor and backward province of a poor country has been on account of the continued absence of the domestic components of its development. And it is becoming increasingly complicated with many issues thrown into the melting pot. Gawadar, the Coastal Highway and the Mirani Dam projects have strategic value but their impact upon the problems of the people of Balochistan is another matter. That begs the question. What are the problems of the people of Balochistan? Any short list of these will include: drinking water, basic health and education, rural roads electrification, telecommunications and unemployment. And

since the province is so large in area and sparsely populated, it means that these problems need to be addressed at many locations in the length and breadth of the province. The events at Sui gas-field have highlighted another problem of the province and have naturally drawn prompt attention from all around. There have been discussions for a fairer distribution of the income from gas-fields among various stakeholders. The Baloch are a trusting, respecting and respectable people. Anyone who has dealt with them as friends has received a generous measure of respect and friendship—more than he has given. And they are not fair-weather friends either. From all that has been said by various parties, no one is against the mega development projects in hand in the province. The issue is about their management and the relationship of mutual trust and benefit between the Federation and the Province. Everyone is hoping that with warm hearts and cool heads, a harmonious balance in the development of the strategic, international and domestic potential of this jewel in the crown of Pakistan will be achieved.

NARI BANK

While going or coming from Dhadar to Sibi, everyone comes across Nari Bank, on Railway or Road bridges, which styled as Nari Bank, opposed to Nari River, seasonally flowing from Harnai Mountains to Kachhi plains. South and North of Nari Bank find separate identities since time iramemorial. The south part is mountainous, and the north one consists of plain lands. South inherited by Pashtoons, historically had been Afghan subjected, and after execution of treaty of Gandamak in 1879, turned British subjects, whereas Kachhi had been ruled by Khan of Kalat. In Sibi bulk of the population is Afghan descendants while in Kachhi population consists of Baloch, Brahvi and Jats. Sibi was acquired during 1879, and being part of Ex-British Balochistan formed Pakistan on 15th August 1947, while other part of Nari Bank, Kalat State acceded to Pakistan on

27th March 1948. After formation of One-Unit in 1955, Sibi was part of Quetta Division whereas Dhadar formed Kalat Division. In Sibi area Civil Judges have been functional since British era, while at Dhadar *Dastoor-ul-Amal*, 1952 governed whereby courts of *Qazi* established. Not a single person from Dhadar has had immovable property at Sibi, and vice versa. While crossing the Nari Bank, travellers usually do not observe the geographical, historical, cultural and social distinction in this regard.

ADMINISTRATION OF JUSTICE IN BALOCHISTAN

Balochistan before the establishment of Pakistan was composed of the following areas:-

I. BRITISH BALOCHISTAN OR THE CHIEF COMMISSIONER'S PROVINCE.

This consisted of:-

1. Western Sanjrani Tract (Tehsil) of Chagai District.
2. Dukki Tehsil in Loralai District.
3. The following Tehsils of Quetta District:
 - i) Pishin
 - ii) Chaman
 - iii) Shararud
4. The following Tehsils of Sibi District:
 - i) Sibi
 - ii) Shahrih

British Balochistan was originally Afghan territory. After the second Afghan War it was surrendered to the British Government by the Afghan King Yaqub Khan under the Treaty of Gandamak in 1879 (APPENDIX-VI). The total area was 9,476 Sq. Miles. In the beginning certain laws of British India were extended to British Balochistan under the Scheduled Districts Act 1874 with necessary modifications. In 1890 special enactments were passed for the British Balochistan which

included the laws, the Civil Justice law and Regulation, the Criminal Justice law and Regulation and the Forest Law and Regulation. The Civil and Criminal Justice Regulations were re-enacted in 1896, when the office of the Judicial Commissioner for Balochistan was created. Before that the Chief Commissioner also performed the functions of the High Court in respect of British Balochistan territories in certain matters and the Chief Court of the Punjab with regard to certain other matters. The law relating to Courts in British Balochistan was again consolidated and amended by Regulation No. VII of 1939 and the law relating to the administration of Civil and Criminal Justice was amended by Regulation VI of 1939 which repealed the Civil Justice and Criminal Justice Regulations of 1896. The British Balochistan Courts of Regulation (No. VII of 1939) was repealed and replaced by the West Pakistan Civil Courts Ordinance 1962 (No. II of 1962).

This Area presently comprises Revenue Districts of: Sibi (1903), Ziarat (1974), Pishin (1974), Killa Abdullah (1993), Harnai (2007), and including Duki.

II. TRIBAL AREAS OF BALOCHISTAN

(called 'Special Areas' from 14-10-1955 to 7-6-1962)

These consisted of:-

1. Dalbandin Tehsil of Chagai District.
2. The following Tehsil of Loralai District:-
 - (i) Musakhel.
 - (ii) Bori.
 - (iii) Barkhan.
 - (iv) Sinjawi.
3. The following Tehsils of Zhob District:-
 - (i) Fort Sandeman.
 - (ii) Hindu Bagh.
 - (iii) Killa Saifullah.
4. The following Tehsil of Sibi District:-

- (i) Kohlu.
- (ii) Marri and Bugti territories.

These were independent areas ruled by Tribal Sardars under the suzerainty of the Afghan Kings. These were brought under the British control from 1890 through various treaties with the Sardars. (See Acheson's Treaties). These treaties were entered into after the defeat of the tribal chiefs in engagements with the British troops in these areas.

Certain laws of British India were first extended to these areas by the Governor-General-in-Council with necessary modification. The laws enacted for British Balochistan were also applied in these areas.

This Area presently comprises Revenue Districts of: Zhob (1890), Chagai (1896), Loralai (1903), Kohlu (1974), Dera Bugti (1983), Killa Saifullah (1988), Barkhan (1992), Musa Khel (2001), and Sherani (2006).

III. LEASED AREAS OF BALOCHISTAN

This consisted of:-

1. Nushki Tehsil of Chagai District.
2. Quetta Tehsil of Quetta District.
3. The following Tehsils of Sibi District.

- (i) Bolan.
- (ii) Nasirabad Tehsil of Sibi District.

These areas formed part of the Kalat State and were leased out to the British Government by the Khan of Kalat under various treaties between the years 1883 to 1913 (APPENDIX-VII). Through these treaties the British Government acquired all authority and jurisdiction over the areas and was directly administered by them.

These areas were treated on the same footing as the Tribal Areas until 1937 when the Government of India Act 1935 was brought into operation. The laws were applied in those and Tribal Areas through the same Notification or Orders-in-Council

and for administrative purposes the Tribal and Leased Areas together were called Agency Areas being Areas governed by the Agent to the Governor General in Balochistan as distinct from the British Balochistan which was governed by the same person in his capacity as the Chief Commissioner of British Balochistan.

After April 1937 the Leased Areas were separately mentioned in Government Notification and the laws which were already enforced in the areas were re-enforced through various other Notification, by the Chief Commissioner in his capacity as the Resident, in order to recognise in distinct legal character of the areas.

This Area presently comprises Revenue Districts of: Quetta (1883), Jafferabad (1987), Nushki (2004), and Bolan Pass.

IV. THE BALUCHISTAN STATES UNION (BSU) (FORMER KALAT STATES).

1. Kalat.
2. Mekran (Makuran).
3. Kharan.
4. Las Bela.

The State of Kalat was the only independent state under the suzerainty of the Afghan kings before the British arrived in Balochistan. The States of Kharan and Mekran were considered as part of the Kalat state as their Chiefs had accepted the Khan of Kalat as their sovereign.

The State of Lasbella was independent but was nominally subject to Kalat. The rulers of these States, however, always asserted their sovereignty. The total area of the Balochistan States was 78,034 Sq. Miles.

After the Mastung Treaty of 1876 (APPENDIX-IV) the British Government gained political control over these states and "accepted the responsibility as the paramount power". Gradually the British Government interfered in the internal affairs of these states till the rulers of the states were turned into nominal sovereigns and the Administration was taken over by

officers appointed (in "consultation" with the rulers) by the Government of India.

The laws of India or British Balochistan were not applied or extended to these states as legally the sovereign was the Khan of Kalat and the other rulers, but the officers administering these territories took action under various laws which were enforced in British Balochistan if it suited their purposes, such as Frontier Crime Regulation, 1901.

This Area presently comprises Revenue Districts of: Kalat (1955), Kharan (1955), Lus Bella (1955), Kech (1955), Kachhi/Bolan (1965), Khuzdar (1974), Nasirabad (1974), Panjgur (1977), Gawadar (1977), Mastung (1991), Awaran (1992), Jhal Magsi (1992), Washuk (2005).

AREAS DEFINED UNDER LAW

In Section 3(3-c) of the General Clauses Act, 1897, provided that "Balochistan" shall mean the territories comprised in the Chief Commissioner's Province of Balochistan immediately before the fourteenth day of October 1955, and under (3-d) "Balochistan States Union" shall mean the territories comprised in the Balochistan States Union immediately before the fourteenth day of October, 1955, and (55-a) "Tribal Areas" shall mean the areas in the Province of West Pakistan which, on the fourteenth day of October one thousand nine hundred and fifty-five, were—

- (a) the tribal areas of Balochistan, the Punjab and the North-West Province; and
- (b) the States of Amb, Chitral, Dir and Swat, and the areas in the Province of East Pakistan known as Chittagong Hill Tract.

Whereas under West Pakistan General Clauses Act, 1956 (W.P. Act VI of 1956) provided that (4-b) "Balochistan" shall mean the territories comprised in the Chief Commissioner's Province of Balochistan immediately before the fourteenth day of

October 1955, (4-c) "Balochistan States Union" shall mean the territories comprised in the Balochistan States Union immediately before the fourteenth day of October, 1955 and (65-a) "Tribal Areas" shall mean the areas in the Province of West Pakistan which, on the fourteenth day of October, 1955.

ORDEAL BY FIRE

Compelling to walk on fire is novel and distinguishable feature and institution of tribal society in Dera Bugti which observed time immemorial. So as to determine the innocence or otherwise of an accused person he has to undergo this specific test and examination. Dates in this connection although not fixed but the occasion held as and when necessary after to do so which celebrated as an occasion.

In cases when solid, concrete and convincing evidence found not forthcoming, lacking and value of the property exceeds beyond certain limits these course of events brought into motion. Usually the cases are concerning murder and *Siahkari*. When an accused consents the opponents have to provide cost of specified wood *Kahoor* and goats etc. a *Wadera* graces the occasion witnessed by many others. A ditch about 12 feet long, 4 feet wide and 3 feet deep where wood burnt and charcoal emitting heat about 200 to 300 centigrade; oath administered by the *Wadera* or his representative while walking around the fire seven a times not to cause harm to the accused if he is otherwise innocent regarding the allegations charged with. The feet of the accused seen and washed with water so that it may be free from all dust and impurities. The accused commences walking on the fire and reaches the other end of the ditch and his feet put in a vassal wherein goat-blood had already been stored. After walk his feet seen and if found free from burns and no damage having been caused then declared as innocent and the adverse party is also required to compensate him monetary.

The grievances of the parties as such taken as redressed. A new chapter of dealing in between the parties ensues. A controversy resolved forever which is peculiar tradition and custom of this area. A lawyer added that such rituals would continue, because people don't have faith in the system.

Walking on fire may not be confined to Bugtis alone as the same also observed during Ashora Muharram at some places as well as certain other parts of the world also as shown by Discovery Channel in a telecast: ARTHUR C. 'CLARKES WORLD OF STRANGE POWERS.'

BAAHBELI IN SINDH

An age-old tradition which uses medieval methods to determine a person's guilt still continues to take place in the remote areas of the country.

It was a balmy day when people of the neighbouring village of Jacobabad heard that the ritual *Baahbeli* was being performed. They gathered at Adam Khan Punhwar, a small village near Jacobabad to watch *faker* Malhaar Bugti reciting Quranic verses, as he purified the fire. Amidst astonishment and fascination, the villagers watched three young men, accused for alleged murder and theft, waiting for the ritual to begin. Both the parties—the accused and accusers—had agreed that *Baahbeli* would be the punishment for the crimes and that it would be carried out in the presence of Sardar, chieftain of the tribe.

Baahbeli is an age old tradition, mostly performed in the tribal areas of Balochistan and Sindh, where old disputes and rivalries are settled. In this ritual, large ditch is dug where wood is thrown into it and set on fire. Once the fire has extinguished, the person accused is ordered to cross the embers line. The logic goes that if his feet are not blistered, it means that he is innocent whereas blistered feet prove the crime.

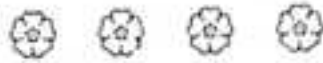
Practising their own method of executing justice, they are of the view that there is no room for a decision going wrong.

They believe that the verses of the Holy Quran make the fire pure and it enables justice to take place, without any hitches. When both parties are unable to settle the dispute in the *Jirga*, they go to Sardar and agree on *Baahbeli*. According to the agreement, all the accused are made to cross the line of burning embers while the supervisor recites verses from the Quran over the fire. (The tradition also requires that those supervising the ritual take an oath for remaining impartial.) However, before beginning the ritual the accused are carefully examined so as to ensure that no one has secretly carrying a *taveez*. Once the accused crosses the fire, their feet are then soaked in a platter filled with the blood of a goat. A goat blood is used because people believe that scars immediately appear on an accused person's feet.

The villagers curiously watch for the verdict, the accused feet come out clear which is when the *fakeer* announce 'brothers, you are all innocent and dismissed from the crime you were accused of. Those accused have to nonetheless pay a fine to the aggrieved party as "a compensation for their humiliation." They have to pay in advance before performing *Baahbeli*, which is the law. There have been thousands of occasions of the *Baahbeli*. No one got injustice. *Fakeer* recites verses from the Holy Quran over the burning ditch to purify the fire. I give the fire *saakh* (swear) to ensure *insaaf* (justice) to both parties. *Baahbeli* as an un-Islamic tradition when both parties agree on *Baahbeli*. Although *Baahbeli* was a barbarous act, it continuances inevitable. This happens when the state fails to provide instant justice. What other option do people have other than to keep practising such cruel laws and traditions, said a human rights activists. Tired of lengthy Court procedures and complexities of the police system, people have opted for traditional methods to end disputes. A lawyer added that such rituals would continue because people don't have faith in the system.

Although the practise of *Baahbeli* can be found in parts of Sindh, its origins can be traced to Balochistan, where it still takes

place. This type of *Jirga* was practised by Nawab Akbar Bugti but it seems that no one dare utter a word about it but it rarely happens in upper Sindh. As the ritual of *Baahbeli* has settled disputes such as *karo kari*, theft, family feuds people seem to have little objection to it. Even if they have objections, they don't complain. A lawyer condemned the turned of settling disputes in *jirgas*. In his view, because people cannot afford the lengthy Court process and lawyers fees, they turn to Sardars and *Waderas*. People continue to have faith in what they and their ancestors have seen through centuries.



CHAPTER 2

SANDEMAN'S MARCH TO SHAAL (QUETTA)

ROBERT GROVES SANDEMAN was born on February 25, 1835, at Perth, where his father's family had been settled for some generations. The Sandemens, or Sandymanns as they were formerly called, were of Scandinavian origin, but had been domiciled in British territory. Robert was one of a family of ten who was educated at Perth Academy and subsequently at St. Andrew's University, and in May, 1859, he was gazetted Assistant Commissioner in the Panjab.

By the conquest of Sindh in 1843, and the annexation of the Panjab in 1849, the north-west frontier of British India was advanced across the river Indus to the foot of the rocky mountain ranges which separate the plains of the Indus valley from the higher plateau of Afghanistan and Kalat. But the mighty barrier thus formed is pierced by several natural highways formed by streams and through these and other similar routes from time immemorial has passed the trade between Afghanistan, Balochistan, and India. Of the tribes, those around and north of Takht-i-Suliman are Pathans (Afghan has the same meaning); those south of the Takht are Baloch, speaking mongrel dialects of Persian overlaid with Sindhi and Punjabi words, who recognized as their suzerain the Ruler of Kalat. The disasters of the first Afghan war and the tragic episode of Kalat created a strong feeling against any political interference with tribes or countries beyond border, to have as little as possible to do with tribes and states beyond.

The prosperity of the Sindh advanced with rapid strides and on the wishes of inhabitants, in 1848, Khangarh (which was associated with Khanate of Kalat) changed its name to Jacobabad. In the Punjab the situation was different. So long as they were friendly, the tribesmen had free access to British territory, and some of the wild spirits of the frontier, were utilized as a local militia in-aid of the regular troops. The district officers and their assistants were specially selected men, to do their utmost to develop friendly feelings, and settle misunderstandings by firmness, tact rather than by force of arms. The expeditions were invariably successful but submission involved no forfeiture, the effect, though beneficial for a time was not calculated to be lasting.

Sandeman was not learned in the law, but had plenty of good sense, patience, and dash. He was careful and thorough in his judicial investigations, and particularly successful in dealing with Fathan *jirgas*, or committees of village or tribal elders appointed to discuss affairs - an institution he afterwards successfully introduced among the Baloch. On his return to the frontier, he served first (1862) in Peshawar. About this time he obtained promotion and was selected by Sir Donald Macleod, the Lieut.-Governor, to act as District Officer of Dera Ghazi Khan.

The district of Dera Ghazi Khan is a strip of country about 25 miles broad, extending for nearly 200 miles between the Sulaiman range and the river Indus, bounded on the north by Dera Ismael Khan on the south by Sindh. Lieutenant Sandeman was already well acquainted, but Dera Ghazi Khan afforded him a new experience. Hitherto he had to deal with Baloch, the Baloch respects and obeys the head of his clan. Sandeman showed in after years that the methods he found so successful among the aristocratic Baloch were not inapplicable to their more democratic neighbours. The Sheranis of the Takht-i-Sulaiman and its neighbourhood, who for forty years resisted all the advances made to them from the Punjab, yielded to the

methods of Sir Robert Sandeman. Accordingly he directed dignity of the *Tumandar*, or chief, whose hearty co-operation was thus secured. Of these, the two first had long been the terror of the border and were at open war with their nominal suzerain, the Khan of Kalat. In 1875 he organized a yearly gathering of chiefs at his summer quarters in the Sulimans, for the purpose of discussing tribal questions and in later years *jirgas* were held annually at Sibi in the cold weather and Quetta in the hot weather.

Strictly speaking, the name Kalat (literally "fort" or "stronghold") was applicable only to the Khan's capital but it was in practice applied to the entire territory under his control or suzerainty. A few fertile spots occupied by pastoral tribes, chiefly Brahui and Baloch. By means of troops the territories of the Khan were gradually extended by conquest (APPENDIX-I). When in 1838, it was determined by the British Government to replace Shah Shuja on the throne of Kabul, the co-operation of the Kalat chief was sought for. In November, 1840, Kalat was stormed by a column of British troops, Mahrab Khan slain in the assault. An insurrection followed and Mahrab Khan's son known subsequently as Mir Nasir Khan-II was placed upon the throne by the confederated tribes, and in October 1841, a Treaty was concluded with him (APPENDIX-II). Khan remained faithful and loyal to the British Government, and in 1854, under Lord Dalhousie's Government, a fresh Treaty was executed (APPENDIX-III).

Until the final reconciliation at Mastung in 1876 - a period of nearly twenty years - the Khan was engaged in a series of struggles with the principal Brahui chiefs, aided from time to time by the Jam of Sus Beyla, and Azad Khan of Kharan, connected by marriage with the Khan. Meanwhile the state of the country was, as might be supposed, deplorable. The traffic which once flowed from Kandahar by Tal - Chotiali and Chachar Pass into the Punjab had wholly ceased; that by the Molla and Bolan Passes to Sindh was interfered with, for the British subsidy

which should have been expended in keeping open trade routes was required to keep up the mercenary force. By a Resolution of the Government of India, dated October 19, 1871, the joint recommendations were sanctioned. In other words, a fresh trial was to be given under somewhat altered conditions, to the policy of "non-intervention".

No sooner was the Resolution passed than intelligence was received of serious disturbances at Quetta and Mastung. Kachhi was quickly in rebellion; Bagh and Gandava were occupied by tribesmen; Lus Beyla in the south fell into the hands of Ali Khan Jamot, province of Makran threw off its allegiance; caravans were plundered, and by the end of the year nearly the whole of the domains were in the hands of the revolted *Sirdars*. The Khan agreed to the mediation, and, with the one exception, the rebel Brahui chiefs suspended hostilities and attended at Jacobabad on March 6, 1872, to submit their grievances to the arbitrament of the Commissioner in Sindh.

The result of Sir William Merewether's well-intended mediation was grievously disappointing. The Kurds, the Kakars, and the Marris, who had real or supposed grievances against the Khan, were disappointed because they were not included in the settlement. The Viceroy-in-Council decided to adopt Captain Sandeman's proposals. It was resolved that Captain Sandeman should henceforth be the sole medium of communication between the Marri and Bugti tribes and that he should, in the first instance, procure by friendly explanation the attendance and submission of the Marri chiefs and the surrender of plundered property. He proceeded himself to the Marri hills, unaccompanied by any military escort. Ghazan Khan and the other Marri chiefs arrived at Jacobabad and paid their respects to the Political Superintendent of the Sindh Frontier.

The mission, entered Kahan, the Marri capital, and Ghazan Khan, the chief, had advanced to meet him. On December 08, he reached Sibi, as then it was the territory of the Amir of Kabul. At Sibi he met the principal Brahui chiefs. They

too accepted his good offices, and agreed to suspend hostilities, and accompany the mission through the Bolan Pass, the opening of which was one of the objects of Captain Sandeman's deputation. A deputation here met him from the Khan's commandant, inviting him to Dhadar, at the mouth of the Bolan, and on arrival he was received with the salute of eleven guns. On the 15th he marched for Kirta, in the Bolan, where he was joined by the Pass headmen. Captain Sandeman arrived at Shaal on December 24, and was received with every mark of honour by the Khan's agent. Captain Sandeman proceeded to Kalat where he was received by the Khan with honour and great friendliness. Afterwards, at Captain Sandeman's request, he received the Brahui *Sirdars* and Marri and Bugti chiefs in *darbar*, expressed his willingness to forgive the past and to abstain from hostilities against them. Captain Sandeman did not indeed succeed in carrying out all the objects of this mission, but had proved one important fact, namely, that the advent of a British officer as mediator was welcome to the Khan and chiefs alike. Captain Sandeman proceeded on his return journey, escorted by Brahui and Marri chiefs. Orders were issued to Sandeman, who had attained the rank of Major of February 8, 1876 to return to Kalat, arrange for another meetings with the Khan and his *Sirdars*, and make a renewed attempt to carry out the objects of his first mission.

MAJOR SANDEMAN'S SECOND MISSION

Major Sandeman started on his second mission on April 4, 1876. His military escort was on a far larger scale than on the previous occasion. He followed with his escort, reached the healthier climate of Abigum. It was arranged that the meetings of the Khan and the Sardars shou'd take place at Mastung. Eventually the Khan proceeded to the place of meeting. All

A service requirement.

matters in dispute were settled, and the settlement agreed to by the Khan. With this view a separate instrument was drawn up and assented to by the Khan and these Sardars. It was deemed desirable to depute Colonel Colley to proceed to Kalat Major Sandeman in full and confidential information to the views of the Government, placed before him a draft Treaty for the consideration of the Khan and in the event of its acceptance, arrange for a meeting with the Viceroy at Jacobabad in view to its execution. Colonel Colley presented the letter from the Viceroy, the draft Treaty, and an invitation to His Highness to attend with his chiefs at the approaching Imperial Assemblage. Khan made arrangements for meeting the Viceroy at the time and place appointed.

The place appointed for the execution of the Treaty was Jacobabad, the creation of the illustrious man whose name it appropriately bear. Towards this place of meeting all parties to the coming Treaty began to move. Accompanied by Captain Wylie and a portion of the British escort, the Khan proceeded slowly by the Molla Pass to Gandava. The Brahui chiefs broke up their camps at Mastung and moved down the Bolan, and besides Brahuīs, Baloch chiefs from the Kachhi plain, Buladis from Makran, and Gichkis from fertile Panjgur, and old friends the Marris and Bugtis from the eastern hills. Early in November, the Viceroy, accompanied by Lady Lytton, commenced his march. The document was executed in the *darbar*-room known as "Jacob's Castle" (APPENDIX-V). In the first place, the Treaty of 1854 (APPENDIX-III) was between the British Government and the Khan alone; in the Treaty of 1876 (APPENDIX-IV) the *Sirdars* were mentioned with the Khan as parties. No time was lost in carrying out the more important provisions of the Treaty and orders were issued for connecting Jacobabad with Quetta by a telegraph line through the Bolan Pass. The Viceroy and suite returned to Sukkur, and then left by steamer for Karachi and Bombay; the Khan, with his followers, escorted by Major Sandemen, proceeded on their journey to Delhi, where, on January 1, 1877,

they were delighted spectators of the imposing ceremonial of the Imperial Assemblage. January 1 Major Sandeman was made a C.S.I., on February 21, he was gazetted Agent to the Governor-General for Balochistan, and British Balochistan Agency was established.

EXTRACT FROM THE PROCEEDINGS OF THE GOVERNMENT OF
INDIA IN THE FOREIGN DEPARTMENT NO. 2219-E, DATED
SIMLA, THE 1ST NOVEMBER 1887.

RESOLUTION. The Governor General in Council had recently had occasion to consider the administration of the districts known as Pishin, Shorarud, Kach, Kawas, Harnai, Sibi and Thal Chotiali.

2. The administration of these districts has hitherto been carried on under the control of the Governor General's Agent in Balochistan and the executive orders of the Governor General in Council in accordance with local customs and with the main principles which guide the Government of the older and more advanced Indian possessions of her Majesty the Queen, Empress of India. But the people of the districts have now become familiar with British rule; the local customs which are worth preserving have been ascertained; and the conditions of the districts have been largely developed by the extension of frontier railways. The Governor General in Council is therefore, of the opinion that the time has come for bringing the districts more closely within the regular system of British India and for placing their administrative arrangements on a sound legislative basis.

3. The Governor General in Council is pleased in the first place to direct that the districts shall be formed into a Chief Commissionership to be styled the Chief Commissionership of British Balochistan and that the Agent of the Governor General in Balochistan shall be ex-officio the Chief commissioner. The Secretary to the Government of India in the Foreign Department

will now take the necessary steps with a view to laying before His Excellency in Council the legislative and executive details which require settlement in pursuance of these orders; and a copy of this Resolution will be forwarded to the Governor's Agent in Balochistan for information and guidance.

By order of
*His Excellency the Viceroy and
Governor General in Council*

"The town of Shaalkot (Quetta)," wrote Captain While in 1875, is in most dilapidated condition. It is small, and built nearly in a square round a mound on which is a mud fortification. The dilapidated native town had been moved out of the enclosure and re-built south on the further side of an affluent of Shaalkot stream, then called by the British residents as "Thames;" the new town consisting of broad bazaars then containing a population of about 10,000 souls.

Sir Robert Sandeman occupied Quetta in the beginning of 1877 and successfully started expansion of the British hegemony over this part of the region of South East-Asia. Though Quetta was part of the Kalat Khanate belonged geographically and ethnically to Pishin. The name Quetta is said to be an Afghan corruption of Kowatta, meaning "Court-house," the final syllable in Shaalkot, the name by which the place was known among Brahuis. Shaal was the more ancient name of the valley.

Major Sandeman in December, 1876, just after the conclusion of the Treaty, proceeded early in the spring of 1877 to take up the duties of Governor-General's Agent for Balochistan. After his return to Quetta, Sandeman was able to settle a dispute with a section of Alizais, he undertook the administration of Pishin and afterwards of Sahorawak, and he proved himself to be a successful in winning the confidence and support of the Pashtoon inhabitants as he had previously been in his dealings with the Baloch. On May 8, 1879, Yakub Khan presented himself at the head quarters of Gandamak, and on May 26, after

protracted discussion, signed a Treaty (APPENDIX-VI). By this provision the districts of Pishin and Sibi were to remain as districts assigned to the British Government, the *Amir* receiving the surplus revenues after payment of the expenses of administration. Kandahar was evacuated, and the remaining troops returned to India, and the second campaign of the second Afghan was finally concluded. In 1883 a further discussion took place as to whether the Tal -Chotiali and Harnai should be occupied, but Sir Robert pointed out that their occupation was essential for the security of Sibi and for completing control over the tribe of Marris. In 1884 the railway works, which had been suspended in 1880, were again proceeded with, and in 1887, by a Resolution of the Indian Government, the Assigned District, including the connected valleys and the plain of Tal - Chotiali, were formally incorporated with British territory under the somewhat inappropriate designation, "British Balochistan." The work both on the Harnai line and in the Bolan Pass was in many cases very difficult but was resolutely carried through. On June 1887, Balochistan was elevated in First-class Residency, and on November 1 the Assigned Districts, were formed into a Chief Commissionership, under the name of British Balochistan, the Agent to the Governor-General in Balochistan being appointed ex-officio Chief Commissioner. By the Duke and Duchess of Manchester, and Lady Alice Montague; in March, by His Royal Highness the Duke of Connaught, accompanied by the Duchess, who was to open the great railway bridge over the Chappar Rift - called, in her honour, the Louise Margaret Bridge.

The Resolution of the Government of India was passed, incorporating the Assigned Districts with British territory. At the time of the incorporation of British Balochistan with British India by the Resolution of November 1, 1887, the tract was divided for administrative purposes into two districts; the district of Quetta-Pishin and of Tal—Chotiali. Each district was in charge of a Political Agent. Regulations had been collected and published in an octavo volume, entitled the "Balochistan Code." In the

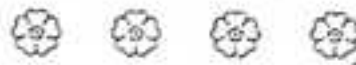
Frontier Regulations powers were given to the district officer to make use of the *Jirga*, or council-of-elders, as a judicial tribunal. In November 1887, the Government of India decided to carry the railway over the Khojak Pass to Chaman, piercing the ridge by a tunnel about two and a half miles in length. The tunnel was completed, and the line to Chaman opened for traffic on January 1, 1892 - the tunnel alone costing not less than 25 lakhs of rupees per mile, or over six millions of rupees in all. In the end of 1883, Sir Robert Sandeman proceeded to Kharan. From Panjgur, Sir Robert proceeded to Kech. Sir Robert at once returned to Gawadar. With the second Panjgur Expedition Sir Robert Sandeman's career practically terminated.

With the arrival of British troops and persons a vast majority of people also penetrated this part of the territory as a working force. They helped in Railway line construction of Sibi-Harnai, Katch-Bostan-Quetta, Sibi-Quetta via Bolan Pass, Quetta-Chaman and Quetta Zahidan. Among them were traders, craftsmen, men of trade as well as learned ones. They were treated as non-indigenous and expression of 'Domicile' was subsequently conceived as regards them. These non-indigenous also provided bureaucratic structure for the invaders. Hottu Ram throughout remained accompanying Robert Sandeman and based on his diaries compiled the book: *History of Balochistan*. Diwan Jamiat Rai, C.I.E., D.B., R.B., also compiled: *Customary Laws in Balochistan*, whose work has been of immense assistance.

When Sir Robert Sandeman breathed his last at Lusbella in 1892, almost whole of the region was under the control and superintendence of British Empire. His successors also played an effective role and control over the subject in the implementation of laws. Laws were supreme and no criminal ever went unpunished. It is likely that all were not treated equal before eyes of law as for the European subjects, separate law machinery had been constituted and provided so that none remained unpunished, if otherwise found guilty.

On the event of departure of British in June 1947 Referendum was held at Quetta concerning British Balochistan and Leased territories. 43 *Shahi Jirga* members and 12 non-official members of Quetta Municipality participated. The majority of the members consented to join, yet to be born Dominion of Pakistan. These States in 1952 formed Balochistan States Union and upon formation of One-Unit on 14th October 1955, titular Rulers lost their supremacy over their respective territories.

The President of Pakistan, and Chief Martial Law Administrator, General Agha Muhammad Yahya Khan on 1st July 1970, dissolved One-Unit of West Pakistan (Dissolution of One – Unit Order, 1970) (President's Order No. I of 1970) and created four provinces including Balochistan. For the first time official recognition accorded to nomenclature of Balochistan over a particular area.



KHANATE OF KALAT

The office of the Khan was hereditary in the Ahmadzai family but the tribal Sardars were selected through the general consent of the clan headmen. The Khan was a benevolent ruler of a decentralised administration. The Khanate was a loose confederacy. Mir Naseer Khan augmented the union by an enlightened policy. He succeeded in evolving the most effective and strong union of tribes in the history of the region. In a grand gesture of political farsightedness, he never interfered with internal tribal issues. The Rind and Magsis of Kachhi-Gandhava and few others in Seistan had complete independence, without paying any land revenue. The political allegiance was considered sufficient.

The Khanate was established in 1666 AD by Mir Ahmad. His domain comprised only Sarawan and Jhalawan. Three among the long list of Khans during the one hundred and seventy three years up to 1839, were men of resolute determination and competence. Mir Abdullah Khan (1715-1730 AD) extended the country's borders to far-flung areas and dominated all the major tribes, compelling them to pay allegiance to Kalat. Mir Naseer Khan (1750-1795 AD) not only further extended the Khanate to the entire region of present-day eastern Balochistan and most parts of the Irani and Afghan Baloch land, including the port of Karachi, but also provided the solid political structure for the confederacy. Mir Naseer Khan,

who was seventh in the line, stands out for his enlightened rule and as a remarkable General and statesman. Mir Mehrab Khan (1816-1839 AD) had to his credit the un-comprising determination and exemplary courage to uphold Baloch traditions in fighting the British forces. He preferred death rather than come to a degrading compromise. Among others, Mir Mahabat Khan is known for his short-sightedness and cruelty and Ahmad Yar Khan for his political immaturity and for demonstrating lack of acumen, self-confidence and administrative skill while Mir Mehrab Khan preferred death rather than surrender.

After the martyrdom of Mir Mehrab Khan the British were facing, the dual task of keeping in check tribal sentiments and fury on the one hand and administering a vast territory with a scattered population on the other. Therefore, it was thought prudent to evolve a policy based on minimum interference but maximum efficiency. The system, called the Sandeman System after Sir Robert Sandeman who masterminded the political set up of the region.

Mir Naseer Khan was a confident ally and one of the ablest generals, who fought many battles for Ahmad Shah Durrani, the Afghan Sovereign, during his numerous marauding fights into the Indian Subcontinent. He extended support to Ahmad Shah and preferred apparently a nominal allegiance to the Afghan than a complete subjugation by the Persians by whom the Baloch had suffered badly. Mir Naseer Khan in fact had a loose feudal relationship with Ahmad Shah and never regarded himself a tributary to Durranis but rather a junior participator in the division of the Persian Empire after the death of Nadir Shah. However, the Afghan attitude towards the Khan provoked Mir Naseer Khan to declare the complete independence of Kalat in 1758. The conflict took such an ugly turn that the Afghans decided to invade Kalat. Afghan troops under Shah Wali were defeated a Mastung by Mir Naseer Khan, but the Khan was later compelled to retreat by forces under the

command of Ahmad Shah Durrani. Mir Naseer Khan took up a position in the Kalat fortress, which was besieged for forty days by the Afghan King. Numerous assaults were made by the Afghan Army but met with dismal failure. Ultimately both the former allies came to an amicable agreement and the Afghan troops were withdrawn. The agreement 'Treaty of Kalat' recognised the sovereign status of Balochistan. The Afghan monarch promised not to interfere in the internal and external affairs of the Baloch confederacy. The Khan in turn promised to help Afghanistan in case of external aggression against her or in its foreign expeditions. Both the countries agreed not to give asylum to rebels within their states. The agreement provided the basis for the Khanate's subsequent relations with Afghanistan.

The foreign policy of the Khanate was one of peaceful coexistence with all the neighbouring states. It had cordial relations with the Sindh and the Persian sovereigns. Although nominally under Afghan hegemony, the various Khans remained neutral and the Khanate was a sort of buffer zone between Persia and Afghanistan.

The question of Baloch national sovereignty in a historical perspective dates back to the days of British hegemony in Balochistan in 19th century. The big-power rivalry in Central Asia which resulted in the British invasion of Afghanistan also brought its forces into the Baloch region. The Baloch Confederacy under Mir Mehrab Khan did not want to be involved in foreign aggression against the Afghan people with whom Kalat had treaty obligations from the time of Mir Naseer Khan. The British supply routes to Afghanistan could not be safeguarded without securing Balochistan, which had by now gathered much importance in British Central Asian policy. Its forces were ordered to subjugate Kalat. A detachment from Quetta attacked Kalat on 13th November 1839. The Khan, Mir Mehrab Khan refused to surrender and fought back against the invaders. He was killed in the battle. With his martyrdom Balochistan came under British rule till 12th August 1947, when

the Khan, Ahmad Yar Khan declared its independence on the eve of the end of British rule in the subcontinent. However, that phase was short-lived.

The British Government made many agreements with Khans of Kalat to allow their trade to Central Asian. The Balochistan was neither conquered nor captured by the British Rulers. Cordial relations in respect of agreement and treaties remained intact till departure of the British in 1947. The first agreement with Balochistan was executed in 1839 (APPENDIX-I) and last in 1876 (APPENDIX-V) in which the sovereignty and independence of Kalat remained intact. In the subcontinent Nepal and Kalat States had direct relations with Government of Britain. The independence and sovereignty of these states remained intact will departure of British from the subcontinent. These States were not counted like other states of subcontinent.

On August 04, 1947 a conference was held in New Delhi under the chairmanship of representative of the Crown Lord Mountbatten in which Khan of Kalat, Mir Ahmed Yar Khan and Muhammad Ali Jinnah participated. Besides these luminaries, the Legal Advisor of Viceroy of India Lord Ramsay, Nawabzada Liaquat Ali Khan on behalf of Pakistan Nawabzada Muhammad Aslam Khan, Prime Minister Kalat and Legal Advisor of Kalat Sir Sultan Ahmad also participated. On 11th August 1947 the following decisions of the Conference was broadcaster from Viceroy House, New Delhi:

1. The Government of Pakistan recognises Kalat as an independent and sovereign state, which had relations with Government of Britain through agreements. Its status is different from other states of India.
2. Legal opinion will be obtained whether agreements executed between Britain and Kalat about leased areas would be transferred to Pakistan or otherwise.
3. After obtaining legal advice a meeting between Khan of Kalat and representative of Pakistan will be held at Karachi for further negotiations.

4. In the meantime there will be STANDSTILL AGREEMENT between Pakistan and Kalat.
5. As regards defence, Foreign Affairs and Communication a Conference will be held soon between Pakistan and Kalat at Karachi.

On the next day i.e. 12th August 1947, The New York Times reported as under:

"Under the agreement, Pakistan recognises Kalat as an independent sovereign state with a status different from that of the Indian States." An announcement from New Delhi said that Kalat, Moslem State in Balochistan has reached an agreement with Pakistan for free flow of communications and commerce, and would negotiate for decisions on defence, external affairs and communications. On the 13th August 1947 the New York Times printed a Map of the world showing Kalat State as a fully independent country.

The Khan of Kalat on Friday, the 12th August 1947 announced independence of Kalat. After *Juma* prayers the Kalat Flag was hoisted in the courtyard of the mosque. Constitution of Kalat State 1947 was enforced immediately. The Khan formed the Lower and Upper Houses of Kalat Assembly. In its first meeting in September 1947, the Assembly confirmed the independence of Kalat. Muhammad Ali Jinnah persuaded Khan of Kalat to join Pakistan but both the House of Kalat Assembly refused to do so. In February 1948 Jinnah made a speech during Sibi week at Sibi Darbar in which it was categorically stated that the status of these areas will remain intact. However, on refusal of Kalat to join Pakistan the Pakistan leaders persuaded other States i.e. Lasbella, Mekran and Kharan. The rulers of these States signed instruments of Accession with Pakistan on 17th March 1948 (APPENDIX-IX) and Muhammad Ali Jinnah as Governor General of Pakistan accepted these instruments. Later on the Khan of Kalat on 27th March 1948 signed the Instrument of Accession of Kalat State with Pakistan. After signing of these Instruments the Agent to the Governor General went to Kalat

and informed the Khan of Kalat that while accepting the Instrument of Accession, the Government of Pakistan has taken overall control of the Kalat State. The cabinet of Kalat State was dissolved within hours and one Muhammad Zareef Khan was appointed as Prime Minister of Kalat. The services of Local Officers who were serving the Kalat State were terminated.

The prominent Officers were Malik Faiz Muhammad Khan Yousafzai, Secretary Transport, and Malik Abdul Rahim Khawajakhel Nazim Kalat. Sardar Bahadur Haji Behram Khan Lehri Revenue Minister, Mir Lal Bakhsh Mengal Tehsildar, Syed Ahmed Shah Hashmi Tehsildar, Malik Muhammad Pannah Tehsildar. Besides these Mr. Ghous Bakhsh Bazenjo, Maulana Muhammad Umar, Maulana Arz Muhammad and Mir Gul Khan Naseer were arrested.

The context of all the Instruments to Accession is same. According to Article 8 the sovereignty of rulers remains intact.

For the sake of information the preamble and other Articles the gist of Instruments are reproduced below:

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August 1947 there should be set up an independent dominion known as Pakistan, and that the Government of India Act, 1935 shall with such omission addition adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of Pakistan.

And whereas the Government of India Act, 1935 as adapted by the Governor General provides that an Indian State may accede to the Dominion of Pakistan by an Instrument of Accession, executed by the Ruler thereof.

Bare perusal of these articles of Instruments show that these states were not merged in Pakistan but they acceded to Pakistan. This future status of these and Federation was considered by the Basic Principal Committee on 21st June 1954 but could not reach to any decision. The Subcommittee report, submitted to the parent committee, is also understood to have characterised the problem as a 'major political question.' The

Muslim League Members on the Committee, it is understood, wanted the party to give a definite policy directive on the issue. The Rulers neither respected wordings of Muhammad Ali Jinnah, nor Instrument of Accession. It may also be pointed out that Muhammad Ali Jinnah was the legal adviser to the Kalat State. In 1943 when a murderous assault was made on the life of the Jinnah, it was the Khan of Kalat, Mir Ahmed Yar Khan, who provided guards to him till the creation of Pakistan. It was also the Khan of Kalat who weighed the Jinnah in gold and offered the same to him. The scale is still in Kalat.

The question of paramountcy was finally disposed of by the Indian Independence Act of 1947 through its Article 7(1) (B), which stipulated that 'the suzerainty of His Majesty over the Indian States lapses'. The legal effect of this stipulation, following the British departure from India, was that the princely states become completely independent and sovereign and was under no legal obligation to join the new dominion of India or Pakistan and could revert to their pre-treaty status. It shows that the rulers of the Indian states would become fully independent and would be free to remain independent or to accede to either India or Pakistan. Hyderabad chose to remain independent, as provided in the June 3 Plan, but its independence was snuffed out through police action by India. The Maharaja of Kashmir entered into a 'standstill agreement with Pakistan and also offered India a 'standstill agreement'. It shows that the June Partition Plan or the partition of India allowed the princely States to do so. The British Prime Minister, in his statement of 1st July 1947, in the House of Commons, stated that 'with the ending of treaties and agreements, the states regained their independence' (House of Commons official report 439 H.C. Debate 58.C. 245, cited in Clyde Eagleton's, 'The case of Hyderabad before the Security Council', 44 American Journal of International Law, 1950, p. 283). Similarly, Lord Mountbatten in his press communiqué of July 25, 1947, stated that the Indian Independence Act released the States from their obligations to

the crown. The States had complete freedom technically and legally and that they are independent (White Paper on Indian States, Government of India, publication 1948, p. 160). The United Nations Security Council took up discussion of the Pakistan case against India on the Junagadh issue, on February 20, 1948, but it has been kept dormant since then.

ADMINISTRATION OF CRIMINAL AND CIVIL LAWS IN FORMER KALAT STATES

When Dominion of Pakistan was created on 14th August 1947, the States of Kalat, Makran, Kharan and Lus Bella, popularly styled as Kalat States, were left independent to exercise their respective options and choices. The States of Kharan (APPENDIX-IX), Mekran and Lus Beyla on 17th March 1948 and that of Kalat on 27th March 1948 through separate Instruments of Accession joined Pakistan. At that time there was no written law in the States. However, *Qazis* were appointed by the Rulers in order to decide the cases according to *Shariat*. The Rulers themselves and through agents governed and executed criminal laws. Although Jails were established by them at different places and inhumane punishments were also inflicted upon the alleged criminals. According to the Ministry of States and Frontier Regions, announced on 12th April 1952, the States of Kalat, Mekran, Kharan and Lasbella, agreed to unite and integrate their territories into one Union (Balochistan States Union) with common executive, legislature and judiciary. The rulers of the four states had entered in to a covenant to this effect with the "concurrence and guarantee" of the Government of Pakistan. The covenant, according to Press communiqué, meant "the end of feudalism and advent of democracy for the people of this region." The covenant provided for Council - of - Rulers to be presided by Khan-i-Azam, Khan of Kalat, Mir Ahmed Yar Khan, during his life time. Each ruler was allowed a specified Privy purse from the revenues of the Union. The legislature

Assembly to have 40 members, 28 to elect on the basis of adult franchise and 12 to be nominated from amongst the Sardars. The Council -of- Rulers were required to frame interim Constitution for the Union with the approval of Pakistan Government. Elections to the first Legislative Assembly were to be held by early 1952. As a consequence of this arrangement, the Pakistan Government appointed Agha Abdul Hamid, a civil servant, as the Prime Minister of B S U in April 1952. However, on the formation of B S U for the first time written laws were enacted in the shape of *Dastoor-ul-Amal Diwani Kalat*, to cover Civil disputes and to administer *Shariat* when both the parties involved were Muslims, and when Hindus the matter being settled by *Panchayat* which law still prevails in those areas, and Kalat Penal Code, Kalat Criminal Procedure, and Kalat *Qanon-e-Shahadat* were also introduced which remained operative. Balochistan States Union through agreement executed on 1st January 1955 merged with the proposed One-Unit of West Pakistan (APPENDIX-VIII).

The One-Unit of West Pakistan was formed on 14th October 1955 when according to this Agreement from "the said day" Balochistan States Union stood merged, resulting thereby not only the authoritative rule of these Rulers in their respective States came to an end, but also history of these States terminated. The B S U was dissolved by the government, merging it in the One-Unit scheme of West Pakistan on 14th October 1955, and with that the executive and authoritative powers of these rules in their domains also came to an end.



CHAPTER 4

THE RETROCESSION OF QUETTA, NUSHKI AND NASIRABAD

The British after formation of Balochistan Agency acquired districts and *niabats* from Khan of Kalat through execution of Quetta Agreement, 1883, Nushki Agreement 1899, and Nasirabad Agreement, 1903 (APPENDIX-VII). The implications of these agreements were that Article 6 of the Kalat Treaty of 1876 read "Whereas the Khan of Khelat has expressed a desire on the part of himself and his *Sirdars* for the presence in his country of detachment of British troops, the British Government, in accordance with the provisions of Article 4 of the Treaty of 1854, and in recognition of the intimate relations existing between the two countries, hereby assents to the request of His Highness on condition that the troops shall be stationed in such position as the British Government may deem expedient, and be withdrawn at the pleasure of that Government." Dealing with this Article the Governor General-in-Council wrote as follows to the Secretary of State for India on the 20 of March 1877:-"had the question before us in connection with this article been whether we should now, even in compliance with the concurrent desire of the Khan, the *Sirdars*, and the tribes, introduce British troops into the Khanate, we might have hesitated before assenting to such a measure. But the troops of the British Government were already in Khelat, where their presence was cordially welcomed by the inhabitants of the country.....Under all these circumstances we deemed it wise

to give practical effect to an arrangement contemplated by the Treaty of 1854, and completely in accordance with the provisions and intentions of that Treaty". The British Government, therefore, selected Quetta in preference to Kalat for the headquarters of the detachment of British troops both for military and political reasons. In 1879, it was agreed that the district and *niabat* of Quetta, should be administered by British officers on certain conditions, and for a certain period, any surplus revenue being made over to the Khan. This was replaced by an agreement concluded in 1883 between the Khan and the British Government, and the arrangements were governed by this agreement under which the Khan of Kalat made over and entrusted to the British Government "the entire management of the Quetta district and *niabat* absolutely and with all the rights and privileges as well as full revenue, civil and criminal jurisdiction, and all other powers of administration" on the express condition that the district and *niabat* would be administered on behalf of the British Government by such officer or officers as the Governor-General-in-Council may appoint for the purpose. The British Government undertook to pay to the Khan a fixed annual rent of Rs. 25,000 "so long as the said district and *niabat* were administered by the British Government". Under this agreement, the Khan also ceded to the British Government full civil and criminal jurisdiction and all other powers of administration within the limits of the Bolan Pass as well as his rights to levy dues or tolls on the trade travelling through the Bolan to and from British India and Afghanistan, as well as to and from Kachhi and Khorasan, or the trade travelling to and from British India and the districts of Sibi, Quetta, and Pishin. In return for this concession, the British Government agreed to pay to the Khan, the sum of Rs. 30,000 per annum, free of deductions.

A similar agreement was concluded with the Khan in 1899 whereby the Khan of Kalat, made over and entrusted to the British Government "in perpetuity, the entire management of the

Nushki district and *niabat* absolutely and with all the rights privileges, State or personal, as well as full and exclusive revenue, civil and criminal jurisdiction, and all other powers of administration, including all rights to levy dues and tolls" on the specific condition that the district and *niabat* would be administered on behalf of the British Government by or through such officer or officers as the Governor-General-in-Council may appoint for the purpose. The British Government, on their part, undertook to pay to the Khan a fixed annual rent of Rs. 9,000, free of deductions on account of the cost of administration.

Under an agreement entered into with the British Government in 1903, the Khan of Kalat made over and ceded "in perpetuity, to the British Government the entire management of the Nasirabad *niabat** absolutely and with all the rights and privileges, State or personal, as well as full and exclusive

* The tomb of Khan Mir Naseer Khan I of Kalat is situated in the vicinity of Jhatpat which in 1986 named as Dera Allayar by Jam government after a social personality of the area. The present areas comprising sub-divisions of Jhatpat and Usta Muhammad consisted of one sub-division Nasirabad of Sibi district. During the year 1974 new revenue division of Sibi created and Tamoo tehsil of Kachhi district turned into a fresh district of this division which also named as Nasirabad district. ND. Sub-division Nasirabad and district Nasirabad were synonymous which created some confusion in the mind of general public which compelled and necessitated change and on 01 July 1987 the name of the district turned as Tamboo TU. On 27 August 1991 ex-Nasirabad sub-division converted into separate district of Jafferabad while district of Tamboo simultaneously renamed Nasirabad. Sub-division Nasirabad of Sibi district, which was a Leased area, in 1987 made a separate revenue district and named as Jafferabad, after late Mir Jaffer Khan Jamali. Government of Balochistan, Revenue Department on 1 January 2001 abolished this district and annexed with Nasirabad district. People of the locality raised voices against abolition. Government of Balochistan, Revenue Department, on 2 December 2002 restored the same.

revenue, civil and criminal jurisdiction, and all other powers of administration, including all rights to levy dues and tolls" on the specific condition that the *niabat* would be administered on behalf of the British Government by or through such officer or officers as the Governor-General-in-Council may appoint for the purpose. The British Government, on their part, engaged themselves to pay to the Khan a fixed annual rent of Rs. 1,15,000, free of deduction on account of the cost of administration. A portion of the Manjuti lands specified in the agreement was also ceded to the British Government on the same conditions for a fixed annual rent of Rs. 2,500. The Khan also agreed to make over on lease, in perpetuity, any lands in the Lehri, Bhag and Gandawa *niabats* that may be found to be irrigable from British canals at a fair quit-rent.

Strictly speaking, none of these arrangements is in the nature of a lease. All of them purport to convey the "entire management" to the British Government of the districts and *niabats* in question together with "all powers of administration". There was, therefore, merely the cession of the powers of government. It is, no doubt, true that the word "rent" is used in all these agreements, but this does not alter the nature of the cession. In fact, in Quetta Agreement the term "rent" had been used for "a fair average equivalent of His Highness the Khan's right to the annual net surplus of the revenues". Similar description appeared in the Nushki Agreement. The question of lease only arose in the case of the Manjuti lands and the lands in Lehri, Bhag and Gandawa *niabats*. In respect of all other areas, the agreements were in the nature of an administrative arrangement between the British Government, and the Khan of Kalat for certain specific purposes, and the following incidents inevitably flew from them: -

- i) sovereignty remained with the Khan of Kalat;
- ii) the territories covered by the agreements continued to be part of the State of Kalat;

- (iii) all powers of administration were vested in the British Government; and
- (iv) the British Government was in actual possession of the territories.

These agreements, appeared to be analogous to the arrangements approved by international usage whereby one State actually exercises sovereignty which is, in law, vested in another State.



CHAPTER 5

PROMINENT ETHNIC GROUPS

THE AFGHANS

The word Afghan is believed to have been derived from the Sanskrit Avagena which goes back to the Sumerian work for a mountainous region, Ab-bar-gan 'the high country'. During 6th century AD Indian astronomer, Varahamihira was the first to use the name Afghan in his writings. Historically, the area, Afghanistan, has been mentioned since the 6th century BC. The main regions Bactria, Arachosia and Aria, have generally been interpreted as the region up to the Indus including the Afghan plains around the Amu River, Kandahar and Hirat. Racially, the Afghans consider themselves descendants of Afghan, the grandson of the Biblical king Saul. They claim that Saul was forty-fifth in descent from Abraham, while Kais, Kish or Kesh was the thirty-seventh from Saul. In some Afghan traditions Kais has been regarded as contemporary of the Prophet Muhammad (P.B.U.H.). They maintain that seventy-six tribesmen, representing the principal Afghan tribes under their leader Kais, visited Hijaz and embraced Islam. Prophet Muhammad renamed Kais Abdul Rashid and bestowed on him the title of Pihtan, which means the 'rudder' of a ship in the Syrian language. Their language, Pashtu, an Aryan tongue, is most probably the Pactypae mentioned by the Greeks. It is said that the Afghans may have adopted the language after their settlement among Pashtu-speaking people. Linguistically the Afghans, who do not

claim Perso-Turkish origin, are Pathan, but ethnologically all Pathans are not Afghans. The Afghans, unlike their Baloch neighbours, are deeply religious to the extent of bigotry. The political organization of the Pakhtoon is essentially tribal and constituted from a number of kindred groups through common ancestry. Many tribes or sections are normally affiliated with others who may be alien but such kinship endures not through common blood but through mutual benefits. The office of the tribal chief, the Khan, is elective and depends on the goodwill of the people. However, leadership of the entire tribe is generally hereditary in some particular family. The most suitable among the family members can be elected to the office, and at times the title has gone to the candidates who have shown extreme courage in times of emergency, not belonging to the traditional families or clans. Although the Pathan chief has tremendous power and can exercise those powers without consulting the chief of the clan, the individual Pakhtoon is democratic in his approach and can be persuaded only by the Jirga or through common consent. The powerful individuals can rarely agree to a compromise through tribal Jirga unless the injuries on both sides are made equal, that is an eye for an eye and a tooth for a tooth. Every Pakhtoon thinks it his inalienable right to do himself justice. He is seldom reconciled to the idea of society punishing the criminal on his behalf. The right to private revenge is not only lawful but considered honourable. In individual or inter-tribal conflicts, the Afghan will not kill a woman, a minor or a racial inferior; nor will he kill a person who has entered a shrine. The fighting will stop when a woman or a Saiyid intervenes with the Quran Sharif.

THE BALOCH

There are differences among scholars regarding the racial origins of the Baloch. Some believe that they belong to the Chaldaean branch of the Semitic people, owing their name to the Babylonian King Belus, also name of their God. An Assyrian,

Turco-Iranian and Aryan origin has also been mentioned by many writers. The origin and etymology of the name Baloch is still obscure. Burhan-e-Katih, mentions the Baloch as a 'a cock's comb, crest or the name of a barbarian people who inhabit the mountains on the border of Kirman.' Farhange-Sarwari also mentions a war-like people as Koch and Baloch. The Baloch are generally referred by Arab and Persian writers as Koch. Both are considered to be one people, the two names being synonymous except for the difference of language. The Baloch appear to have been in constant conflict with their neighbours. Muslim rulers of eastern Iran also fought occasional battles with the Baloch to keep the trade routes open through Baloch territories and also keep Baloch in their areas to a minimum. Up to the late 10th century AD the Baloch or *Koch-o-Baloch* inhabited the western and northern areas of Kirman, Seisten and Makkuran. By 14th century, the Baloch were settled in the central Balochistan up to the Jhalawan hills, where they replaced a branch of their own people, the Brahuis. Their further migration to the Indus valley took place at a much later date. They formed the bulk of the population in the region north of Hirat in the 13th and 14th centuries and were friendly with the Kurt ruler of the areas. From linguistic evidence, it appears that the Baloch migrated eastward from the region of the Caspian Sea – a theory borne out by the clear relationship obtaining between Balochi and Kurdish. The Semitic connection of the Baloch was first suggested by George Rawlinson in 1862 in his three volume book. Balochi is not homogeneous. The people of various regions speak their own variety of dialects with an over-riding influence from neighbouring tongues. In 1913, M. Long-worth Dames classified Balochi dialects into two main groups, northern and southern. Dialects spoken in Kach-Gandhava, the Sulaiman Mountains, parts of Dera Ghazi Khan and Jacobabad are grouped as northern while southern dialects were claimed to be spoken in Makkuran and Persian Balochistan, excluding the dialects of Kharan and Seistan. Balochi is spoken by the majority people in

the Pakistani, Irani and Afghani parts of Balochistan. Other languages spoken are mainly Pashtu, Persian, Brahui, Saraiki and Jatki. In central Balochistan, the region occupied by the Brahuīs, the people are mostly bi-lingual, speaking Brahui along with Balochi. Balochi has been influenced by the Indo-Aryan languages such as Sindhi, Panjabi and a variety of other tongues such as Saraiki on the east and Pashtu on the north, with Persian influence on the west easily observed. Poetry is still one of the main sources of Baloch history and culture. Being unwritten, however, its authenticity with regard to many events sometimes becomes doubtful. The Baloch cultural traditions are based on the moral principles of good conduct beneficial to the entire people.

THE BRAHUI

There is confusion regarding the racial origin of the Brahui faction of the Baloch. They are classed as Dravidians because of their language, and Arabs, Turco-Iranians or Semites in view of some common cultural traits. The work *Biroea*, the Greek name for Aleppo, has conveniently been connected with Brahui to assert their Syrian origin. An etymological connection with the Brahui-speaking Mengal has been traced in *Min*, a Scythian tribe. The Scythian tribes *Sagatae* and *Saki* have been claimed as progenitors of the Brahui tribe *Sajedi*; and similarly, the *Sarparra* are said to be the descendants of the Thracian tribe *Sarapaarae*. 'Brahui' has also been identified as antonym of *Narohi*, the inhabitants of the plains; or since the Brahui came from *Burzko*, *al Burz*, under *Ibrahim*, it is suggested they were at first called *Brahimi* after their leader, *Ibrahim* or *Braho*, which ultimately changed to Brahui. However, the common fallacy is the unsubstantiated assertion that the Brahui are the remnants of the Dravidians inhabiting this part of Balochistan, this claim is made on the basis that their language, also classed as Dravidian is connected with a few Central Asian tongues and the languages spoken in southern India. They might have lost their original language through political domination over

a long period. We have at least traces of such a language in central Balochistan before the arrival of the Brahui, which might have given Brahui speech its present structural form. There is historical evidence that the Brahui were living in Fars in the 10th century A.D. Ibn Haukal mentions Brahui tribes along with the Baloch. It can safely be presumed that the Brahui were the first to move from eastern Iran to Turan. The Brahui established themselves in Nal and Khuzdar after securing political authority by defeating the Hindu Raja of Kalat.

It is difficult to identify the tribes who may be of purely Baloch or non-Baloch origin. Since their migration from the Caspian and their movement eastward, the Baloch must have absorbed many indigenous tribes along the way; some of them lose their identity, some blending with others and quite a few maintaining their distinctive character against tremendous pressure. A wide variety of invaders came to Balochistan and greatly influenced the racial and cultural environment of the region. As regards, the non-Baloch-Brahui tribes, who are now completely 'Balochized' there are sketchy accounts in the Greek, Persian and Arab chronicles which throw some light on some of them. Makkuran are presumed to have been named after the chief of these tribes, who was Gandara and after whom the country was called Gedrosia. The Meds, who possess many attributes of Arrian's Ichthyophagoi, are also said to be of indigenous stock. The Arab chronicles mention Korak or Med: both are found in the coastal belt. The Jat or Jadgal are considered to be Dravidian and their language is of Sindhi origin. The Arab historians describe them as holding the country between Kirman and Mansura in Sindh. The Lasi claim descent from Summan and Sumras of Sindh. The Lasis and their subsection can clearly be identified with the Jats. The Dehwars of Kalat and Mastung are mostly Tajiks with elements of Chamakzai who have migrated from Bactria. Their language is corrupt form of Persian. The Gichkis are regarded as Rajputs.

The Noushervanis of Kolwah have an unsubstantiated claim of Persian connection through Kiani Maliks.

Rai Bahadur Diwan Jamiat Rai, Late Superintendent of Census Operations in Balochistan, in 1921, relating to the Tribes of Balochistan, had classified them as under: -

PUSHTOON— Babi, Barech, Jafar, Kakar (Davi, Dumar, Lamar, Sanzarkhel, Sargara, Sanatia, Targhara), Kasi, (or Kansi), Luni, Mandokhel, Musakhel, Zarkun, Tarin (Abdal, Achakzai, Spin, Tor), Venechi, Zimari.

BALUCH— Badini, Bugti, Buledi, Buzdar, Dashti, Domki, Gazani, Gishkori, Gichki, Gorgage, Hout, Jamali, Jamaldini, Kashani, Khetran, Khosa, Lashari, Magasi, Marri, Nausharwani, Rais, Rakhshani, Rind, Sangur, Sanjrani, Umrani.

BRAHVI— Ahamdzai, Bizanjav, Bangulzai, Gurgnari, Haruni, Iltazai, Jatak, Kalandrani, Kambrani, Kurd, Lehri, Langav, Mengal, Mirwari, Muhammad Hasni, Muhammad Shahi, Nichari, Pandrani, Pirkani, Raisani, Rekizai, Rodeni, Rustamzai, Sajdi, Samalani, Sasoli, Sarparra, Satakzai, Shahwani, Zagar-Mengal, Zahri.

SAIYID—Bukhari, Chishti, Gharshin, Gilani, Hashmi, Khosti, Mashwani, Maududi, Taran.

INDIGENOUS—Darzada, Dehwar, Gola, Jatt (Abra, Arain, Awan, Bhangar, Bhatti, Eri, Gajani, Gujjar, Joya, Kalwar, Mastoi, Sheikh, Sumra, Unar etc.), Khoja, Langah, Lasi (Angaria, Burra, Gongga, Jamot, Mangia, Mandara, Ronjha, Shahok, Shekh), Lori, Med, Nakib; Hindu and Sikh.

SEMI-INDIGENOUS—Alkozai, Andar, Barakzai, Durrani, Ghilzai, Hazara, Hotak, Kharot, Muhammadzai, Nasar, Niazi, Nurzai, Popalzai, Sadozai, Sulemankhel, Tajak, Wardak, Yousufzai, Zamrani.



NON-LOCAL AND DOMICILE IN BALOCHISTAN

In 1901, 18,682 persons (14,657 males and 4,025 females) were enumerated in the then Quetta-Pishin district, who had been born in the Provinces and 2,352 were of Native States of India respectively. These figures included the sepoys serving then in native regiment. The Provinces in India from which most immigrants came were the Punjab (11,804) followed by United Provinces (3,346), Bombay and Sindh came next. Of Native States, those of Rajputana were numerously represented. The immigrants were drawn principally from the Districts of Amritsar, Sialkot, Jhelum, Rawalpindi, Jullandar, Gujranwala, Gujrat and Hoshiarpur. The immigrants were also scattered in the other parts of the region.

In 1906 twenty families of the Afghan refugees permanently resided in the district who were in receipt of allowances from Government. Of these ten were Muhammadzai, 4 Ghilzais while the rest also included Sulaiman Khail, Popalzai, Alkozai and Shinghari Saiad. Hazara subsequently also treated as refugees but allowances not paid; however, all these were treated as semi-indigenous tribes.

Cooly work proper was peculiarity of the industrial centres which had grown up since the British occupation and in which plentiful supply of labour from Mekran, Afghanistan, Sindh and Punjab was found. Before the opening of the railways, the rates paid were high but in 1893 efforts were made to reduce

monthly wages. The wages of skilled labourer then varied from Rs. 20 to Rs. 45 and of mechanic, from Rs. 45 to Rs. 90 per month.

During the extensive Census operation of 1911, covered almost whole of the region and the tribes were classified which, however, did not include clan, section or sub-section thereof. Basing that Census *STATISTICAL ANALYSIS of The Tribes of Balochistan* was compiled in 1921, by Diwan Jamiat Rai. The Report contained two types: Indigenous, the locals, and semi-Indigenous, the tribes which had since migrated from Afghanistan. The List was extensive which inducted specified sections of Hindu and Sikh as indigenous. Throughout British era the Frontier Crimes Regulation, 1901 governed the civil as well as criminal tribal disputes *inter se* by the Council-of-Elders, the *Jirga* constituted under the Regulation, dealt with the cases. The *Jirga* members were appointed locally, as well as at the levels of District *Jirga* and Shahi *Jirga*. The elders of indigenous tribes were included as members of *Jirga* and none else. The other category of population who were immigrants were not included in the Classified List were taken as non-indigenous. The Britishers had great care and caution for this kind of population and their cases were tried under regular law irrespective of the fact that the crime had been committed in 'A' or 'B' area. 'A' Area considered where Police investigation powers are vested with the Police by the Levies Force. Under the regular law only death punishment can be and within 'B' area awarded but under FCR the maximum punishment was imprisonment for a considerable duration. This sort of population as such enjoyed greater care and protection.

Before partition of sub-continent the classification and distinction of these tribes or population whether indigenous, semi-indigenous, or non-indigenous was of little importance, and consideration as great harmony existed in-between them. Seeking of a job was not a difficult task then. Educational institutions were available at the required places for population. Documentation was not a necessary, element as the personalities

were recognized and known. Former Kalat States remained aloof from such kind of discrimination and classification.

After, creation of Pakistan another class of population entered in this region, were immigrants from India and Kashmir. Mr. Asim Malik (Advocate), member of Balochistan Council in its ninth Session at Sibi on February 12, 1951 moved a resolution that all the refugees who had then been living in Balochistan for the last two years be declared as domiciled residents of this Province. The Officers-on-Special Duty who had been authorized by the AGG gave reply on behalf of the Local Administration that question of domicile certificate was under consideration. The mover said that when he entered Balochistan along with other refugees were accorded warm reception which encouraged and induced them to settle in this part of the territory. According to him about 9000 refugees had then entered here who had permanently settled should no longer be called 'refugees' and there should be no distinction between locals and refugees. The refugees who had come to Balochistan would in due course adopt the culture of this Province but if they were persistently called refugees it would mean the creation of a separate sect. K.B. Sardar Rustam Khan Jamali opposed the motion and said that the proposal was not sound. The Adviser incharge Agriculture K.B. Haji Karam Khan Kansi said that the question was controversial and discussion be avoided. Continuing he said that when other non - locals who had been here for the last seventy years had not been recognized as Balochistanis, how it would be possible to accept the refugees as such who had been here not over three years. The BC rejected the proposal. People migrating from India and Kashmir who were new Pakistanis and for them generally the Pakistan Citizenship Act, 1951 and the Pakistan Citizenship Rules, 1952 were introduced. They required and were in search of Pakistani citizenship certificates who were issued domicile resident of Pakistan citizenship Certificates where after 'domicile' word used for the population which was non-Local i.e. not belonging

to indigenous or semi-indigenous tribes. The immigrants from Dera Ghazi Khan fell under this classification as well.

As far some of the semi-indigenous tribes, Government of Pakistan, Ministry of States and Frontier Regions on 10 May 1962 through a letter declared them as indigenous which included 1) Hazaras, 2) Durrani (Barakzai, Muhammadzai, Noorzai and Popalzai), 3) Yousafzai, and 4) Ghilzai (Andar, Kharot and Sulemankhail). Subsequently another letters of like nature also issued for Nasar, Tajak and Wardak tribes. Through an administrative action their status converted into indigenous where after they were labelled and styled as Locals, and two sets of population remained in the field, one as Locals and the other as Non-Locals or 'domicile' despite they had entered for works and gains in this geographical enclave about a century ago. Except for the terminology of Local and non-Local, both have equal status and treated at par under the law and the rules made thereunder. However, this terminology created confusion between them. A contesting candidate at Quetta for the provincial Assembly of Balochistan during General ELECTION-1970 included in his manifesto that he would cause and bring the Settlers i.e. domiciles at par with the other residents of the province and separate terminology as regards them would be discontinued. The matter as such took a political shape and turn and the subsequent governments had to deal with it.

The Provincial Government of Balochistan NAP-JUI Coalition, headed by Chief Minister Sardar Attaullah Mengal in the Council-of-Minister on 23 December 1972 decided that a bonafide non-Local residents of Balochistan would be treated as local, if he A) has been residing continuously in any area of the Province before the 14th August 1947, B) has acquired Pakistani Citizenship under the Pakistan Citizenship Act, 1951 and is residing continuously anywhere in the Province since 14th October 1955, and C) has been residing continuously in the Province twelve years prior to the making of the application for being treated as Local. This decision of Sardar Attaullah Mengal

hailed generally especially by the immigrant residents of the Province who fulfilled all the requirements and conditions. The decision circulated throughout for all intends and purposes. Before this decision could have taken the required shape and implemented in toto, the NAP-JUI Coalition government was ousted and de-thrown on 15th February 1973 by the first PPP regime at the Federal level when party affairs were managed by Chairman Zulfiqar Ali Bhutto. Mengal government was replaced by a Coalition government under the Chief Ministership of Al-Haj Jam Mir Ghulam Qadir of Lusbella when that particular contesting candidate was holding the portfolio of a Ministership. The Government of Balochistan in the Gazette No. 37 Friday September 13, 1974, issued the Notification No. 143/74-Cabinet (S&GAD) dated 10 September 1974, which reads as under: -

"In pursuance of the decision of the Council of Ministers Balochistan dated 23rd December, 1972 and 25th May, 1974, the Government is pleased to ratify that a bonafide non-local resident of Balochistan would hence forth be treated as local, if he: -

- a) been residing continuously in any area of the Province of Balochistan before the 14th August, 1947; or
- b) acquired Pakistani Citizenship under the Pakistan Citizenship Act, 1951 and is residing continuously anywhere in the Province of Balochistan since 14th October, 1955; or
- c) been residing continuously in the Province of Balochistan twelve years prior to the - making of the application for being treated as locals; and shall be considered a local to all intends and purposes.

BY ORDER OF THE GOVERNOR BALOCHISTAN"

The decision of Council of Minister of 25 May 1974 is verbatim of earlier taken on 23 December 1972 under the Chief Ministership of Attaullah Mengal. However, it seems probable

that on account of political rivalry the credit of decision on the part of Mengal government not attributed to them rather that contesting candidate, the winner, turned Minister desired that he be crowned for the decision which manifesto was included in his election campaign which version of him taken seriously by the opposite group of NAP supporters who resisted Jam government, and a boycott of the decision commenced by observing closure of educational institution for a considerable period which on account of law and order situation necessitated intervention by the Federal Government, and during first week of December 1974 the Interior Division held in-abeyance the relevant cabinet decision of 25 May 1974. Thereafter the status quo maintained as far the affairs on the subject.

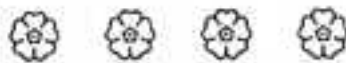
Earlier, during the same year, the then Governor of Balochistan, Khan Mir Ahmed Yar Khan, issued an administrative order that persons for the government jobs be recruited on the basis of ethnic groups, Baloch fifty, Pashtoon forty-five, and others five percent, were allotted job-quota respectively. This terminology of 'others' remained unspecified. Authenticity of this administrative action under the Constitution as well as law was considered as doubtful and ratio of the representation besides non-exhaustive definition of each group, the idea failed to work and never implemented.

The issue of 'Domicile' and 'Local' mitigated after the influx of Afghan refugees in this Province who entered in thousands which also required immediate attention concerning law and order situation. A mere obtaining of Local Certificate not taken or treated to redeem or redress gravity of the situation as far seeking of jobs or admissions in educational institution etc. are concerned but the distinction between these two classes of residents still observed, whereas in the all other Provinces of Pakistan Citizenship Certificates issued to the concerned by the District Magistrate/ Deputy Commissioner of the concerned district showing thereby being domicile resident of Pakistan under the Pakistan Citizenship Act, 1951 and the Rules made

thereunder. However, to the needy Permanent Residence Certificate, PRC, are issued with an object to show and indicate his long affiliations and considerable stay over a particular place or station for the purposes related therewith.

In the case of Ch. Noor Muhammad versus Province of W. Pakistan reported in PLD 1971 Lahore 367 held that under the Pakistan Citizenship Act and the Rules hereunder grant of Certificate for those fulfilling the requirement and precondition mandatory, and the person entitled could demand the same as a matter of right. In cases appearing in law Journals: PLJ 1977 Quetta 676 and PLJ 1983 Quetta 1, held that citizenship once 'acquired or recognized under the Act not to be summarily, arbitrarily and whimsically withdrawn by the Deputy Commissioner but in the event of obtaining by fraud or misrepresentation show-cause notice, holding of enquiry and prosecution treated as essential factors.

In the relevant sphere of such kind of distinction in this Province, the Judge-made-law and the precedents by the highest judicial forum, besides action by other authorities, could, some-or-how, settle the controversy, if any, so that the law applicable throughout Pakistan made uniform in this Province as well as in obtaining of Permanent Residence Certificate-PRC.



HIGH COURT OF BALOCHISTAN

Soon-after the establishment of British hegemony in 1876, the areas of Pishin and Sibi (Thal-Chotiali) were acquired and annexed during the year 1879 upon execution of Treaty of Gandamak. These areas along with Duki were classified as British Balochistan although the same was predominated by the Pushtoons. Agent to the Governor General exercised authority mainly in respect of Frontier and Tribal areas, among others his function was to administer British Balochistan as Chief Commissioner who in revenue matters was Revenue Commissioner and in judicial cases under regular law a Judicial Commissioner. The Chief Commissioner was vested powers to act as revisional authority under FCR, but in the capacity of Judicial Commissioner acted as highest judicial forum in other common and regular cases to hear second appeals under the provisions of Code of Civil Procedure, 1898 and Code of Civil Procedure, 1908, within the territorial jurisdiction, which was some-or-how equivalent to a High Court.

This state of affairs continued till on 14th October 1955 when One-Unit was formed in West Pakistan, and under the Constitution of Islamic Republic of Pakistan, 1956, a separate High Court was constituted with headquarters at Lahore. Quetta and Kalat Divisions were under the jurisdiction of that High Court. The President of Pakistan and Chief Martial Law Administer, General Agha Muhammad Yahya on 1st July 1970, dissolved the One-Unit, and four separate provinces were

created including Balochistan. Under the Constitution of Islamic Republic of Pakistan, 1973, which was enforced on 14 August 1973, a common High Court for Sindh and Balochistan was established. On 7 April 1976, a delegation of Balochistan Bar Association called upon the then Prime Minister of Pakistan, Zulfikar Ali Bhutto, and demanded creation of separate High Court, when this author was also a member of the delegation, Mr. Bhutto consented the suggestion and then and there ordered for taking of the necessary steps as regards establishment of a separate High Court which commenced functioning on 1st December 1976. For those purposes through the Constitution (Fifth Amendment) Act, 1976 (62 of 1976) necessary amendments were introduced in Article 192(2) and (3) of the Constitution. This High Court has sanctioned strength of eight Judges including the Chief Justice. Circuit of High Court has been established at Sibi in 1999 to hear cases pertaining to former Sibi and Nasirabad divisions.

In Pakistan Supreme Court is designated as apex Court, whereas the Supreme Court, the other High Courts of the provinces; and the Federal *Shariat* Court taken as superior courts or higher courts. The Constitution of Islamic Republic of Pakistan, 1973 which is not in its original form and shape passed by the Assembly from the day it was enacted or enforced i.e. 14th August, 1973, and subsequently it has undergone so many changes and amendments that nobody can be sure as to which of its provisions are presently in vogue. So much so that after its initial promulgation, so far no official revision has been printed, published or circulated for all the concerned. Anyhow, PART VII, The Judicature, CHAPTER 1, CHAPTER 2, AND CHAPTER 3, as well as CHAPTER 3A deal with: The Courts, the SUPREME COURT OF PAKISTAN, THE HIGH COURTS, and FEDERAL SHARIAT COURT. The relevant Articles are reproduced hereunder for perusal:-

175. (1) There shall be a Supreme Court of Pakistan, a High Court for each Province and such other courts as may be established by law.

(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

(3) The Judiciary shall be separated progressively from the Executive within [fourteen] years from the commencing day.

176. The Supreme Court shall consist of a Chief Justice to be known as the Chief Justice of Pakistan and so many other Judges as may be determined by Act of *Majlis-e-Shoora* (Parliament) or, until so determined, as may be fixed by the President.

177. (1) The Chief Justice of Pakistan shall be appointed by the President, and each of the other Judges shall be appointed by the President after consultation with the Chief Justice.

(2) A person shall not be appointed a Judge of the Supreme Court unless he is a citizen of Pakistan and—

(a) has for a period of, or for periods aggregating, not less than five years been a judge of a High Court (including a High Court which existed in Pakistan at any time before the commencing day); or

(b) has for a period of, or for periods aggregating not less than fifteen years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day).

* x * x * x
179. A Judge of the Supreme Court shall hold office until he attains the age of sixty-five years, unless he sooner resigns or is removed from office in accordance with the Constitution.

* x * x * x
193. (1) A Judge of a High Court shall be appointed by the President after consultation—

- (a) with the Chief Justice of Pakistan;
- (b) with the Governor concerned; and
- (c) except where the appointment is that of Chief Justice, with the Chief Justice of the High Court.

(2) A person shall not be appointed a Judge of a High Court unless he is a citizen of Pakistan, is not less than forty years of age, and—

- (a) he has for a period of, or for periods aggregating, not less than ten years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day); or
- (b) he is, and has for a period of not less than ten years been, a member of a civil service prescribed by law for the purposes of this paragraph, and has, for a period of not less than three years, served as or exercised the functions of a District Judge in Pakistan; or
- (c) he has, for a period of not less than ten years, held a judicial office in Pakistan.

Explanation.— In computing the period during which a person has been an advocate of a High Court or held judicial office, there shall be included any period during which he has held judicial office after he became an advocate or, as the case may be, the period during which he has been an advocate after having held judicial office]

(3) In this Article, "District Judge" means Judge of a principal civil Court of original jurisdiction.

The Articles have been reproduced for the reasons and with a view that usually the question asked is as to which person is qualified to be appointed as Judge of the High Court. Article 193 refers that the concerned officials/authority are the President, Chief Justice of Pakistan, the Governor concerned, but in practice quite a different method and policy is so adopted. For a single vacancy, three names of prospective candidates are listed by the Chief Justice of the concerned province to its Governor, which may or may not agree rather may ask the Chief Justice for making changes in the list which is, of course, time consuming. Quoting an instance when Amirul Mulk Mengal was the Governor of Balochistan, he was interested for elevation of a

particular person of his own choice which name was not included in the list, so placed before him, whereupon he desired for making necessary change in the list. The change, which included the name of that specific person of his choice, surprisingly contained the name of this Author too. This was done knowingly and purposely that he would never forward the list to the Central Government and his choice would also not meet any success. Anyhow, as per routine the list is forwarded by the concerned Governor to the Federal Government through the Secretary, Law and Parliamentary Affairs Division. The Division get it processed through the Chief Justice of Pakistan for inclusion of his consultation and the matter placed before President of Pakistan for final approval/ appointment.

In this process and procedure, political, social, cultural, economical, influential, liking and disliking factors play an effective role, part and purpose. Public has no say in the process, and merit considerations found lacking. So far nobody or organisation has been formed to assess or judge suitability, qualifications, merit and quality of the prospective incumbent/candidate, whereas almost in the whole world an independent forum stand established to act as such in its advisory capacity. In this outdated and un-enforceable Constitution of Pakistan no provision has been introduced regarding medical/mental check up, and examination relating to the person desirous to occupy any constitutional seat and post including Judges of the superior courts. That is why 'Restoration of Judges' has been topic and talk of the nation so as to kill the time when-so-ever there is no other topic left for discussion. Even in certain cases it has been established that the incumbents were not qualified therefor, and even in one particular case the Supreme Court Judges held that Pandora Box cannot be opened at that stage when the Chief Justice was about to retire and had by tempering in his date of birth got extension of two years service. Admittedly Judiciary, and law is supreme but 'Judicial Mafia' should be curbed. Contempt of Court Law deserves

repeal as through the same law even genuine voices are got silenced, which law does not found existence, and unprecedented in other civilised nations and countries of the world. Even in Islam such kind of law has been taken and considered as un-Islamic, requiring thereby to be done away with immediately. Long ago during 1958 Justice Mr. M. R. Kiyani had termed them *Ketchary* instead of Courts.

SUBORDINATE JUDICIARY

While making appointments in the subordinate Judiciary, taking or administration of an oath has not been considered necessary or essential. In the different provinces different service laws govern its members. As far this province, in a separate Chapter the relevant service law and procedure has been enshrined.

A Judicial District is so formed and established under the provisions of W.P. Civil Courts Ordinance, 1962, which is headed by a District and Sessions Judge. While functioning relating to Civil Cases, he is designated and styled as District Judge, and while acting in criminal cases called as Sessions Judge—Sessions Court/Sessions Division. So far Additional District and Sessions Judges are concerned, for them and as regards them he acts like a Monitor of the class for distribution of work as they also enjoy and administer equal powers and jurisdiction. Any party considering himself aggrieved by any order/judgement passed by District and Sessions Judge (D&SJ) or Additional District and Sessions Judge (Add: D&SJ) can avail the forum of a Superior Court i.e. High Court for seeking remedy and redressal. Under the law civil Judicial District are formed by the Law Department, and Judicial Criminal District by the Home Department, Government of Balochistan, which is headed by the same incumbent i.e. D&SJ.



METHODS OF EXECUTION

Recognised and established methods of Execution are:

1. Hanging,
2. Electric Chair,
3. Firing Squad,
4. Gas Chamber,
5. Lethel Injection,
6. Guillotine (it severs the neck), and
7. Stoning



JUDICIAL DISTRICT-WISE COURTS/JUDICIAL OFFICERS IN BALOCHISTAN

List of Subordinate Judiciary so constituted and established in the province is detailed hereunder:-

QUETTA

1. District and Sessions Judge, Quetta.
2. District and Sessions Judge Ad-hoc Quetta.
3. District and Sessions Judge (Inspection) Balochistan Quetta.
4. Special Judge, Anti-Corruption, Balochistan Quetta.
5. Presiding Officer 1st, Labour Court, Quetta.
6. Additional District and Sessions Judge-I, Quetta.
7. Additional District and Sessions Judge-II, Quetta.
8. Additional District and Sessions Judge-III, Quetta.

* This information has been supplied by the Computer Section, High Court of Balochistan. Authenticity thereof is doubtful as Government of Balochistan; Law Department has so far not established all these Judicial Districts under the W.P. Civil Courts Ordinance, 1962. Further the same contains typographical mistakes, which have been rectified accordingly.

9. Additional District and Sessions Judge-IV, Quetta.
10. Additional District and Sessions Judge-V, Quetta.
11. Additional District and Sessions Judge-VI, Quetta.
12. Senior Civil Judge-I, Quetta.
13. Senior Civil Judge-II, Quetta.
14. Senior Civil Judge-III, Quetta.
15. Civil Judge-I, Quetta.
16. Civil Judge-II, Quetta.
17. Civil Judge-III, Quetta.
18. Civil Judge-IV, Quetta.
19. Civil Judge-V, Quetta.
20. Civil Judge-VI, Quetta.
21. Civil Judge, Ziarat.
22. Family Judge-I, Quetta.
23. Family Judge-II, Quetta.
24. Judicial Magistrate-I, Quetta.
25. Judicial Magistrate-II, Quetta.
26. Judicial Magistrate-III, Quetta.
27. Judicial Magistrate-IV, Quetta.
28. Judicial Magistrate-V, Quetta.
29. Judicial Magistrate-VI, Quetta.
30. Judicial Magistrate-VII, Quetta.
31. Judicial Magistrate-VIII, Quetta.
32. Judicial Magistrate-IX, Quetta.
33. Judicial Magistrate-X, Quetta.
34. Judicial Magistrate-XI, Quetta.
35. Judicial Magistrate, Ziarat.

PISHIN

1. District and Sessions Judge, Pishin.
2. Additional District and Sessions Judge, Pishin.
3. Additional District and Sessions Judge, Killa Abdullah at Chaman.
4. Senior Civil Judge, Pishin.
5. Senior Civil Judge, Chaman.

6. Family Judge, Pishin.
7. Family Judge, Chaman.
8. Civil Judge, Chaman.
9. Judicial Magistrate, Pishin.
10. Judicial Magistrate, Chaman.
11. Judicial Magistrate, Killa Abdullah at Chaman.
12. Judicial Magistrate, Karezat at Khanozai.
13. Judicial Magistrate, Barshor at Pishin.

LORALAI

1. District and Sessions Judge, Loralai.
2. Additional District and Sessions Judge, Barkhan at Rakhni.
3. Additional District and Sessions Judge, Killa Saifullah.
4. Senior Civil Judge, Loralai.
5. Family Judge, Loralai.
6. Civil Judge, Duki.
7. Judicial Magistrate, Loralai.
8. Judicial Magistrate, Killa Saifullah.
9. Judicial Magistrate, Dukki.
10. Judicial Magistrate, Sanjavi.
11. Judicial Magistrate, Barkhan.
12. Judicial Magistrate, Muslim Bagh.
13. Member *Majlis-e-Shura*, Loralai.
14. Member, *Majlis-e-Shura*, Barkhan.
15. *Qazi*, Muslim Bagh.
16. *Qazi* Killa Saifullah.
17. *Qazi*, Bori/Sanjavi at Loralai.
18. *Qazi*, Barkhan.

JAFFERABAD*

1. District and Sessions Judge, Dera Allah Yar.
2. Additional District and Sessions Judge, Dera Allah Yar.
3. Senior Civil Judge, Dera Allah Yar.

* Former Nasirabad Sub-Division of Sibi District—Ex-Leased Area.

4. Family Judge, Dera Allah Yar.
5. Judicial Magistrate, Dera Allah Yar.
6. Judicial Magistrate, Sohbat Pur.

NASIRABAD**

1. District and Sessions Judge, Dera Murad Jamali (former Temple Dera).
2. Additional District and Sessions Judge, Dera Murad Jamali.
3. Family Judge, Dera Murad Jamali.
4. Civil Judge, Dera Murad Jamali.
5. Civil Judge, Gandawa.
6. Judicial Magistrate, Dera Murad Jamali.
7. Judicial Magistrate, Chattar at Dera Murad Jamali.
8. Judicial Magistrate, Gandawa at Jhal Magsi.
9. Judicial Magistrate, Tamboo.
10. Judicial Magistrate, Jhal Magsi.

USTA MUHAMMAD

1. District and Sessions Judge, Usta Muhammad.
2. Civil Judge, Usta Muhammad.
3. Judicial Magistrate, Usta Muhammad.
4. Judicial Magistrate, Gandakha.

SIBI

1. District and Sessions Judge, Sibi.
2. Presiding Officer-II, Labour Court at Sibi.
3. Additional District and Sessions Judge-I, Sibi.
4. Additional District and Sessions Judge-II, Sibi.
5. Additional District and Sessions Judge, Harnai.
6. Senior Civil Judge, Sibi.
7. Family Judge, Sibi.
8. Civil Judge, Mach.
9. Civil Judge, Harnai.

** Former Kalat State.

10. Judicial Magistrate, Sibi.
11. Judicial Magistrate, Dhadar.
12. Judicial Magistrate, Harnai.
13. Judicial Magistrate, Mach.
14. Judicial Magistrate, Bhag.
15. Judicial Magistrate, Lehri.
16. Member *Majlis-e-Shura*, Sibi.
17. *Qazi* Lehri at Dhadar.
18. *Qazi*, Bhag.

KALAT AT MASTUNG

1. District and Sessions Judge, Kalat at Mastung.
2. Additional District and Sessions Judge, Kalat
3. Family Judge, Mastung.
4. Judicial Magistrate, Mastung.
5. Judicial Magistrate, Kalat.
6. Judicial Magistrate, Dasht (Mastung).
7. Judicial Magistrate, Soorab.
8. Judicial Magistrate, Mangochar.
9. Member, *Majlis-e-Shura*, Kalat at Mastung.
10. Member, *Majlis-e-Shura*, Kalat at Mastung.
11. *Qazi* Sarawa at Mastung.
12. *Qazi* Soorab.
13. *Qazi*, Kalat.
14. *Qazi*, Dasht (Mastung).

KHUZDAR

1. District and Sessions Judge, Khuzdar.
2. Additional District and Sessions Judge, Khuzdar.
3. Additional District and Sessions Judge, Awaran at Khuzdar.
4. Senior Civil Judge, Khuzdar.
5. Family Judge, Khuzdar.
6. Judicial Magistrate, Khuzdar.
7. Judicial Magistrate, Awaran.

8. Judicial Magistrate, Wadh.
9. Judicial Magistrate, Mashkay.
10. Judicial Magistrate, Zehri.
11. Judicial Magistrate, Nal.
12. Member, *Majlis-e-Shura*, Khuzdar.
13. Member, *Majlis-e-Shura*, Khuzdar.
14. Qazi, Khuzdar.
15. Qazi, Mashkay.
16. Qazi, Awaran.

LASBELLA AT HUB

1. District and Sessions Judge, Lasbella at Hub.
2. Presiding Officer-III, Labour Court at Hub.
3. Additional District and Sessions Judge, Hub.
4. Senior Civil Judge, Hub.
5. Family Judge, Hub.
6. Civil Judge, Uthal.
7. Civil Judge, Bela.
8. Judicial Magistrate, Hub.
9. Judicial Magistrate, Bela.
10. Judicial Magistrate, Uthal.
11. Judicial Magistrate, Lakhra.
12. Judicial Magistrate, Duraji.
13. Judicial Magistrate, Kanraj.
14. Judicial Magistrate, Gaddani.
15. Member, *Majlis-e-Shura*, Hub.
16. Qazi, Uthal.

MAKRAN* AT TURBAT

1. District and Sessions Judge, Mekran at Turbat.
2. Presiding Officer-IV, Labour Court at Gawadar.
3. Additional District and Sessions Judge, Turbat.

* Locally it is pronounced as Makkuraan.

4. Additional District and Sessions Judge, Gawadar.
5. Senior Civil Judge, Gawadar.
6. Senior Civil Judge, Turbat.
7. Civil Judge, Pasni.
8. Family Judge, Gawadar.
9. Family Judge, Turbat.
10. Judicial Magistrate, Turbat.
11. Judicial Magistrate, Tump.
12. Judicial Magistrate, Gawadar.
13. Judicial Magistrate, Pasni.
14. Judicial Magistrate, Mand.
15. Judicial Magistrate, Omara.
16. Judicial Magistrate, Jiwani.
17. Judicial Magistrate, Buleda.
18. Member, *Majlis-e-Shura*, Turbat.
19. Member, *Majlis-e-Shura*, Turbat.
20. *Qazi*, Turbat.
21. *Qazi*, Tump.
22. *Qazi*, Dasht (Turbat)

NUSHKI

1. District and Sessions Judge, Nushki.
2. Additional District and Sessions Judge, Dalbandin.
3. Family Judge, Nushki.
4. Civil Judge, Nushki.
5. Judicial Magistrate, Nushki.
6. Judicial Magistrate, Taftan.
7. Judicial Magistrate, Dalbandin.
8. Judicial Magistrate, Nokundi.
9. Member, *Majlis-e-Shura*, Nushki.
10. *Qazi*, Dalbandin.

KHARAN

1. District and Sessions Judge, Kharan.

2. Judicial Magistrate, Kharan.
3. Judicial Magistrate, Mashkail.
4. Judicial Magistrate, Basima.
5. Judicial Magistrate, Washuk.
6. Member, *Majlis-e-Shura*, Kharan.
7. *Qazi*, Kharan.
8. Additional *Qazi*, Kharan.
9. *Qazi*, Basima.
10. *Qazi* Mashkail.

MUSA KHAIL

1. District and Sessions Judge, Musa Khail at Loralai.
2. Judicial Magistrate, Musa Khail.
3. Member, *Majlis-e-Shura*, Musa Khail.
4. *Qazi*, Musa Khail.

ZHOB

1. District and Sessions Judge, Zhob.
2. Civil Judge, Zhob.
3. Judicial Magistrate, Zhob.
4. Judicial Magistrate, Sherani/Zhob.
5. Judicial Magistrate, Qamar Din Karez.
6. Member, *Majlis-e-Shura*, Zhob.
7. *Qazi*, Zhob.

DERA BUGTI

1. District and Sessions Judge, Dera Bugti.
2. Additional District and Sessions Judge, Dera Bugti at Dera Murad Jamali.
3. Judicial Magistrate, Sui.
4. Member, *Majlis-e-Shura*, Dera Bugti.
5. *Qazi*, Dera Bugti.

KOHLU

1. District and Sessions Judge, Kohlu.
2. Additional District and Sessions Judge, Kohlu.
3. Judicial Magistrate, Kohlu.
4. Judicial Magistrate, Kahan.
5. Member, *Majlis-e-Shura*, Kohlu.
6. *Qazi*, Kohlu.

PANJGUR

1. District and Sessions Judge, Panjgoor.
2. Additional District and Sessions Judge, Panjgur.
3. Civil Judge, Panjgur.
4. Judicial Magistrate, Panjgur..



UNIVERSITY LAW COLLEGE, QUETTA.

University Law College at Quetta was established and commenced functioning during the month of November 1971. Subsequently after a few days Pakistan and India launched war against each other which resulted into emergence of Bangladesh. These were the days when blackout was being observed throughout the country but evening classes at University Law College remained unaffected. The classes initially commenced in the premises of Government Science College, Jinnah Road (former Bruce Road), Quetta during and the month of December 1971 the classes were terminated on account of winter vacations. After fall of Dacca, Mr. Zulfiqar Ali Bhutto assumed the governing powers also as Civilian Martial Law Administrator (unprecedented in the annals of history) of new Pakistan, and subsequently at midnight telephoned Barrister Yahya Bakhtiar to come to Islamabad immediately, and then he was appointed as Attorney General of Pakistan, and with his new assignment his relationship with the University Law College as its Principal

stood served. Late Barrister Yahya Bakhtiar remains as such its first Principal including among the pioneers and sponsors.

It is pertinent to mention the steps and movements which lead the idea into motion and reality as far establishing Law College in the Capital of the Province. During summer season of 1971, Mr. Azizullah K. Sheikh, Barrister-at-Law, and the Principal, Sindh Muslim Law College, Karachi did visit Quetta in connection with pleading of a case as a prominent senior Advocate. This Author had remained as one of his students in S.M. Law College, and in the final Examination of LL.B. during 1969 secured First Class First Position from the Karachi University, a distinction for the College, which ever appreciated by him among the others. While meeting him flouted the ideas for the establishing of Law College at Quetta, for the manifest reason that majority of the people are not in a position to study Law in other cities of the country on account of financial constraints etc. He appreciated the idea and notion, and on account of his past and teaching experience expressed that initially to start with a Teacher and one Classroom is so required. During conversation Mr. Amirul Mulk Mengal, then an Advocate, entered and Mr. Azizullah Sheikh also exchanged the idea with him who was of the same opinion. Continuing Mr. Azizullah Sheikh said that today he has been invited on a dinner by Barrister Yahya Bakhtiar, and he would like to talk to him in this regard. Subsequent development revealed that Mr. Yahya Bakhtiar was convinced with the suggestion, and called upon Justice Mr. Dorab Patel, the first Chancellor of University of Balochistan, as far implementation of this suggestion. Mr. Dorab Patel was of the positive view in this regard, and commenced measures for the establishment of Law College, Obviously the Classes were to be held in the evening time, probably at the centre of the city for the convenience of all concerned, and the Science College was best suited location as per his choice. The next step to be taken by him was the choice of staff recruitment, especially among the Members of the Bar,

while the job being honorary on one fine day he happened to visit Bar Room, and his purpose was an open secret. Senior Member of the Bar vehemently opposed the idea and suggestion on the grounds that the profession is already overcrowded, and on account of then prevalent *Jirga* Laws etc. the idea is bound to meet failure; despite Mr. Dorab Patel remained unmoved, and as per decorum and seniority, invited consent of the members of the Bar. The senior members declined but then a young lawyer, Mr. Zakaullah Lodhi consented followed by Mr. Aslam Chishtee, Mr. W.N. Kohli, Advocate and certain others including this Author whose name included by him at his own as he was already aware of the pioneers. The others included were Mr. Basharatullah, Mr. Syed Mahmood (who after taking class while going chamber, meet heart attack and died), Mr. Azizullah Memon, Mr. Yakoob Khan Yousafzai, Mirza Mohammad Tahir, Mr. Ehsanul Haq, Mr. M. Zafar, Mr. Noor Mohammad Magsi, Mr. Munawar Mirza, Mr. Khalid Malik. The list of lawyers/Advocates was then not exhaustive as far inclusion of teaching staff, the others being non-professionals voluntarily offered their services to join the initiative which included Mr. Nasru Minallah, then Commissioner Quetta Division, Mr. M.A. Rashid, Secretary Law Department, Government of Balochistan C.S.P. (surprisingly then he was not a Law Graduate), Mr. Manzoor Ahmad Jamali, Mr. Majid Raza Jaffery, Mr. A.F. Verdag, C.S.P., Mr. Simon E. Nathenial as Administrative Officer, and Mrs. Nathenial as its Librarian. In November 1971 during night time blackout was to be observed when college started functioning. One its first day the first period was taken by Mr. W.N. Kohli, Advocate and the third and last by this Author in his capacity as an Advocate-Professional. On that particular occasion this Author happened to be the youngest Law Teacher throughout the country which then also included East Pakistan. When the classes commenced after winter vacation during March 1972, its first Principal Mr. Yahya Bakhtiar stood replaced by Mr. M.A. Rashid. During that era not

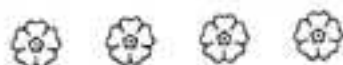
only the Teachers were men of calibre but students too, and among others included, subsequently turning well-known personalities: Ali Ahmad Kurd , K.N. Kohli, Raja Rab Nawaz, Sikandar Jamali, Atta Jaffer, Tariq Mahmood, Muhammad Riaz Ahmad, Ms. Ashraf Abbas, Pervez Zahoor, Qalandar Khan (socially well known person), Amanullah Shadezai, Ulfat Naseem Baloch, Aseer Abdul Qadir Shahwani, Abdul Samad Dogar, Zohra Durrani, Salma Malik, Yasmin Agha, Ahmad Bakhsh Tareen, Mirza Ehsan-ul-Haq, Taj Naeem, Muhammad Jalil Minhas, Sarwar Mengal, Musa Khan Samalani, Ali Ahmed Baloch, Faiza Verdak, Khalida Bahar, Ziauddin Ziaee, Masroor Alam khan, Gharib Hussain Shah, Muhammad Ali Jogazi, Ghulam Serwer Lodhi, Salma Hameed, Major Junaid Usmani, Mrs. Qamar-un-Nisa Usmani, Malik Muhammad Afzal, Misri Khan Mangel, Javid Iqbal Qureshi, Imtiaz Shah, Brig.M.A.Ali, Ahmed Raza, Inyat ullah Sulemani, Nawab Khan, Muhammad Khan Bugti and many others.

When the imagination had acquired the shape of realism, the others got him inducted in the staffs which include Mr. Muhammad Khan Raisani, Mr. Muhammad Ahmad Mirza, and others. Relating to Mr. Raisani it may be mentioned that he was not an enrolled Advocate of the High Court whereas a separate list of Advocate are mentioned by the Bar Council, one in respect of Courts subordinate to High Court and the other for High Courts. Supreme Court Bar Association² has third category of List. At this juncture it would not be out of place to be mentioned here the difference between 'Association' and 'Council'. Associations are formed for the welfare and betterment of its Members, such as Bar Association, Medical Association, Engineering Association, Officers Association, and so on and so forth, while a Council performs and functions in order to regulate the profession including disciplinary actions etc. Such as Bar Council, Medical Council, Engineering Council, Banking Council etc. Which may be at Provincial or Central level, such as Balochistan Bar Council or Pakistan Bar Council,

and when in the centre it works also as Appellate Authority/Body.

The University Law College after its inception at Government Science College was shifted to the premises of Directorate of Press Information in District Courts compound, and then presently at Khojak Road, Quetta Cantt. From 1971-92 onwards and up till the present time about a period of 37/38 years have since elapsed and thousands students have since qualified LL.B. Examination (LL.B. *L. Legum Baccalaureus*) (Bachelor of Laws) from this Law College. Presently at about eighteen hundred are reported to have been enrolled as Advocate by the Balochistan Bar Council while actually practicing lawyers are limited. Over this period hundreds of girls students have passed the Examination but those who have since joined the profession might not exceed dozens. This Institution has since produced thousands LL.B. but talent found missing. A few might be named as Scholars. Common sense is uncommon rather rare, while a primary duty is cast upon the Educational Institutions especially Law to develop and enlarge in acquiring of common sense. Some are born great; some achieve greatness and upon some greatness is thrust. The Institutions are mainly concerned with its second branch and category.

Irony of life is that a war is fought by soldiers but credit goes to General and, those who sow not necessarily reap the harvest. People forget you for your mistakes but they punish you for your virtues. It is better to be killed than to be defeated.



CHAPTER 8

THE BALOCHISTAN EXCISE REGULATION, 1915 [REG. I OF 1915]

[6th January, 1915]

A Regulation to consolidate and amend the Excise Law in force in then British Balochistan.

WHEREAS it is expedient to consolidate the law in British Balochistan, relating to the import, export, transport, manufacture, sale and possession of Intoxicating liquor and of Intoxicating drugs;

It is hereby enacted as follows:-

CHAPTER-I PRELIMINARY

1. (1) This Regulation may be called the Excise Regulation, 1915.
(2) It extends to British Balochistan.
(3) It shall come into force on such date as the (then) Chief Commissioner may, by notification, direct.
2. In this Regulation, unless there is anything repugnant in the subject or context: -

* As then it was Chief Commissioner's Province of British Balochistan; which excluded Kalat States.

- (1) "beer" includes ale, stout, porter and all other fermented liquors usually made from malt;
- (2) to 'bottle' means to transfer liquor from a cask or other vessel to a bottle, Jar, flask or other similar receptacle for the purpose of sale, and "bottling" Includes re-bottling;
- (3) "Excise Commissioner" means the officer appointed by the Chief Commissioner under section 7, clause (a);
- (4) "denatured" means rendered unfit for human consumption in such manner as the Provincial Government may, by notification, prescribe;
- (5) "excisable article" means any liquor or intoxicating drug as defined by or under this Regulation;
- (6) "Excise-officer" means a Collector or any officer or other person appointed or invested with powers under section 7;
- (7) "excise-revenue" means revenue derived or derivable from any duty, fee tax penalty, payment (other than a fine imposed by a court of law) or confiscation imposed or ordered under the provisions of this Regulation, or of any other law for the time being in force relating to liquor or intoxicating drugs;
- (8) "export" means to take out of the province;
- (9) Clause (9) was omitted by the Dangerous Drugs Act, 1930 (2 of 1930)
- (10) "import" means to bring into the province;
- (11) "intoxicating drug" means-
- (i) the leaves, small stalks and (lowering or fruiting tops of the Indian hemp plant (*Conabis sativa* L, including all forms known as *bhang*, *sdhi*, or *ganja*;
 - (ii) *Charas*, that is the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;
 - (iii) any mixture, with or without neutral materials of any of the above forms of hemp or any drink prepared therefrom; and

(iv) any other Intoxicating or narcotic substance which the Provincial Government may, by notification, declare to be an intoxicating drug. such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of Dangerous Drugs Act, 1930;

(12) "liquor" means intoxicating liquor, and includes spirits of wine, spirit, wine. *Tari*, beer all liquid consisting of or containing alcohol, and any substance which the Provincial Government may, by notification, declare to be liquor for the purposes of this Regulation;

(13) "manufacture" includes every process, whether natural or artificial, by which any excisable article is produced or prepared, and also redistillation and every process for the rectification, flavouring, blending or colouring of liquor;

(14) "notification" means notification in the official Gazette;

(15) "place" includes house, building, shop booth, tent, vessel, raft and vehicles;

(16) expressions referring to "sale" include any transfer otherwise than by way of gift;

(17) "spirit" means any liquor containing alcohol obtained by distillation whether it is denatured or not;

(18) "*tari*" means fermented or unfermented juice drawn from any kind of palm tree; and

(19) "Transport" means to move from one place to another within British Balochistan"

3. *Provision supplemental to the definition of "intoxicating drug" Repealed by s.40 and Sch.II of Act 2 of 1930.*

4. The Provincial Government may by notification, declare what, for purposes of this Regulation or any portion thereof, shall be deemed to be "country liquor" and "foreign liquor", respectively.

5. (1) The Provincial Government may, by notification declare, with respect either to the whole of Balochistan or to any specified local area, and as regards purchasers generally or any specified class of purchasers, and either generally or for any specified occasion, what quantity of any excisable article shall, for the purposes of this Regulation, be the limit of a retail sale.

(2) The sale of any excisable article in any quantity excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a sale by whole sale.

6. Nothing contained In this Regulation shall affect the provisions of the Sea Customs Act, 1878, or the Indian Tariff Act, 1894, (except section 6 thereof), or the Cantonments Act, 1910 or any rule or order made thereunder.

CHAPTER II ESTABLISHMENT AND CONTROL

7. The Provincial Government may, by notification, for the whole or for any specified part of the province, -

- (a) appoint an officer who, subject to such control (if any) as the Provincial Government may direct, shall superintend the administration of the Excise Department and the collection of the excise-revenue;
- (b) appoint any person other than the Collector to exercise all or any of the powers and to perform, all or any of the duties conferred and imposed on a Collector by or under this Regulation, either concurrently with, or in subordination to, or in exclusion of, the Collector, subject to such control as the Provincial Government may direct;
- (c) appoint officers of the Excise Department of such classes and with such designations, powers and duties as the Provincial Government may think fit;
- (d) order that all or any of the powers and duties assigned by or under this Regulation to any officer appointed under clause (c) shall be exercised and

- performed by any Government officer or any other person;
- (e) delegate to the Excise Commissioner all or any of its powers under this Regulation;
 - (f) withdraw from any officer or person all or any of its powers under this Regulation; and
 - (g) authorise the delegation by the Excise Commissioner or the Collector to any person or class of persons specified in such notification of any powers conferred or duties imposed upon him by or under this Regulation, or exercised or discharged by him in respect of the excise-revenue under any other law for the time being in force.

CHAPTER III IMPORT, EXPORT AND TRANSPORT

8. The Provincial Government may, by notification, -
- (a) prohibit, throughout Balochistan or in any specified area thereof, the import or export of any excisable article;
 - (b) prohibit the transport of any excisable articles.
9. No excisable articles shall be imported, exported or transported, except, -
- (a) after payment of any duty of customs or excise to which it may be liable, or execution of a bond for such payment; or
 - (b) on compliance with such conditions as the Provincial Government may impose.
10. No excisable article exceeding such quantity as the Provincial Government may prescribe by notification of either generally or for any specified area, shall be imported, exported or transported, except under a pass issued, or deemed to be issued, under the provisions of this Regulation:

Provided that in the case of duty-paid foreign liquor such passes shall be dispensed with, unless the Provincial Government shall, by notification, otherwise direct with respect to any local area.

11. (1) Except when otherwise directed by the Excise Commissioner, passes for the Import, export or transport of excisable articles may be granted by the Collector.

(2) Such passes may be either general for definite periods and kinds of excisable articles, or special for specified occasions and particular consignments only.

12. The Excise Commissioner may, by general or special order, direct, subject to such conditions (if any) as he may impose, that a pass granted by any authority in Pakistan shall be deemed to be a pass for any purpose under this under this Regulation.

CHAPTER IV MANUFACTURE, POSSESSION AND SALE

13. (a) No excisable article shall be manufactured or collected;

(b) no hemp plant shall be cultivated;

(c) no *tari*-producing tree shall be tapped and no *tari* shall be drawn from any tree;

(d) no liquor shall be bottled for sale;

(e) no distillery or brewery shall be constructed or worked; and

(f) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than *tari*,

except under the authority and subject to the terms and conditions of a license granted in that behalf:

Provided that the Provincial Government may, by notification, declare that the provisions of this section shall not

apply, in any area specified in this behalf, to the tapping of *tari*-producing trees, or the drawing of *tari* such conditions as it may prescribe.

14. The excise Commissioner may -

- (a) establish a distillery in which spirit may be manufactured under a license granted under section 13 on such conditions as the Provincial Government may impose;
- (b) discontinue any such distillery;
- (c) license on such conditions as the Provincial Government may impose, the construction and working of a distillery or brewery;
- (d) establish or license a warehouse wherein any excisable article may be deposited and kept without payment of duty; and
- (e) discontinue any such warehouse.

15. Without the sanction of the Provincial Government no excisable article shall be removed from any on removal from any distillery, brewery, warehouse or other place of storage established or licensed under this Regulation unless the storage established or licensed under this Regulation unless the duty (if any) imposed under section 24 has been paid or a bond has been executed for the payment thereof.

16. (1) The Provincial Government may, by notification, prescribe a limit of quantity for the possession of any of excisable article:

Provided that different limits may be prescribed for different qualities of the same article.

(2) No person shall have in his possession any quantity of any excisable article in excess of the limit prescribed under subsection (1), except under the authority and in accordance with the terms and conditions of -

- (a) a license for the manufacture, cultivation, collection, sale or supply of such article, or
- (b) a permit granted by the Collector in that behalf.

- (3) Sub-section (2) shall not apply to any foreign liquor -
- (a) which is in the possession of any common carrier or warehouseman as such, or
 - (b) which is lawfully procured by and in the possession of any person for his *bonafide* private consumption and not for sale.

(4) Notwithstanding anything contained in this Regulation, or in any other law for the time being in force, the Provincial Government may, by notification, prohibit or restrict the possession or consumption of any excisable article, either throughout the area in which this Regulation is in force or in any specified part thereof in respect of any individual or class or body or individuals or the public generally, subject to such conditions as it may prescribe.

17. No excisable article shall be sold except under the authority and subject to the terms and conditions of a articles, license granted in that behalf:

Provided that -

- (a) a person having the right to the *tari* drawn from any tree may sell such *tari* without a license to a person licensed to manufacture or sell *tari* under this Regulation;
- (b) nothing in this section shall apply to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease

(2) On such conditions as the Excise Commissioner may determine, a license for sale under the Excise law for the time being in force other parts of Pakistan may be deemed to be a license granted in that behalf under this Regulation.

18. (1) The Provincial Government may lease to any person, on such conditions and for such period as it may think fit, the right-

- (a) of manufacturing or of supplying by whole sale, or of both, or
- (b) of selling by whole sale or by retail or
- (c) of manufacturing or of supplying by wholesale, or of both, and of selling by retail.

any country liquor or intoxicating drug within any specified area.

(2) The licensing authority may grant to a lessee under sub-section (1) a license in the terms of his lease; and, when there is no condition in the lease which prohibits sub-letting, may, on the application of the lessee, grant a license to any sub-lessee approved by such authority.

19. Where a right of manufacturing *tari* has been leased under section 18, the Provincial Government may declare that the written permission of the lessee to draw *tari* shall have the same force and effect as a license from the Collector for the purpose.

20. Within the limits of any military Cantonment, and within such distance from those limits as the Provincial Government may prescribe, no licence for the retail sale of liquor shall be granted, except with the knowledge and consent of the Commanding Officer.

21. Every person who manufactures or sells any excisable article under a license granted under this licensees Regulation shall be bound-

- (a) to supply himself with such measures, weights and instruments as the Excise Commissioner may prescribe, and to keep the same in good condition and on the licensed premises; and
- (b) on the requisition of any Excise-officer duly empowered in that behalf, at any time to measure, weigh or test any excisable article in his possession in such manner as the said Excise-officer may require.

22. (1) No person who is licensed to sell any excisable article for consumption on his premises shall, during the hours in

which such premises are kept open for business, employ or permit to be employed either with or without remuneration, any child under such age as the Provincial Government may by rule prescribe in this behalf, in any part of such premises in which such excisable article is consumed by the public.

(2) No person who is licensed to sell any excisable article for consumption on his premises shall, without the previous permission in writing of the Collector, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any woman in any part of such premises in which such excisable article is consumed by the public..

(3) Every permission granted under sub-section (2) shall be endorsed on the license and may be modified or withdrawn.

23. (1) The District Magistrate, by notice in writing to the licensee, may require that any shops in which any excisable article is sold shall be closed at such time or for such period as he may think necessary for the preservation of the public peace.

(2) If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, a Magistrate of any class, or any police-officer above the rank of constable who is present, may require such shop to be kept closed for such period as he may think necessary;

Provided that where any riot or unlawful assembly so occurs, the licensee shall, in the absence of such Magistrate or officer, close his shop without any order and keep it closed during the continuance of such riot or unlawful assembly.

CHAPTER V DUTIES AND FEES

24. (1) The Provincial Government may, by notification, impose a duty, at such rate or rates as it thinks fit, either generally or for any specified area, on any excisable article –

- (a) Imported; or
- (b) exported; or

- (c) transported; or
- (d) manufactured, cultivated or collected under any license granted under section 13; or
- (e) manufactured in any distillery established, or any distillery or brewery licensed, under this Regulation.

(2) Duty may be imposed under sub-section (1) at different rates according to the places to which any excisable article is to be removed, or according to the strength and quality of such article.

(3) Notwithstanding anything contained in sub-section (1) -

- (i) duty shall not be imposed thereunder on any article which has been imported into Pakistan and was liable, on such importation to duty under the Sea Customs Act, 1878 or the Indian Tariff Act, 1894.
- (ii) duty imposed thereunder on denatured spirit or beer manufactured in Pakistan shall, unless the Provincial Government with the previous sanction of the Central Government otherwise directs, be equal to the duty to which denatured spirit or beer as the case may be, when imported into Pakistan by sea. Is liable under the Indian Tariff Act, 1894, or any other law for the time being in force relating to the duties of customs on goods imported into Pakistan.

25. Subject to such rules regulating the time place and manner as the Provincial Government may prescribe, such duty shall be levied rateably on the quantity of excisable article imported, exported, transported, collected or manufactured in or issued from a distillery, brewery or warehouse:

Provided that -

- (1) duty may be levied -

- (a) on spirit or beer manufactured in any distillery established or any distillery or brewery licensed under this Regulation-
 - (i) in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the Provincial Government may prescribe, or
 - (ii) by a rate charged directly on the materials used;
 - (b) on *tari*, b a tax on each tree from which the *tari* is drawn;
- (2) where payment is made upon the issue of an excisable article for sale from a warehouse, it shall be at the rate of duty in force on the date of issue of such article from the warehouse.

26. Instead of or in addition to any duty leviable under this Chapter, the Provincial Government may accept payment of a sum in consideration of the grant of any lease under section 18.

CHAPTER VI LICENSES, PERMITS AND PASSES

27. Every license, permit or pass granted under this Regulation -

- (a) shall be granted -
 - (i) on payment of such fees (if any)
 - (ii) for such period,
 - (iii) subject to such restrictions and on such conditions, and
- (b) Shall be in such form and contain such particles, as the Provincial Government may direct either generally or in any particular instance.

27-A. No license, permit or pass under this Regulation shall be issued to a Muslim.*

28. Any authority granting a license under this Regulation may require the license to give such security for the observance of the terms of his license, or to make such deposit in lieu of security, as such authority may think fit.

29. (1) No license granted under this Regulation shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof.

(2) The decision of the Excise Commissioner as to what is a technical defect, irregularity or omission shall be final.

30. (1) Subject to such restrictions as the Provincial Government may prescribe, the authority granting any license, permit or pass under this Regulation may cancel or suspend it –

- (a) if any duty or fee payable by the holder thereof be not duly paid; or
- (b) in the event of any breach by the holder thereof, or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions thereof; or
- (c) if the holder thereof, or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Regulation or any other law for the time being in force relating to excise-revenue; or
- (d) if the holder thereof is convicted of any cognisable and non-bailable offence, or of any offence under the Dangerous Drugs Act, 1930 or under the Merchandise Marks Act, 1889, or under any section which has been introduced into the Pakistan Penal Code by section 3 of that Act, or of any offence

* Added by Balochistan Ordinance X of 1984.

punishable under clause (8) of section 167 of the Sea Customs Act, 1878, or

- (e) where a license, permit or pass has been granted on the application of the holder of any lease granted under section 18, on the requisition in writing of such lessee; or
- (f) if the conditions of the license, permit or pass provide for such cancellation or suspension at will.

(2) Where a license, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c), or clause (d) of sub-section (1), the authority aforesaid may cancel any other license, permit or pass granted to such person under this Regulation or under any other law for the time being in force relating to excise-revenue, or under the Opium Act, 1878.

(3) The holder shall not be entitled to any compensation for its cancellation or suspension, nor to the refund of any fee paid or deposit made in respect thereof.

(4) Where a license, permit or pass is cancelled or suspended under clause (a), clause (b), clause (c), or clause (d) of sub-section (1), -

- (a) the fee payable for the balance of the period for which such license would have been current but for such cancellation or suspension, may be recovered from the ex-licensee as excise-revenue;
- (b) the Collector may take the grant under management or resell it, but any profit realised by such management or resale which is not in excess of the amount recovered for such period shall be paid to the ex-licensee.

31. (1) Whenever the authority which granted any license under this Regulation considers that such license should be withdrawn for any cause other than those specified in section 30, it shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days, and may withdraw the license either -

- (a) on the expiration of fifteen days' notice in written of its intention to do so, or
- (b) forthwith without notice.

(2) If any license be withdrawn under clause (b) of sub-section (1), the aforesaid authority shall, in addition to remitting such sum as aforesaid, pay to the licensee such further sum (if any) by way of compensation as the Excise Commissioner may direct.

(3) When a license is withdrawn under subsection (1) any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount (if any) due to Government.

32. (1) Any holder of a license granted under this Regulation to sell an excisable article may surrender his license on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same and on payment of the fee payable for the license for the remainder of the period for which it would have been current but for such surrender:

Provided that if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a license, he may remit to the holder thereof the sum so payable on surrender or any portion thereof.

(2) Sub-section (1) shall not apply in the case of any license granted under section 18.

Explanation - The words "holder of a license" as used in this section include a person whose tender or bid for a license has been accepted although he may not actually have received the license.

CHAPTER VII OFFENCES AND PENALTIES

33. Whoever, in contravention of this Regulation, or of any rule, notification or order made, issued or given thereunder, or of any license, permit or pass granted under this Regulation -

- (a) imports, exports, transports, manufactures, collects, possesses or consumes any excisable article; or
- (b) save in the cases provided for in section 37, sells any excisable article; or
- (c) cultivates any hemp plant; or
- (d) taps or draws *tari* from any *tari* producing tree; or
- (e) constructs or works any distillery or brewery; or
- (f) uses keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than *tari*, or
- (g) removes any excisable article from any distillery, brewery or warehouse licensed, established or continued under this Regulation; or
- (h) bottles any liquor;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

34. Whoever—

- (a) renders fit for human consumption any spirit which has been denatured; or
- (b) has in his possession any spirit in respect of which he knows or has reason to believe that any such offence has been committed, or that an attempt to commit, such offence has been made;

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

35. Whoever, without lawful authority, has in his possession any quantity of any excisable article knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected, or knowing the prescribed duty not to have been paid thereon, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

36. Whoever does any acting contravention of any of the provisions of this Regulation, or of any rule, notification or order made, issued or given thereunder and not otherwise provided for In this Regulation, shall be punishable with fine which may extend to two hundred rupees.

37. (1) A licensed vendor or any person in his employ and acting on his behalf who –

- (a) sells any excisable article to a person who is drunk; or
- (b) sells or gives any excisable article to any child apparently under such age as the Provincial Government may by rule prescribe in this behalf; or
- (c) in contravention of section 22 employs or permits to be employed on any part of his licensed premises referred to in that section any child or woman; or
- (d) permits drunkenness, disorderly conduct or gaming on the premises of such vendor; or
- (e) permits persons whom he knows or has reason to believe to have been convicted of any non-bailable offence, or who are reputed prostitutes, to resort to or assemble on the premises of such vendor whether for the purposes of crime or prostitution or not;

shall be punishable with fine which may extend to five hundred rupees.

(2) Where any licensed vendor, or any person in his employ and acting on his behalf, is charged with permitting drunkenness on the premises of such vendor, and it is proved that any person was drunk on such premises, it shall lie on the person charged to prove that the licensed vendor and the persons employed by him took all reasonable steps for preventing drunkenness of such premises.

38. A holder of license, permit or pass granted under this Regulation, or any person in the employ of such holder and acting on his behalf, who intentionally –

- (a) fails to produce such license, permit or pass on the demand of any Excise-officer or of any other officer duly empowered to make such demand; or
- (b) save in a case provided for by section 33, contravenes any rule made under section 62, or
- (c) does any act in breach of any of the conditions of the license, permit or pass not otherwise provided for in this Regulation;

shall be punishable in case (a) with fine which may extend to two hundred rupees, and in case (b) or case (c) with fine which may extend to five hundred rupees.

39. (1) A chemist, druggist, apothecary or keeper of a dispensary who allows any excisable article which has not been *bonafide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both.

(2) Any person not employed as aforesaid who consumes any such excisable article on such premises shall be punishable with fine which may extend to two hundred rupees.

40. (1) Where any excisable article has been manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such manufacture or sale was, or that such possession is on his account, the article shall, for the purposes of this Regulation, be deemed to have been manufactured or sold by or to be in the possession of such other persons.

(2) Nothing in sub-section (1) shall absolve any person who manufactures, sells or has possession of an excisable article on account of another person from liability to any punishment under this Regulation for the unlawful manufacture, sale or possession of such article.

41. Whoever attempts to commit any offence punishable under this Regulation shall be liable to the punishment provided for such offence.

42. In prosecutions under section 33, section 34 and it shall be presumed, until the contrary is proved, that the accused person has committed an offence punishable under that section in respect of –

- (a) any excisable article, or
- (b) any still, utensil, implement or apparatus whatsoever for the manufacture of any excisable article other than *tori*, or
- (c) any materials which have undergone any process towards the manufacture of an excisable article, or from which an excisable article has been manufactured, for the possession of which he is unable to account satisfactorily.

43. Where any offence under section 33, section 34, section 35, section 37 or section 38 is committed by any of licensee for person in the employ and acting on behalf of the holder of a license, permit or pass, granted under this Regulation, such holder shall also be punishable as if he had himself committed the same unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence:

Provided that no person other than the actual offender shall be punishable under this section with imprisonment except in default of payment of fine.

44. If any person, after having been previously convicted of an offence punishable under section 33, section 34, section 35, or section 39 or under the corresponding provisions in any enactment repealed by this Regulation, subsequently commits and is convicted of an offence punishable under any of those sections he shall be liable to twice the punishment which might be imposed on a first conviction under this Regulation:

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

45. Whenever an offence has been committed which is punishable under this Regulation, the following things shall be liable to confiscation, namely:-

(1) any excisable article, materials, still, utensil, implement or apparatus In respect of or by means of which such offence has been committed;

(2) any excisable article lawfully Imported, transported, manufactured, had in possession or sold along with, or in addition to. any excisable article liable to confiscation under clause (1); and

(3) any receptacle, package or covering in which anything liable to confiscation under clause (1) or (2) is found, and the other contents, if any, of such receptacle, package or covering and any animal, cart, vessel, raft or other conveyance used in carrying the same:

Provided that if anything specified in clause (3) is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed.

46. (1) Where in any case tried by him the Magistrate decides that anything is liable to confiscation under section 45, he may either order confiscation or may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the Magistrate thinks fit.

(2) When an offence under this Regulation has been committed, but the offender is not known or cannot be found, the case shall be inquired into and determined by the Collector, who may order confiscation:

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated, or without hearing any person who

may claim any right thereto, and the evidence (if any) which he may produce in support of his claim:

Provided further that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that the sale would be for the benefit of its owner, the Collector may at any time direct it to be sold, and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of such sale.

47. The Collector may—

- (a) accept from any person whose license, permit or pass is liable to be cancelled or suspended under clauses (a) and (b) of sub-section (1) of section 30, or who is reasonably suspected of having committed an offence under section 36, section 37, or section 38, a sum of money not exceeding two hundred rupees in lieu of such cancellation or suspension, or by way of composition for such offence, as the case may be; and
- (b) in any case in which any property has been seized as liable to confiscation under this Regulation may, at any time before an order of confiscation has been passed by a Magistrate, release the same on payment of the value thereof as estimated by the Collector.

(2) On the payment of such sum of money or such value, or both, as the case may be, to the Collector, the accused person, if in custody, shall be discharged, the property seized (if any) shall be released, and no further proceedings shall be taken against such person or property.

48. Any Excise-officer who vexatiously and unnecessarily—

- (a) enters or searches or causes to be entered or searched any place under colour of exercising any power conferred by this Regulation, or
- (b) seizes the movable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Regulation, or
- (c) searches or arrests any person,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

49. Any Excise officer, who without lawful excuse shall cease or refuse to perform, or shall withdraw himself from the duties of his office, unless expressly allowed to do so in writing by the Collector, or unless he shall have given to his superior officer two month's notice in writing of his intention to do so, or who shall be guilty of cowardice, shall, on conviction before a Magistrate, be punished with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES

50. Whenever any excisable article is manufactured or collected, or any hemp plant is cultivated, on any land in contravention of this Regulation—

- (a) all owners and occupiers of such land and their agents; and
- (b) all village-headmen, village-accountants, village-watchmen, village police-officers, and all officers employed in the collection of revenue or rent of land on the part of Government or the Court of Wards in the villages in which such land is situate;

shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or to an officer of the Excise, Police or Land Revenue Department as soon as the fact comes to their knowledge.

51. The Excise Commissioner, or a Collector or any Excise-officer not below such rank as the Provincial Government may by notification prescribe, or any Police officer duly empowered in that behalf, may--

- (a) enter and inspect, at any time by day or by night, any place in which any licensed manufacturer, manufactures or stores any excisable article; and
- (b) enter and inspect, at any time within the hours during which sale is permitted and at any other time during which the same may be open, any place in which any excisable article is kept for sale by any person holding a license under this Regulation; and
- (c) examine accounts and registers, and examine, test, measure or weigh any materials, stills, utensils, implements, apparatus or excisable article found in such place.

52. (1) Any officer of Excise, Police, or Land Revenue Department, subject to such restrictions as the Provincial Government may prescribe, and any other person duly empowered, may—

- (a) arrest without warrant any person found committing an offence punishable under section 33, section 34 or section 35; and
- (b) seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under this Regulation or any other law for the time being in force relating to excise-revenue; and
- (c) detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which he may have reasonable cause to suspect any such article to be.

(2) When any person is accused or reasonably suspected of committing an offence under this Regulation, other than an offence under section 33, section 34 or section 35, and on demand of any such officer as aforesaid refuses to give his name and residence or gives a name and residence which such officer has reason to believe is false, he may be arrested by such officer in order that his name and residence may be ascertained.

53. If a Magistrate, upon information and after such inquiry (if any) as he thinks necessary, has reason to believe that an offence under section 33, section 34 or section 35 has been, is being, or likely to be committed, he may issue a warrant –

- (a) for the search of any place to which he has reason to believe that any excisable article, still, utensil, implement, apparatus or materials which are used for the commission of such offence, or In respect of which such offence, has been, is being, or is likely to be committed, are kept or concealed, and
- (b) for the arrest of any person whom he has reason to believe to have been, to be or to be likely to be engaged in the commission of any such offence.

54. Whenever any Excise-officer not below such rank as the Provincial Government may by notification prescribe, has reason to believe that an offence under section 33, section 34 or section 35, has been, is being, or is likely to be committed, and that a search-warrant cannot be obtained without affording the offender an opportunity, of escape or of concealing evidence of the offence, he may, after recording the grounds of his belief –

- (a) at any time by day or night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under this Regulation; and
- (b) detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.

55. (1) Any Excise-officer not below such rank and within such specified area as the Provincial Government may notification, prescribe, may as regards offences under section 33, section 34 and section 35, exercise the powers conferred on an officer in charge of a police-station by the provisions of the Code of Criminal Procedure, 1898.

Provided that any such powers shall be subject to such restrictions and modifications (if any) as the Provincial Government may by rule prescribe.

(2) For the purposes of section 156 of the said Code the area in regard to which an Excise-officer is empowered under sub-section (1) shall be deemed to be a police-station, and such officer shall be deemed to be the officer in charge of the station.

(3) Any such officer specially empowered in that behalf by the Provincial Government may, without reference to a Magistrate and for reasons to be recorded by him in writing, stop further proceedings against any person concerned or supposed to be concerned in any offence against this Regulation, which he has investigated or which may have been reported to him.

56. If on an investigation by an Excise-officer empowered under section 55, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer, unless he proceeds under section 55, sub-section (3), shall submit a report which shall for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police report to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police reports.

57. Where any Excise-officer below the rank of Collector makes any arrest, seizure or search under this Regulation, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search to his immediate official superior, and shall unless bail be accepted under section 59, take or send the person arrested, or the thing seized, with all convenient despatch, to a Magistrate for trial or adjudication.

58. Save as in this Regulation otherwise expressly how to be provided, the provisions of the 'Code of Criminal Procedure, 1898, relating detentions is custody, warrants of arrest, search-warrants, the production of persons arrested and the disposal of

things seized shall apply as far as may be to all action taken in these respects under this Regulation.

59. (1) The Provincial Government may empower any Excise-officer to release persons on bail.

(2) When a person is arrested under this Regulation otherwise than on warrant by a person or officer who has not authority to release arrested persons on bail, he shall be produced before or forwarded to -

- (a) the nearest Excise-officer who has authority to release arrested persons on bail, or
- (b) the nearest officer in charge of a police-station, whoever is nearer.

(3) Whenever any person arrested under this Regulation, otherwise than on a warrant is prepared to give bail, and is arrested by or produced in accordance with sub-section (2) before an officer who has authority to release arrested persons on bail, he shall be released upon bail, or at the discretion of the officer releasing him, on his own bond.

(4) The provisions of sections 499 to 502, 513, 514 and 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

60. No Magistrate of the third class, unless he is specially empowered by the District Magistrate in this behalf, shall take cognizance of, or try, any offence under this Regulation.

61. (1) No Magistrate shall take cognizance of an offence punishable—

- (a) under section 36, section 37 or section 38, except on the complaint or report of the Collector or of an Excise-officer authorized by him in this behalf; or
- (b) under any other section of this Regulation other than section 48, except on his own knowledge or suspicion or on the complaint or report of an Excise or Police-officer.

(2) Except with the special sanction of the Provincial Government, no Magistrate shall take cognizance of any offence punishable under this Regulation, or any rule or order thereunder, unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed.

CHAPTER IX MISCELLANEOUS

61. (1) The Provincial Government may make rules for the purpose of carrying out the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Provincial Government may make rules-

- (a) prescribing the powers and duties of Excise-officers;
- (b) regulating the delegation of any powers by the Excise Commissioner or Collectors under section 7, clause (g);
- (c) declaring in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Regulation, or under any rule made thereunder, or by what authorities such orders may be revised and prescribing the time and manner of presenting, and the procedure for dealing with appeals;
- (d) regulating the import, export, transport, manufacture, cultivation, collection, possession, supply or storage of any excisable article, and may, by such rule among other matters --
 - (i) regulate the tapping of *tari*-producing trees, the drawing of tort from such trees, the making of the same and the maintenance of such marks.

- (ii) declare the process by which spirit shall be denatured and the denaturation of spirit ascertained, and
 - (iii) cause spirit to be denatured through the agency or under the supervision of its own officers;
- (e) regulating the periods and localities for which, and the persons or classes of persons to whom, licenses for the wholesale or retail vend of any excisable article may be granted, and regulating the number of such licenses which may be granted in any local area;
 - (f) prescribing the procedure to be followed and the matters to be ascertained before any license for such vend is granted for any locality;
 - (g) regulating the time, place and manner of payment of any duty or fee;
 - (h) prescribing the authority by which, the form in which, and the terms and conditions on and subject to which any license, permit or pass shall be granted, and may, by such rules, among other matters;
 - (i) fix the period for which any license, permit or pass shall continue in force;
 - (ii) prescribe the scale of fees or the manner of fixing the fees payable in respect of any privilege, license, permit or pass, or the storing of any excisable article;
 - (iii) prescribe the amount of security to be deposited by the holders of any license, permit or pass for the performance of the conditions of the same;
 - (iv) prescribe the accounts to be maintained and the returns to be submitted by license holders;

- (v) prohibit or regulate the transfer of licenses; and
- (vi) prescribe the ages under which It shall be unlawful to employ children and to sell or give to children excisable articles;
- (i) providing for the destruction or other disposal of any excisable article deemed to be unfit for use;
- (j) regulating the disposal of confiscated articles;
- (k) regulating the grant of expenses to witnesses and to persons charged with offences under this regulation and subsequently released or acquitted; and
- (l) regulating the power of Excise-officers to summon witnesses from a distance.

63. All rules made under this Regulation shall be published in the official Gazette, and on such publication shall have effect as if enacted in this Regulation.

64. The following moneys, namely—

- (a) all excise revenue,
- (b) any loss that may accrue when, in consequence of default, a grant has been taken under management by the Collector or has been re-sold by him, and
- (c) all amounts due to the Government by any person on account of any contract relating to the Excise-revenue.

may be recovered from the person primarily liable to pay the same, or from his surety (if any) by distress and sale of his movable property, or by any other process for the recovery of land revenue due from landholders or from farmers of land or their sureties.

(2) When a grant has been taken under management by the Collector, or has been re-sold by him, the Collector may recover, in any manner authorised by subsection (1), any money due to the defaulter by any lessee or assignee.

65. In the event of default by any person licensed or holding a lease under this Regulation, all his distillery, brewery or

warehouse or shop buildings, fittings or a apparatus, and all stocks of excisable articles or materials for the manufacture of the same held in or upon any distillery, brewery, warehouse or shop premises, shall be liable to be attached in satisfaction of any claim for excise-revenue, or in respect of any losses incurred by Government through such default, and to be sold to satisfy such claim which shall be a first charge upon the sale-proceeds.

66. Any person to whom a lease has been granted in accordance with the provisions of section 18, may, in a case where sub-letting is not forbidden by the terms of his lease, proceed against any person holding under him for the recovery of any money due in respect of such sublease or holding as if it were an arrears of rent recoverable under the law for the time being in force with regard to landlord and tenant:

Provided that nothing contained in this section shall affect the right of any such grantee to recover any such money by civil suit.

67. The Provincial Government may, by notification either wholly or partially and subject to such conditions as it may think fit to prescribe, exempt any excisable article from all or any of the provisions of this Regulation, the provisions either throughout British Balochistan or in any specified area, or for any specified period or occasion, or as regards any specified class or persons.

68. No suit prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Regulation.

69. No suit shall lie against the Provincial Government, or against any Excise-officer in respect of anything done, or alleged to have been done, in pursuance of this Regulation unless the suit is instituted within six months from the date of the act complained of.

70. *Repeal of enactments Rep. by s.2 and Sch. Of the Repealing Act, 1927 (12 of 1927).*

71. *The Schedule Rep. by s.2 and Sch. of the Repealing Act, 1927 (12 of 1927).*

COMMENTARY

Chief Commissioner of (British) Balochistan vide Notification dated 5th March, 1947, in exercise of the powers conferred under Excise Regulation, 1915, framed Rules called British Balochistan Liquor and Intoxicating Drugs License Rules, 1947. On 2nd May, 1973, these Rules further amended by the Government of Balochistan.

In 1915 the Excise Regulation was enforced relating to the area of former British Balochistan, when the present province of Balochistan was not wholly covered as Kalat States were excluded therefrom. After the formation of Dominion of Pakistan, area of former British Balochistan was included in it whereas Kalat States through execution of separate Instruments of Accession, not merger, joined it during March 1948. Between these two types of areas Luck Pass has been marked as demarcation. Luck Pass is hill track of Chiltan mountain range whereon from Quetta to Nushki road was constructed during British India regime, when also Bolan Pass road was constructed as well as Airports at Pishin, Spezand, and Panjpai. This was done during Second World War (WWII) in order to cause resistance to Germans, if the need be, and rail-road from Quetta to Pasni was under plan when the WWII ended, which plan as such never attained shape, and thereafter with the departure of British further progress come to a standstill, if not forever but temporarily. The said Luck Pass has, some-or-how, tend to create two separate zones/regions of the present Balochistan relating to history, culture, traditions, economically, and ethnically etc. When problems of Balochistan are so referred, it means and taken as south of Luck Pass where Mega Project of Gawadar is also stated to be in progress. During last sixty years in Pakistan uprisings have been witnesses only in Baloch and Brahvi areas.

This (British) Balochistan Regulation covered area falling under north of Luck Pass while never extended to its southern

side. During West Pakistan era as well as after the formation of present Province, through a separate legislation or by making suitable legal amendments this Regulation has not so far been extended to southern side of Luck Pass.



دستور العمل دیوانی ریاست قلات بابت ۱۹۵۲ء

- (۱) یہ دستور العمل دیوانی بعد ترمیم دستور العمل سابق نافذ کیا جاتا ہے۔
- (۲) مقدمات دیوانی میں مدعی پر لازم ہوگا کہ عدالت مجاز میں اصالتاً حاضر ہو کر اپنا صحیح اور واضح دعوائے تحریری پیش کرے اور تحت میں اس کی صحت کی تحریری تصدیق کرے۔ اس کو عرض دعویٰ کا متنبہ یا اگر مدعا علیہم دو یا زائد ہو تو اتنی تعداد میں مزید پیش کرنے ہوں گے۔
- (۳) عرضی دعویٰ میں حسب نمونہ مندرجہ ضمیمہ
 - (الف) نیا طہ نالاش دستاویز یا حقیقت جس پر دعویٰ مبنی ہو۔
 - (ب) شہنیہ مستدعیہ کا تعین بھی اراضی کی صورت میں حدود محل وقوع بصراحت موضع تحصیل و صوبہ اور زر نقد وغیرہ کی صورت میں مقدار رقم مستدعیہ وغیرہ کی صراحت ضروری ہے۔
 - (ج) مالیت دعویٰ بغرض تعین رسوم عدالت۔
 - (د) بناء دعویٰ یعنی دعویٰ کا حق کب اور کس طرح حاصل ہوا۔
 - (ر) دادرسی کی استدعا تحریر ہونی ضروری ہے۔
- (۴) حاکم عدالت کو لازم ہوگا کہ مدعی کی درخواست کا مطلب اور اس کی صحت معلوم کرے۔ اور اگر ضرورت ہو تو اس کو درست کرا کر درج رجسٹر کرے۔
- (۵) حاکم عدالت کو مدعا علیہ کسی طلبی کیلئے ایک اطلاع نامہ تحریری بہ تعین تاریخ وقت و مقام

حاضری اور پیشی مقدمہ کسی وضاحت کے ساتھ حاضری مدعا علیہ کیلئے معقول مہلت کا لحاظ رکھتے ہوئے جاری کرنا ہوگا اور مثنیٰ عرضی دعویٰ اس کے ساتھ بھیجنا ہوگا۔

(۶) مدعا علیہ کی حاضری پر اس سے دستاویز نیا طنائش کے متعلق اقبال انکار دستاویز عدالت کو لکھ کر اس پر اپنے دستخط ثبت کرنے ضروری ہوں گے اور مدعا علیہ باوجود اطلاع یا بی پیشی پر اگر حاضر نہ ہو تو مدعا علیہ کے خلاف یکطرفہ کارروائی کا حکم دیا جائے۔ اور اگر تاریخ حرائی طلب نامہ سے ۳۰ یوم کے اندر مدعا علیہ حاضر ہو کر معقول عذرات غیر حاضری پیش کرے تو حکم کارروائی یکطرفہ منسوخ کر کے دوطرفہ کارروائی کے ساتھ مقدمہ جاری ہوگا۔

(۷) بعد حاضری مدعا علیہ اس سے تحریری جواب دعویٰ داخل کرایا جائے گا۔ فریقین کے عذرات تحریری داخل ہونے کے بعد عدالت کو لازم ہوگا کہ تحقیقات تصفیہ طلب قائم کرے۔*

(۸) اگر تاریخ مقررہ پر مدعی حاضر عدالت نہ ہو اور مدعا علیہ نے دعویٰ سے اقبال بھی نہ کیا ہو یا فریقین حاضر نہ ہوں تو مقدمہ خارج اور مثل داخل دفتر ہوگی اور اگر تاریخ حکم اخراج سے ۳۰ دن کے اندر مدعی حاضر ہو کر درخواست باز دائری پیش کرے اور معقول عذرات کے ذریعے حاکم کو مطمئن کر دے تو مثل مقدمہ برآمد کر کے باز نمبر سابق لے جا کر کارروائی مقدمہ آغاز کر دی جائیگی۔

(۹) اگر مدعی معقول عذرات پیش کر کے عدالت کو اطمینان نہ دلا سکے یا درخواست حکم اخراج سے ۳۰ یوم کے اندر درخواست باز دائری پیش نہ کر سکے تو درخواست باز دائری نام منظور ہوگی اور اس کے بعد مدعی اگر اسر نو دعویٰ کرنا چاہے تو اس کو مجبوراً کورٹ فیس داخل کر کے کارروائی جاری کرانی ہوگی۔

(۱۰) اگر مدعی یا فریقین مقدمہ حاضر نہ ہو اور بلحاظ اہمیت مقدمہ اخراج نہ ہو تو عدالت عالیہ (سابقہ وزیراعظم ریاست قلات) کو اختیار ہوگا کہ حسب حیثیت کسی ایک یا دونوں فریق پر دودھ روپیہ تک جرمانہ غیر حاضری عائد کر کے مقدمہ جاری کرنے کا حکم صادر فرمائیں۔

(۱۱) فریقین کی حاضری پر حاکم کوشش کرے گا کہ مقدمہ کا فیصلہ صلح یا ثالث یا شریعت کے

* دفعہ ۷ وفاقی آرڈیننس ۳۲ بانہ ۱۹۷۳ء کے تحت تبدیل ہوئی۔

ذریعے کرائے۔ اور اگر معاملہ رسم و رواج سے متعلق ہو یا اس کی ضرورت ہو کہ جرمہ کے ذریعے فیصلہ کرایا جائے تو بمنظوری عدالت عالیہ (سابق وزیراعظم بہادر) مقدمہ جرمہ میں پیش کر دیا جا سکے گا اگر فریقین اہل ہنود میں سے ہوں تو مقدمہ پنچائیت یا ایسے جرمہ مشترکہ کے تقویض ہوگا۔ جس میں اہل ہنود ارکان کی تعداد برابر کی ہو جرمہ و پنچائیت کی رائے پر آخری حکم عدالت عالیہ (سابق وزیراعظم) خود صادر فرمائیں گے۔

(۱۲) بارثوت بدوش ادعا کنندہ ہوگا اور رسوم عدالت ہمیشہ مدعی کے ذمہ ہوگا۔ الا جبکہ اس کی درخواست مفلسی منظور ہوگئی ہو۔

(۱۳) فریقین مقدمہ عدالت میں اپنا اپنا ثبوت و گواہان پیش کرنے کے بعد خود ذمہ دار ہونگے۔ اگر ضرورت ہو تو وہ اپنے اپنے گواہان کو سرکاری طور پر طلب کرا سکیں گے لیکن خرچہ طلبی گواہ فریق طالب کو بصورت نکت ریاست ۸ آنہ فی گواہ داخل کرنا ہوگا۔

(۱۴) ثالثان یا شریعت کا خرچہ فریقین پر بھصہ مساوی تقسیم ہوگا اور خرچہ مقدمہ بذمہ مدیون ڈگری رہے گا۔ الا جبکہ حالات مقدمہ اس کی متنافی ہو۔

(۱۵) معمور عدالت بلحاظ مقدار مالیت دعویٰ یا از رد دعویٰ صدہ ۱۱٪ بشکل معمور عرضی دعویٰ پر چسپاں ہوگا۔

(۱۶) حق شفیع اور حساب فہمی کے دعویٰ جات پر بھی رسوم چسپاں ہوگا۔

(۱۷) مفلسی کے تحت دعویٰ میں رسوم بعد فیصلہ وصول ہوگا۔

(۱۸) طلب اثاث کے دعویٰ پر عدہ کار رسوم معمور درخواست اجرائے ڈگری پر اور ان

درخواستوں پر جو عدالت عالیہ (سابق وزیراعظم) کی ماتحت عدالتوں میں پیش ہوں اور ہر اقرار نامہ و ضمانت نامہ و چکلہ و نقل پیش کردہ پر ۸ کا نکت ریاستی چسپاں کیا جائیگا۔

(۱۹) جو درخواستیں عدالت عالیہ (سابق وزیراعظم) کے پاس پیش ہوں گی ان پر عدہ کار

رسوم اور جو اعلیٰ حضرت کی خدمت اقدس میں پیش کی جائیں گی ان پر صنف کا نکت ریاست

چسپاں ہوگا۔

* (۲۰) تمام دعویٰ جات کی سماعت کے اختیارات قاضی صاحبان کو ہونگے اور وہ عارضی حکم امتناعی جاری کرنے کے بھی مجاز ہونگے۔

(۲۱) یہ اختیار سماعت عدالت عالیہ (سابق وزیراعظم) بہ توشیح اعلیٰ حضرت افسران متعلقہ کو بمصالحت انتظامی خود تقاضا فرمائیں گے۔

(۲۲) دیوانی مقدمات کا فیصلہ قاضیاں شرع انور یا فریقین غیر مسلم ہونے کی صورت میں جرگہ مشتمل بہ مساوی تعداد مسلم و غیر مسلم ارکان ہو سکے گا۔

** (۲۳) ----

(۲۴) قاضی صاحبان کے فیصلہ کے خلاف مرافعہ اولیٰ مجلس شوریٰ (سابق وزیر معارف صاحب) کے اجلاس پر ہوگا۔ اور مجلس شوریٰ (سابق وزیر معارف صاحب) کے فیصلہ یا تجویز کی ناراضی سے مرافعہ ثانی عدالت عالیہ (سابق جناب وزیراعظم بہادر ریاست قلات) کے اجلاس پر ہوگا۔ (الف) عدالت عالیہ (سابق وزیراعظم صاحب بلوچستان سٹیٹس یونین) کو یہ اختیارات حاصل ہیں کہ وہ مجلس شوریٰ قائم کریں جو مشتمل بر دو یا دو سے زیادہ ممبران ہو۔

(ب) مرافعہ کے لئے معیاد تاریخ فیصلہ سے جس کا مرافعہ درکار ہونوے یوم ہوگی اور نگرانی کیلئے ساٹھ یوم۔

(ج) قطعی تجاویز کا مرافعہ اور درمیانی احکام کی نگرانی ہوگی۔

(د) نظر ثانی کی درخواست میں جہاں کوئی نمایاں قانونی یا حسابی غلطی ہو رہنا، تسامح ہوگئی ہو جو حاکم تجویز کنندہ ہی کے اجلاس پر پیش کر کے تصحیح کرائی جاسکے گی۔

* دفعہ ۲۰ وفاقی آرڈیننس ۳۲ بانہ ۱۹۸۳ء کے تحت تبدیل ہوئی۔

** دفعہ ۲۳ وفاقی آرڈیننس ۳۲ بانہ ۱۹۸۳ء کے تحت حذف ہوئی۔

(ھ) (۱) * ممبر مجلس شوریٰ اور صدر کے درمیان اختلاف رائے کی صورت میں فیصلہ صدر کی رائے کے مطابق ہوگا۔

(۲) دو ممبران کے مابین اختلاف رائے کی صورت میں مقدمہ صدر یا تیسرے ممبر کے حوالے کیا جائیگا اور فیصلہ اکثریت کی رائے سے ہوگا۔*

(۲۵) ہر افسر بالا دست اپنے ماتحت کے پاس سے مثل طلب کر سکے گا اور اس کو بہ نظر انصاف ہدایت دے سکے گا۔

(۲۶) عدالت عالیہ (سابق وزیراعظم) کسی ماتحت عدالت سے مثل طلب فرما کر برائے تجویز کسی دوسری عدالت میں منتقل کر سکیں گے اور اگر چاہیں تو خود بھی مناسب فیصلہ یا تجویز صادر فرما سکیں گے۔

--- (** الف)

(۲۷) عدالت عالیہ (سابق وزیراعظم بہادر ریاست قلات) کا اختیار ہوگا کہ باغراض تکمیلہ دستور العمل ہذا وقتاً فوقتاً مناسب احکام مزید جاری اور طریق کاروائی و نمونہ جات رجسٹرات و دیگر کاغذات کے قائم کرنے کی ہدایت فرمائیں۔

* شق (ھ) کا اضافہ بذریعہ وفاقی آرڈیننس ۳۲ بانہ ۱۹۸۴ء کیا گیا۔

** (26-A) The President *Majlis-e-Shura* may call for the record of any case pending in any Court subordinate to him and transfer the same for disposal or trial to any such Court.

نمبر 1429۔ ای او قلات مورخہ 29 جولائی 1955ء

جناب وزیراعظم صاحب بہادر بلوچستان سٹیٹس یونین نے ان اختیارات کے تحت جو زیر دفعہ ۲۳/۱۲۷ شق (الف) (۱) دستور العمل دیوانی قلات ۱۹۵۲ء انہیں حاصل ہیں۔ دو ممبران پر مشتمل مجلس شوریٰ کی تشکیل منظور کی ہے۔ مجلس شوریٰ کے اس بیج کو بلوچستان سٹیٹس یونین کے قاضی صاحبان کے فیصلوں کے خلاف اپیل سماعت کرنے کا اختیار ہوگا۔

فی الحال مجلس شوریٰ مشتمل بر مولوی عبدالصمد صاحب اور مولوی تاج محمد صاحب ہے۔ اندرین بالا دستور العمل دیوانی قلات میں جو ترمیمات منظور کی گئی ہیں، وہ مندرجہ ذیل ہیں:

(۱) دستور العمل دیوانی قلات ۱۹۵۲ء کی دفعہ ۲۳/۱۲۷ کی شق الف کی پہلی سطر میں جناب وزیر معارف صاحب کے الفاظ اور دوسری سطر میں جناب وزیر معارف صاحب کے الفاظ کے بجائے مجلس شوریٰ کے الفاظ تحریر کئے گئے ہیں۔

(۲) نیز ایک مزید ضمن شق الف (۱) کا دفعہ ۲۳/۱۲۷ شق الف دستور العمل دیوانی قلات ۱۹۵۲ء کے بعد اضافہ کیا گیا ہے۔

وزیراعظم صاحب بلوچستان سٹیٹس یونین کو یہ اختیارات حاصل ہیں کہ وہ مجلس شوریٰ قائم کریں جو مشتمل بر دو یا دو سے زیادہ ممبران ہو۔

دستخط اردو

(آغا محمد یوسف جان)

سیشن جج صاحب بہادر

بلوچستان سٹیٹس یونین۔

دستور العمل دیوانی ریاست قلات (ترمیمی) آرڈیننس ۱۹۸۴ء

[Gazette of Pakistan, Extraordinary, Part I, 1st August, 1984]

No. F.17 (1)/83-Pub.-- The following Ordinance made by the President is hereby published for general information: -

چونکہ قرین مصلحت ہے کہ دستور العمل دیوانی ریاست قلات بابت ۱۹۵۲ء میں بعد ازیں ظاہر ہونے والی اغراض کیلئے ترمیم کی جائے۔

لہذا اب پانچ جولائی ۱۹۸۴ء کے اعلان کے بموجب اور اس سلسلے میں مجاز کرنے والے تمام اختیارات کا استعمال کرتے ہوئے صدر نے حسب ذیل آرڈیننس وضع اور جاری کیا ہے۔

۱۔ مختصر عنوان اور آغاز نفاذ۔ (۱) یہ آرڈیننس دستور العمل دیوانی ریاست

قلات (ترمیمی) آرڈیننس، ۱۹۸۴ء کے نام سے موسوم ہوگا۔

(۲) یہ فی الفور نافذ العمل ہوگا۔

۲۔ ترمیم دفعہ ۷ دستور العمل ریاست قلات بابت ۱۹۵۲ء دستور العمل دیوانی

ریاست قلات بابت ۱۹۵۲ء جس کا بعد ازیں مذکورہ دستور العمل کے طور پر حوالہ دیا گیا ہے، کی دفعہ

۷ کی بجائے مندرجہ ذیل دفعہ تبدیل کر دی جائے گی۔ یعنی:-

”(۷) بعد حاضری مدعا علیہ اس سے تحریری جواب دعویٰ داخل کرا جائے گا۔ فریقین

کے عذرات تحریری داخل ہونے کے بعد عدالت کو لازم ہوگا کہ تفتیحات تصفیہ طلب قائم کرے۔“

۳۔ ترمیم دفعہ ۲۰ دستور العمل دیوانی ریاست قلات بابت ۱۹۵۲ء مذکورہ

دستور العمل کی دفعہ ۲۰ کی بجائے مندرجہ ذیل دفعہ تبدیل کر دی جائے گی یعنی:-

”(۲۰) تمام دعویٰ جات کی سماعت کے اختیارات قاضی صاحبان کو ہوں گے اور وہ

عارضی حکم امتناعی جاری کرنے کے بھی مجاز ہوں گے۔“

۴۔ دفعہ ۲۳ دستور العمل دیوانی ریاست قلات بابت ۱۹۵۲ء حذف کی جائے

گی۔ مذکورہ دستور العمل کی دفعہ ۲۳ حذف کی جائے گی۔

۵۔ ترمیم دفعہ ۲۳ دستور العمل دیوانی ریاست قلات بابت ۱۹۵۲ء مذکورہ

دستور العمل کی دفعہ ۲۳ میں شق نمبر (۵) کے بعد مندرجہ ذیل شق کا اضافہ کیا جائے گا۔ یعنی:-

” (۵)۔ (۱) ممبر مجلس شوریٰ اور صدر کے درمیان اختلاف رائے کی صورت میں

فیصلہ صدر کی رائے کے مطابق ہوگا۔

(۲) دو ممبران کے مابین اختلاف رائے کی صورت میں مقدمہ صدر یا تیسرے

ممبر کے حوالے کیا جائے گا اور فیصلہ اکثریت کی رائے سے ہوگا۔“

THE GAZETTE OF PAKISTAN
EXTRAORDINARY

Islamabad, Monday, January 8, 1990

PART-I

Act, Ordinance, President's Orders and Regulations including
Martial Law Orders and Regulations.

SENATE SECRETARIAT

Islamabad, the 7th January, 1990

The following Acts of Majlis-e-Shoora (Parliament) received the assent of the President on the 31st December, 1989, and are hereby published for general information:-

Act No. I of 1990

An Act further to amend the Dastoor-ul-Amal Diwani State Kalat, 1952.

WHEREAS, it is expedient further to amend the Dastoor-ul-Amal State Kalat, 1952, for the purpose hereinafter appearing:

It is hereby enacted as follows: -

1. **Short title and commencement.** (1) This Act may be called the Dastoor-ul-Amal Diwani State Kalat (Amendment) Act, 1989.

(2) It shall come into force at once.

2. **Insertion of new Section (26-A) in the Dastoor-ul-Amal Diwani State Kalat, 1952.** In the Dastoor-ul-Amal Diwani State Kalat, 1952. In the Dastoor-ul-Amal Diwani State Kalat, 1952, after section (26), the following new section shall be inserted namely: -

“(26-A) The President Majlis-e-Shoora may call for the record of any case pending in any court subordinate to him and transfer the same for disposal or trial to any other such court.”

COMMENTARY

Dastoor-ul-Amal Diwani Riasat Kalat, 1952 a substantive and procedural law has been applicable to the vast area of Balochistan. The expression "*Dastur-ul-Amal Diwani*" can be accurately translated by the words "Basic Provisions of Civil Procedures."

Mr. Justice Zakaullah Lodhi, later elevated as Chief Justice of Balochistan High Court, on 9th December, 1978 observed in case reported in PLD 1979 Quetta 118 that unlike other Provinces of Pakistan, Balochistan had four different assortments of territories, namely; (1) The British Balochistan, Chief Commissioner's province consisting of the Districts of Pishin and Sibi and Duki Tehsil of Loralai District; (2) the tribal areas comprising the districts of Kohlu and Marri Bugti, Loralai, Zhob and Dalbandin, including Western Sinjawi country being subject to treaties and agreements between the British Government on the one hand and the Sardars and Maliks on the other; (3) the Leased area consisting of districts of Quetta and Bolan, the Nushki Tehsil and Nasirabad Sub-Division all these being part of Kalat State, acquired in 1882 by an Agreement with the then Khan of Kalat; and (4) the States of Kalat, Mekran, Las Bela and Kharan. In 1951 these four States merged into the Balochistan States Union and thus comprised of the compact unit and evicted so until the province of West Pakistan had come into being. In the field of Law as in executive field the Agent to the Governor General of India acted in three different capacities that is besides his capacity of Agent to the Governor-General for all the territories under British control, with regard to British Balochistan he was Chief Commissioner. It may be mentioned here that in all these four different assortments of territories no uniformity of law ever existed until today and different areas are governed by different legal systems.

The Civil Procedure (Special Provisions) Ordinance, 1968 (W.P. Ordinance No. 1 of 1968), which was previously applicable

to the areas specified therein stands withdrawn vide Notification No. Legis 1-45/Law/72 dated 23rd June 1988, issued by the Government of Balochistan.

It may be appropriate to refer that in the Province of Balochistan presently there are three parallel laws for adjudication of civil disputes in their respective areas. *Dastoor-ul-Amal* extends to former Kalat States. Civil Courts Ordinance, 1962 extends to ex-British Balochistan, and Leased area. The Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976 extends to Provincially Administered Tribal Areas. The Courts of *Qazi* have been established, under the provisions of the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976, at Dera Bugti, Kohlu, Zhob, Dalbandin in respect of Chagai, Muslim Bagh and Killa Saifullah and Bori/Sanjawi, Musa Khail, Barkhan.

The *Dastoor-ul-Amal Diwani Riasat Kalat*, 1952 is in Urdu language as then in *Riasat Urdu* was the official language. However, English version thereof incorporated in this book for readers. Section 1 thereof contains a statement that it was enforced in the place of the previous *Dastur-ul-Amal*. Section 1 provides that in civil suits it would be mandatory for the plaintiff by appearing in person in the competent court and to present his claim in writing correctly and with particulars, and to append therewith verification. He is further required to provide copy of the suit and when the defendants are two or more, as many copies thereof. Section 3 require that in accordance with Appendix the suit to contain; (*Alif*) cause of action, documents or statement whereon the claim is so founded, (*Baay*) valuation of the suit, and in case of piece of land boundaries thereof, also specifying therein the village, Tehsil and province and in case of currency etc. the proper valuation thereof, (*Jeem*) valuation of the suit for the purpose of Court-fee, (*Daal*) cause of action as to when and how accrued; and (*Ray*) relief requested for to be mentioned. Section four states that it would be mandatory for *Hakim-Adalat* to verify the purpose of the application from the

plaintiff for elucidation as regards its correctness; and if necessary has the authority to get the same corrected and registered. Section 5 requires that *Hakim-e-Adalat* to issue process specifying therein the date, time and place and nature of the suit so far as summoning and due attendance of the defendant, keeping in view the reasonable opportunity to be so afforded, and also to send therewith copy of the plaint. Section 6 envisages that the defendant upon appearance required to admit or deny in writing concerning the suit and the documents, and to put his signature thereon, and if the defendant despite notice fails to appear on the date of hearing then he shall be proceeded against ex-parte, and in case the defendant makes appearance within 30 days from the date when proceeded against and assigns reasonable cause as regards non-appearance then the order of ex-parte to be set aside and the suit to proceed both the ways. Section 7 has been amended by Central Ordinance No. XXXII of 1984 and it reads that upon appearance of the defendant he is required to submit written statement. After written objections of the parties having been filed, it would be mandatory for the Court to frame issues for adjudication. Section 8 mentions that when the plaintiff fails to appear on the date of hearing, and the defendant not having admitted the claim, or the parties do not appear then suit to be dismissed and the record to be consigned. And if within 30 days of the dismissal order, the plaintiff appears and submits application and satisfies the *Hakim* by assigning reasonable cause or reasons, then the record after recall to be taken at its previous position and the proceedings of the case to commence. Section 9 states that if the plaintiff by assigning sufficient cause fails to satisfy the Court or fails to file restoration-application within 30 days of the dismissal then the application is liable to be rejected. And thereafter if the plaintiff intends to sue afresh then under an obligation by making payment of the Court-fee to get start the proceedings. Section 10 mentions that if the plaintiff or parties to the suit fail to appear and importance of the suit do not warrant dismissal then the

High Court have the authority as per status upon one or both the parties by imposing fine up to the tune of two hundred rupees to order as regards commencement/ continuance of the proceedings of the case. Section 11 mentions that upon appearance of the parties the *Hakim* would make effort to have the case settled amicably through compromise, arbitration or *Shariat*. And if the matter pertains to custom or *Riwaj* or if it is necessary to refer the same to a *Jirga*, then it could be so referred on obtaining the approval of the High Court. If the parties happen to be *Hindus* then the case would be referred to *Panchayat* or to a joint *Jirga* consisting of equal member of *Hindus* as members. Upon the verdict of *Panchayat* or *Jirga* final order is to be passed by the High Court. Section 12 prescribes that burden of proof shall lie upon the plaintiff, and payment of Court-fee shall be his liability except when his paupers application stands accepted. Section 13 states that it shall be the personal responsibility of the parties to the suit to produce their respective proof and the witnesses in the Court. If so necessary they may procure officially attendance of their respective witnesses upon payment of prescribed fee. Section 14 mentions that expenses of arbitrator or *Shariat* shall be borne by the parties equally, and cost of the suit shall be on the judgement-debtor except when the circumstance of the case warrant otherwise. Section 15 of the *Dastoor-ul-Amal* relates about payment of prescribed Court-fee. Section 16 specifies that in suits relating to pre-emption and adjustment of accounts Court-fee shall be payable. Section 17 mentions that in pauper suit the Court-fee to be realised subsequent to decision. Section 18 and 19 relate about rate of Court-fee so far as different sorts of suits and applications are concerned. Section 20 stands amended under Central Ordinance No. XXXII of 1984, and provides that *Qazi Sahiban* would be having jurisdiction to decide all suits and the authority to pass interlocutory order. Section 21 states that this authority to hear to be conferred, on ratification by His Highness, by the High Court upon concerned officers keeping in view its own administrative

convenience. Section 22 provides that the decision to be made by the *Qazian* according to *Shariaht Anwar*, or when parties are non-Muslim then by or *Jirga* consisting of equal number of Muslim and non-Muslim members. Section 23 stands deleted by virtue of Central Ordinance no. XXXII of 1984. Section 24 specifies that against the judgements of *Qazi Saluban* first appeal to lie before session of *Majlis-e-Shoora*, and against decision or order of *Majlis-e-Shoora* second appeal to be preferred before High Court. Sub-Section (*Alif*) thereof empowers the High Court to constitute or establish *Majlis-e-Shoora* consisting of two or more members. Sub-Section (*Baay*) mentions that period of appeal relating to decision against which appeal sought to be preferred would be ninety days and for revision sixty days. Sub-Section (*Jeem*) states that appeal to lie concerning final pronouncement and revision for interim orders. Sub-Section (*Daal*) relates about review powers to be exercised when there be prominent legal or mathematical mistake which may be immediately corrected or rectified by the *Hakim* making it. Sub-Section (*Hay*) (1) envisages that in case of disagreement between member *Majlis-e-Shoora* and the President the decision to be according to the opinion of the President; (2) states that in case of disagreement between two members case to be referred to the President or to a third member, and the majority view to prevail. In Section 25 contained that every higher officer can call the record of the case from its subordinate and may issue him directions for the sake of administration of justice. Section 26 divulges that the High Court after having called the record relating to proceedings may transfer the same to another Court, if so desired himself to pass judgement or appropriate Order. Section 27 is the last section and envisages that the High Court has the power to pass appropriate orders from time to time so as to direct to carry out in furtherance of completion of this *Dastoor-ul-Amal*, of the specimen or registers and other documents.

The substantive civil law according to Section 11 of the *Dastoor-ul-Amal Dirwani*, is *Shariat* as well as the custom that is

followed by the Muslim population. Section 11 of the *Dastoor-ul-Anal* is special and novel provision as compared to Code of Civil Procedure. It mentions that upon appearance of the parties the *Hakim* would make effort to have the case settled amicably through compromise, arbitration or *Shariat*. And if the matter pertains to custom or *Riwaj* or if it is necessary to refer the same to Jirga, then it could be so referred upon obtaining the approval of the High Court. If the parties happen to be *Hindus* then the case would be referred to *Panchayat* or to a joint Jirga consisting of equal number of *Hindus* as members. Upon the verdict of *Panchayat* or Jirga final order is to be passed by the High Court. In this provision law laid down relating to the status of the parties and the nature of the dispute involved, and the different stages and steps of the proceedings to be held accordingly. No such parallel provision has been incorporated in the Code of Civil Procedure.

Hon'ble Supreme Court of Pakistan has observed in PLD 1972 S C 84 that the Muslim *Shariat* does not embrace the concept of the British common law that a sovereign can do no wrong and cannot be sued in a Municipal Court in his own domain. On the contrary in *Shariat* a sovereign can be sued in the Court of *Qazi* and like any other citizen is subject to his jurisdiction and bound to carry out any decree or order passed against him by the *Qazi*. There was no provision in the *Dastur* under which a Ruler could not be sued in a Municipal Court. In *Shariat* there is no bar of limitation to the institution of a suit or other legal action for enforcement of a right in property or in personam.

Section 22 of the *Dastoor* provides that the decision to be made by the *Qazian* according to *Shariat Anwar*, or when parties are non-Muslim then by a Jirga consisting of equal number of Muslim and non-Muslim members. However, this provision does not specify the course of action to be taken or the related law to be applied when both the parties happen to be of divergent religion. Under Islamic jurisprudence a non-Muslim cannot take oath before a *Qazi*. In such an eventuality the course

open might be a decision by a Jirga. Reading section 22 and 11 together one comes to the conclusion that cases involving customary rights or where the parties are non-Muslims, whatever be the subject matter of litigation, are diverted to the Jirga while all other cases, pass on to the Qazi who is required to decide them according to *Shariat*. No departure is either envisaged or provided for. In consequence, once the matter reaches the Qazi the rule of decision in trials, and in appeals arising out of the decision of the Qazi, is *Shariat* and nothing else. Only the corresponding provisions of *Dastoor-ul-Amal* have been repealed and there is no corresponding provisions of section 22 in Code of Civil Procedure, which by implication can be said to have been repealed. Section 22 is not a procedural law, but it is a substantive law, therefore concerned Courts are bound to decide the matter in accordance with *Shariat*. In PLD 1978 Quetta 52 Justice Abdul Qadeer Chaudhry, held that the Contract Act (made applicable under Ordinance No. XXI of 1960) cannot be pressed into service for resolving the disputes.

Subsequent to establishment of one unit on 14th October, 1955, on 9th June, 1960 Central Laws (Statute Reform) Ordinance 1960 (XXI of 1960) promulgated and as a consequent whereof among other enactments Code of Civil Procedure, 1908 made applicable retrospectively from 14th Oct, 1955. Central Laws (Statute Reforms) Ordinance, 1960 (Ordinance XXI of 1960) had been promulgated and as a consequent whereof among other enactments Code of Civil Procedure, 1908 made applicable retrospectively from 14th Oct., 1955. Central Laws (Statute reform) Ordinance, 1960 (Ordinance XXI of 1960) had been promulgated on 9th June, 1960 and thereby Central Acts and Ordinances, specified in the First and Second Schedule thereof, were repealed and extended/amended respectively to the whole of Pakistan. Although authority and domain of the legislature so as to give retrospective effect to any statute has never been disputed but consistent view has been that such an action usually gives rise to complications and repercussions, and the

area of defunct Balochistan States Union, which was governed under the provisions of *Dastoor-ul-Amal*, had not been an exception to this general rule.

The provisions of the CPC have been made applicable to the Courts functioning in the area of former Kalat State with effect from 14th October, 1955 by virtue of Ordinance XXI of 1960. This ordinance applied with certain qualifications the provisions of Code of Civil Procedure. Central Laws (Statute Reform) Ordinance, 1960 was made applicable to the whole of Pakistan and *Dastoor-ul-Amal* not repealed. It had been observed in PLD 1962 Quetta 82 that it appears that while the Government was aiming at unification of laws in whole of West Pakistan, it was conscious of the existence of peculiar local institutions, practices and procedures, usage and custom etc. and was not willing to disturb or abolish them abruptly, so as to ensure smooth transition to the new pattern of uniformity. By operation of section 4 of Ordinance XXI of 1960 the *Dastoor-ul-Amal Diwani Kalat* will be deemed to have been repealed from the date of its retrospective operation i.e. 14th October, 1955 to the extent similar provisions are available in the Code of Civil Procedure, 1908. *Dastoor-ul-Amal* appears to be a law corresponding to the Civil Procedure Code inasmuch as both the laws are intended to regulate the procedure of Courts of Civil Jurisdiction. Provisions of the Code of Civil Procedure have repealed the provisions of the *Dastoor-ul-Amal* on the identical subject and that the provisions of the Code of Civil Procedure are to prevail upon the provisions of the *Dastoor*. *Dastoor* stands repealed only to the extent of those its provisions which correspond to the provisions of Code of Civil Procedures, but those of its provision which deal with other matters, not provided for in the C P C, remain uneffected. Further, the jurisdiction of the existing courts which are functioning in the former Kalat State under *Dastoor*, and the peculiar practices and procedures applicable before them, which are not covered by the provisions of the Code, have been preserved. In PLD 1973 Quetta 43 held that it will, therefore, be

more appropriate to say that if, subject-wise, the same is covered by the provisions contained in *Dastoor-ul-Amal* and the Code of Civil Procedure, 1908 the latter law to that extent will repeal the former and re-enacted procedural law in the former areas of Kalat, would be of Code of Civil Procedure, 1908, plus *Dastur-ul-Amal Diwani* but, minus its such provisions, which have parallel stand repealed only to the extent of those of its provisions which correspond to the provisions of Code of Civil Procedure, 1908 but those of its provisions which deal with other matters, not provided for in the Code of Civil procedure, remain uneffected.

Part II Order XXI of the Code of Civil Procedure relate about execution of decrees and orders. The *Dastoor* does not contain any such provision related therewith, therefore, the provisions of the Code govern the subject. As regards administration of Code of Civil Procedure agency in the District Court have been established for the purpose of execution etc, and within the same purview no such agency ever established in the areas where *Dastoor* made applicable. The point in issue may be that in the absence thereof whether a decree passed by a Court of *Qazi* if sent for execution to a Deputy Commissioner, Assistant Commissioner, or Tehsildar, would have judicial recognition. Such a situation having arisen on a miscellaneous application of Mst. Naz Bibi, considered and appreciated by Justice Mr Ajmal Mian, the then acting Chief Justice of High Court of Balochistan, in PLD 1987 Quetta 1, and held that decree passed by a *Qazi* or by any other Civil Court cannot be transferred under Section 37,38 and 39 C PC for execution, *Qazi* who passed a decree in an area where *Dastur-ul-Amal Diwani* is applicable is competent to entertain execution application and to execute the decree or to cause its execution and to invoke assistance of Civil Administration including that of Assistant Commissioner, Tehsildar, Naib-Tehsildar. Levies and Police for execution of such decree, which practice has judicial recognition.

Section 9 of the *Dastoor-ul-Amal Diwani* and Section 11 of the Code of Civil Procedure are statutes in parimateria. Section 11 of the C P C relates about *res judicata* where under subsequent suit on the same subject between the same parties is barred, while Section 9 of the *Dastoor* envisages that the suit although having been dismissed the plaintiff could sue afresh but under an obligation by making payment of the Court-fee to get start the proceedings. In such cases the provisions of C P C being identical on the subject are to prevail and subsequent suit as such barred. Unlike Code of Civil Procedure and for those purposes Civil Courts Ordinance, 1962 the Court of a *Qazi* is of unlimited pecuniary jurisdiction as far as civil suit is concerned irrespective of the valuation. The forum for the suit remains unaltered whatever may be the valuation of the suit.

Section 10 of the *Dastoor*, however, empowers the High Court, despite the plaintiff or parties to the suit having failed to appear, could order as regards commencement/continuance of the proceedings of the case if the importance thereof warranted no such dismissal in-default; but Code of Civil Procedure does not contain corresponding provisions. Section 14 of the *Dastoor-ul-Amal* deviates from the provisions of the Code of Civil Procedure in as much as it mentions that expenses of arbitrators or *Shariat* shall be borne by the parties equally.

Section 21 of the *Dastoor-ul-Amal Diwani* relate about the authority to hear to be conferred upon concerned officers by the High Court on ratification by His Highness. The mention of this institution of His Highness under *Dastoor*, also in Section 19, is neither incorporated under any law nor by way of carrying out amendment in the *Dastoor* has so far been repealed or substituted.

Section 27 of the *Dastoor-ul-Amal Diwani* is the last section and empowers the High Court to pass appropriate orders from time to time so as to direct to carry out in furtherance of completion of this *Dastoor-ul-Amal*, of the specimen or registers

and other documents. But thereunder so far no such rules/orders have been framed or issued.

Section 28 of the Civil Courts Ordinance, 1962 (II of 1962) relate about repeal and savings. Sub-Section (I) thereof provide that the enactments specified in the Schedule are repealed to extent mentioned in the fourth column thereof. Therein the whole of *Dastoor-ul-Amal Diwani Riasat Kalat*, 1952, enactment, shown as repealed. Rules of interpretation of statutes envisage that no provision of law is to be treated as redundant rather effect is to be given to its each word and for those purposes the punctuation is also to be looked into as so examine and judge the object and intention of the legislature. From this point of view prima facie the continuance of enforcement of *Dastoor-ul-Amal* gives rise to discussion on the subject, especially with respect to areas of Balochistan where provisions of Civil Courts Ordinance, 1962 have been made applicable.

It has been provided in the rule 3 (1) of the Balochistan Government Rules of Business, 1976 that the Business of Government shall be classified and distributed among the several departments specified in Schedule I. Different Government Departments including Home and Law have as such been allocated the sphere of their respective functioning. The Home Department affiliated with Administration of Justice-Constitution and Organisation of Courts except High Court; whereas the Law Department with Civil Law and Procedure. Related therewith Notification issued from time to time require examination for the purposes of its intended applicability. The relevant Notifications which issued from time to time have been included for the purpose and object of facilitation.

A substantial change occurred when by promulgation of *Dastoor-ul-Amal Diwani Riasat Kalat (Tarmeemi) Ordinance*, 1984 (XXXII of 1984) Section 20 of the *Dastoor* amended. Prior to amendment according to valuation of the suit the concerned parties were to approach the forum provided thereby, whereas

after amendment on 1st August, 1984 *Qazi Sahiban* were bestowed the jurisdiction to decide all suits and the authority to pass interlocutory order. Consequent thereof the court of *Qazi* has been declared the principle Court of original jurisdiction. Prior to amendment a non-Muslim party could approach the prescribed forum but subsequent thereof no other course is left open to a non-Muslim except to approach Court of *Qazi*. The position as such emerges for enunciation is as to whether Court of *Qazi* would be competent to refer the case to a *Jirga* when the parties are non-Muslim, or when the matter relates about custom and *Ritwaj*, as prescribed under section 11 and 22 of the *Dastoor*, and for the eventualities concerning when one of the parties happen to be a non-Muslim. Under Central Ordinance No. XXXII of 1984 section 20 of the *Dastoor* amended while Section 23 deleted. Prior to this amendment against the order of a *Hakim* an appellate forum had been provided whereas consequent thereof a non-Muslim party likely to be exposed to inconvenience as no *Hakim* is left to approach for the redress of grievances, by way of preferring of an appeal so as to rectify the wrong done, if any.

The Balochistan *Qazis* and Member, *Majlis-e-Shoora* Service Rules, 2002 provide constitution and composition of service, the appointing authority, method of recruitment and the requisite qualifications of the incumbents and their authority.

The *Dastoor-ul-Amal Diwani Riasat Kalat*, 1952 and the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976 assert to apply *Shariat* Law. Under the *Dastoor* the Court of *Qazi* has original unlimited pecuniary jurisdiction irrespective of valuation, whereas under the Regulation the same not to exceed fifty thousand rupees. Section 22 of the *Dastoor* and para 2 of the Regulation are statute in *pari materia* and envisage that *Shariat* to be the Law as far Muslims are concerned. However, judgement of different Court enunciate the law in terms that this exercise of powers is also subject to different other laws including also Central Laws (Statute Reform) Ordinance, 1960. Both the said Laws are substantive and procedural in nature and

are applied in different areas of the Province of Balochistan. So far *Dastoor* is concerned, no separate Rules or Service Rules have been framed thereunder. Be that as it may, it is different proposition whether it is requirement of law or otherwise.

CASES REPORTED IN LAW JOURNALS REGARDING *DASTOOR*

SECTION 1

Agha Abdul Hamid, Wazir-e-Azam, Kalat has stated in 1951 in his forward to the Law of Evidence, Kalat as follows:

"Accordingly, the Government of Kalat, has, with the prior sanction of the Ruler of Kalat, prepared, three Codes and enforced them:

- (1) The Penal Law of Kalat;
- (2) The Code of Criminal Procedure; and
- (3) The Law of Evidence.

Moreover, instructions relating to the Civil Procedure have also been issued and codification of *Shariat* Law is in hand." The *Dastur-ul-Amal Diwani*, Kalat, 1952, contains a statement in section 1 that it was enforced in the place of the previous *Dastur-ul-Amal*. The expression "*Dastur-ul-Amal Diwani*" can, be accurately translated by the words "Basic Provisions of Civil Procedure."

(PLD 1959 Quetta 11)

Civil Procedure Code of 1908 along-with other enactments under section 3 of the Ordinance No. XXI of 1960 was made applicable to the whole of Pakistan. By section 2 of this Ordinance the Kalat Civil Procedure Code was not repealed and this special legislation still exists on the Statute Book-This Ordinance was promulgated on 9.6.1960 and was given retrospective effect from 14.10-1955.

(PLD 1962 Quetta 28).

It is now well settled that a procedural law has retrospective application, and governs all matters pending at the time of its enforcement. No party has a vested right in any particular form of procedure.

It seems to us that one of the purposes to which the Ordinance No. XXI of 1960 is directed is to secure the unification of laws applicable to the various areas which were integrated into the Provinces of West Pakistan with effect from the 14th of October, 1955, and to achieve this end, certain Central Acts and Ordinance have been extended so as to apply to the whole of the Province, and as a necessary consequence some local and special laws have either been expressly or impliedly repealed. We find that the *Dastur-ul-Amal Diwani*, Kalat, has not been expressly repealed, as it does not appear in the First Schedule referred to in section 2 of the Ordinance. The *Dastur-ul-Amal Diwani* Kalat, 1952 appears to us to be a Law corresponding to the Civil Procedure Code of 1908, in as much as both the law are intended to regulate the procedure of Courts of civil jurisdiction.

It appears that while the Government was aiming at unification of laws in the whole of West Pakistan, it was conscious of the existence of peculiar local institutions, practices and procedures, usages and customs etc, and was not willing to disturb or abolish them abruptly, so as to ensure smooth transition to the new pattern of uniformity. The local law shall stand repealed only in so far as it corresponds to the provisions of the Central Act or Ordinance, and the established jurisdictions, practices and procedures etc shall continue in force.

Dastur-ul-Amal Diwani, Kalat, stands repealed only to the extent of those of its provisions which corresponds to the provisions of the Code of Civil Procedure. 1908, but those of its provisions which deal with other matters, not provided for in the Code of Civil Procedure, remain unaffected-Further, the jurisdiction of the existing courts which are functioning in the Kalat area under the *Dastur-ul-Amal, Diwani*. Kalat and the peculiar practices and procedures applicable before them, which

are not covered by the provisions of the Code of Civil Procedure have been preserved.

It is well settled that a procedural law has retrospective application, and governs all matters pending at the time of its enforcement. No party has a vested right in any particular form of procedure. The rules of limitation are prima facie rules of procedure and consequently no one has any vested right in a period of limitation, unless the contrary follows from the rules themselves.

When the Limitation Act, 1908 prescribes a period of limitation of the institution of a particular suit, it does not create any right for favour of any person or define or create causes of action but it simply prescribes that the remedy could be exercised only within limited period and not subsequently. Nor does the law of limitation create any obligation to sue where none exists. It follows that in respect of any particular suit or proceedings the law of limitation applicable is the law which is in force on the date on which such suit or proceedings is instituted, notwithstanding that the cause of action may have arisen before such Act came into force.

It is, therefore, clear that the relevant provisions of the Civil Procedure Code as well as the Limitation Act came into force in Kalat State immediately on the 9th of June, 1960 on the promulgation of the Central Laws (Statute Reform) Ordinance (XXI of 1960), and governed all pending matters.

But, as the Civil Procedure Code, 1908, by virtue of section 3 of Ordinance (XXI of 1960) is to be deemed to have been extended to the Kalat area from the 14th day of October, 1955, the *Dastur-ul-Amal* is to be deemed to be impliedly repealed by virtue of section 4 of the Ordinance in respect of portions "Corresponding" to the provisions of the Civil Procedure Code, 1908. Thus in order that a law may be a law "Corresponding" to another law, it should deal broadly with matters dealt with in the other law. It need not be substantially and materially identical with other law. Viewed in this broad sense, the *Dastur-*

ul-Amal Diwani, Kalat, 1952 appears to be a law corresponding to the Civil Procedure Code, 1908 in as much as both the laws are intended to regulate the procedure of Courts of civil jurisdiction.

The *Dastur-ul-Amal Diwani*, stands repealed to the extent of those of its provisions which correspond to the provisions of the Code of Civil Procedure, 1908, but those of its provisions which deal with other matters, not provided for in the Code of Civil Procedure, remain unaffected. Further, the jurisdiction of the existing Courts which are functioning in the Kalat area under the *Dastur-ul-Amal Diwani*, Kalat, and the peculiar practices and procedures applicable to proceeding before them, which are not covered by the provisions of the Code of Civil Procedure, have been preserved.

The conclusion is also supported by the inclusion of the "*Dastur*" among the enactments expressly repealed by the West Pakistan Civil Courts Ordinance, (II of 1962).

Under West Pakistan Civil Courts Ordinance (II of 1962) *Dastur-ul-Amal Diwani*, Kalat has been treated as an enactment which was alive in 1962 and included in the list of enactments repealed by section 28 of the Ordinance; but this law not repealed in its entirety by Ordinance XXI of 1960. The Courts functioning in the Kalat are continued to exercise their jurisdiction.

(PLD 1962 Quetta 82).

The provision of the C.P. Code have been made applicable to the Courts functioning in the Kalat Division with effect from 15th October, 1955 by virtue of Ordinance XXI of 1960.

(PLD 1969 Quetta 81).

West Pakistan (Adaptation and Repeal of Laws) Ordinance, 1956 replaced the expression Wazir-i-Azam wherever occurring in any law in force in Balochistan States Union or part thereof by "Minister of the Provincial Government in relation to all matters except judicial matters, where it shall mean the

appropriate Court." The appropriate Court in the Scheme of *Dastoor-ul-Amal Diwani*, Kalat is the High Court. The expression "*Wazir-i-Muarif*" was similarly substituted by "District Judge" and "*Kazi*" by Civil Judge. Central Laws (Statute Reform) Ordinance, 1960 applied with certain qualifications the provisions of Code of Civil Procedure to Kalat.
(PLD 1971 Quetta 93)

The effect of section 3 of the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance XXI of 1960) is that among other laws the *Dastur-ul-Amal Diwani* which governed the trial of civil suits in the territories of the former Balochistan States Union was repealed with effect from the 14th October, 1955, and replaced by the Code of Civil Procedure.

After the creation of the Balochistan States Union in 1952, *Dastur-ul-Amal Diwani* governed the trial of civil suits throughout the States of Kalat, Lasbella, Mekran and Kharan.

It may be briefly stated that the Kharan State acceded to Pakistan in 1948. In 1952 it became a member of the Balochistan States Union which was ruled by a Council of Rulers headed by the Khan-i-Azam of Kalat. The Union merged in the Province of West Pakistan on the 14th October, 1955. Under the covenant of Merger, the Titles; personal privileges; and private properties of the Rulers of the Merged State were assured to them. Before Kharan State was merged in the Balochistan State Union in 1952 there were no written laws in the State. *Shariat* was the only Rule of law in all disputes civil and criminal in nature.

Under the Central Laws (Statute Reform) Ordinance, 1960 its application was extended to the acceding States with effect from 14th October, 1955, but the suits which had been filed earlier were saved under subsection (2) of section 4 of the Ordinance. In *Shariat* there is no bar of limitation to the institution of a suit or other legal action for enforcement of a right in property or in personam.

(PLD 1972 SC 84).

Kalat, one of the several acceding States to Pakistan became incorporated into the then Province of West Pakistan on 14th October, 1955 by the Establishment of West Pakistan Act, 1955. On the 9th of June, 1960 the Central Laws (Statute Reform) Ordinance was promulgated with a view to secure the unification of laws applicable to the various areas which were integrated into the Province of West

Pakistan and to achieve this end, certain Central Acts and Ordinances, including the Code of Civil Procedure, 1908, were extended so as to apply to the whole of the said Province including of course what was formerly the State of Kalat. Prior to this, the law relating to civil procedure in Kalat was the "*Dastur-ul-Amal Diwani*" which was, it may be noted not repealed by the said Ordinance with the result that there were two competing Code of Civil Procedure in force in this area. To the extent that the Code of Civil Procedure, 1908 provided for matters not provided for the said *Dastur-ul-Amal Diwani*, there was obviously no difficulty for the local procedural law was enlarged upon by more comprehensive and detailed Code of Civil Procedure, 1908. The legislature was, however, not unaware that the provisions in the Code of Civil Procedure may be in conflict with the provisions of *Dastur-ul-Amal Diwani*, and there might be provisions in the two statutes covering the same field. It was with a view to meet this situation that in Ordinance XXI of 1960 was incorporated section 4. This section recognises the laws, in force in Kalat area and that those laws contain provisions which may correspond to the provisions in the Acts or Ordinances extended to this area by the said Ordinance. Furthermore the laws in force are not completely repealed but to the extent that there are corresponding provisions in the Central Acts or Ordinances extended to this area, the law enforceable would be one contained in the Central Act or Ordinance. It will therefore be more appropriate to say that if, subjectwise, the same is covered by the provisions contained in *Dastur-ul-Amal Diwani* and the Code of Civil Procedure, 1908 the latter law to that

extend will repeal the former and re-enacted procedural law in the former areas of Kalat would be Code of Civil Procedure, 1908, plus *Dastur-ul-Amal Diwani* but minus its such provisions which have parallel in the Code of Civil Procedure. It is only then that full effect will be given to section 4 as well as section 5 of Ordinance XXI of 1960, which among other things saves the established jurisdictions, practice or procedure etc. The *Dastur-ul-Amal Diwani*, Kalat, stand repealed only to the extent of those of its provisions which correspond to the provisions of the Code of Civil Procedure, 1908, but those of its provisions which deal with other matters, not provided for in the Code of Civil Procedure, remains unaffected. (PLD 1973 Quetta 43).

Civil Courts of the nature of the Court of District Judge, Additional District Judge and Civil Judge are the creation of the West Pakistan Civil Courts Ordinance, 1962. Although the Ordinance extended to the whole of the Province of West Pakistan, as it then was, but it was not enforced in the Division of Kalat by virtue of subsection (3) of section 1 thereof. This is perhaps because of policy of the Government is to continue the present Courts of *Kazi*, constituted under the *Dastur-ul-Amal Diwani*, Kalat. The Ordinance by its section 28, repeals among other laws, the *Dastur* as well. But because the Ordinance is not enforced in the areas of the former Kalat Division, therefore, such repealing provisions do not come into play in that area and the result is that the *Dastur* stays in the field. (PLD 1978 Quetta 91).

It would be pertinent to refer that unlike other Provinces of Pakistan, Balochistan had four different assortments of territories namely, (1). The British Balochistan, Chief Commissioner's Province consisting of the Districts of Pishin and Sibi and Duki Tehsil of Loralai District; (2) the tribal areas comprising the districts of Kohlu and Marri Bugti, Loralai, Zhob

and Dalbandin, including Western Sinjawi country being subject to treaties and agreements between the British Government on the one hand the Sardars and Maliks on the other; (3) the Leased area consisting of districts of Quetta and Bolan, the Nushki Tehsil and Nasirabad Sub-Division all these being parts of Kalat State, acquired in 1883 and later by an agreement with the then Khan of Kalat, and (4) the State of Kalat, Mekran, Lasbella and Kharan. In 1951 these 4 States merged into the Balochistan States Union and thus comprised of the compact unit and evicted so until the province of West Pakistan had come into being. In the field of law as in executive field the Agent to the Governor-General of India acted in three different capacities that is besides his capacity of Agent to the Governor-General for all the territories under British control, with regard to British Balochistan he was a Chief Commissioner. It may be mentioned here that in all these four different assortments of territories no uniformity of law ever existed until today and different areas are governed by different legal systems such as Frontier Crimes Regulations, Ordinance I and II of 1968, the Regular laws and *Dastur-ul-Amal Diwani* in Kalat Division. (PLD 1979 Quetta 118).

It may be appropriate to observe that in Balochistan, there are four parallel laws for adjudication of civil disputes in their respective areas, namely (i) *Dastur-ul-Amal Diwani* Kalat, 1952, which is applicable to the area which was known previously as Balochistan States Union, (ii) Balochistan Civil Disputes (*Shariat* Application), Regulation, 1976 which is applicable to some tribal areas, (iii) Civil Procedure (Special Provisions) Ordinance, 1968, which is applicable to the areas specified in the first schedule to the said Ordinance (Since repealed vide Notification No. Legis. 1-45/Law-72, dated 23rd June, 1988), and (iv) General Civil Laws, which are applicable to the areas known as "A" areas, which comprise of inter alia

Quetta City, Sub-Division Jhatpat and Usta Muhammad and Hub, etc.
(PLD 1987 Quetta 1).

SECTION 2

As regards the necessary parties being impleaded it is true that there is no provision to this effect, but in the absence of any bar in the *Dastur-ul-Amal Diwani*, Kalat, on the Ordinary principles of the administration of justice this procedure must be considered to be inherent -in any proceedings before a Civil Court. Under the practice and procedure prevalent in Pakistan, any person can be impleaded as party to any proceedings at any time. But ordinarily no person is joined as a party if the claim against him is barred by time.
(PLD 1962 Quetta 28).

The provisions relating to the preliminary entertainment of a plaint contained in the *Dastur-ul-Amal*, Kalat are still applicable. If the provisions of the *Dastur-ul-Amal* are applicable with respect to the entertainment of plaints only, then too it follows that for purposes of continuing *exparte* proceedings until the disposal of a suit, after an *exparte* order is made by the *Hakim* under section 6, and a *Jirga* is appointed under section 11, the C.P.C. should be applied. From this point of view also, an *exparte* decree cannot be granted unless the Court applies its mind to the facts of the case and the relevant law.
(PLD 1969 Quetta 81).

The Muslim *Shariat* does not embrace the concept of the British common law that a sovereign can do no wrong and cannot be sued in a Municipal Court in this own domain. On the contrary in *Shariat* a sovereign can be sued in the Court of a *Qazi* and like any other citizen is subject to his jurisdiction and bound to carry out any decree or order passed against him by the *Qazi*. There was no provision in the *Dastur* under which a Ruler could

not be sued in a Municipal Court within the Balochistan States Union. None of the Rulers of the Merged States of Balochistan States Union, was, therefore, immune from being sued in the Court of the *Qazi*.
(PLD 1972 SC 84).

Section 2 of the Code speaks of a "Aadat-e-Majaz" who entertains the suit. Section 2 of the *Dastur-ul-Amal Diwani* provided for the presentation of the plaints in a Court of competent jurisdiction. After the institution of the suit the Court specified in section 2 could summon the defendant, receive written statement and frame issues.
(1982 CLC 2258).

Section 2 of the *Dastur* provides for the presentation of the plaint in a Court of competent jurisdiction. Section 2 of *Dastur* merely enacts a rule of procedure and contains a direction to the plaintiff to file the suit- The proposition of the law stand settled that if a suit cognizable by a Court of lower grade is filed in a Court of higher grade, it may be returned for presentation to the proper Court but if it is tried and determined by the Court of higher Grade, the decree will be valid and binding as trial before a Court of higher grade is only an irregularity which does not affect the jurisdiction of the Court.
(PLD 1984 Quetta 92).

The Civil Procedure Code and the Limitation Act, 1908 have been extended to and are enforced in Kalat Division by virtue of the Statutes Reforms Ordinance, 1960. The *Dastur-ul-Amal Diwani*, Kalat, 1952 also in section 3, the requisite brevity and as specimen of the pleadings required. The provisions of *Dastur-ul-Amal Diwani* and that of rules I (e) or Order VII, C.P.C. are in pari materia and require that a statement should be made in the plaint that the cause of action arose on such and such date to enable the defendant and the Court to ascertain from the

plaint whether in fact or in law the cause of action did arise as alleged or not and is within time.

(PLD 1985 Quetta 69).

SECTION 3

Section 3 provides that the Presiding Officer of the Court to examine the plaintiff for elucidation and verification of facts and the contents of the plaint. These functions are similar to the functions of the Court under Order X, C.P.C.

(1982 CLC 2258).

The provisions in *Dastur-ul-Amal Diwani*, Kalat relating to the form of suit are given in section 3 and the appendix to the *Dastur-ul-Amal Diwani*. Since the topic-wise and subject-wise provisions regarding form and frame of suit are given in Orders VI, VII, VIII, and Appendix to the First Schedule in the C.P.C., the provisions of the Code will prevail.

It has been noticed that the Courts of Kalat and Mekran Divisions do not insist on the observance of Law of pleadings laid down in Order VI, VII and VIII. of the C.P.C. are not mere formalities. There is very purpose and object behind these rules. If the pleadings of the parties are wanting in clarity the Court can examine the parties under order X, C.P.C. to get the cases of parties properly on record. The object of the law of pleadings is that the parties whole case should be before the Court. After pleadings are in proper form, proper issues can be framed. Departure from the law of pleadings would cause embracement (Sic) in the trial. Every fact which is material and proper for adjudication of a dispute between the parties should be stated in the pleadings. Unless all material facts are stated in the plaint, the defendant will not be in a position to deny or admit specifically the facts stated in the plaint. For proper adjudication on a disputed question proper pleadings are essential prerequisite. Proper pleadings is not only a matter of form but are important so that parties are put to their respective position vis-à-vis

subject-matter of the suit. Departure from law of pleadings, as contained in the Code, should not be readily and easily condoned. By operation of section 4 of Ordinance XXI of 1960 section 3 of the *Dastoor-ul-Amal Diwani*, Kalat will be deemed to have been repealed to the extent similar provisions are available in the Code with effect from the date of enforcement of Central Laws (Statute Reforms) Ordinance XXI of 1960. (PLD 1983 Quetta 114).

SECTION 4

A *Qazi* trying a suit originally has ordinarily to consider and decide the cases only according to pleas raised by the parties themselves and the issues framed on their pleas, subject to the provisions of section 4 of the *Dastur-ul-Amal Diwani*. (PLD 1959 Quetta 11).

Section 4 contemplates that "Hakim Adalat" has the authority to ask for the amendment of the plaint if so required. (1982 CLC 2258).

The provisions of the Court Fees Act are fiscal in nature and do not control the provisions of the Code which are procedural. The Court is empowered under section 9 of the Court Fees Act to correct the valuation after enquiry and investigation and direct payment of court-fees under section 10 of the same Act. Order XIV, rule 2, C.P.C. does not restrict the power of the Court under section 9 or 10 of the Court Fees Act or vice versa. (PLD 1984 Quetta 101).

Court visualised in Order VH, rule 11, C.P.C. is one-tiered forum which has to consider the applicability of any of the clauses in Rule 11 and can reject the plaint if it is covered by any of them. But in case it decides otherwise then the same Court

has to proceed with the other steps and stages in the trial of the suit.

(1985 S C M R 1962).

SECTION 6

The *Dastur-ul-Amal Diwani*, Kalat, section 6 thereof states that if the defendant fails to appear then *ex parte* proceedings could be taken against him.

Before passing an *ex parte* decree the Court must at least hold that the case has been *prima facie* proved by some evidence. It was held in the case of *F- Kanemastu and Co. Ltd. VS. Nazir Hussain Puri* PLD 1957 Kar. 832 that it is the duty of the Court when *ex parte* proceedings are taken, to consider the absence of the defendant and the record should bear some indication that the matter was properly considered and the Court applied its mind to the facts of the case. (PLD 1962 Quetta 28).

I am accordingly of the opinion that the *Hakim* could order *ex parte* proceedings, but thereafter he had to appoint a *Panchayat* or a *Jirga*, because the parties are *Hindus*, and it was for the *Panchayat* or the *Jirga* to decide the case in accordance with the provisions of the C.P. Code. It is within the jurisdiction of the *Hakim* to order *ex parte* proceedings, therefore to that extent the order stands.

The present view of the law as enunciated by the Supreme Court is that the Court cannot grant an *ex parte* decree without applying its mind to the facts and the law of the case. Moreover purely technically, there seems to be no reason for giving a restricted meaning to section 22 of the said code i.e. *Dastur-ul-Amal Diwani*, Kalat by excluding from its ambit those cases in which *ex parte* proceedings may have been ordered. Full effect can be given to the meaning of that section consistently with the provisions of the said Code, if the above mentioned

provisions contained in section 11 of the said Code is given effect to, because the *Hakim*, who orders *ex parte* proceedings under section 6, is also expected to appoint a *Panchayat* or a *Jirga* as contemplated by section 11, and entrust the case to that *Jirga* to proceed *ex-parte*. The *Panchayat* or the *Jirga* would then be expected to try the case in a manner which is appropriate in the case in which *ex parte* proceedings have been ordered. This interpretation is also consistent with the provision of the Code that in a suit to which the parties are *Hindus*, the decision will be given by a *Panchayat* or a *Jirga* consisting of members, whose number is not less than half -of its total strength.

(PLD 1969 Quetta 81).

According to section 6 *ex parte* proceedings can be taken if the defendant in spite of service does not appear and the court has also the authority to set aside it. Section 6 of the *Zabita Amal Diwani* authorises the said Court to proceed *ex-parte* against the defendant in case the defendant absents in spite of service of summons, it has also the authority to set aside the order of *ex-parte* proceedings. In case such officer decide to proceed *ex-parte* it could be presumed logically that he had the jurisdiction to pass *ex-parte* decree otherwise the provisions of Section 6 of the *Zabita Amal Diwani* would be meaningless.

(1982 C L C 2258).

SECTION 7

We find that the point regarding the framing of issues was not raised before the *Majlis-e-Shoora*, nor is it specifically mentioned in the grounds of appeal filed in this Court. Non-framing of the issues by the Naib-Tehsilar having not resulted in any prejudice to the appellant, for the reason that the issues framed by the *Qazi*; objection overruled.

(PLD 1962 Quetta 82).

Section 7 enjoins upon the Presiding Officer to frame issues and thereafter to transmit the record to *Qazi* for recording evidence and decision of the matter. The necessity of referring a case to *Jirga* as mentioned in section 7, arises where the parties are non-Muslims.

The requirements of section 7 are not mandatory, that non-compliance with it does not necessarily vitiate the trial and the decision, and in any case no prejudice has been caused to either party and the parties to the litigation had acquiesced. As the *Qazi* had in the first instance, before proceeding with the trial, framed the issues and no particular prejudice is alleged by either party the technical non-compliance with the requirements of section 7 is of no consequence.

(PLD 1971 Quetta 93).

Section 7 of the *Zabita Amal Diwani* introduces the Court of the *Qazi* (*Sharia Anwar Mutaliqa*) only after written statement has been filed and issues have been framed. A suit instituted in the Court of an officer under section 2 of the *Zabita* could not be referred in the court of *Kazi* for decision unless it had reached the stage shown in section 7 in the *Zabita*.

(1982 C L C 2258).

In the present case the Deputy Commissioner had called for the written statement. It was incumbent upon him to frame issues and refers the matter to the *Qazi* to be decided according to law. If the Deputy Commissioner had been of the opinion that the matter was such as was to be decided by the *Jirga* or *Panchayat* he should have proceeded under section 11 of the *Dastoor-ul-Amal Diwani*, Kalat. In case of *Mirza Khan vs. Ch. Mohan Das* it was observed that as long as the Deputy Commissioner did not consider it expedient to get the case decided by the *Jirga* or *Panchayat*, the ordinary form would be that of the *Qazi*. There is no provision under *Dastoor-ul-Amal Diwani*, Kalat whereby the Deputy Commissioner can himself assume the jurisdiction of the *Qazi* or the arbitrator or the *Jirga* or

the *Panchayat*. The function assigned to the Deputy Commissioner is to entertain the suit and call for the written statement under section 7 of the *Dastoor-ul-Amal Diwani*. It is not the discretion of the Deputy Commissioner to call for the written statement but it is obligatory. When the written statement is filed the Deputy Commissioner has to frame issues as provided under section 7 of the *Dastoor-ul-Amal, Diwani*. The Deputy Commissioner has no power to dismiss the suit after he had called for the written statement. It is necessary for him to frame issues and refer the case to the *Qazi* for decision on such issues and disposal of the case. It is found that the plaint does not disclose any lawful cause of action, the *Qazi* can reject the plaint but the Deputy Commissioner possesses no such powers.

The defendant/respondent had raised preliminary objection in the written statement that the suit should have been filed before the Naib-Tehsildar as the valuation of suit was Rs 400/-. In this behalf section 20 of the *Dastoor-ul-Amal Diwani* is relevant, according to which the suit valuation of which is up to Rs 1,000/- has to be filed before the Naib-Tehsildar. Since the suit was filed in the Court of the Deputy Commissioner he should have returned the plaint for presentation to the Naib-Tehsildar. (PLD 1983 Quetta 100).

In Kalat area whatever be the valuation of the suit whenever it is presented and filed by the plaintiff, the *Hakim*, if it has to be decided according to *Shara*, it has to be referred as per necessity of law to the *Qazi* and the relief claimed in the suit can only be granted by the *Kazi* deciding the suit on merit. Thus, it can be safely said *Qazi* does not lack the inherent jurisdiction to try the suit, only a procedural formality is to be completed by the *Hakim*.

(PLD 1984 Quetta 92).

Deputy Commissioner acting by virtue of powers conferred by 3.7 of *Dastoor-ul-Amal* has no power to give a final or

binding judgement. Deputy Commissioner required to get written statement/better statement and then after framing issues to refer case to *Kazi* for trial and decision- He after the perusal of the pleadings has to determine the scope of the controversies involved in the suit in the form of specified issues. He has also amongst others, the powers under section 11 to attempt at an amicable settlement between the parties himself as also through a *Jirga* if need be. But that does not mean that he has all the powers of a Court under the Code of Civil Procedure. Looked at in this context this two-tiered forum provided in the *Dastoor-ul-Amal* does not find any parallel in the Code of Civil Procedure not at least the Court mentioned therein. Therefore, notwithstanding, as regard sections 3 and 4 read with the relevant item in second schedule being applicable to some of the other provisions of the *Dastoor-ul-Amal* so as to render them as repealed by the said Ordinance, the provisions contained in section 7, 20 and 22 in so far as the present discussion is concerned, it has to be held, have not been repealed and or re-enacted by the Code of Civil Procedure.
(1985 SCMR 1692).

SECTION 8

Section 8 of the *Dastur-ul-Amal Diwani Kalat*, not containing provision for dismissal of appeal in default though containing such a provision regarding suits, the Court to exercise its inherent power to dismiss appeal in default. *Majlis-e-Shoora* can exercise inherent power on the ordinary principles of administration of justice and order dismissal of appeal in default. It is clear that if a suit can be dismissed in default at the trial stage, there can be no question of injustice or impropriety if an appeal is dealt within a similar manner. Courts of law must be presumed to have inherent powers of regulating their procedure in matters for which no provision is made in the procedural law applying to them. If such an inherent powers is

not presumed, the Courts may often find themselves powerless to proceed with case and dispense Justice expeditiously. The mere fact that the property involved is of a substantial value does not by itself justify any interference by the appellate Court with a legal and competent order passed in case of dismissal in default dismissed-in-default.
(PLD 1962 Quetta 82).

SECTION 11

The substantive civil law according to section 11 of the *Dastur-ul-Amal Diwani*, is *Shariat* as well as the custom that is followed by the Muslim population, but to the extent to which there are provisions in the *Dastur-ul-Amal Diwani*, the law of Evidence Kalat, and other codified law that is in force, the *Qazis* and the *Majlis-e-Shoora* are definitely bound by them and they must act accordingly. The Courts governed by the *Dastur-ul-Amal Diwani* and the Law of Evidence, Kalat, have no authority to contravene the provisions contained in those statutes. *Majlis-e-Shoora* and the *Qazi* bound to follow codified law of Kalat in spite of recognition accorded to *Shariat* and custom.

The procedure of making inquiries from those who are not witnesses of the parties and whose statements are not recorded is not satisfactory, inspection of the property in suit is not objectionable, but a record of the inspection should be maintained by writing a separate note after the inspection of what was inspected and what was observed and found during inspection- Questions relating to the administration of special oath are to be determined in accordance with the *Qanun-e-Shahadat* of Kalat. Unless the provisions of that law or some other law make it proper a party should not be deprived of the opportunity of producing evidence. A defendant is entitled to an opportunity to produce evidence unless a provision of law make it unnecessary or improper. Where opportunity to produce evidence was not given to the defendant and the case was

decided on basis of the defendant's failure to take a proposed oath on the Holy Quran, the case was remanded for re-trial. (PLD 1959 Quetta 11).

Section 11, independently considered, enjoins upon the Presiding Officer to make an attempt at the very initial stage. After procuring attendance of the parties, to have the dispute settled by compromise, arbitration or *Shariat*. This is a pre-trial effort at settlement.

The section 11 provides that if the matter relates to custom, or it is necessary to refer a matter to *Jirga*, then it could be so referred on obtaining the approval of the High Court, when where such a reference is made, the final order on the recommendation of the *Jirga* is required to be passed by the High Court. The specific question which requires determination is whether section 11 confers a discretion on the Presiding Officer or an obligation. If it be an obligation, whether the requirement is mandatory or directory.

The language of section 11, and also for that section 22 is permissive and enabling. It concerns procedure of a Court in civil litigation.

(PLD 1971 Quetta 93).

Section 11 of the *Dastur* also lays down scope of the function of *Hakim*. According to this section the *Hakim* has to try to decide dispute either through compromise or arbitration or *Shariat*. If, however, the matter relates to custom it is to be referred to a *Jirga*. If the parties are Hindu then the matter is to be referred to a *Panchayat* or a Special *Jirga*. The power to decide disputes according to *Shariat* is conferred upon the *Kazis* by section 22. Thus the only cases where a dispute is finally resolved before the Deputy Commissioner is when it is settled through compromise or arbitration. But the power to effect compromise, or get disputes settled through arbitration fall outside the scope of judicial power, These two elements are,

therefore, not enough to supply the essential attributes of a Court to a Deputy Commissioner.

The Deputy Commissioner, therefore, cannot be termed as a Court. At best it is a non-judicial office, created to perform administrative functions and details necessary to the performance of the duty of a Court. They help in the administration of justice by relieving the *Kazis*, *Jirga* or the *Panchayats* of such details, permitting them to concentrate on purely judicial aspects.

The Court of *Kazis* or for that matter the *Jirgas* and the *Panchayats* constituted under section 11 of the *Dastur* are not courts of original jurisdiction, as the disputes of civil nature cannot be brought before them directly. This leaves us with no forum, in the areas of former Kalat, which could be termed as principal civil Courts of original jurisdiction. (PLD 1978 Quetta 91).

Under section 11 "*Hakim*" has the authority to refer the matter to arbitration or decide it on compromise- Section 11 of the *Zabita* lays down that the *Hakim* could make effort at conciliation or arbitration. In case the matter relates to custom the *Hakim* would try to get it resolved through a *Jirga*. If the matter could be settled by a compromise or arbitration it would not be referred for decision to the *Kazi* concerned and it can be read in this provision that the *Hakim* is competent to get the matter so decided without even referring to the *Kazi*. This is a stage in the proceedings prior to the trial of the suit in the Court of *Kazi*.

Section 11 of the *Zabita Amal Diwani* lays down that where the *Hakim* finds that the matter is such that the decision of the case should be got through a *Jirga* and when the parties are *Hindus*, the *Jirga* or the *Panchayat* to which such matter is referred should consist of equal number of *Hindus*. In such the final order could be passed by the *Wazir-e-Azam* and now by the High Court. Section 11 is the only provision of *Zabita Amal*

Diwani which makes any reference to *Hindus*. A suit where parties are *Hindus* could be referred to a *Jirga* which consisted of equal number of *Hindus* as members. There is no other provision in the *Zabita Amal Diwani* where any distinction has been made in the procedure of the jurisdiction of the Court of *Hakim* or the *Kazi* in trial of suits of *Hindus*. Even if the parties are *Hindus* and in the opinion of the *Hakim* the matter is not such that should be decided by reference to a *Jirga*, the procedure prescribed for trial of suits by *Kazi* for Muslims would apply. A suit where the *Hindus* would also be tried under section 7 of the *Zabita Amal Diwani* and there is not separate procedure prescribed. If a separate procedure for trial of suit when parties were *Hindus* was extended, such provision could be made in section 7 of the *Zabita* and not under section 4 of the same. It was wrongly referred by the *Hakim* to the High Court under section 11 of the *Zabita* since there is no findings of the *Hakim* that the suit should be disposed of by reference to *Jirga* or *Panchayat*.
(1982 C L C 2258).

SECTION 12

Section 12 of the *Dastur-ul-Amal Diwani* deal with the burden of proof. An opportunity for the defendant to produce evidence should not be denied unless a provision of law make it unnecessary or improper.
(PLD 1959 Quetta 11).

Under the Hanfi Law it is not necessary to administer Oath to a witness.
(PLD 1962 Quetta 82).

Nowhere in the order XXXIII(I) nor in section 12 any provision is made requiring moving of a separate application other than plaint for suing as paupers but what required is that a

petition to sue in *forma pauperis* has to contain all that a plaint is required to have and annexed therewith a schedule of movable, immovable properties, assets and debts any and nothing beyond that. On that consensus view of the Court has been that *forma pauperis* application is a composite document consisting of an application to sue *pauperis* and a plaintiff. Our views get support from the case reported in AIR 1949 Mad. 162 wherein it has been held "An application under Order XXXIII (1) is a composite document consisting of plaint and an application for being excused from the payment of court-fee." Reverting to effect of Ordinance of 1960 section 12 of *Dastoor* and Order XXXIII of Code it may be observed that the proposition has already been squarely dealt with in case PLD 1973 Quetta 43. In such event it would certainly be futile effort on our part to elucidate the proposition which has already been settled by this Court and not disturbed by the Supreme Court in case reported in 1985 SCMR 1692. Manifestly the proposition laid down in the above said citation of Supreme Court and ratio enunciated in the above said authority of Division Bench of this Court is on all fours with the proposition under discussion in the case before us. No material was placed before us as discussed hereinabove to depart from the well considered view already taken by the Supreme Court and Divisional Bench of this Court in the above said citation, we, therefore adhere to the same interpretation of the Law and hold that the subject under section 12 of *Dastoor* and Order XXXIII of the Code being same the former stood repealed and substituted by the latter. It may be further observed that though the Deputy Commissioner did not in fact follow the procedure laid down under Order XXXIII of the Code or that of *Dastoor* yet he took full precautions held enquiry regarding *pauperis* of the respondent and admitted suit by exempting him from paying the court fee for the time being till disposal of the suit or otherwise before allowing the application *forma pauperis*. No doubt the State derives a revenue from court-fee stamps from plaintiffs who approach the Civil Courts. Under Court-Fees Act

they are bound to pay the court-fee prescribed under it at the filling of the plaint but there may be persons for reason of their poverty unable to pay the court-fee, for such deserving persons/provisions under section 12 of *Dastoor* and Order XXXIII has been made exempting them from paying at the first instance the court fee and present their suits as *forma paperis*. It may be observed that dispute regarding payment of court-fee particularly in *forma pauperis* is a matter between the Government and its pauperis subject though a defendant too under rule 6 of Order XXXIII is one of the necessary party to be heard but if for some reasons, he is not called at the initial stage but in that case while taking defence of the suit if still defendant feels actually aggrieved against the order may avail the opportunity to move for dispaupering the suit under rule 9 of the order. Failing to move such objection at the proper stage before the trial Court he cannot be allowed to challenge it for the first time before the appellate Court in appeal along with the judgement and decree. It may be pertinent to observe further that while challenging a decree in fact, it is not open to the appellate Court to entertain such pleas that the plaint had not been legally allowed to sue as pauperis as the matter at such initial stage is one affecting the institution of the suit itself and not affecting any decision of the trial Court, that is why it has not been made appealable.

(1986 C L C 1227 Quetta).

SECTION 15

Provisions of S.15 *Dastoor-ul-Amal Dirvani*, Kalat held, were repealed and replaced by provisions of Court Fees Act, 1870 by virtue of S.4. Ordinance XXI of 1960. Court-Fees in special areas of Kalat would now be regulated by provisions of Court Fees Act, 1870 instead of *Dastoor-ul-Amal Dirvani*, Kalat. The perusal of section 4 of the amending Ordinance of 1960 and the authorities referred to hereinabove make it crystal clear that

section 15 of *Dastoor-ul-Amal, Diwani*, Kalat stands repealed and replaced by the provisions of Court-Fees Act, of 1870 which law has been made applicable even before the enforcement of above Central Statute in the above said Special areas.
(PLD 1986 Quetta 179).

SECTION 20

Deputy Commissioner is not competent to appoint any arbitrator on behalf of the parties to partition the property between them.
(PLD 1962 Quetta 28).

In the Kalat area the jurisdiction of the existing Courts namely of the Naib-Tehsildars and other Officers as well as the Qazi and the *Majlis-e-Shoora*, functioning under *Dastur-ul-Amal Diwani*, Kalat, has been preserved, but in the matter of procedure certain provisions of the *Dastur-ul-Amal* stand substituted by corresponding provisions of the Code of Civil Procedure, 1908. It is these Courts in the area of the former Kalat States which have now to apply the Limitation Act, and no question of lack of jurisdiction arises in this behalf. The Courts are competent to apply the Limitation Act as well as certain provisions of the Civil Procedure Code.
(PLD 1962 Quetta 82).

In order to understand the relevance and the application of the principles it is necessary to set out, in brief the Scheme of *Dastur-ul-Amal*, Kalat. The pre-trial proceedings are required to be conducted by Naib-Tehsildars in matters of the value up to Rs 1.000/-, by the Tehsildar in matters of the value up to Rs 2.000/- and by the Nazim (presently Assistant Commissioner) in matters of the value up to Rs 10.000/-, Deputy Commissioner (former Wazir-e-Adlia) for value exceeding Rs 10.000/-. They have been authorised to entertain the civil disputes in the first instance

(section 2), to seek elucidations from the plaintiff (section 4), to secure the attendance of the defendants (section 5), to dismiss the matter in default (section 8), to attempt a settlement (section 11), without themselves going into the merits of the claim, to frame the issues and transmit the case for trial (section 7). It will be observed that functionaries authorised to conduct pre-trial proceedings have not been empowered to deal independently or finally with the merits of the case, or to deal with it in a manner and to the extent to contain or predetermine the subsequent course of litigation in trial and appeal. The *Kazi* has no option but to decide, the cause brought before him in accordance with *Shariat* (section 22). In such a situation the legislature could not intend that these functionaries should have so wide a discretion as to divert the course of litigation into Channels into which the parties never intended it to proceed, or to stifle the cause by leaving no option but to apply *Shariat* even to a case where the parties undisputedly placed custom for determination of their rights. Similarly, it could not have been intended that disputes involving non-Muslims should be resolved or adjudicated upon, at the discretion of the Presiding Officer, by *Shariat*. In the circumstances, the power reposed with the Presiding Officer, in pre-trial proceedings, of moving for approval to refer to a Jirga disputes involving custom, or having non-Muslims as parties, is coupled with a positive duty to do so where the requirements for making such a reference are satisfied. The duty is obsolete and unavoidable. (PLD 1971 Quetta 93).

The scheme of the *Zabita-e-Amal Diwani Kalat* clearly indicates that a *Hakim* in cases where he has the pecuniary jurisdiction to entertain a suit has the authority to pass interlocutory or ancillary orders. It has been observed in *Malik Muhammad Hassan VS. Assistant Commissioner Quetta Sub-Division and others* in C.P., No. 169 of 1978, that grant of interim relief is part of the working of the Judicial system and no

separate specific provision is necessary to empower Court or a tribunal to issue such interim orders. This observation was made in view of the decision taken in *Chaudhry Textile Mill Ltd. v. Central Board of Revenue and in Commissioner Khairpur Division v. All Sher*. The C.P.C. has been made applicable to Kalat with effect from 21st June, 1960 therefore, provisions of orders XXXVIII and XXXIX, C.P.C. have been made applicable since then. A Court taking cognizance of the matter on civil side is therefore, authorised to pass an interim order as laid down in order XXXVIII or XXXIX C.P.C.

Section 20 of the same *Zabita* circumscribes the limits of function of various parts of whom complaints can be presented according to section 2 of the *Zabita*. The Courts are the Courts of the Naib-Tehsildar, Tehsildar and *Nazim*, and formerly the *Wazir-e-Adlia* and now the Deputy Commissioner. The word "Court" used in subsection (2) means the parts specified in section 20. It will show that the officers shown in section 20 are Courts for certain specified purposes under the *Zabita*.

The provisions of the *Zabita Amal Diwani* provide two different stages of the suit, one is that provided under section 20 and the other one provided under section 7 of the *Zabita Amal Diwani*. They have been assigned various judicial functions. A *Kazi* does not have jurisdiction to entertain or decide a case unless it is referred to him by the *Hakim* after framing of the issues but once the case is referred to the *Kazi* by the *Hakim*, the *Hakim* ceases to have jurisdiction in respect of the matter so referred. If a case can be disposed of otherwise than on decision of issues and recording of evidence it could be disposed of by the *Hakim* without-reaching that stage when it referred to the *Kazi*. The whole scheme of the Act and provision of appeal in respect of decision by the *Hakim* leave no doubt that the Courts specified under section 20 of the *Zabita Amal Diwani* have been assigned judicial function and are Courts for all practical purposes until the case is referred to a *Kazi* under section 7 of the *Zabita*. Taking a hypothetical case of a suit being instituted before the *Hakim*

and after an interim order in the nature of one provided under Order XXXVIII, Order of XXXIX or Order XL of the C.P.C. is made and such suit is compromised before the filing of the written-statement or framing of the issues. The stage would not arrive when the *Kazi* comes into the picture. There should be somebody to grant the interim relief in such cases where the object of the suit would be frustrated in case such interim relief is not granted. It cannot be presumed that law would not provide such a contingency as long as the suit is within the Court of the *Hakim* and has not been referred to the *Kazi*, the *Hakim* has jurisdiction to perform all such actions as are necessary to grant interim/main relief. His competency to grant interim relief or make interlocutory order is inherent. The main relief claimed in the suit can be granted by the *Hakim* in case of compromise or arbitration and by the *Kazi* in case of decision upon the issue on the basis of evidence led by the parties. The *Hakim* and the *Kazi* have all the judicial powers of a Court within their respective spheres and discharge those functions according to the requirement of the case. It cannot be argued that function of the *Hakim* are merely ministerial in nature under *Zabita Amal Divani*. Since he possesses powers to decide a case in certain circumstances and competent to grant ex-parte decree or get the dispute settled by compromise or arbitration, he would be deemed to possess all the residential powers necessary for the purpose and in aid of granting the substantial relief.
(1982 CLC 2258)

Section 20 specifically lays down that the Deputy Commissioner shall have jurisdiction in suits valuation of which is more than Rs 10,000/-. The Deputy Commissioner should have returned the plaint to the plaintiff/petitioner for presentation to a competent Court instead of dismissing the suit.
(PLD 1983 Quetta 100).

Section 20 circumscribes the limits of functions of various Courts to whom plaints can be presented, according to section 20 of the *Dastoor-ul-Amal*, these Courts are the Courts of the Naib-Tehsildar, Tehsildar, the Assistant Commissioner (formerly Nazim) and Deputy Commissioner (formerly *Wazir-e-Adlia*). After the institution of suit the Court would summon the defendant, receive written statement and frame issues and for recording evidence on the issues and deciding matter according to *Shara*, the suits is to be sent to *Qazi*. (PLD 1984 Quetta 92).

The provisions of the Registration Act, 1908 were extended to Kalat by the Ordinance, No. XXI of 1960 on 9th of June, 1960. Accordingly section 20 of the *Dastoor-ul-Amal Diwani* stood repealed and re-enacted by the said Act and others duly extended, as amended by this Ordinance as if such law were a Central Act. Therefore, while the Registration Act was in force, the agreement for sale of the disputed property was executed and the receipt given for the consideration. These documents as such could not convey any title to the appellant unless a sale-deed was executed and registered. (1987 S C M R 347).

Provisions of the Code of Civil Procedure have repealed the provisions of the '*Dastoor*' on the identical subject and that the provisions of the Code of Civil Procedure are to prevail over the provisions of the "*Dastoor*." It is also evident from the Quetta case of 1982 C L C 2258 that Naib-Tehsildars, Tehsildars, Nuzma and the Deputy Commissioners, were acting as the Courts for the purpose of pecuniary jurisdiction to the extent mentioned in section 20 of the "*Dastoor*". However, the above ruling no longer reflects the correct position in view of the above Ordinance 32 of 1984, which has withdrawn the power of the above officers to adjudicate upon Civil disputes to the extent of pecuniary jurisdiction mentioned in the above section 20 of the "*Dastoor*". A

Qazi who passes a decree in an area where "*Dastoor*" is applicable is competent to entertain an execution application and is also competent to invoke the assistance of Civil Administration including of a Assistant Commissioner, Tehsildar, Naib-Tehsildar, Levies and Police, etc. for the execution of such decree.

In order to understand the point in issue, it may be pertinent to point out that under the original "*Dastoor*" Naib-Tehsildars, Tehsildars, Nuzma and Deputy Commissioner had original jurisdiction to try the civil disputes to the extent of pecuniary limits given in section 20 of the same and, therefore, they were Courts for all intents and purposes for execution of a civil decree. The above position was altered by Ordinance No 32 of 1984, namely *Dastur-ul-Amal Diwani Riasat Kalat (Termeemi) Ordinance, 1984* whereby the aforesaid section 20 was substituted and the powers to try civil disputes were withdrawn from Naib-Tehsildars, Tehsildars, Nuzma and the Deputy Commissioners. In this view of the matter, they have ceased to act as a Court. (Author's note: With utmost respect it may be stated that under original "*Dastoor*" i.e. prior to promulgation of Central Ord. No. XXII of 1984, Naib-Tehsildars, Tehsildars, Nuzma and Deputy Commissioner have had no original jurisdiction to try the civil disputes, but after framing of the issues-transmitted the record of the case to the Court of *Qazi* for adjudication). It will not be also out of context to mention that by virtue of section 3 of Central Laws (Statute Reform) Ordinance, 1960 (Ordinance No. XXI of 1960), inter alia, the provisions of the Code of Civil Procedure were made applicable to the Acceding States which had become the part of West Pakistan, i.e. including Kalat. In this regard, it may be stated that the practice obtaining in the area where "*Dastoor*" is applicable is that a civil decree passed by a *Qazi* is sent for execution to a Deputy Commissioner, Assistant Commissioner or Tehsildar, which practice has judicial recognition.

(PLD 1987 Quetta 1)

SECTION 22

As the *Kazi* was to decide the case according to the *Shariat Anwar* it was not obligatory on him to give oath to the witnesses who appeared before him. The parties are Hanafi Muslims and under the Hanafi School it is not necessary to give an oath to a witness because the word "testimony" implies an Oath. (PLD 1962 Quetta 28).

Reading sections 22 and 11 together one comes to the conclusion that cases involving customary rights or where the parties are non-Muslims, whatever be the subject-matter of litigation, are diverted to the *Jirga* while all other cases, pass on the *Kazi* who is required to decide them according to *Shariat*.

Section 22 of *Dastoorul Amai Diwani, Kalat*, makes it very clear that a *Kazi* is required to decide a civil matter brought before him in accordance with *Shariat*. No departure is either envisaged or provided for. In consequence, once the matter reaches the *Kazi* the rule of decision, in trial, and in appeals arising out of the decisions of the *Kazi*, is *Shariat* and nothing else. The *Kazi* has no option but to decide, the case brought before him in accordance with *Shariat*. (PLD 1971 Quetta 93).

Punjab Tenancy Laws, is not applicable in Balochistan. Only remedy available for the parties is to file a civil suit for possession. The factum of *Moaroosi Bazgar* is not unknown to this region although Punjab Tenancy Act strictly is not applicable and that such disputes are to be decided through a suit for possession and decision to be given according to *Shariat*. (PLD 1973 Quetta 18).

Section 22 of *Dastoorul Amal Diwani, Kalat*, makes it very clear that a *Qazi* is required to decide a civil matter brought

before him in accordance with *Shariat*. No departure is either envisaged or provided for. In consequence, once the matter reached the *Qazi* the rule of decisions of *Qazi* is *Shariat* and nothing else. Only the corresponding provisions of *Dastoorul Amal Diwani*, Kalat, have been repealed and there is no corresponding provisions of section 22 in Civil Procedure Code, which even by implication can be said to have been repealed. Section 22 is not a procedural law, but it is substantive law, therefore, the Courts of *Qazis* in Kalat Division are bound to decide the matter in accordance with *Shariat*.

(PLD 1978 Quetta 4).

Bai Sa'am (sale of anything not in existence with seller) contract of salam of things not within control for delivery-Invalid. Contract Act cannot be pressed into service for resolving the disputes. The Courts of *Qazis* in Kalat Division bound to decide matters according to *Shariat*.

(PLD 1978 Quetta 52).

The Court of the *Kazi* is a Court of ultimate pecuniary jurisdiction as far as civil suit is concerned irrespective of the valuation. If the value of land in the case was 100 rupees or 10 lacs of rupees it would still remain within the competence of the *Kazi*. The Court of *Kazi* is a Court of unlimited Civil jurisdiction and so in any case whether the issues is decided against the plaintiff/respondent the jurisdiction of the *Kazi* will not be affected and the suit will remain there and be tried by the *Kazi* and the plaintiff/respondent will be asked to pay the deficient court-fee before decree is prepared. The forum for the suit remains unaltered whatever may be the valuation of the suit and

* In this case the Author appeared as an Advocate for the Appellant.

** This precedent mentions the name of this Author as Legal Attorney for and on behalf of Appellant.

failure on the part of the *Kazi* to decide the issues regarding valuation as a preliminary issue will not have adverse consequence for the suit as far as pecuniary jurisdiction of the *Kazi* is concerned.

(PLD 1984 Quetta 101).

Decree passed by a *Qazi* or by other Civil court cannot be transferred under Ss, 37, 38 & 39, C.P.C. for execution. *Qazi* who passed a decree in an area where *Dasturul Amal Diwani* is applicable, is competent to entertain execution application and to invoke assistance of Civil Administration including that of Assistant Commissioner, Tehsildar, Naib-Tehsildar, Levies and Police for execution of such decree. Since the provisions of the Code of Civil Procedure are applicable to the area covered by the "*Dastoor*", the above provisions of section 38 are attracted to, and hence, a *Qazi* who passes a decree is competent to entertain execution application and to execute the decree or to cause its execution.

(PLD 1987 Quetta 1).

SECTION 23

Civil Procedure Code (V of 1908), S.115 and *Dastur-ul-Amal Diwani* (Kalat), S.23—Revisional Dowers—Ought to be exercised to correct obvious error of law even if not attacked directly by revision application.

(PLD 1969 Quetta 81).

Under Section 23, an order passed by Nazim (Assistant Commissioner) is appealable before the Deputy Commissioner. Section 23 of the *Zabita* provides appellate forum from the decision of Naib-Tehsildar, Tehsildar, Nazim and Deputy Commissioner. If the Courts shown in section 23 of the *Zabita* could not decide a case the provision regarding appeal would be redundant. Provision of appeal presupposes that in certain circumstances the Courts specified in section 23 of the *Zabita*

could make a decision. Such decision is not ministerial or executive action. It is a decision which cannot be done otherwise than in judicial process. This assertion also supports the contention that functions of the Tehsildar or the Nazim or for that matter the Deputy Commissioner, are not simply ministerial or executive in nature. They have been assigned judicial role to play in the administration of civil justice and therefore they are Courts for practical purposes though such functions are exercise-able at a particular stage of the proceedings. (1982 CLC 2258).

The promulgation of Ordinance 32 of 1984, Naib-Tehsildars, Tehsildars, Nuzma and Deputy Commissioners, have ceased to be a Court within the ambit of sections 37 to 39 of the Code of Civil Procedure and, therefore, a decree passed by a Qazi or by any other Civil Court cannot be transferred under the above provisions of the Code of Civil Procedure for execution. (PLD 1987 Quetta 1).

SECTION 24

An appeal means invocation of the authority of a higher Court for rectifying the mistakes made by the lower Court. That being so, the scope of appeal should be taken, in the absence of any provision to the contrary, to be restricted to the decision of the objection that may be raised against the Judgement from which an appeal is preferred. There is nothing to the contrary in *Dastur-ul-Amal Diwani*, Kalat. Therefore, during the hearing of an appeal, the *Majlis-e-Shoora* has no power to record any additional evidence under OXLI rule 27 of the Code of Civil Procedure (V of 1908).

Majlis-e-Shoora is not entitled to record evidence in appeal, and could not of its own accord raise new objections, which involved proof of additional facts. In 2nd Civil Appeal No. 3 of 1957, in which Munshi. J has observed as follows:

"Section 24 of *Dastur-ul-Amal Diwani* Kalat merely provided for appeals to be heard by *Majlis-e-Shoora*. This section does not empower *Majlis-e-Shoora* to hear evidence. No other section of *Dastur-ul-Amal* has been pointed out to me to show that *Majlis-e-Shoora* is empowered to hear evidence while dealing with appeal. There is not even a provisions in this *Dastur-ul-Amal* analogous to Order XLI, rule 27. C.P.C. whereby the appellate Court under certain specified circumstances is empowered to record additional evidence. It is, therefore, clear that the *Majlis-e-Shoora* acted without jurisdiction when they heard evidence led by the respondent and acted on it."

(PLD 1959 Quetta 11).

Majlis-e-Shoora Competent to dismiss appeal in default though "*Dastur*" contains no such provision as provided under Order XLI rule 17 of the Civil Procedure Code, 1908.

After the 9th of June, 1960, the procedure in the matters of the appeals from original decrees pending before the *Majlis-e-Shoora* was to be regulated by Order XLI of the Code of Civil Procedure, which authorises the dismissal of an appeal in default. An application for re-admission of the appeal could only be made within thirty days. Even if the matter was governed purely by the *Dastur-ul-Amal Diwani*, Kalat the lower appellate Court i.e. *Majlis-e-Shoora* had the inherent power of dismissing the appeal in default. In any case, the application for review had to be made within ninety days of the order of dismissal. The *Majlis-e-Shoora*, therefore, legally competent, and acts rightly, in dismissing the applications for restoration of the appeal. The *Majlis-e-Shoora* competent to dismiss the appeal in default under the provisions of Order XLI, rule 17 C.P.C. Once the appeal had been dismissed in this manner, the appellant had to proceed under rule 19 of Order XLI and apply to the *Majlis-e-Shoora* for

the re-admission of the appeal, and in that case, the application had to be made within thirty days of the date of dismissal in default, as required by Articles 168 of the First Schedule to the Limitation Act. The *Majlis-e-Shoora* was therefore, right in treating it as time-barred. *Majlis-e-Shoora* had inherent power to dismiss an appeal in default, and no question of an error of law would arise.

Dismissal of appeal in default under Order XLI rule 17 of the Civil Procedure Code, 1908; and application for restoration of appeal if not made within prescribed period, the *Majlis-e-Shoora* competent to reject as time-barred.

(PLD 1962 Quetta 82).

There is no corresponding section in the Code of Civil Procedure which covers section 24 of the *Dastur-ul-Amal Diwani*, Kalat, hence section 24 has not been repealed. This contention has force because section 24 of the Kalat *Dastur-ul-Amal* provides that an appeal would lie to the *Majlis-e-Shoora* against an order of *Qazi* and then an appeal will lie to the High Court against the order of *Majlis-e-Shoora*. No restrictions as embodied in section 100 C.P.C. are mentioned therein.

(PLD 1966 Quetta 44).

The *Dastur-ul-Amal Diwani* to the extent there are provisions on the same subject in the Code of Civil Procedure, 1908, though not identical stood repealed, and accordingly section 24 of the *Dastur-ul-Amal Diwani* stood repealed by section 100 of the Code of Civil Procedure, 1908 being the provision contained in the C.P.C. on the same subject, notwithstanding the fact that while in the former Second Appeals would lie both on question of fact and law, in the latter they would be confined to law only.

(PLD 1973 Quetta 43).

Dastur-ul-Amal Diwani Kalat, S.24 and Civil Procedure Code, 1908 (V of 1908), S.100 Concurrent finding of fact by two lower courts i.e. trial court and the first appellate Court-Not to

be lightly interfered with. Concurrent findings of fact based on no evidence or misreading of evidence liable to be set aside in second appeal.

(PLD 1973 Quetta 123).

Accordingly as there is no provision in section 100 of the Code of Civil Procedure on the subject of limitation, section 24 of *Dastur-ul-Amal Diwani*, Kalat shall be considered to have been saved to this extent and the period of limitation for both the first and second appeals would be ninety days, and not the period prescribed by the Limitation Act.

(PLD 1977 Quetta 79).

In a second appeal which is competent under section 24 of the *Dastur-ul-Amal, Diwani*, Kalat only on those grounds which are available under section 100 of the Code of Civil Procedure. Even if a finding of fact is erroneous appraisal of evidence cannot be undertaken while hearing second appeal under section 24 of the *Dastur-ul-Amal Diwani*, Kalat.

(PLJ 1977 Quetta 658).

The scope of appeal has not been prescribed by section 24 of the *Dastur-ul-Amal Diwani* yet as appeal could not be regarded as a retrial and that its scope could not be same as that of the original trial.

Majlis-e-Shoora cannot raise new pleas in an appeal unless all the facts necessary for their decision are already on the record and that the converse of this proposition is not always true.

Under Order XLI, rule 1, C.P.C. it is incumbent upon the appellant to file a copy of the decree appealed against along with the memo. of appeal and in case it is not so accompanied the memo of appeal would not be considered having been properly drawn up. Where the memorandum of appeal is not properly drawn up the provisions of Order XLI, rule 3, C.P.C. are

attracted and there are two courses open to the appellate court. The first course is that the appeal may be rejected while the second course is that the appeal may be returned for refiling after amendment within the time to be fixed by the Court. (PLD 1978 Quetta 88).

Section 24 provides appellate forum from the decision of *Kazi and Majlis-e-Shoora*. (1982 C L C 2258).

This is settled law that where is a provision in the *Dastur-ul-Amal Diwani* with corresponding provisions in the Civil Procedure Code, the latter would prevail and the provisions in the *Dastur-ul-Amal Diwani*, Kalat would be deemed to have been repealed by application of section 4 (I) of Central Laws (Statute Reform) Ordinance XXI of 1960. In the case of *Saeed Muhammad v. Chakkar* it was held that section 24 by operation of this Ordinance stood repealed. This observation related to section 24 of *Dastoor-ul-Amal Diwani*, Kalat so far it related second appeal. Section 4 of the Central laws (Statute Reform) Ordinance XXI of 1960 also repeals the provisions of section 24 of the *Dastoor-ul-Amal Diwani* so far as it relates to revisions and provisions of section 115, C.P.C. would be the one applying to the revision. No time limit is prescribed for filing revision under section 115, C.P.C. (PLD 1983 Quetta 8)

The Civil Procedure Code is applicable in those areas where *Dastoor-ul-Amal Diwani* Kalat in force. It is settled law now that where corresponding provisions are available in the Civil Procedure Code the provisions in relation to that subject contained in *Dastoor-ul-Amal Diwani* would stand repealed by virtue of section 4 of the Central Law (Stature Reforms) Ordinance (XXI of 1960). (PLD 1983 Quetta 114).

The revisional jurisdiction can be invoked within the scope of section 115, C.P.C. and in case there is any defect in the finding of the trial Court regarding valuation those can be corrected at the time of appeal. (PLD 1984 Quetta 101).

Limitation being a question of law can be raised in appeal even though not raised in pleadings (See PLD 1959 Kr. 760). Thus, the omission of the issue does not preclude the defendant to urge the bar of limitation on or the Court holding a proceeding to be barred if it is apparent in view of section 3 of the Limitation Act. The plea of limitation raised by the defendants/respondents thus has been properly entertained, and the appellate Court (*Majlis-e-Shoora*) was competent to record a finding on this point. Order XLI rule 24, C.P.C. lays down that if the evidence upon the record is sufficient to enable the appellate Court to pronounce Judgement, the appellate Court may record a finding itself although the lower Court might have left the point undetermined. (PLD 1985 Quetta 69).

Failure of executing Court to dispose of objections/applications before passing of final order, held, would not change terminus a quo for purpose of limitation. Such failure may constitute a ground for condonation of delay under S.5. Limitation Act, 1908. Appellate Court declined to disturb impugned order to executing Court and remand for de novo distribution of property to avoid more miseries to legal heirs who had been under litigation for about 33 years. (PLD 1986 Quetta 246).

SECTION 25

We have, however, found that the power to remand a case with suitable directions to a lower Court is contained in section 25 of the *Dastur-ul-Amal Diwani*. (PLD 1959 Quetta 11).

SECTION 27

In realisation of the meagre provisions that it contains, power has been conferred by section 27, which is its last section, on the Wazir-e-Azam (or the High Court) for making additional provisions.
(PLD 1959 QUETTA 11).



NOTIFICATIONS ISSUED FROM TIME TO TIME

GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT.

Dated QUETTA, the 7th October, 1986.

NOTIFICATION

No. Legis.6-63/Law/80-III/(1). In supersession of all previous notifications and orders issued from time to time in this behalf, the Government of Balochistan is pleased to determine the territorial limits of the Civil Districts of Kalat Khuzdar, Turbat, Jhatpat and Sibi and constitute *Majlis-e-Shoora* under section 24 of the *Dastur-ul-Amal Diwani*, Kalat 1952, at Kalat, Khuzdar, Turbat, Jhatpat and Sibi, to exercise civil revisional/appellate jurisdiction within the territorial limits of the above noted Districts as follows:-

Name of Civil District.	Name of <i>Majlis-e-Shoora</i> Exercising Civil Revisional/ Appellate Powers.	Territorial Limits.

Section 24 relate about form as regards preferring of Appeal, and not constituting Appellate Courts.

Kalat	<i>Majlis-e-Shoora</i> , Kalat with headquarters at Mastung.	<ul style="list-style-type: none"> i) Kalat Revenue District. ii) Kharan Revenue District.
Turbat.	<i>Majlis-e-Shoora</i> , Turbat with headquarters at Turbat.	<ul style="list-style-type: none"> i) Turbat Revenue District. ii) Gawadar Revenue District. iii) Pangoor Revenue District.
Khuzdar.	<i>Majlis-e-Shoora</i> , Khuzdar with headquarters at Khuzdar.	<ul style="list-style-type: none"> i) Khuzdar Revenue District. ii) Lasella Revenue District (except Industrial area and Town area of Hub).
Jhatpat.	<i>Majlis-e-Shoora</i> , Jhatpat with headquarters at Jhatpat.	<p>Pat Feeder Sub-Division of headquarters Revenue District, i.e.</p> <ul style="list-style-type: none"> i) Dera Murad Jamali Tehsil. ii) Tamboo; and iii) Chattar Sub-Tehsils.
Sibi.	<i>Majlis-e-Shoora</i> , Sibi with headquarters at Sibi.	Revenue District of Kachhi.

The Court established within the same territorial limits of relevant law can only adjudicate during Appeals.

2. The Government of Balochistan is further pleased to appoint District and Sessions Judges of Kalat, Turbat, Khuzdar, Jhatpat and Sibi to be Presidents of Court of *Majlis-e-Shoora*, Kalat, Turbat, Khuzdar, Jhatpat and Sibi respectively.

BY ORDER OF GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT.

Dated QUETTA, the 20th October, 1986.

CORRIGENDUM

No. Legis.6-63/Law/80-III. In this Department's Notification No. Legis. 6-63/Law/80-III(2), dated 7th October, 1986, after the Explanation, a new para shall be added, namely: -

"2. The Government of Balochistan is further pleased to extend the provisions of *Dastoor-ul-Amal Diwani Kalat*, 1952, in the other parts of Lasbella District, and establish Qazi Courts thereunder."

Secretary,
Government of Balochistan,
Law Department.



This Notification does not specify or narrate any provision of law whereunder issued.

GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 3rd July, 1988.

NOTIFICATION

No. Legis.6-63/Law/80-IV (1). In supersession of this Department's Notification of even number, dated 7th October, 1986, the Government of Balochistan is pleased to determine the territorial limits of the Civil Districts of Kalat, Khuzdar, Turbat, Jaffarabad and Sibi and constitute *Majlis-e-Shoora* under section 24 of the *Dastur-ul-Amal Diwani*, Kalat 1952, at Kalat, Khuzdar, Turbat, Jaffarabad and Sibi, to exercise civil revisional/appellate jurisdiction within the territorial limits of the above noted Districts as follows: -

Name of Civil Districts.	Name of <i>Majlis-e-Shoora</i> Exercising Civil Revisional /Appellate Powers.	Territorial limits.
Kalat.	<i>Majlis-e-Shoora</i> , Kalat with headquarters at Mastung.	1. Kalat Revenue Districts 2. Kharan Revenue District.
Turbat.	<i>Majlis-e-Shoora</i> , Turbat with headquarters at Turbat.	1. Turbat Revenue District. 2. Gawadar Revenue District. 3. Panjgoor Revenue District.
Khuzdar.	<i>Majlis-e-Shoora</i> , Khuzdar with headquarters at	1. Khuzdar Revenue District. 2. Lasbella Revenue

	Khuzdar.	District (except Industrial area and Town area of Hub).
Jaffarabad.	<i>Majlis-e-Shoora</i> , Jaffarabad with headquarters at Dera Allah Yar.	Dera Murad Jamali and Chatter Sub-Divisions of Tamboo Revenue District, i.e. 1. Dera Murad Jamali Tehsil. 2. Tamboo Tehsil. 3. Chatter Tehsil.
Sibi.	<i>Majlis-e-Shoora</i> , Sibi with headquarters at Sibi.	Revenue District of Kachhi except Mach Sub Division.

2. The Government of Balochistan is further pleased to appoint the District and Sessions Judge of Kalat, Turbat, Khuzdar, Jaffarabad and Sibi to be the Presidents of Court of *Majlis-e-Shoora*, Kalat, Turbat, Khuzdar, Jaffarabad and Sibi respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN.

SECRETARY,
GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT.



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT.

Dated QUETTA, the 4th October, 1990

NOTIFICATION

No. Legis. 6-63/Law/80-IV/4093-4152 In supersession of all previous notifications and orders issued from time to time in this behalf and in exercise of the powers conferred by section 24 of the *Dastoor-ul-Amal*, 1952, the Government of Balochistan is pleased to revise and fix the territorial jurisdiction of Qazi Bhag and Qazi Dhadar as under :-

A. LOCAL LIMITS/JURISDICTION OF QAZI BHAG

S. No.	District.	Sub-Division.	Territorial limits/ jurisdiction.
1.	Kachhi	i) Bhag. ii) Gandawah.	i) Bhag Tehsil. ii) Gandawah Tehsil. iii) Mir Pur Sub-Tehsil. iv) Jhal Magsi Sub-Tehsil. v) Lehri Tehsil.
2.	Tamboo	i) Patfeeder.	i) Tamboo Sub-Tehsil.
3.	Tamboo	ii) Patfeeder.	i) Dera Murad Jamali Tehsil. ii) Chattar Sub-Tehsil.

B. LOCAL LIMITS/JURISDICTION OF QAZI DHADAR.

- | | | | |
|----|--------|--------|---|
| 1. | Kachhi | Dhadar | i) Dhadar Tehsil.
ii) Sanni Sub-Tehsil.
iii) BalaNari Sub-Tehsil. |
|----|--------|--------|---|

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW.



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT.

Dated Quetta, the 5th March, 1994.

NOTIFICATION

No. Legis. 6-63/Law/80-IV.715 In supersession of this Department's Notification No. Legis. 6-63/Law/80-IV.(1), dated 3rd July 1988, the Government of Balochistan is pleased to determine the territorial limits of the Civil Districts of Kalat, Turbat, Khuzdar, Jaffarabad and Sibi and constitute *Majlis-e-Shoora* at Kalat, Turbat, Khuzdar, Jaffarabad and Sibi for the purpose of section 24 of *Dastoor-ul-Amal Diwani Kalat, 1952*, to exercise civil revisional/appellate jurisdiction within the territorial limits as indicated below :-

Name of Civil Districts.	Name of <i>Majlis-e-Shoora</i> exercising Civil Revisional/ Appellate Powers.	Territorial
Kalat	<i>Majlis-e-Shoora</i> , Kalat, with headquarters at Mastung.	1. Kalat Revenue District. 2. Kharan Revenue District. 3. Mastung Revenue District
Turbat	<i>Majlis-e-Shoora</i> , Turbat with headquarters at Turbat.	1. Turbat Revenue District. 2. Gawadar Revenue District 3. Panjgoor Revenue District.
Khuzdar.	<i>Majlis-e-Shoora</i> ,	1. Khuzdar Revenue District.

	Khuzdar with headquarter s at Khuzdar.	2. Lasbella Revenue District (except Industrial area and Town area of Hub).
Jaffarabad.	<i>Majlis-e- Shoora</i> Jaffarabad with headquarter s at Dera Allah Yar.	3. Revenue District of Awaran. Dera Murad Jamali and Chattar Sub-Divisions of Nasirabad Revenue District i.e. 1. Dera Murad Jamali Tehsil. 2. Tamboo Tehsil. 3. Chattar Tehsil. 4. Gandawah Sub- Divisions of Jhal Magsi Revenue District i.e. (i) Gandawah Tehsil. (ii) Mir Pur Sub-Tehsil. (iii) Jhal Magsi Sub-Tehsil.
Sibi	<i>Majlis-e- Shoora</i> , Sibi with headquarter s at Sibi.	1. Revenue District of Bolan except Mach Sub- Division. 2. Lehri Tehsil

2. The Government of Balochistan is further pleased to appoint the District and Sessions Judges of Kalat, Turbat, Khuzdar, Jaffarabad and Sibi to be the presidents of Courts of *Majlis-e-Shoora*: Kalat, Turbat, Khuzdar, Jaffarabad and Sibi respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW,
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 5th March, 1994.

NOTIFICATION

No. Legis.6-63/Law/80-IV./733 In exercise of powers conferred by section 21 read with section 27 of *Dastoor-ul-Amal*, 1952, the Government of Balochistan is pleased to exclude sub-tehsil Jahoo from the jurisdiction of *Qazi Mashkai* and include the same within the jurisdiction of *Qazi Awaran*, in the interest of public litigants and for speedy dispensation of justice with immediate effect.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 19th March, 1999.

NOTIFICATION

No. Legis:6-63/Law/80/Vol-V/979-1026. In supersession of this Department's Notification No. Legis. 6-63/Law/80-V/3721-3820, dated the 24th October, 1998, the Government of Balochistan is pleased to determine the territorial limits of the Civil Districts of

Such powers under the *Dastoor-ul-Amal*, not delegated to the Government.

Kalat, Turbat, Khuzdar, Lasbella, Nasirabad, Kharan and Sibi and constitute *Majlis-e-Shoora* at Kalat, Turbat Khuzdar, Lasbella at Hub, Nasirabad at Dera Murad Jamali, Kharan and Sibi for purpose of section 24 of *Dastoor-ul-Amal*, 1952, to exercise Civil revisional/appellate jurisdiction within the territorial limits as indicated below :-

NAME OF CIVIL DISTRICT.	NAME OF MAJLIS-E-SHOORA EXERCISING CIVIL REVISIONAL/ APPELLATE POWERS.	TERRITORIAL LIMITS
Kalat	<i>Majlis-e-Shoora</i> , Kalat with headquarters at Mastung.	1. Kalat Revenue District. 2. Mastung Revenue District.
Turbat	<i>Majlis-e-Shoora</i> , Turbat with headquarters at Turbat.	1. Kech Revenue District. 2. Gawadur Revenue District. 3. Panjgoor Revenue District.
Khuzdar.	<i>Majlis-e-Shoora</i> , Khuzdar with headquarters at Khuzdar.	1. Khuzdar Revenue Distt: 2. Awaran Revenue Distt:
Lasbella.	<i>Majlis-e-Shoora</i> , Lasbella with headquarters at Hub.	Lasbella Revenue District (except Industrial and Town area of Hub and Somiani (Winder Tehsil).
Nasirabad.	<i>Majlis-e-Shoora</i> , Nasirabad with headquarters at Dera Murad Jamali.	Dera Murad Jamali and Chatter Sub-Divisions of 1) Nasirabad Revenue District i.e. (i) D. M. Jamali Tehsil (ii) Tamboo Tehsil (iii)

		Chatter Tehsil. 2) Gandawah Sub-Divisions of Jhal Magsi Revenue District i.e. (I) Gandawah Tehsil (ii) Mir Pur Sub-Tehsil (iii) Jhal Magsi Sub-Tehsil.
Kharan.	<i>Majlis-e-Shoora</i> , Kharan with headquarters at Kharan.	Revenue District of Kharan.
Sibi.	<i>Majlis-e-Shoora</i> , Sibi with headquarters at Sibi.	1. Revenue District of Bolan except Mach Sub-Division. 2. Lehri Tehsil.

2. The Government of Balochistan is further pleased to appoint District and Sessions Judges of Kalat, Turbat, Khuzdar, Lasbella, Nasirabad, Kharan and Sibi to be the Presidents of Courts of *Majlis-e-Shoora*, Kalat, Turbat, Khuzdar, Lasbella, Nasirabad, Kharan and Sibi respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN
SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



* Such powers are conferred u/s 24 (A) of the *Dastoor-ul-Amal*, upon High Court.

Dated Quetta, the 23rd February, 2005.

NOTIFICATION

No. Legis: 6-63/Law/80/VI780899 In supersession of this Department's Notification No. Legis:6-63/Law/80/301-50, dated 23.11-2000, the Government of Balochistan is pleased to re-constitute the following *Majlis-e-Shoora* in Balochistan for the purpose of section 24 of *Dastoor-ul-Amal*, 1952, the exercise Civil revisional/appellate jurisdiction within the territorial limits as indicated below :-

S. No.	Name of Civil District	Name of <i>Majlis-e-Shoora</i> Exercising Civil Revisional Appellate powers	Territorial Limits.
1.	Kalat	<i>Majlis-e-Shoora</i> , Kalat with headquarters at Mastung.	1. Kalat Revenue District. 2. Mastung Revenue District.
2.	Kharan	<i>Majlis-e-Shoora</i> , Kharan with headquarters at Kharan.	Revenue District of Kharan.
3.	Khuzdar	<i>Majlis-e-Shoora</i> ,	1. Khuzdar Revenue District.

		Khuzdar with headquarters at Khuzdar.	2. Awaran Revenue District.
4.	Lasbella	<i>Majlis-e-Shoora</i> , Lasbella with headquarters at Hub.	Lasbella Revenue District (except Industrial and Town area of hub and Somiani (Winder Tehsil).
5.	Turbat	<i>Majlis-e-Shoora</i> , Turbat with headquarters at Turbat.	1) Kech Revenue District 2) Gawadur Revenue District except (1) Gwadur Tehsil (2) Jiwani Tehsil (3) Suntsar Sub Tehsil.
6.	Panjgoor	<i>Majlis-e-Shoora</i> , Panjgoor with headquarters at Panjgoor.	3) Panjgoor Revenue District
7.	Sibi	<i>Majlis-e-Shoora</i> , Sibi with headquarters at Sibi.	1. Revenue District of Bolan except Mach Sub-Division. 2. Lehri Tehsil.
8.	Nasirabad	<i>Majlis-e-Shoora</i> , Nasirabad with headquarters at Dera Murad Jamali.	Dera Murad Jamali and Chatter Sub-Divisions of 1) Nasirabad Revenue District i.e. (I) D.M Jamali Tehsil (ii) Tamboo Tehsil (iii) Chatter Tehsil. 2) Gandawah Sub-Divisions of Jhal Magsi Revenue District i.e. (i)

Gandawah Tehsil (ii)
Mir Pur-Tehsil (iii)
Jhal Magsi Sub-Tehsil.

The Government of Balochistan is further pleased to appoint District and Sessions Judges of Kalat, Turbat, Khuzdar, Lasbella, Nasirabad, Kharan and Sibi to be the presidents of Courts of *Majlis-e-Shoora*, Kalat, Turbat, Pangoor, Khuzdar, Lasbella, Nasirabad, Kharan and Sibi respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW AND PARLIAMENTARY
AFFAIRS DEPARTMENT

Dated Quetta the 11th June 2007

NOTIFICATION

No. Legis: 6-63/Law/80/VI/3951-4030. In supersession of this Department's Notification No. Legis:6-63/Law/80/780-899, dated 23.02.2005, the Government of Balochistan is pleased to re-constitute the following *Majlis-e-Shoora* in Balochistan for the purpose of section 24 of *Dastoor-ul-Amal*, 1952, to exercise Civil revisional/ appellate jurisdiction within the territorial limits as indicated below :-

S. NO	Name of Civil District	Name of <i>Majlis-e-Shoora</i> Exercising Civil Revisional Appellate powers	Territorial Limits
1.	Kalat	<i>Majlis-e-Shoora</i> ,	1. Kalat Revenue

		Kalat with headquarters at Mastung.	District. 2. Mastung Revenue District.
2.	Kharan	<i>Majlis-e-Shoora</i> , Kharan with headquarters at Kharan.	Revenue District of Kharan.
3.	Khuzdar	<i>Majlis-e-Shoora</i> , Khuzdar with headquarters at Khuzdar.	1. Khuzdar Revenue District except Khuzdar Town 2. Awaran Revenue District
4.	Lasbellah	<i>Majlis-e-Shoora</i> , Lasbellah with headquarters at Hub.	Revenue District of Lasbellah except Industrial area and Town area of Hub and Somiani (Winder Tehsil).
5.	Turbat	<i>Majlis-e-Shoora</i> , Turbat with headquarters at Turbat.	1. Kech Revenue District except Turbat Town. 2. Gawadar Revenue District except (1) Gawadar Tehsil (2) Jiwani Tehsil 3. Suntsar Sub Tehsil.
6.	Panjgoor	<i>Majlis-e-Shoora</i> , Panjgoor with headquarters at Panjgoor.	Panjgoor Revenue District.
7.	Sibi	<i>Majlis-e-Shoora</i> , Sibi with headquarters at Sibi.	1. Revenue District of Bolan except Mach Sub-Division 2. Lehri Tehsil.

8.	Nasirabad	<i>Majlis-e-Shoora</i> , Nasirabad with headquarters at Dera Murad Jamali.	<ol style="list-style-type: none"> 1. Dera Murad Jamali and Chatter Sub-Divisions of Nasirabad Revenue District i.e. (i) D.M Jamali Tehsil (ii) Tamboo Tehsil (iii) Chatter Tehsil. 2. Gandawah Sub-Divisions of Jhal Magsi Revenue District i.e. Gandawah Tehsil (ii) Mir Pur Tehsil (iii) Jhal Magsi Sub-Tehsil.
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The Government of Balochistan is further pleased to appoint District and Sessions Judges of Kalat, Turbat, Khuzdar, Lasbella, Nasirabad, Kharan and Sibi to be the presidents of Courts of *Majlis-e-Shoora*, Kalat, Turbat, Panjgoor, Khuzdar, Lasbella, Nasirabad, Kharan and Sibi respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW AND PARLIAMENTARY
AFFAIRS DEPARTMENT

Dated Quetta the 7th November 2007

NOTIFICATION

No. Legis: 6-63/Law/80/VI/8048-8146. In supersession of this Department's Notification No. Legis:6-63/Law/80/3951-4030, dated 11.06-2007, the Government of Balochistan is pleased to re-constitute the following *Majlis-e-Shoora* in Balochistan for the purpose of section 24 of *Dastoor-ul-Amal*, 1952, to exercise Civil revisional /appellate jurisdiction within the territorial limits as indicated below :-

S. NO	Name of Civil District	Name of <i>Majlis-e-Shoora</i> Exercising Civil Revisional Appellate powers	Territorial Limits
1.	Kalat	<i>Majlis-e-Shoora</i> , Kalat with headquarters at Mastung.	1. Kalat Revenue District. 2. Mastung Revenue District.
2.	Kharan	<i>Majlis-e-Shoora</i> , Kharan with headquarters at Kharan.	Revenue District of Kharan.
3.	Khuzdar	<i>Majlis-e-Shoora</i> , Khuzdar with headquarters at Khuzdar.	1. Khuzdar Revenue District except Khuzdar Town 2. Awaran Revenue District
4.	Lasbollah	<i>Majlis-e-Shoora</i> , Lasbollah with headquarters at	Revenue District of Lasbollah except Industrial area and

W.P. Civil Courts Ordinance, 1962, after application throughout the Province, issuance of such kind of Notification became redundant.

		Hub.	Town area of Hub and Sonmiani (Winder Tehsil).
5.	Turbat	<i>Majlis-e-Shoora</i> , Turbat with headquarters at Turbat.	Kech Revenue District except Turbat Town.
6.	Sibi	<i>Majlis-e-Shoora</i> , Sibi with headquarters at Sibi.	Revenue District of Bolan except Mach Sub-Division.

The Government of Balochistan is further pleased to appoint District and Sessions Judges of Kalat, Kharan, Khuzdar, Lasbela, Turbat and Sibi to be the presidents of Courts of *Majlis-e-Shoora* Kalat, Kharan, Khuzdar, Lasbela, Turbat and Sibi, respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



THE COURTS OF QAZI IN BALOCHISTAN

The Courts of *Qazi* were established in the former Kalat States during the year 1952. *Dastoor-ul-Amal Diwani Riasat Kalat*, 1952, had been promulgated in this regard, and in the meanwhile about sixty-one years have since elapsed. The point in issue revolves around the *Dastoor-ul-Amal Diwani Riasat Kalat*, 1952 (hereinafter referred to as the *Dastoor*), in terms that whether the same has since lost its legality, and no more remains available on the Statute Book?

So far as the historical back ground is concerned, the British Parliament passed the Independence of India Act, 1947, in terms that as on and from 15 August, 1947, two Dominions, India and Pakistan, shall be established. However, through Stand- Still Agreement the Princely States in the sub-continent were provided the opportunity and the option, either to join India or Pakistan or declare their respective Independence. On the eve of establishment of Dominion of Pakistan, the States of Kalat, Mekran, Kharan, and Lus Bela (hereinafter commonly and combinedly referred to as Kalat States), did not join this newly created Dominion. However, British Balochistan area through Referendum, held in June, 1947, opted for merger with Pakistan. Subsequently the States of Mekran, Kharan, and Lus Bela, through execution of separate Instruments of Accession on 17th March, 1948, and Kalat State on 27th March, 1948, acceded to Pakistan. However, it may not be out of place to be mentioned here that these four Instruments were separately executed, in between Governor-General of Pakistan, Muhammad Ali Jinnah, and the respective Ruler of the State, that too on equality basis/as friends and as equal partners. After having joined Pakistan, these Kalat States in the year 1951 formed a Union, with name and style as Balochistan States Union (BSU), and for the first time within these areas written laws were introduced ; i) Kalat Penal Code, 1952, ii) Kalat Criminal Procedure Code, 1952, iii) Kalat Evidence Act, 1952, and iv) *Dastoor-ul-Amal Diwani Riasat Kalat*, 1952. Thereafter in 1952, earlier *Dastoor* of 1951 was repealed, and substituted by new one, which remained applicable and in operation for a considerable period. Then on 14-10-1955 Province of West Pakistan was created, and these States found merger. Subsequently W.P. (Adaptation and Repeal of Laws) Act, 1957 (Act XVI of 1957) was brought into existence.

However, during the year 1962, Pakistan Central Laws (Statute Reforms) Ordinance, 1962 (Central Ordinance No. XXI of 1962) was promulgated, and also made applicable in the former Kalat States, whereby Pakistani Laws were enacted

retrospectively i.e. w.e.f. October 14, 1955, on the day when One-Unit came into being; and Kalat Penal Code, Cr.P.C., and Evidence Act repealed, instead among other Pakistani laws P.P.C., C.P.C., Cr.P.C., and Evidence Act, 1872, were made applicable. However, with respect to applicability or otherwise of the *Dastoor* nothing mentioned specifically; which was prima facie taken and understood as not having been repealed. Then there was turning point during the year 1962 when W.P. Civil Courts Ordinance 1962 (W.P. Ordinance No. 11 of 1962) (hereinafter referred to as the Ordinance) was promulgated, and extended to whole of the Province of West Pakistan. This Ordinance by virtue of Section 28 thereof, repeals among other laws, the *Dastoor* as a whole, as well. It is well established principal of law that no part of any Statute can be taken or treated as redundant rather each part of it is to be given effect to/and adhered to. The proposition came up for consideration in Jia Ram's case, reported in P L D 1978 Quetta 91. It was observed that in the areas which then formed ex-Kalat States, no District Judge (within the purview of Civil Courts Ordinance) had been appointed till then.

It may not be out of place to be mentioned here that when the case of Jia Ram came up for hearing, a District Judge was functioning at Quetta in respect of the then Quetta Division, and Session Judge, Mastung was affiliated as Additional District Judge, Quetta Sessions Judge, Ex-Kalat Division at Mastung was President of *Majlis-e-Shoora*, relating to whole of the then Kalat Division. The reason was obvious as the Civil Courts Ordinance had then not been extended to the former Kalat States. Under the Civil Courts Ordinance, Judicial Districts are formed which is headed by a District Judge, a Court of original principal jurisdiction. Till fresh appointment of District Judge(s), under the Ordinance, in the former Kalat States, the *Dastoor* had to stay in the field so as to avoid any legal lacuna occurring therefrom; meaning thereby as soon as provisions of the Ordinance extended to the former Kalat States or any part thereof, *Dastoor*

automatically stood repealed thereby as having been envisaged under the repealing clause of the Ordinance.

It is established proposition of law that by way of Constitutional amendment a Constitution is so amended, an Act or Ordinance is amended or repealed by way of promulgation of an Act or Ordinance, and Byelaws are amended through bye-Ordinance, which had attained finality as the same was never challenged or repelled. The point in issue and for determination remained as to when the Civil Courts / District Courts / District Judges may be treated and taken to have been appointed in the former Kalat States so as to fall within the purview and ambit of the Ordinance. A bare reading of the *Dastoor* would indicate that Government of Balochistan, and for those purposes the Law Department, cannot play or administer an effective role related therewith. The Law Department has since issued different and various Notifications purporting and under Sections 24 and Section 27 of the *Dastoor* overlooking the fact that Section 24 deals with forum of Appeals, and Section 27 thereof empowers the High Court (former *Wazir-e-Azam Bahadur Riasat Kalat*) to issue instructions as regards completion of *Dastoor*. The Law Department vide Notification No. Legis. 6-63/Law /80-II dated 19-4-1982 W.P. Ordinance II of 1962, made applicable throughout the District of Lasbella. Taking its face value it shall mean, taken and understood that *Dastoor* replaced by the Ordinance, requiring thereby appointment of a District Judge for the area concerned but the same was never done or performed. Thereafter vide No. EVEN dated 16-5-1982 i) Court of District Judge for Lasbella established at Khuzdar, and ii) Courts of Civil Judges established at Hub and Uthal. Such kind of recourse to a Notification is prima, facie wrong, incorrect and inappropriate; as the matter falls within extraterritorial Jurisdiction because the Ordinance had then not been extended to Khuzdar. It is on the analogy that if High Court of Balochistan may hold Circuit / Bench at Jacobabad for the convenience of the people of Usta

Muhammad or Dera Allah Yar, which may be taken and treated a wrong notion and does not fall within the four corners of the law. Under the law there is lowest Court of competent jurisdiction in order to exercise jurisdiction for a specific territory; Appellate Court is so established where a specific law remains in force, and the same proposition applies and holds good for Second Appeal or Constitutional matter. A District Judge is head of the Judicial District constituted under the Ordinance, and the moment the Ordinance comes into play, *Dastoor* vanishes. A District Judge simultaneously cannot act as Chairman. *Majlis-e-Shoora*, under the *Dastoor* as envisaged under the Notification referred to above. Be that as it may, so far as constitution of a *Majlis-e-Shoora* is concerned, the same powers were available with the former *Wazir-e-Azam*, Balochistan States Union, which provision substituted by *Adalat-e-Aalia* (High Court) (see Section 24 (A) of the *Dastoor*), and this amendment had been introduced in the W.P. (Adaptation and Repeal of Laws) Act, 1957 (W.P. Act XVI of 1957), and as per Sch:II, *Wazir-e-Azam* was substituted by Provincial Government except judicial matters where it shall mean the appropriate Court, and no such powers were ever conferred upon the Government i.e. Law Department. Exercise of such powers by the Law Department is prima facie wrong, incorrect and in-appropriate, and was / is without jurisdiction. Thereafter Notification Nos. EVEN dated 07-10-1986, 20-10-1986, 04-10-1990, 05-3-1994, 19-3-1999, 14-01-2003, and No. EVEN /780-899 dated 23-02-2005 have been issued by the same Department, whereas the Notifications dated 19-3-1999 and 14-01-2003 specifically provide that Civil Courts having been established, under the Ordinance, for the whole of the Province of Balochistan, at Quetta, Zhob, Loralai, Sibi, Jafferabad, Kalat , Lasbella, Mekran, Pishin, Nushki, Nasirabad, Khuzdar, Kharan, Usta Muhammad, and Musa Khail (15). The cumulative effect of these Notifications is that the *Dastoor* has since ceased to exist and no more available on Statute Book. The Ordinance has since come into play and made

applicable throughout the Province; and the *Dastoor* automatically ceased to exist and further proceedings/trial etc. before the *Qazis Majlis-e-Shura* as in any form or manners are without jurisdiction and of no avail. The same should be transferred to parallel forums as prescribed under the law, and the rules made thereunder.

In all other three provinces of Pakistan, there is one set of Civil Courts, and in this province of Balochistan, there are three parallel Laws for adjudication of civil disputes in their respective areas. These are: *Dastoor-ul-Amal Diwani Riasat Kalat*, 1952; The Balochistan Civil Disputes (*Shariat Application*) Regulation, 1976; and Civil Courts Ordinance, 1962. This aspect of the matter is repugnant to the Constitution of Islamic Republic of Pakistan, 1973, which aspect of the matter requires interference and intervention by the Constitutional forum in the exercise of its extra-ordinary jurisdiction.

The *Dastoor* has expressly been repealed from Hub Town and Industrial area, including Gaddani Ship-Breaking, as well as from District Gawadar. The reason advanced therefor is that *Dastoor* cannot cope up with the Industrial advancement and progress of the modern age; and to apply the same with respect to remaining areas and as regards the other people, amounts to causing prejudice. There cannot be different yard stick for different people, as to be treated in accordance with law, and equal treatment of law is inalienable valuable legal right of every citizen, and especially in this Province. A wrong which is being done to them require correction and rectification henceforth. In Constitution-Petition No. 474/2006, pending adjudication before High Court of Balochistan, this aspect of the matter has been impugned. The Federation of Pakistan is also a party in this case. The reason is obvious ; i)the Civil Law happens to be the concurrent powers of the Province and Centre, and the Federation has promulgated the *Dastoor-ul-Amal Diwani State Kalat (Amendment) Act*, 1989 (The Gazette of Pakistan-Extraordinary-Islamabad, Monday, January 8, 1990), and

Ordinance XXXII of 1984. Its presence is considered necessary and essential in order to resolve the controversy thus involved.

After Devolution Plan in 2001, almost the whole of *Dastoor* has become redundant. The *Dastoor* envisages *Hakims* (Ss.4,5, and 11 thereof), and his/ their pecuniary powers (S.20), whereas designation of Assistant Commissioner and Deputy Commissioner has since ceased to exist. The *Dastoor* has never been amended in this behalf; and the concerned parties may be deemed to have been left at the mercy of *Allah*, and not at the law of the land. Section 11 of the *Dastoor* speaks of *Ahal-e-Hanood*, and functions to be performed by the *Hakim*, *Ahal-e-Hanood* have been left without any legal forum to avail in case the need be.

The Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976 (Balochistan Regulation of 1976) (hereinafter referred to as the Regulation) has been made applicable in the Provincially Administrated Tribal Area of Balochistan (PATA). According to the Article 247(2) of the Constitution, the President of Pakistan may, from time to time, give, such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in exercise of his function under this Article, comply with such directions. Be that as it may, the promulgation of this Regulation has tended to create certain reasonable doubts such as: i) this Regulation has not been Numbered, and ii) the approval of the President, if any, never surfaced. Further despite efforts by the concerned, so far no amendment could be carried out in this Regulation due to tag of war between the Province and the Centre as regards obtaining of the approval of the President, if any on the eve of promulgation of this Regulation. The controversy ensuing therefrom as such has not been resolved so far. The matter, therefore require probe and query.

The Reg. 2 (1) thereof provides that in all disputes of civil nature, where the parties are Muslims, shall be decided in accordance with Muslim (*Shariat*) Law; but in case both the parties happen to be non-Muslims then in PATA no forum is

available as regards for him/ them. A Law cannot be considered as too much harsh. Proviso attached to this sub.sec. further states that the same shall cease to apply by or against the Federal Government or a Provincial Government or a Local authority or a Public Corporation or a public servant acting in the discharge of his duty; that shall mean and to be taken as if they are exempt from the jurisdiction of Courts of *Qazis* or *Majlis-e-Shura*. As regards them there is no third forum or option available in PATA area. A wrong, if done, shall never be remedied to a person having been victimised as such. Further Reg.2 (2) provides that if a non-Muslim agree to the dispute being adjudicated upon this Regulation, such dispute shall, as far as practicable, be adjudicated upon accordingly. Say that particular non-Muslim does not exercise his option in favour of the proposition; then again he is left without a forum to avail, if aggrieved. Besides in the Regulation as per Reg. 4(1), (a) and (b), pecuniary jurisdiction of Court of *Qazi*, and *Majlis-e-Shura* have been fixed as below fifty thousand rupees, and above, respectively. A proposition which might have been sound during 1976, does not still hold good on account of inflation. By now not a single *Khokha* is available for an amount less than fifty thousand rupees, that means if as all the Courts of *Qazis* have become redundant. On the other hand the law is to act in aid of justice, and not to obstruct or cause resistance to justice. Moreover, Reg. 4(2) states that every *Majlis-e-Shura* shall be deemed to be a District Court within the meaning of the Code (Code of Civil Procedure), i.e. for the purposes of first appeal/revision, from the order of the Court of *Qazi* and nothing else. This proposition in this form is not an exhaustive one, and is not likely to act in the aid of justice.

The Balochistan Civil Disputes (*Shariat* Application) Rules, 1977 (framed under the Regulation), in the Rule 4 thereof, provide that the headquarters of *Majlis-e-Shura* shall be at Quetta. While factually no such headquarters is available at Quetta. Either the law is wrong, or the makers thereof were

wrong? The same rather Regulation itself require due rectification and examination under the provisions of the Constitution of Pakistan, 1973. Rule 6 of the Rules *ibid* provide that Court Fee and process fee by the Court of Qazi and Majlis-e-Shura shall be levied according to the provisions of *Dastoor-ul-Amal Diwani* of Kalat. This provision of the *Dastoor*, relating to Court-fee, has already been struck down in case entitled: Abdul Aziz & others vs. Muhammad Hassan & others, reported in PLD 1984 Quetta 101. Therefore, this Rule 6 has become non-existent, and ought to have been deleted as much.

The Articles: 8, 20 and 25 of the Constitution, relating to fundamental Rights, are hereby referred concerning; Laws inconsistent with or in derogation of Fundamental Rights to be void; Freedom to profess religions; and Equality of citizens before Law and equal protection of law, respectively. The people of Ex-Kalat States, and PATA, especially non-Muslims (Hindus, Sikhs and Christians etc.) feel themselves aggrieved as not being treated in accordance with law with other fellow citizens. The Ordinance provides uniform forum, in this behalf, throughout the Country; and the people of this Province deserve equal treatment and equal protection of law.

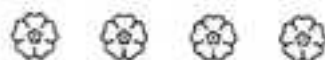
The *Dastoor* had been framed and promulgated for the people of ex-Kalat States who had great regard for *Shariah* where *Ahal-e-Hanood* also live in considerable minority, and dominate business activities. The *Dastoor* as regards them, provided settlement of civil disputes through *Panchayat* and *Jirga*, consisting of equal number of Muslim and non-Muslim members. The *Qazis* were then appointed after due consultations and deliberations, who were men of integrity, scholars, intellectuals, well-versed in *Shariah*, and enjoyed full confidence. They were locals of the area and none ever imported as a *Qazi*. Maulana Abdul Samad Sarbazi and Moulvi Taj Muhammad were writers too. Till formation of One-Unit of West Pakistan on 14-10-1955, the people were unfamiliar with corruption, embezzlement, and misappropriation etc. The matters took U-

turn when Police Stations were so established, and non-local *Qazis* exported from ex-British Balochistan. They were found men of low integrity and un-trust worthy. Even most of them lacked appearance being a *Qazi*, a sacred word in Islamic *Shariah* and history. It was a major setback to the scheme, and the idea behind the screen became impracticable and un-feasible. Their further retention on the post in former Kalat States is cause of grievance and annoyance for the people of the area concerned. This may not be treated as mere an allegation but supported by documentary proof, to be made available whensoever desired. Further, surprisingly presently not a single civil suit is pending adjudication in between two Hindu parties, or the adverse party being a Muslim. They have since lost faith in the *Dastoor*. As per *Shariah* a non-Muslim is prevented to make appearance as a witness before *Qazi* Court, as no oath can be administered to him/ her. Moreover all the *Hakims* are strangers and aliens. The *Dastoor* has since worn-out its utility. Under the Ordinance a Judge can be of either gender, but a *Qazi* cannot be a female; meaning thereby half of the population of the area as such stands deprived, neglected and prejudice being caused to them, this gender.

Conclusion drawn thereby is that the *Dastoor-ul-Amal Diwani Riasat* Kalat, 1952, and the Regulation, are no more an existing laws / not available in the Statute Book; void and of no legal effected; the Civil Courts Ordinance 1962, stands extended, operative, and applicable to whole of the Province of Balochistan; the uniformity of law prevails throughout as far Civil litigation, and appearance before the alike competent Courts are concerned.

This aspect of the matter has been impugned by the Author in the capacity of Petitioner, by making approach to the High Court of Balochistan in its extraordinary jurisdiction, by way of preferring a Constitutional-Petition (writ) entitled: Muhammad Akbar Azad versus Federation of Pakistan and four others (C.P. No. 474 of 2006), instituted during the month of July

2006, and after nine *Ketcha Peshi*, it has been admitted for regular leaving, and during the course of proceedings of the case Larger Bench consisting of three Judges has since been constituted, and the matter is pending adjudication. Meanwhile grant of ad-interim injunction (stay) has been sought in terms that pending adjudication of the writ the courts of *Majlis-e-Shura* and *Qazi*, throughout the Province, may be restrained not to announce or proclaim final decision/verdict in all the cases except to proceed and conduct day-to-day hearing/proceedings in the relevant matters. The fate of this application is still to be decided as the same covers also the political implications and repercussions, if any—Author.



CHAPTER 10

WEST PAKISTAN (ADAPTATION AND REPEAL OF LAWS) ACT 1957

(W.P. ACT XVI OF 1957)

[25 July 1957]

An Act to adapt and repeal certain laws applicable to the Province of West Pakistan

WHEREAS it is expedient to adapt and repeal certain laws applicable to the Province of West Pakistan;

It is hereby enacted as follows:-

1. (1) This Act may be called the West Pakistan (Adaptation and Repeal of Laws) Act, 1957.

(2) It shall be deemed to have come into force on and from the 14th day of October, 1955.

[(3) It extends to the whole of the Province of West Pakistan, except the Tribal Areas.]

2. **Definitions.**— (1) In this Act, unless there is anything repugnant in the subject or context—

(i) "Administration" means any authority, howsoever constituted immediately before the appointed day, to administer a territory or area and includes the Government of any Province, State or other area included in the province of West Pakistan;

- (ii) "Appointed day" means the fourteenth day of October, 1955;
- (iii) "Board of Revenue" means the Board of Revenue established under the West Pakistan Board of Revenue Act, 1957;
- (iv) "Existing law" means any Act, Ordinance, Regulation, Rule, Order or Bye-law made or issued by the appropriate Legislature or other competent authority including any public notification issued thereunder and in force in the territories and areas included in the Province of West Pakistan or any part thereof immediately before the appointed day, but shall not include any law with respect to any of the matters enumerated in List I of the Seventh Schedule to the Government of India Act, 1935; and
- (v) "Instrument" means any instrument or document in force in the territories and areas included in the Province of West Pakistan or any part thereof immediately before the appointed day.

(2) Any expression not defined in this Act and defined in the Establishment of West Pakistan Act, 1955, or the Government of India Act, 1935, shall be deemed to have the meaning assigned to it by the said Acts.

3. Adaptation of laws.— (1) Wherever in any existing law, or in any instrument, a reference, in whatever form, not being a reference in the title, preamble, description or citation of such law or instrument, is made to any Province or area or State or to the States Union mentioned in column No. 1 of Schedule I annexed to this Act, then notwithstanding anything to the contrary contained in such law or instrument, but subject to the other provisions of this Act, with effect from the appointed day, it shall, unless there be anything repugnant in the subject or context, be construed, as, and be deemed to be, a reference to the territories and areas

included in the districts, or States, as the case may be, mentioned against it in column No. 2 of the said Schedule.

(2) Wherever in any existing law or any instrument in force in the whole or any part of the territories or areas included in the Balochistan States union, or in any Province or State or other area included in the Province of West Pakistan and mentioned in column No. 1 of Schedule II annexed to this Act, any term mentioned in column No. 2 of the said Schedule appears, it shall, as from the appointed day, and subject to any reservation made in this behalf and to the other provisions of this Act, be deemed to have been replaced by the term mentioned against it in column No. 3 of the said Schedule.

(3) The laws mentioned in Schedule III annexed to this Act shall be deemed to have been adapted to the extent and in the manner mentioned in column No. 5 of the said Schedule.

(4) As from the appointed day, unless there be a direction to the contrary in this Act, all references in any existing law or in any instrument—

(i) to the Governor-General, the Agent to the Governor-General, the Crown representative, the Central Government, the Chief Commissioner or Resident in relation to Balochistan, or to the Lieutenant-Governor or Governor of any of the Governor's Provinces unless the context indicates otherwise, be deemed to be references to the Governor or the Provincial Government of the Province of West Pakistan, as the case may be, and references to the administration of any of the said Provinces, territories or areas howsoever worded, shall be deemed to be references to the Provincial Government of West Pakistan;

(ii) to any Board, Committee, authority, functionary, officer or office, howsoever worded, or to any tribunal other than a High Court, which Board,

Committee, authority, functionary, officer, office or tribunal has ceased to function or exist and has been replaced by another as a result of the establishment of the Province of West Pakistan, shall be deemed to be references to the Board, Committee, authority, functionary, officer, office or tribunal, howsoever named or designated, constituted, appointed or created to exercise all or any of the functions and duties of the afore-mentioned Board, Committee, authority, functionary, officer, office or tribunal, for the whole or a part of the territories in relation to which the said Board, Committee, authority, functionary, officer, office or tribunal, had been constituted, appointed or created;

- (iii) to "Punjab Act", "Sind Act", "Bombay Act", "North-West Frontier Province Act", "Bahawalpur Act", "Khairpur Act", "Balochistan Regulation", "Balochistan States Union Act", "Balochistan States Union Regulation", howsoever worded, shall mean, respectively, references to the relevant Act or Regulation, in force immediately before the appointed day in the Provinces, States or the States Union, as the case may be, included in the Province of West Pakistan;
- (iv) to the official Gazette of any of the territories and areas included in the Province of West Pakistan, howsoever worded, shall, subject to the provisions of section 10 of the Establishment of West Pakistan Act, 1955, be deemed to be references to the official Gazette of the Province of West Pakistan;
- (v) to a Subordinate Judge shall include references to the Civil Judge in localities and areas where the latter designation is used;

- (vi) to "Punjab Legislative Assembly", "Sind Legislative Assembly", or "North-West Frontier Province Legislative Assembly", shall be deemed to be reference to the Provincial Assembly of West Pakistan.

Grammatical Changes. Where this Act requires that in any existing law a plural noun shall be substituted for a singular noun or *vice versa* or a masculine noun for a neuter noun or *vice versa* there shall be made also in any verb or pronoun used therefor such consequential amendments as the rules of grammar may require.

5. Exercise of Powers. As from the appointed day—

- (i) the powers exercised and duties performed before the appointed day by any officer of the administration of any Province, State or other territory or area included in the Province of West Pakistan except [the Karachi Area] in relation to the whole or any part of the territory under the charge of such administration, shall be exercised and performed by such officer or officers as may be specified in this behalf by the Governor of West Pakistan, for that territory or part thereof, and all references to the first named officer in any existing law or instrument shall be deemed to be references to the officer or officers so specified;
- (ii) any reference in any existing law or instrument to any authority for which some other authority has been substituted by virtue of this Act or of any action taken under this Act shall be deemed to be a reference to the authority so substituted;
- (iii) the Province of West Pakistan shall be deemed to be substituted as a party in all proceedings pending in any Court or before any authority for

and on behalf of the administration of any territory or area included in the Province of West Pakistan, other than [the Karachi Area] except in proceedings with respect to any property used for any of the purposes specified in List I of the Seventh Schedule to the Government of India Act, 1935, or with respect to any rights, liabilities or obligations arising out of any matter specified in List I of the said Schedule.

6. **Repeal.** The laws mentioned in Schedule IV annexed to this Act shall be deemed to have been repealed from the appointed day.

7. **Savings and Validation.** (1) Notwithstanding the repeal of the West Pakistan (Adaptation of Laws) Order, 1955, the expiry of the West Pakistan (Adaptation of Laws) Ordinance, 1956, and the West Pakistan (Adaptation and Repeal of Laws) Ordinance, 1956 or any judgment, decree or order of any Court, Tribunal or other Authority, everything done, action taken, obligation, liability, penalty or punishment incurred, inquiry or proceedings commenced, officer appointed or person authorised, jurisdiction or power conferred, rules made and order issued under any provision of any existing law, in pursuance of the amendments, omissions, modifications or repeals made by or under the said Order or the said Ordinances shall be deemed to have been validly done, taken, incurred, commenced, appointed, authorised, conferred, made or issued and be continued, and if not inconsistent with the provisions of this Act, be deemed to have been respectively done, taken, incurred, commenced, appointed, authorised, conferred, made or issued under any such existing law as adapted or repealed by this Act.

(2) Everything done, action taken, obligation, liability or penalty incurred or proceeding commenced, officer appointed or person authorised, jurisdiction or power conferred, rules made and order issued after the date of expiry of the West Pakistan

(Adaptation of Laws) Ordinance, 1956, and before the 18th day of October, 1956, under any provision of an existing law which could have been done, taken, incurred, commenced, appointed, authorised, conferred, made or issued under any such law, in pursuance of the amendments, omissions, modifications or repeals made by or under the said Ordinance if it had been in force during the said period, shall be deemed to have been validly done, taken, incurred, commenced, appointed, authorised, conferred, made or issued and be continued and, if not inconsistent with the provisions of this Act, be deemed to have been respectively done, taken, incurred, commenced, appointed, authorised, conferred, made or issued under any such existing law as adapted or repealed by this Act.

SCHEDULE 1

[See Section 3 (1)]

COLUMN 1	COLUMN 2
Bahawalpur State, or the State of Bahawalpur.	Districts of Bahawalnagar, Bahawalpur and Rahimyar Khan.
Balochistan or Balochistan Province, or the Province of Balochistan.	<ol style="list-style-type: none"> 1. The Pishin District comprising the Tehsils of— <ol style="list-style-type: none"> (i) Pishin; (ii) Chaman; (iii) Shorarud. 2. The Sibi District comprising the Tehsils of— <ol style="list-style-type: none"> (i) Sibi; (ii) Shahrig. 3. The Duki District comprising the

Tehsil of Duki.

Leased Areas being the areas defined in the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950).

The Areas within the borders of Balochistan as defined in Ministry of States Frontier Regions' Notifications No. F-9(170)-F/48-1 and F-9(170)-F-48-II, dated the 27th June 1950.

1. The Quetta District;
 2. The Nasirabad Sub-Division;
 3. The Bolan District (including Kachhi Railway District and Nushki Railway District);
 4. The Nushki Tehsil.
1. The Kohlu and Marri Bugti District comprising the Tehsils of—
 - (i) Kohlu;
 - (ii) Kohlu Railway;
 - (iii) Marri Bugti.
 2. The Loralai District comprising the Tehsils of—
 - (i) Musakhel;
 - (ii) Bori;
 - (iii) Barkhan;
 - (iv) Sinjawi.
 3. The Zhob District comprising the Tehsils of—
 - (i) Fort Sandeman
 - (ii) Hindubagh;
 - (iii) Killa Saifullah.
 4. The Dalbandin District, including Western Sinjrani country comprising the Tehsil of Dalbandin.

Balochistan States Union	Districts of Kalat, Kharan, Las Bela and Mekran.
Khairpur State or the State of Khairpur. District of Khairpur.	North-West Frontier Province. Districts of Bannu, Dera Ismail Khan, Hazara, Mardan, Kohat and Peshawar.
Amb, Chitral, Dir and Swat States.	Amb, Chitral, Dir or Swat State, as the case may be.
Punjab, Punjab Province, or the Province of the Punjab.	Districts of Campbellpur, Dera Ghazi Khan, Gujranwala, Gujrat, Jhelum, Jhang, Lahore, Lyallpur, Mianwali, Montgomery, Multan, Muzaffargarh, Rawalpindi, Shahpur, Sheikhpura and Sialkot.
Sind, Sind Province, or the Province of Sind.	Districts of Dadu, Hyderabad, Tharparkar, Upper Sind Frontier, Larkana, Nawab Shah, Sanghar, Sukkur and Thatta.

SCHEDULE II

[See Section 3 (2)]

Territory	Existing Term	Substituted Term
1	2	3
Punjab	Financial Commissioner or Financial Commissioners	Board of Revenue.

Territory	Existing Term	Substituted Term
1	2	3
North-West Frontier Province	Revenue Commissioner or Revenue and Divisional Commissioner.	Commissioner.
(i) Balochistan	Revenue Commissioner or Revenue Commissioner in Balochistan.	Commissioner.
(ii) Leased Areas being the areas defined in the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950),		
(iii) The Areas within the borders of Balochistan as defined in Ministry of States and Frontier Regions' Notifications No.F.9 (170)-F/48-1, and F-9 (170) F/48-II, dated the 27th June,		

Territory	Existing Term	Substituted Term
1	2	3
1950. Bahawalpur State	His Highness the Nawab Ruler Bahadur of Bahawalpur, his heirs and successors, or the Ruler of the Bahawalpur State, or Alahazrat, Sarkar-i-Ali or Alahazrat or Alahazret the Ameer of Bahawalpur State or His Highness, or His Highness the Nawab Ruler Bahadur.	Provincial Government except when any of the expressions occurs in an oath or affirmation, where it shall mean the Constitution of Pakistan as by law established.
	The Bahawalpur Government or the Government of Bahawalpur or the local Government of the Government of the Bahawalpur Darbar, or the State Government or the Government of Alahazrat the	Provincial Government

Territory	Existing Term	Substituted Term
1	2	3
	<p>Ameer of Bahawalpur, or the Government of the Bahawalpur State, or His Highness's Government or the Government of His Highness the Nawab Ruler Bahadur.</p>	
	<p>Indian Penal Code.</p>	<p>Pakistan Penal Code.</p>
	<p>The State Revenue or the Revenue of the State.</p>	<p>Provincial Revenue</p>
	<p>A.M. the Wazir-i-Azam, or A.M. the Chief Minister, or A.M. the Prime Minister, or A.M. the Revenue Minister, or the Minister Incharge.</p>	<p>Commissioner.</p>
	<p>Financial Commissioner.</p>	<p>Board of Revenue.</p>
	<p>His Highness the</p>	<p>Inhabitants of the</p>

Territory	Existing Term	Substituted Term
1	2	3
	Nawab Ruler Bahadur's subjects, or the subjects of the State, or the State subjects.	area comprising the Districts of Bahawalpur, Bahawalnagar and Rahimyar Khan.
	British India.	Provinces and Capital of the Federation.
	Government of India.	Government of Pakistan.
	The Ruler in the Judicial Committee or the Judicial Committee.	Governor of West Pakistan in relation to all mercy petitions against convictions in murder cases and in respect of other matters it shall mean the appropriate Court.
	Forces of Sarkari-i-Ali, or the State Forces, or the Forces of the Bahawalpur State, or the State Troops.	Forces of the Government of Pakistan.
Khairpur State	H.H. the Mir, his heirs and successors, or H.H.	Provincial Government except when the expression

Territory	Existing Term	Substituted Term
1	2	3
	the Mir of Khairpur, his heirs and successors.	occurs in an oath or affirmation, where it shall mean the Constitution of Pakistan as by law established.
	Darbar, or Khairpur Darbar, or Government, or Khairpur Government, or Kachehry, or Council, or His Highness in Council, or State or State Government, or His Highness the Mir of Khairpur.	Provincial Government
	President, or Council of Administration, or Council, or President of Council.	Commissioner.
	Judicial Committee.	Governor of West Pakistan in relation to all mercy petitions against convictions in murder cases and in

Territory	Existing Term	Substituted Term
1	2	3
	<p>Chief Minister, or Minister or Minister Law and Order, or Minister Finance and Industries or Wazir, or Revenue Minister, or Education Minister, or Health Minister, or Council of Ministers or Finance and Revenue Minister, or Finance and Revenue Member, or Minister Incharge of Agriculture, or Public Works Minister, or Council Member Incharge, or President Council.</p>	<p>respect of other matters it shall mean the appropriate Court.</p> <p>Commissioner.</p>
	Council of Rulers.	Provincial Government.
Balochistan	Wazir-i-Azam.	[Provincial

Territory	Existing Term	Substituted Term
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1
States

2

3

Government or any Officers empowered by the Governor of West Pakistan to perform the functions of Wazir-i-Azam in relation to any matters except judicial matters where it shall mean the appropriate Court]-

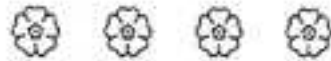
Wazir-i-Muarif
[*****]

District Judge.
*****]

COMMENTARY

On 14th October 1955, One-Unit or province of West Pakistan was formed. Political considerations being kept apart, by the promulgation of this Act it was intended and desired that uniformity of laws be maintained throughout the province. This legislation had as such introduced been to that direction and purpose. Especially relating to former Kalat States (former Balochistan States Union) necessary amendments in law were made. In judicial matters, Wazir-e-Azam Riasat Kalat, under Section 26 of the *Dastoor-ul-Amal Diwani Kalat*, substituted by the High Court, and subsequent thereto within the span of fifty-three years, the High Court, West Pakistan, Sindh and Balochistan, and Balochistan have not disposed even a single

case of this nature within the purview thereof. Under the above quoted Section the *Wazir-e-Azam Riasat Kalat* proceeded as of kind of issuing writs, when the occasion had so arisen it was issued then and there, might have been at the spot. Illogical and unreasonable laws have further added miseries of general public and common man. A resident of Gawadur would not like to undertake journey to Quetta and especially during winter season when usually the temperature is below freezing point. Related therewith the public demand for the establishment of High Court Circuit at Mekran has not been adhered to by all the governments, Central or Provincial so far formed meanwhile.



CHAPTER 11

THE CENTRAL LAWS (STATUTE REFORM) ORDINANCE, 1960

[ORDINANCE NO. XXI OF 1960]

[9th June, 1960]

An Ordinance to reform the Central Statute-Book.

WHEREAS the incorporation of certain former Provinces, Accessing States and Tribal Areas into the Province of West Pakistan by the Establishment of West Pakistan Act, 1955, has rendered it expedient that certain changes should be made in the laws and that certain laws should be extended to parts of the new Province to which they had not extended before;

AND WHEREAS such extension has been agreed upon in consultation with the Provincial Government of West Pakistan and the other authorities concerned;

AND WHEREAS it is expedient to remove from the Statute-book certain Acts and Ordinance which have become obsolete or have discharged their function;

AND THEREFORE, in pursuance of the Proclamation of the seventh day of October 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

1. Short title. This Ordinance may be called the Central Laws (Statute Reform) Ordinance, 1960.

2. Repeal of certain Central Acts and Ordinance. The Central Acts and Ordinances specified in the First Schedule are hereby repealed, and shall be deemed to have been so repealed on the fourteenth day of October, 1955.

3. Amendments to effect adaptation of Central Acts and Ordinances necessitated by the establishment of West Pakistan. (1) Save as otherwise expressly provided in any Central Act or Ordinance, the Central Acts and Ordinances specified in the Second Schedule shall extend to the whole of Pakistan, and shall be amended in the manner indicated in the fourth column thereof, and shall be deemed to have been so extended and amended on fourteenth day of October, 1955.

(2) Nothing in sub-section (1) shall be deemed to extend, or ever to have had the effect of extending the operation of, any Central Act or Ordinance so extended or amended, to—

(a) any to which, immediately before the fourteenth day of October, 1955, such Act or Ordinance did not extend, or is not otherwise extended or applied thereafter; or

(b) any of the Special Areas to which, immediately before the fourteenth day of October, 1955, such Act or Ordinance did not extend, or is not otherwise extended or applied thereafter; or

(c) any Acceding State, not being an Acceding State incorporated, on and from the fourteenth day of October, 1955, into the Province of West Pakistan, whose Instrument of Accession does not authorise, nor is deemed to authorise, the Federal Legislature to make for the State such law as is contained in any such Act or Ordinance;

nor shall the extension of any Central Act or Ordinance by this Ordinance be deemed to have or ever to have

had the effect of retrospectively creating any offence, or of retrospectively enhancing the punishment for any offence provided in any law for the time being in force.

4. **Repeal and re-enactment of certain laws in force in certain Acceding States before their incorporation into West Pakistan.** (1) Subject always to the provisions of sub-section (2) of section 3, where the operation of any Central Act or Ordinance has been extended by an amendment indicated in the Second Schedule to any area which before the fourteenth day of October, 1955, formed part of the territories of an Acceding state, any law in force in that area before that date and corresponding to the provisions of such Act or Ordinance shall stand repealed, and shall be deemed to have been re-enacted by such Act or Ordinance, as amended by this Ordinance, as if such law were a Central Act, and the provisions of the General Clauses Act, 1997, shall apply accordingly.

(2) Notwithstanding the provisions of sub-section (1), anything done, action taken, right accrued, or liability, penalty, forfeiture or punishment incurred, under any such law as aforesaid during the period commencing on the fourteenth day of October, 1955, and ending with the commencement of this Ordinance, shall be deemed to have been validly done, taken, accrued or incurred, as the case may be, and the Central Act or Ordinance by which such law is deemed to have been re-enacted shall, to that extent, be deemed not to have come into force during the said period in the area to which such law applied immediately before the commencement of this Ordinance.

5. **Saving.** Without prejudice to the other provisions of this Ordinance, the repeal by this Ordinance of any Central Act or Ordinance shall not affect—

- (a) the previous operation of any Act or Ordinance so repealed or the validity invalidity, effect or

- consequences of anything already done or suffered thereunder; or
- (b) any right, title privilege, obligation or liability, acquired, accrued or incurred thereunder or any release or discharge already granted of, or from, any debt, penalty, obligation, liability, claim or demand, or any indemnity, already granted, or the proof of any past act or thing; or.
 - (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any act or Ordinance so repealed; or
 - (d) any investigation, legal proceeding or remedy in respect of any such right, title, 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 this Ordinance had not been enacted;

nor shall the repeal of any Act or Ordinance by which the text of any law was amended by the express omission, insertion or substitution of any matter, affect the continuance of any such amendment unless a different intention was expressly stated in the Act or Ordinance by which the amendment was made; nor shall this Ordinance revive or restore anything not in force or existing at the time of its commencement, or affect any law in which any Act or Ordinance hereby repealed has been applied, incorporated or referred to, or affect any principle or rule of law, or established jurisdiction, form, or cause of pleading, practice, or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that they respectively may have been in any manner affirmed, recognised or derived by, in or from any Act or Ordinance hereby repealed.

6. **Adaptations.** As soon as may be after the commencement of this Ordinance such adaptations as the

President may see fit to make in the Central Acts and Ordinances shall be effected in such Acts and Ordinances as reformed by this Ordinance.

FIRST SCHEDULE
(LIST OF STATUTES REPEALED)

[FOR TEXT OF THIS SCHEDULE, SEE PLD 1960 CENTRAL STATUTES
PP. 240-249].

THE SECOND SCHEDULE
(LIST OF STATUTES EXTENDED TO THE WHOLE OF PAKISTAN
AND AMENDED)

[FOR TEXT OF THIS SCHEDULE, SEE PLD 1960 CENTRAL STATUTES
PP. 249-295].

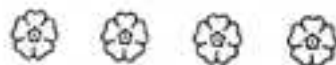
COMMENTARY

During 1960 Central Laws (Statute Reforms) Ordinance, 1960 (Ordinance No. XXI of 1960) was promulgated. Section 2 thereof provided that Central Acts and Ordinances specified in First Schedule stood repealed and shall be deemed to have been so repealed from 14 October 1955, whereas Section 3 provided that all the Acts and Ordinances specified in Second Schedule shall extend to the whole of Pakistan (including former Kalat States) and shall be amended in the manner indicated by promulgation of the said Ordinance. Pakistan Penal Code, Code of Criminal Procedure and Evidence Act and other laws enforced retrospectively. Such kind of legislation is unprecedented in the annals of history when certain criminal laws had been enacted and enforced retrospectively, which ensued great miseries for the general public of the area. Under

Kalat Penal Code when established and proved that the culpable homicide committed on account of *Sihakari* as outcome of local and tribal *ritwaj*, the accused incurred no liability and was set free, whereas under Pakistan Penal Code such kind of act considered and taken and treated as a commission of offence but on account of sudden and grave provocation, deserving thereby awarding of lesser punishment. During 1961 a case of *Sihakari* was reported in Khuzdar area (Jhalawan), and the clothes of the slain deceased woman were despatched to Lahore for expert opinion and report which, incident touched the sentiments of the local people and uprising in Jhalawan region commenced which slowly and gradually flared up; the other forces also joined the movement, and became functional. Mir Nauroz Khan fought the Pakistani army for nearly a year. The government responded by bombarding the villages and sustaining a reign of terror in the entire area. With ulterior aims government envoys met representative of the rebel leaders and took an oath on the Holy Quran that if they stopped hostilities and surrender would be received honourably and demands would be considered sympathetically. But when they came down from the mountains were arrested and removed to Quli Camp at Quetta. Mir Nauroz Khan and seven of his colleagues were tried in Hyderabad and sentenced to death on charges of treason. The death sentence on Mir Nauroz Khan was commuted to life imprisonment because of his old age who died in prison in 1964. Others, Mir Wali Muhammad Zarakzai, Mir Ghulam Rasool Nichari, Mir Sabzal Khan Zehri, Mir Masti Khan, Mir Bhawal Khan, Mir Jamal Khan, and the elder son of Mir Nauroz Khan, Mir Batay Khan were hanged in Hyderabad and Sukkur Jails. Mir Jalal Khan Zarakzai, Mir Buland Khan, Mir Muhammad Umer and Mir Dilmurad were given life imprisonment. There was general mourning for the executed sculs. Hundreds of people turned out to participate in the burial ceremonies at Kalat which also witnesses by this 'Author'. From 1960 to 1965 the then area of Kalat Division was governed under the provisions of P.P.C. and Cr.P.C. as regards

trial of offences when commission of an offence was almost rare although the society was not advanced but the personalities and traditions contributed their role. It might sound strange that the convicts at the occasion of release were granted gratuity so that they may lead peaceful life and financial constraints should not create hurdles or obstacles in achieving their desired aims and objects. As mentioned earlier, during 1965 Quetta and Kalat (Civil and Criminal Law) Ordinance, 1965 was promulgated and extended and applied to Kalat areas as regards trial of criminal charges before a *Jirga* i.e. Tribunal.

The increase in commission of offences might be of general trend as a whole in the society but this part of territory in Balochistan required special attention and care as far administration of criminal justice was the focus, which need and requirement never adhered to. The concurrent list of the Constitution of Pakistan, 1973 also cover the administration of criminal law but presently Provincial law on the subject are not in operation rather withdrawn and substituted by general law of the land. Civil laws can be taken to be the exception to this rule as in former areas of Kalat States, *Dastoor-ul-Amal Diwani Kalat*, 1952 and in tribal areas the Balochistan Civil Disputes (Shariat Application) Regulation, 1976 are administered by the *Qazis* and *Maslis-e-Shoora*, while in cases of former areas of British Balochistan and the Leased where Civil Courts Ordinance, 1962 is applicable, whereunder Civil Judges and District Judges have been performing their respective spheres of duties.



THE GWADUR (APPLICATION OF
WEST PAKISTAN LAWS) ORDINANCE, 1962

(W.P. ORD. I OF 1962)

[6th January, 1962]

An Ordinance to extend the West Pakistan Laws to Gwadur.

WHEREAS Gwadur, being ceded to Pakistan on the eighth day of September, 1958, became on that day one of the territories included in Pakistan; -

AND whereas Article 2 of the Gwadur (Government and Administration) Order, 1958, provides that until otherwise determined by competent authority, Gwadur shall, for purposes of government and administration, and all matters connected therewith, constitute part of the Mekran District in the Kalat Division of the Province of West Pakistan;

AND WHEREAS it is expedient to apply to Gwadur all West Pakistan laws which are or may hereafter be in force in the aforesaid Mekran District;

NOW, THEREFORE, in pursuance of the Presidential Proclamation of the seventh day of October, 1958, and having received the previous instructions of the President, the Governor of West Pakistan, in exercise of all powers enabling him in that behalf, is pleased to make and promulgate the following Ordinance:-

1. This Ordinance may be called the Gwadar (Application of West Pakistan Laws) Ordinance, 1962.
2. (1) All West Pakistan Acts including all Orders and other enactments, and all notifications, rules by laws or directions made or issued thereunder, which were in force in the District of Mekran in the Kalat Division of the Province of West Pakistan immediately before the eighth day of September, 1968 (hereinafter referred to as the "said day"), shall be deemed to have been in force in Gwadar with effect from the said day, and shall continue in force, subject always to such amendments as may have been or may be made therein by or under proper authority.

(2) For the removal of doubt, it is hereby declared that any West Pakistan Act which became applicable to the Mekran District, on or after the said day, shall extend, or shall be deemed to have extended to Gwadar.

3. (1) Any law or legal instrument having the force of law in Gwadar (hereinafter called Gwadar law) in force immediately before the said day, and corresponding to the provisions of any West Pakistan Act applied by the preceding section, shall stand repealed on and from the said day, and shall be deemed to have been re-enacted by such West Pakistan Act as if the Gwadar law were West Pakistan Act and the provisions of the West Pakistan General Clauses Act, 1956, shall apply accordingly.

(2) Notwithstanding the provisions of sub-section (1), anything done, action taken, right accrued, or liability, penalty, forfeiture or punishment incurred, under any Gwadar law on or after the said day and immediately before the commencement of this Ordinance shall be deemed to have been validly done, taken, accrued or incurred, as the case may be, and the West Pakistan Act by which such Gwadar law is deemed to have been re-enacted shall, to the extent, be deemed not to have come into force during the period.

(3) Nothing in section 2 shall be deemed to have or ever to have had the effect of retrospectively creating any offence or of

retrospectively annulling the punishment for any offence provided for any law for the time being in force.

(4) Without prejudice to the other provisions of this Ordinance, the repeal by this Ordinance of any Gwadur law shall not affect -

- (a) the previous operation of any Gwadur law so repealed or the validity, invalidity, effect or consequences of anything already done or suffered thereunder; or
- (b) any right, title, privilege, obligation or liability, acquired, accrued or incurred thereunder, or any release or discharge, already granted, of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any Gwadur law so repealed; or
- (d) any investigation, legal proceeding or remedy in respect of an such right, title, 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 this Ordinance had not been promulgated;

nor shall this Ordinance revive or restore anything not in force or existing at the time of its commencement or affect any law in which any Gwadur law hereby repealed has been applied, incorporated or referred to, or affect any principle or rule of law, or established jurisdiction, form, or cause of pleading, practice, or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that they respectively may have been in any manner affirmed, recognised or derived by, in or from any Gwadur law hereby repealed.

4. The West Pakistan (Gwadar) Amendment of Laws Ordinance, 1959, is hereby repealed.

COMMENTARY

Gawadar includes not only the town and port of that name but the whole country. At the foot of the Koh-e-Dramb lies Gawadar-I-Nigwar, the only cultivated part of the locality. The rest is known as Gawadari Rek, i.e., Gawadar sands. The area contains no rivers. The rainfall is very scanty and sometimes none occurs for several consecutive years. Most is received in winter.

Historical – Gawadar is very ancient place but authentic history only begins with the Portuguese in the sixteenth century. In the seventeenth century it fell into the hands of the Buledais but was wrested from them by the Gichkis, who then obtained permanent possession of the place. In the last quarter of the eighteenth century Gawadar and the surrounding country fell into the hands of Muscat. It is generally understood that the right of sovereignty in Gawadar was made over by the Khans of Kalat to Maskat in perpetuity and at least one eminent authority asserts that the place was made over as a free gift to the Sultans. Khan of Kalat Mir Nasir Khan I, is said to have transferred to the younger brother of Imam Said bin Ahmed of Muscat. From 1863 to 1879 Gawadar was the head quarters of an Assistant Political Agent. The groups inhabiting Nigwar in 1903 were Kalmatis, Mahdizais, Zainozais (a section of the Kulanch Bands) and Rekani Baloch. The country was administered by an Arab deputy of the Sultan of Maskat, known as *wali*, who lived in Gawadar and was assisted by an Arab garrison. The history of Gawadar has been given with that of the surrounding country. It was attacked and burnt by the Portuguese in 1581 and in 1739, Taki Khan, Nadir Shah's general, captured it. At the end of the same century it fell into the hands of Maskat, the authority of the Sultan represented by a *wali*. Gawadar was the chief port of

Makran and the trade from Persian as well as Kalat Makran gravitated to it but since the construction of the bridge path from Pasni to Turbat and Panjgur, nearly the whole trade of Makran had found its way to Pasni, which to the disadvantage of Gawadar. Gawadar ceded to Pakistan on the eighth day of September, 1958 and became from that day one of the territories included in Pakistan. Malik Muhammad Warris, *Tamgha Quaid-i-Azam - TQA*, a road at Turbat named after him, the then Deputy Commissioner of Makran, was appointed as its first administrator to take control and manage the affairs of this seaport which was formerly part of Muscat, purchased by Government of Pakistan at a cost of Rs. Twenty million (Pakistani rupees) from Sultanate of Oman, Muscat then forming one of its part. Soon-after this geographical change Issmailee community started migration steadily and bulk of them since left the place for good. Local administration during seventies made their livelihood miserable, unlawfully to extract money from them.

Article 2 of the Gawadar (Government and Administration) Order, 1958 provided that until otherwise determined by competent authority, Gawadar shall for purposes of government and administration, and all matters connected therewith, constitute part of the then Makran district of the Province of the then West Pakistan. It was thought expedient to apply to Gawadar all West Pakistan laws, the Governor of West Pakistan after having received the previous instructions of the President of Pakistan, promulgated the Gawadar (Application of W.P. Laws) Ordinance, 1962 (W.P. Ordinance No.1 of 1962) whereby all orders and other enactments, and all notifications, rules by-laws or directions which were then enforce in Makran district of Kalat Division, treated retrospectively to have been in force in Gawadar with effect from the date it ceded to Pakistan.

* Maternal uncle of Author.

Upon promulgation of the said Ordinance, the West Pakistan (Gawadar) Extension of Laws Ordinance, 1959 stood repealed. Makran district in 1977 upgraded as a Division and sub-division of Gawadar accorded status of a revenue district. Census: 1981 112,385 – 1998 178,989. Area 15,216 Km.



CHAPTER 13

THE WEST PAKISTAN CIVIL COURTS ORDINANCE, 1962

(W.P. ORDINANCE II OF 1962)

[18th January 1962]

An Ordinance to amend and consolidate the law relating to Civil Courts in the province of the West Pakistan.

WHEREAS it is expedient to amend and consolidate the law relating to Civil Courts in the province of the West Pakistan.

NOW, THEREFORE, in pursuance of the Presidential Proclamation of the seventh day of October, 1958, and having received the previous instructions of the President, the Governor of West Pakistan is pleased, in exercise of all powers enabling him in that behalf, to make and promulgate the following Ordinance:-

CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the West Pakistan Civil Courts Ordinance, 1962.

(2) It extends to the whole of the province of the West Pakistan except the Tribal Areas.

(3) It shall come into force at once in the Divisions of Bahawalpur, Dera Ismail Khan, Hyderabad,

Khairpur, Lahore, Multan, Peshawar, Quetta, Rawalpindi, Sargodha and the District of Karachi, and in the remaining parts of the province or any specified area or areas thereof, it shall come into force on such date or dates as Government may, by notification in the official Gazette, appoint in this behalf.

2. In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a) "Government" means the Provincial Government of the West Pakistan;
- (b) "High Court" means the High Court of the West Pakistan;
- (c) "Land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture and includes the sites of buildings and other structures on such lands;
- (d) "land suit" means a suit relating to land or to any right or interest in land;
- (e) "prescribed" means prescribed by rules made under this Ordinance;
- (f) "small cause" means a suit of the nature cognizable by a Court of Small Causes under the Provincial Small Cause Courts Act, 1887;
- (g) "unclassed suit" means a suit which is neither a small cause nor a land suit; and
- (h) "value" used with reference to a suit means the amount or value of the subject matter of the suit.

CHAPTER II CIVIL COURTS

3. Besides the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established

under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely: -

- (a) the Court of the District Judge;
- (b) the Court of the Additional District Judge; and
- (c) the Court of the Civil Judge.

4. For the purposes of this Ordinance, Government may, by notification, divide the province into civil districts, fix the limits of such districts and determine the headquarters of each such district.

5. Government shall, in consultation with the High Court, appoint as many persons as it thinks necessary to be District Judges and post a District Judge to each district:

Provided that the same person may be appointed to be District Judge of two or more districts.

6. (1) Government may, in consultation with the High Court, appoint as many Additional District Judges as may be necessary.

(2) An Additional District Judge shall discharge such functions of a District Judge as the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge.

7. Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regard the value.

8. Government may, in consultation with the High Court—

- (a) fix the number of Civil Judges to be appointed;
- (b) make rules prescribing qualifications for recruitment of persons as Civil Judges; and
- (c) appoint as many Civil Judges as may be deemed necessary.

9. The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Civil Judge shall

be determined by the High Court either by including him in a class or otherwise as it thinks fit.

10. (1) The local limits of the jurisdiction of a Civil Judge shall be such as the High Court may define.

(2) When the High Court posts a Civil Judge to a district, the local limits of the district shall in the absence of any direction to the contrary, be deemed to be the local limits of his jurisdiction.

11. The High Court may, by notification, within such local limits as it thinks fit, confer upon any Civil Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of suits, cognizable by such Courts, upto such value not exceeding one thousand rupees as it thinks fit.

12. (1) Notwithstanding anything contained in the Succession Act, 1925, the High Court may, by general or special order, authorise any Civil Judge to take cognizance of or any District Judge to transfer to a Civil Judge under his control, any proceedings or class of proceedings under the said Act.

(2) The District Judge may withdraw any such proceedings taken cognizance of by or transferred to a Civil Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them:

Provided that nothing herein contained shall empower a District Judge to withdraw such proceedings as have been specifically transferred from his Court by the High Court.

(3) Proceedings taken cognizance of by or transferred to a Civil Judge as the case may be, under this section, shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge.

13. **Places of sitting of Courts.**— (1) The High Court may fix the place or places at which any Court under this Ordinance is to be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Court under this Ordinance may be held at any place within the local limits of its jurisdiction.

14. **Control of Courts and Presiding Officers.**— (1) All Civil Courts in the areas to which this Ordinance extends shall be subordinate to the High Court, and, subject to the general superintendence and control of the High Court, the District Judge shall have control over all Civil Courts within the local limits of his jurisdiction.

(2) The posting of Civil Judges shall be made by the High Court.

15. Notwithstanding anything contained in the Code of Civil Procedure, 1908, every District Judge may by written order direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among such Courts in such manner as he thinks fit:

Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction.

16. A District Judge may, with the previous sanction of the High Court, delegate, in respect of any specified portion of the district, to any Civil Judge in the district, his powers under sections 14 and 15 of this Ordinance and the powers of the District Court under section 24 of the Code of Civil Procedure, 1908, and such powers may be exercised by such Civil Judge subject to the general control of the District Judge.

CHAPTER III JURISDICTION IN CIVIL APPEALS

17. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of

District Judge or Additional District Judge exercising original jurisdiction shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional District Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

18. (1) Save as aforesaid, an appeal from a decree or order of a Civil Judge, shall lie—

- (a) to the High Court if the value of the original suit in which the decree or order was made exceeds fifty hundred thousand rupees; and
- (b) to the District Judge in any other case.

(2) Where the function of receiving any appeal which lie to the District Judge under the last preceding subsection has been assigned to an Additional District Judge, the appeal may be preferred to the Additional District Judge.

(3) The High Court may, by notification, direct that appeals lying to the District Judge from all or any of the decrees or orders passed in any original suit by any Civil Judge shall be referred to such other Civil Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly, and the Court of such Civil Judge shall be deemed to be a District Court for the purposes of all appeals so preferred.

CHAPTER IV SUPPLEMENTAL PROVISIONS

19. Whenever any person holding an office in the service of the State who has been invested with any powers under this Ordinance throughout any local area is transferred or posted at any subsequent time to an equal or higher office of the same nature within a like local area, he shall, unless the High Court otherwise directs or has otherwise directed, exercise the

same powers in the local area to which he is so transferred or posted.

20. The High Court, in consultation with the Board of Revenue, West Pakistan, may make rules consistent with this Ordinance and any other enactment for the time being in force,—

- (a) declaring what persons shall be permitted to act as petition-writers in Courts;
- (b) regulating the issue of licences to such persons, the conduct of business by them and the scale of fees to be charged by them, and
- (c) determining the authority by which breaches of such rules shall be investigated and the penalties which may be imposed.

21. In the event of the death of a District Judge or of his being prevented from performing his duties by illness or other cause, the Additional District Judge, if any, or in the absence of the Additional District Judge from the district, the senior most of the Civil Judges at the headquarters, shall assume charge of the district without interruption of his ordinary jurisdiction, and while so incharge shall perform the duties of the District Judge with respect to the filing of suits and appeals, receiving pleadings, execution of processes and the like, and shall be designated Additional District Judge or Civil Judge, as the case may be, incharge of the district and shall continue in such charge until the office of the District Judge has been resumed or assumed by an officer duly appointed thereto.

22. Any District Judge, leaving the headquarters and proceeding on duty to any place within his jurisdiction or in the event of his absence from the district on leave may delegate to the Additional District Judge or in the absence of an Additional District Judge to the senior most of the Civil Judges at the headquarters, the powers of performing any of the duties enumerated in section 21 that may be emergent; and such officer shall be designated Additional

District Judge or Civil Judge, as the case may be, incharge of the district.

23. In the event of the death, suspension or temporary absence of any Civil Judge, the District Judge, may empower any other Civil Judge of the District to perform the duties of the Judge of the vacated Civil Court, either at the place of such Court or of his own Court, but in every such case the register and records of the two Courts shall be kept separately.

24. (1) No Civil Court not having jurisdiction in original suits without limit as regards value and no Court of the Small Causes shall receive, entertain or register any suit in which Pakistan or any of its provinces or any public officer as defined in clause (17) of section 2 of the Code of Civil Procedure, 1908.

Provided that in the Karachi District any such suit, if the value thereof does not exceed twenty-five thousand rupees, may be instituted in the Court of the District Judge, the Additional District Judge or a Civil Judge of the First Class, and in the High Court where the value of the suit exceeds twenty-five thousand rupees.

(2) In every such case the plaintiff shall be referred to the Court of the Civil Judge having jurisdiction in original suits without limit as regard value and such suit shall be instituted only in the Court of such Civil Judge and shall be heard at the headquarters of the district.

(2-A) Notwithstanding anything contained in sub-sections (1) and (2) in the Karachi District, any such suit, if the value thereof does not exceed twenty-five thousand rupees, may be instituted in and be tried by the Court of the District Judge, the Additional District Judge or Civil Judge of the First Class, and where the value of the suit exceeds twenty-five thousand rupees, it shall be instituted in and be tried by the High Court.

(2-B) The High Court may transfer any civil suit, whether instituted before or after the coming into force of the

Balochistan Civil Courts (Amendment) Act, 1963, and whether pending before it or in any other Court, which under the provisions of sub-section (2-A) may be tried by a Civil Court constituted under this Ordinance, to such Civil Court, and such suit shall thereupon be tried by such Civil Court.

(3) Nothing in this section shall be deemed to apply to a suit relating to the affairs of a Government Railway or to any suit merely because a public officer is a party thereto, in his capacity as--

- (a) a member of a local authority; or
- (b) curator, guardian, manager or representative of a private person or estate in virtue of an appointment, delegation, declaration of exercise of powers under-
 - (i) Order XXXII rule 4(4) of the Code of Civil Procedure, 1908,
 - (ii) section 195 of the Succession Act, 1925;
 - (iii) section 69 or 71 of the Lunacy Act, 1912;
 - (iv) section 7, 18 or 42 of the Guardians and Ward Act, 1890; or
 - (v) any provision of any West Pakistan enactment relating to Court of Wards.

25. **List of holidays.**— (1) Subject to such general orders as may be made by Government, the High Court shall prepare a list of days to be observed in each year as holidays in the Civil Courts.

(2) Every such list shall be published in the official Gazette.

26. **Seal of the Court.**— Every Court shall have and use, as the occasion may arise, a circular seal two inches in diameter bearing round its circumference the title of the Court in

English and Urdu script and in the centre a device and impression of a crescent moon with the horns pointing upwards surmounted by a star, and the said seal shall be delivered to and kept in the custody of the presiding officer of the Court.

27. Power to frame rules.— (1) The High Court may, with the approval of Government, frame rules for the purposes of carrying into effect the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, the High Court may, with the approval of Government, frame rules for all or any of the following purposes, namely:-

- (a) the supervision of all Civil Courts and their visitation and inspection;
- (b) the exercise by the District Judges of the general control vested in them over the Civil Courts in their respective districts;
- (c) the places and times for the holding of Civil Courts;
- (d) the fees to be charged for processes issued by the Civil Courts or by any officer of any such Courts;
- (e) the fees payable in any suit or proceeding in any Civil Court by any party in respect of the fees of the pleader of any other party; and
- (f) the manner in which the proceedings of the Civil Courts shall be kept and recorded, the manner in which the paper books for the hearing of appeal shall be prepared and the granting of copies.

28. (1) The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

(2) The districts and headquarters of districts existing for the purposes of civil justice when this Ordinance comes into force shall be deemed to have been made and determined under this Ordinance.

(3) On the commencement of this Ordinance, if any suit or appeal is pending in the High Court or any other Civil Court, which under this Ordinance is to be tried or heard by some other Court, such suit or appeal shall stand transferred to the Court competent under this Ordinance to try or hear the same.

- (4) (i) the District Judges;
- (ii) the Additional Judges, the Joint Judges and the Assistant Judges; and
- (iii) the First Class Subordinate Judges, the Second Class Subordinate Judges, the Subordinate Judges, the Joint Subordinate Judges and Civil Judges;

appointed under any of the enactments repealed under subsection (1) shall, on the commencement of this Ordinance, become District Judges, Additional District Judges and Civil Judges respectively under this Ordinance, and exercise powers and jurisdiction as such.

(5) Notwithstanding the repeal of the enactments mentioned in the Schedule, everything done, action taken, obligation, liability, penalty or punishment incurred, inquiry or proceeding commenced, officer appointed or person authorised, jurisdiction or power conferred, rule made and order issued under any of the provisions of the said enactments shall, if not inconsistent with the provisions of this Ordinance, continue in force and, so far as may be, be deemed to have been respectively done, taken, incurred, commenced, appointed, authorised, conferred, made or issued under this Ordinance.

THE SCHEDULE
ENACTMENTS REPEALED

(See section 28)

Year	No.	Short title	Extent of repeal
1	2	3	4
1918	VI	The West Pakistan Courts Act, 1918.	The whole
1918	VI	The West Pakistan Courts Act, 1918, as applicable to former Bahawalpur State.	The whole
1926	VII	The Sind Courts Act, 1926.	The whole
1926	VII	The Sind Courts Act, 1926, as applicable to the District of Karachi.	The whole, except section 8.
1926	VII	The Sind Courts Act, 1926, as applicable to the District of Khairpur.	The whole
1931	I	The North-West Frontier Province Courts Regulation, 1930.	The whole
1939	VII	The British West Pakistan Courts Regulation, 1939.	The whole
1952	X	The North-West Frontier Province Courts Act, 1952.	The whole
1952		<i>Dastoor-ul-Amal Diwani, Riasat Kalat.</i>	The whole
1959	IV	The Sind Acts (Extension to Khairpur District) Ordinance, 1959.	Entry 4 of the First Schedule.
1956	II	The Karachi Courts Order, 1956.	The whole, except Clause 4(2).

* *Dastoor-ul-Amal Diwani* as such repealed expressly.

NOTIFICATIONS ISSUED FROM TIME TO TIME

GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

NOTIFICATION

Dated Quetta, the 19th April, 1982

No. Legis. 6-63/LAW/80-II. In exercise of the powers conferred by sub-section (3) of Section 1 of the Balochistan Civil Courts Ordinance, 1962 (W.P. Ordinance II of 1962), the Government of Balochistan is pleased to direct that the said Ordinance shall come into force in the District of Lasbella with immediate effect.

BY ORDER OF THE GOVERNOR BALOCHISTAN

SECRETARY LAW



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated QUETTA, the 16th May, 1982*

NOTIFICATION

No. Legis. 6-63/LAW/80-II. In exercise of the powers conferred by Section 4 of the Balochistan Civil Court Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to create the following Civil District, fix its territorial limits and determine its headquarter :-

* Duplication of the earlier dated 19th April, 1982.

S. No.	Name of Civil District.	Territorial Limits.	Headquarter
1.	2.	3.	4.
1.	Lasbella	Revenue District of Lasbella	Khuzdar

BY ORDER OF THE GOVERNOR BALOCHISTAN

SECRETARY,
GOVERNMENT OF BALOCHISTAN,
LAW DEPARTMENT



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated QUETTA, the 16th May, 1982

NOTIFICATION

No. A-3/80/Admn-LAW. In the Notification of this Department No. 5-4/72-Admn.Law/2353-83, dated the 17th October, 1978*, regarding territorial limits of Khuzdar and Kalat Civil Judicial Districts**, the words "Lasbella District" appearing in column No. 3 against the entry of "Khuzdar" shall be deleted.

BY ORDER OF THE GOVERNOR BALOCHISTAN

SECRETARY,
GOVERNMENT OF BALOCHISTAN,
LAW DEPARTMENT



* Non-existent.

** Then formed as such Judicial Districts.

GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated QUETTA, the 16th May, 1982*

NOTIFICATION

No. Legis. 6-63/LAW/80-II. In exercise of the powers conferred by Section 3 of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to establish and constitute the following Courts for the District of Lasbella :-

1. Court of District Judge Lasbella at Khuzdar.
2. Courts of Civil Judges at Hub and Uthal.

BY ORDER OF THE GOVERNOR BALOCHISTAN

SECRETARY,
GOVERNMENT OF BALOCHISTAN,
LAW DEPARTMENT



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated QUETTA, the 7th October, 1986

NOTIFICATION

No. Legis. 6-63/Law/80-III(2). In partial modification** of this Department's Notification No. Legis. 6-63/Law/80-II, dated 16th May, 1982, and in exercise of the powers conferred by section 3

* This Notification issued on the same day before ink could have dried.

** Section 3 of Ordinance II of 1962 does not envisage any modification of earlier Notification thus issued.

of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to substitute Serial No. 2 appearing in the said Notification as under :-

- "2. Court of Civil Judge, for Industrial area and Town area of Hub.

EXPLANATION.- Industrial area includes the entire Ship Breaking Yard of Gaddani and the entire industrial zone of Hub-Tehsil."

BY ORDER OF THE GOVERNOR BALOCHISTAN

SECRETARY,
GOVERNMENT OF BALOCHISTAN,
LAW DEPARTMENT



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated QUETTA, the 3rd July, 1988

NOTIFICATION

No. Legis. 6-63/LAW/80-IV(2). In supression of this Department's Notification of even number, dated 2nd November 1987, and in exercise of powers conferred by section 4 of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to create the following Civil Districts, fix their territorial limits and also determine their headquarters as indicated below :-

S. No.	Name of Civil District.	Territorial limits.	Headquarters.
1.	Quetta.	1. Revenue District of Quetta.	Quetta

		2. Revenue District of Pishin.	
		3. Revenue District of Chagai.	
		4. Revenue District of Ziarat.	
2.	Loralai	1. Revenue District Loralai.*	Loralai.
		2. Revenue District of Zhob**.	
3.	Jaffarabad.	1. Revenue District Jaffarabad.	
		2. Revenue District of Dera Bugti Agency.***	Dera Allah Yar.
4.	Lasbella.	1. Revenue District of Lasbella**** i.e. Industrial area and Town area of Hub.	Khuzdar.
5.	Sibi.	1. Revenue District of Sibi.	
		2. Revenue District of Kachhi**** except Dhadar,	Sibi.

* Except Duki, which Revenue District governed under Balochistan Regulation of 1976.

** Tribal area where regular law could be made applicable in accordance with due prescribed procedure.

*** A tribal agency.

**** Repugnant to earlier Notification dated 15th April, 1982, and 16th May, 1982.

***** Governed under *Dastoor-ul-Amal Diwani Kalat*, 1952.

Bhag and
Gandawah Sub-
Divisions.

BY ORDER OF THE
GOVERNOR BALOCHISTAN.

SECRETARY,
GOVERNMENT OF BALOCHISTAN,
LAW DEPARTMENT



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 5th March, 1994.

NOTIFICATION

No. Legis. 6-63/LAW/80-IV(2)/730. In supersession* of this Department's Notification No. Legis. 6-63/Law/80-IV(2), dated 3rd July, 1988 and in exercise of powers conferred by section 4 of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to alter the limits of existing Civil Districts and create the following Civil Districts, fix their territorial limits and also determine their headquarters as indicated below :-

S. No.	Name of Civil District.	Territorial limits.	Headquarters.
1.	Quetta.	1. Revenue District of Quetta. 2. Revenue District of Pishin. 3. Revenue District	Quetta

* Such powers not envisaged under the W.P. Ordinance II of 1962.

	of Chagai.	
	4. Revenue District of Ziarat.	
	5. Revenue District of Killa Abdullah.	
2. Loralai	1. Revenue District Loralai*.	Loralai.
	2. Revenue District of Zhob.	
	3. Revenue District of Killa Saifullah.	
	4. Revenue District of Musa Khel.	
	5. Revenue District of Barkhan.	
3. Jaffarabad.	1. Revenue District Jaffarabad.	Dera Allah Yar.
	2. Revenue District of Dera Bugti Agency**.	
4. Lasbella.	1. Revenue District of Lasbella i.e. Industrial area and Town area of Hub.	Khuzdar.
5. Sibi.	1. Revenue District of Sibi.	Sibi.
	2. Revenue District	

* Except Duki the remaining area governed under Balochistan Shariat Regulation, 1976.

** Tribal area.

of Jhal Magsi*
except
Gandawah Sub
Divisions i.e.

- (i) Gandawah
Tehsil.
 - (ii) Mir Pur Sub-
Tehsil.
 - (iii) Jhal Magsi
Sub-Tehsil.
 - (iv) Lehri Tehsil.
3. Revenue District
of Bolan except
Bhag and
Dhadar Sub-
Division.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 19th March, 1999

NOTIFICATION

* Except Mach Sub-Division, the remaining area governed under
Dastoor-ul-Amal Diwani.

No. Legis. 6-63/LAW/80/Vol-V/930-78. In supersession of this Department's Notification No. Legis.6-63/Law/80-V/3621-3720, dated the 24th October, 1998*, and in exercise of powers conferred by section 4 of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to alter the limits of existing Civil Districts and create the following Civil Districts, fix their territorial limits and also determine their headquarters as indicated below :-

S. No.	Name of Civil District.	Territorial limits.	Headquarters.
1.	Quetta.	1. Revenue District of Quetta. 2. Revenue District of Ziarat.	Quetta
2.	Zhob	1. Revenue District of Zhob**.	Zhob.
3.	Loralai.	1. Revenue District of Loralai. 2. Revenue District of Killa Saifullah. 3. Revenue District of Musa Khel. 4. Revenue District of Barkhan.	Loralai.
4.	Sibi.	1. Revenue District of Sibi. 2. Revenue District of Bolan except Bhag and Dhadar Sub-Division.	Sibi

* Non-existent.

** Governed under Balochistan *Shariat* Regulation.

		3. Revenue District of Kohlu Agency*.	
		4. Revenue District of Dera Bugti Agency.	
5.	Jaffarabad	Revenue Sub-Division of Jhatpat consisting of	Dera Allah Yar.
		1) Jhatpat Tehsil.	
		2) Panhwar Sub-Tehsil.	
6.	Kalat	1. Revenue District of Kalat.	Mastung.
		2. Revenue District of Mastung.	
7.	Lasbella.	Revenue District of Lasbella i.e. Industrial area and town area of Hub and Sonmiani (Winder Tehsil).	Hub.
8.	Mekran.	1. Revenue District of Kech.	Ketch (sic)**
		2. Revenue District of Gawadur.	
		3. Revenue District of Panjgoor.	
9.	Pishin	1. Revenue District of Pishin.	Pishin
		2. Revenue District of Killa Abdullah.	
10.	Nushki.	Revenue District of Chagai.	Nushki.
11.	Nasirabad	1. Revenue District of Nasirabad.	Dera Murad Jamali.
		2. Revenue District	

* Tribal area.

** Ketch is the name of Revenue District whereas Turbat its headquarters.

- | | | | |
|-----|------------------------|--|-------------------|
| | | of Jhal Magsi. | |
| 12. | Khuzdar. | 1. Revenue District of
Khuzdar. | Khuzdar. |
| | | 2. Revenue District of
Awaran. | |
| 13. | Kharan | Revenue District of
Kharan. | Kharan. |
| 14. | Usta
Muhammad
ad | Revenue Sub-Division of
Usta Muhammad
consisting of
1. Usta Muhammad
2. Gandakha Sub-Tehsil. | Usta
Muhammad. |

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY,
GOVERNMENT OF BALOCHISTAN,
LAW DEPARTMENT



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated QUETTA, the 14th January, 2003

NOTIFICATION

No. Legis. 6-63/LAW/80/Vol-V/273-314. In supersession of this Department's Notification No. Legis.6-63/Law/80-V/930-78, dated the 19th March, 1999 and in exercise of powers conferred by section 4 of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to alter the limits of existing Civil Districts and create the following Civil Districts, fix their territorial limits and also determine their headquarters as indicated below :-

S. No.	Name of Civil District.	Territorial Limits.	Headquarters.
1.	Quetta.	1. Revenue District of Quetta.	Quetta
		2. Revenue District of Ziarat.	
2.	Zhob	1. Revenue District of Zhob.	Zhob.
3.	Loralai.	1. Revenue District of Loralai.	Loralai.
		2. Revenue District of Killa Saifullah.	
		3. Revenue District of Barkhan.	
4.	Sibi.	1. Revenue District of Sibi.	Sibi
		2. Revenue District of Bolan except Bhag and Dhadar Sub-Division.	
		3. Revenue District of Kohlu Agency.	
		4. Revenue District of Dera Bugti Agency.	
5.	Jaffarabad.	Revenue Sub-Division of Jhatpat consisting of	Dera Allah Yar.
		3) Jhatpat Tehsil.	
		4) Panhwar Sub-Tehsil.	
6.	Kalat	1. Revenue District of Kalat.	Mastung.
		2. Revenue District of Mastung.	
7.	Lasbella.	Revenue District of Lasbella i.e. Industrial area and town area of Hub and Sonmiani (Winder Tehsil).	Hub.

8.	Mekran*	1. Revenue District of Kech. 2. Revenue District of Gawadur. 3. Revenue District of Panjgoor.	Ketch (sic)**
9.	Pishin	1. Revenue District of Pishin. 2. Revenue District of Killa Abdullah.	Pishin
10.	Nushki.	Revenue District of Chagai.	Nushki.
11.	Nasirabad.	3. Revenue District of Nasirabad. 4. Revenue District of Jhal Magsi.	Dera Murad Jamali.
12.	Khuzdar.	1. Revenue District of Khuzdar. 2. Revenue District of Awaran.	Khuzdar.
13.	Kharan	Revenue District of Kharan.	Kharan.
14.	Usta Muhammad	Revenue Sub-Division of Usta Muhammad consisting of 1. Usta Muhammad 2. Gandakha Sub-Tehsil.	Usta Muhammad.
15.	Musa Khail.	1. Musakhail Tehsil. 2. Kingri Sub-Tehsil.	Musa Khail.

BY ORDER OF
GOVERNOR BALOCHISTAN
SECRETARY LAW

* After Devolution Plan, Local Government Ordinance, 2001, the word 'Mekran' vanished.

** Not Ketch but Turbat.



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 23rd February, 2005

NOTIFICATION

No. Legis. 6-63/LAW/SO-VI/695-778. In supersession of this Department's Notification No. Legis.6-63/Law/80-VI/273-314, dated the 14.1.2003, and in exercise of powers conferred by section 4 of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to alter the limits of existing Civil Districts and create the following Civil Districts, fix their territorial limits and also determine their headquarters as indicated below :-

S. No.	Name of Civil District.	Territorial Limits.	Headquarters.
1.	Quetta.	1. Revenue District of Quetta. 2. Revenue District of Ziarat.	Quetta
2.	Pishin	1. Revenue District of Pishin. 2. Revenue District of Killa Abdullah.	Pishin.
3.	Nushki.	1. Revenue District of Chagai. 2. Revenue District of Nushki.	Nushki.
4.	Zhob	Revenue District of Zhob.	Zhob.
5.	Loralai.	1. Revenue District of Loralai. 2. Revenue District of Killa Saifullah.	Loralai.

		3. Revenue District of Barkhan.	
6.	Musa Khail.	1. Musakhail Tehsil. 2. Kingri Sub-Tehsil.	Musa Khail.
7.	Sibi.	1. Revenue District of Sibi. 2. Revenue District of Bolan except Bhag and Dhadar Sub-Division. 3. Revenue District of Kohlu Agency. 4. Revenue District of Dera Bugti Agency.	Sibi
8.	Jaffarabad.	Revenue Sub-Division of Jhatpat consisting of 1) Jhatpat Tehsil. 2) Panhwar Sub-Tehsil.	Dera Allah Yar.
9.	Nasirabad.	1. Revenue District of Nasirabad. 2. Revenue District of Jhal Magsi.	Dera Murad Jamali.
10.	Usta Muhammad	Revenue Sub-Division of Usta Muhammad consisting of 1. Usta Muhammad 2. Gandakha Sub-Tehsil.	Usta Muhammad
11.	Kalat	1. Revenue District of Kalat. 2. Revenue District of Mastung.	Mastung.
12.	Khuzdar.	1. Revenue District of Khuzdar. 2. Revenue District of Awaran.	Khuzdar.
13.	Kharan	Revenue District of Kharan.	Kharan.
14.	Lasbellah.	Revenue District of Lasbella	Hub.

- i.e. Industrial area and town area of Hub and Sonmiani (Winder Tehsil).
15. Mekran. 1. Revenue District of Kech.
2. Revenue District of Panjgoor.
16. Gwadar. Revenue District of Gwadar Gwadar
consisting of:-
a) Gwadar Tehsil.
b) Jiwani Tehsil.
c) Sunstar sub Tehsil.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW AND PARLIAMENTARY
AFFAIRS DEPARTMENT

Dated Quetta, the 11th June 2007 *

NOTIFICATION

No. Legis. 6-63/LAW/80-VI/4031-4110. In supersession of this Department's Notification No. Legis.6-63/Law/80-VI/695-778, dated the 23.2 2005, and in exercise of powers conferred by section 4 of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to alter the limits of existing Civil Districts and create the

* Cumulative effect of this Notification as well as subsequent Notification is that in the whole Province W.P. Ordinance II of 1962 stands extended.

following Civil Districts, fix their territorial limits and also determine their headquarters as indicated below :-

S. No.	Name of Civil District.	Territorial Limits.	Headquarters.
1.	Quetta.	1. Revenue District of Quetta.	Quetta
		2. Revenue District of Ziarat.	
2.	Pishin	1. Revenue District of Pishin.	Pishin.
		2. Revenue District of Killa Abdullah.	
3.	Nushki.	1. Revenue District of Chagai.	Nushki.
		2. Revenue District of Nushki.	
4.	Zhob	Revenue District of Zhob.	Zhob.
5.	Loralai.	1. Revenue District of Loralai.	Loralai.
		2. Revenue District of Killa Saifullah.	
		3. Revenue District of Barkhan.	
6.	Musa Khail.	1. Musakhail Tehsil.	Musa Khail.
		2. Kingri Sub-Tehsil.	
7.	Sibi.	1. Revenue District of Sibi.	Sibi
		2. Revenue District of Bolan except Bhag and Dhadar Sub-Division.	
		3. Revenue District	

		of Kohlu Agency.	
		4. Revenue District of Dera Bugti Agency.	
8.	Jaffarabad.	Revenue Sub-Division of Jhatpat consisting of	Dera Allah Yar.
		1. Jhatpat Tehsil.	
		2. Panhwar Sub-Tehsil.	
9.	Nasirabad.	1. Revenue District of Nasirabad.	Dera Murad Jamali.
		2. Revenue District of Jhal Magsi.	
10.	Usta Muhammad	Revenue Sub-Division of Usta Muhammad consisting of	Usta Muhammad.
		1. Usta Muhammad	
		2. Gandakha Sub-Tehsil.	
11.	Khuzdar	1. Revenue District of Khuzdar i.e. Khuzdar Town.	Khuzdar.
		2. Revenue District of Awaran.	
12.	Mekran.	1. Revenue District of Kech i.e. Turbat Town.	Kech.
		2. Revenue District of Panjgoor.	
13.	Lasbellah.	Revenue District of Lasbella i.e. Industrial area and town area of Hub and Sonmiani (Winder Tehsil).	Hub.

14. Gwadar.

Revenue District of
Gwadar consisting of:-

Gwadar

- a) Gwadar Tehsil.
- b) Jiwani Tehsil.
- c) Sunstar (sic)* sub
Tehsil.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN

GOVERNMENT OF BALOCHISTAN
LAW AND PARLIAMENTARY AFFAIRS
DEPARTMENT

Dated Quetta, the 11th June 2007

NOTIFICATION

No. Legis. 6-63/LAW/SO-VI/4111-4180. In exercise of the powers conferred by sub section (3) of section 1 of the Civil Courts Ordinance, 1962 (Ordinance II of 1962) the Government of Balochistan is pleased to appoint the date specified in column 3 of the table below to be the dates on which the said Ordinance shall come into force in the areas specified in column 2 thereof:-

S. NO.	AREAS	DATED ON WHICH ORDINANCE II OF 1962 SHALL COME INTO FORCE.
1	Khuzdar Town	With immediate effect.
2	Turbat Town	With immediate effect.
3	Gawadar district A) Gawadar Tehsil.	23.02.2005**

* Sundsar

	B) Jiwani Tehsil.	
	C) Sunstar Sub-Tehsil.	

2. Nothing in this Notification shall affect any proceeding by or before any court or any authority under the provisions of any Law before the issuance of this Notification.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF
BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW AND PARLIAMENTARY AFFAIRS
DEPARTMENT

Dated Quetta, the 7th November 2007

NOTIFICATION

No. Legis. 6-63/LAW/80-VI/8149-8249. In supersession of this Department's Notification No. Legis.6-63/Law/80-VI/4031-4110, dated 11.06.2007, and in exercise of powers conferred by section 4 of the Balochistan Civil Courts Ordinance, 1962 (West Pakistan Ordinance II of 1962), the Government of Balochistan is pleased to alter the limits of existing Civil Districts and create the following Civil Districts, fix their territorial limits and also determine their headquarters as indicated below :-

S. No.	Name of Civil District.	Territorial Limits.	Headquarters
1.	Quetta.	1. Revenue District	Quetta

** Applied retrospectively.

		of Quetta.	
		2. Revenue District of Ziarat.	
2.	Pishin	1. Revenue District of Pishin.	Pishin.
		2. Revenue District of Killa Abdullah.	
3.	Nushki.	1. Revenue District of Chagai except Dalbandin Tehsil & Nokundi Sub Tehsil.	Nushki.
		2. Revenue District of Nushki.	
4.	Loralai.	1. Revenue District of Loralai.	Loralai.
5.	Sibi	1. Revenue District of Sibi.	Sibi
		2. Revenue District of Bolan except Bhag and Dhadar Sub-Division.	
6.	Jaffarabad.	Revenue District of Jafferabad.	Dera Allah Yar.
7.	Nasirabad.	1. Revenue District of Nasirabad.	Dera Murad Jamali.
		2. Revenue District of Jhal Magsi.	
8.	Usta Muhammad	Revenue Sub-Division of Usta Muhammad consisting of	Usta Muhammad.
		1) Usta	

		Muhammad 2) Gandakha Sub- Tehsil.	
9.	Khuzdar.	Revenue District of Khuzdar i.e. Khuzdar Town.	Khuzdar.
10.	Mekran.	Revenue District of Ketch (sic) i.e. Turbat Town.	Kech*.
11.	Lasbellah.	Revenue District of Lasbella i.e. Industrial area and town area of Hub and Sonmiani (Winder Tehsil).	Hub.
12.	Gwadar.	Revenue District of Gwadar.	Gwadar
13.	Panjgoor.	Revenue District of Panjgoor.	Panjgoor.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
LAW AND PARLIAMENTARY AFFAIRS
DEPARTMENT

Dated Quetta, the 7th November 2007

NOTIFICATION

* Turbat.

No. Legis. 6-63/LAW/80-VI/8250-8350. In exercise of the powers conferred by sub section (3) of section 1 of the Civil Courts Ordinance, 1962 (Ordinance II of 1962) the Government of Balochistan is pleased to appoint the date specified in column 3 of the table below to be the dates on which the said Ordinance shall come into force in the areas specified in column 2 thereof :-

S. NO.	AREAS	DATED ON WHICH ORDINANCE II OF 1962 SHALL COME INTO FORCE.
1.	Revenue District of Nasirabad.	With immediate effect.
2.	Revenue District of Gawadar.	With immediate effect.
3.	Revenue District of Sibi*	With immediate effect.
4.	Revenue District of Panjgoor.	With immediate effect.

2. Nothing in this Notification shall affect any proceeding by or before any court or any authority under the provisions of any Law before the issuance of this Notification**.

BY ORDER OF
GOVERNOR BALOCHISTAN

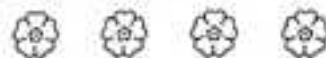
SECRETARY LAW
GOVERNMENT OF BALOCHISTAN



* Which already governed under the W.P. Ordinance II of 1962.

** A procedural law has always retrospective effect.

Subsequent thereto the Governemnt of Balochistan, Law & Parliamentary Affairs Department, vide Natification No. Legis:6-63/Law/80-VI/1920 dated 16th Febrary, 2009, purporeting in exercise of the powers comfered by sub-section (3) of Section 1 of the Civil Courts Ordinee, 1962 read with Section 20 of the Balochistan General Clauses Act, 1956, has withdrwan Notification No.8250-8350 dated 7th Novemeber,2007. Also vide Notification No.2530 dated 16th Febrary, 2006 reconstituted *Majlis-e-Shooras* in Balochistan for the purposeds of Section 24 of *Dastoor-ul-Aml Diwani Kalat*, 1952, as well as vide Notification No.1810, issued on the same date, has also withdrawn Nortification No.8149-8249 dated 7yh November, 2007. Operation of these Notificat:ions have been chalenged before Hight Court of Balochistan in C.F.No.80/2009, which on 23-02-2009 has since suspended the impugned Notifications. Being aggried Mr. Ammanullah Kandrani, Adocate, has taken the matter before Supreme Court of Pakistan. The outcome of it would follow the events.



CHAPTER 14

THE [WEST PAKISTAN] PROHIBITION OF *WALVER* ACT, 1964.

[6th February, 1964]

An Act to prohibit "*Walver*" in the Division of Quetta in the [West Pakistan].

WHEREAS it is expedient to prohibit the giving or accepting of *walver* in the Division of Quetta in [West Pakistan];

It is hereby enacted as follows:-

1. (1) This Act may be called the [West Pakistan] Prohibition of *Walver* Act, 1964.

(2) It extends to the Division of Quetta, except the Tribal Areas.

(3) It shall come into force on such date as Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a) "Government" means the Government of [West Pakistan];
- (b) "*Walver*" means the amount, in cash or kind paid or agreed to be paid to the parent, guardian or otherwise relative of a woman by any person in consideration of the betrothal or marriage of such woman with that person or any other person.

3. No person shall give or agree to give or accept or agree to accept *walver* under any circumstances.

4. (1) Whoever contravenes the provision of section 3 shall, on first conviction, be punished with year or with fine which may extend to three thousand rupees or with both, and on subsequent conviction, with imprisonment which may extend to two years or with fine which may extend to five thousand rupees or with both.

(2) Abatement of or attempt to commit an offence under section 3 shall be punishable as an offence under section 3.

5. The Court trying an offence under this Act may direct that any amount, not exceeding forty percent of such sum as may be realised by way of fine in respect of the offence, be awarded to the person or persons supplying information relating to the commission of the offence.

6. Government may make rules for carrying out the purposes of this Act.

COMMENTARY

During era of Field Marshal Muhammad Ayub Khan this enactment in the shape of an Ordinance promulgated. This piece of legislation although forms part of statute book but implementation thereof remained dormant. Under this law prohibition made and restriction imposed in essence that none would give or take *Walver* amount, bride price, under any circumstances, and surprisingly then made applicable to a specific area of the Quetta Division, as then it was. *Walver* or *Lab* has since time immemorial has been attached with tribal tradition, custom, and culture, and geographical factor has been the cause relating to formation of a tribal society where the area is vast and the population scarce. By way of promulgation of Municipal Law, as opposed to International Law, culture of a society cannot be changed, and the least abruptly. Each society undergoes changes as regards culture and tradition but that too slowly, gradually, and with passage of time. In this direction motivation, need and requirement plays a vital role whereas sudden and abrupt change in the shape of forced legislation serves no purpose and idea. Any legislation without the support of public inspiration or wishes results in a futile attempt as the same is not honoured by them and respect of law thereby also fades.

On the other hand, it has been observed and perceived, the custom of obtaining *Walver* if not diminished but faded slowly and gradually with the passage of time. It may or may not be due to public awakening, but with the passage of time and fast movement of life and changes in value and culture have brought drastic changes visible by all. Obtaining of bride price has not been uncommon in rest societies of the world including Afghanistan, Iran, and Arabistan etc. and this aspect of the matter is not the sole concern of this part of the territory. The

Muslim Personal Law (*Shariat Application*) Act makes it obligatory and mandatory that each female member has the right of inheritance as share in a property but as regards its observance and implementation seldom acted upon by prominent majority of the population. In the case of estates of late Khan Sahib Siaid Ali Jan Hurmzai, disposed of by the *Shahi Jirga* on the 5th January, 1931, who had given their opinion based on the award of majority of the Saiyids dated 7th April, 1930 to the effect that it be governed by *Rivaj* according to which the females do not inherit but are only entitled to *Khurak-o-Poshak* and the case since taken and served as a precedent. The law of necessity also demands the same, as outside elements would be in a position to share their sources of income, which has already been limited in a tribal society.



CHAPTER 15

THE CIVIL PROCEDURE (SPECIAL PROVISIONS) ORDINANCE, 1968

WEST PAKISTAN ORDINANCE NO. I OF 1968

An Ordinance to provide for certain areas of West Pakistan special procedure for the adjudication of the disputes on certain matters.

PREAMBLE. WHEREAS it is necessary to provide for certain areas of West Pakistan special procedure for the adjudication of disputes on certain matters to meet the special requirements of those areas;

AND WHEREAS the Provincial Assembly of West Pakistan is not in session and the Governor of West Pakistan is satisfied the circumstances exist which render immediate legislation necessary;

NOW, THEREFORE, in exercise of the powers conferred on him by clause (1) of Article 79 of the Constitution Governor of West Pakistan is pleased to make and promulgate the following Ordinance: -

1. SHORT TITLE EXTENT AND COMMENCEMENT. (1) This Ordinance may be called the Civil Procedure (Special Provisions) Ordinance, 1968.

(2) It extends to the areas specified in the First Schedule.

(3) Government may, by notification in the Official Gazette, extend the operation of this Ordinance to any other area or areas in the Province.

(4) Government may, by notification in the Official Gazette, direct that this Ordinance shall, on such date may be specified in the notification cease to be in force . any area in which it is in force or has been brought in force under subsection (3), and, upon its so ceasing to I in force in any area, shall be deemed to have been repealed.

2. **DEFINITIONS.** In this Ordinance, unless there is anything repugnant in the subject or context: -

(a) "Commissioner" means the Chief Officer-in-charge of Revenue Administration of a Division, and includes any _ other officer who is specially empowered by Government to exercise the powers of a Commissioner under this Ordinance;

(b) "Deputy Commissioner" includes any officer exercising or performing any power or function of a Deputy Commissioner under this Ordinance;

(c) "Government" means the Government of West Pakistan.

(d) "Tribunal" means a Tribunal constituted under this Ordinance.

3. **CERTAIN DISPUTE TO BE ADJUDICATED UPON UNDER THIS ORDINANCE.** (1) Notwithstanding any thing contained in any other law for the time being in force, all disputes of a Civil nature, other than any dispute to be determined in accordance with the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), or the Conciliation Courts Ordinance, 1961 (XIV of 1961), shall be adjudicated upon in accordance with the provisions of this Ordinance:

Provided that the provisions of this Ordinance shall not apply to a dispute arising in or relating to any area specified in the Second Schedule, unless ail the parties to such dispute make

an application in writing to the Deputy Commissioner that such dispute be adjudicated upon the accordance with this Ordinance.

(2) Except as otherwise provided in this Ordinance, the provisions of the Evidence Act, 1872 (I of 1872) and the Code of Civil Procedure, 1908 (V of 1908), shall not apply to any proceedings under this Ordinance.

4. **CONSTITUTION OF AND REFERENCE OF DISPUTE TO A TRIBUNAL.** Where any party to a dispute, not being a dispute arising in or relating to any area specified in the Second Schedule. Makes, or all parties to a dispute arising in or relating to any area specified in the Second Schedule, make an application in writing to the Deputy Commissioner for the adjudication or settlement of such dispute, the Deputy Commissioner shall constitute a Tribunal in accordance with section 5, and by order in writing refer the dispute to the Tribunal for a finding on such matters or issues as may be specified in order.

5. **COMPOSITION OF THE TRIBUNAL.** (1) A Tribunal constituted for the purpose of section 4 shall consist of a Government official, not below the rank of Naib-Tehsildar, who shall be its President, and four other members, all to be appointed by the Deputy Commissioner.

(2) In appointing a person as a member, other than the President, the Deputy Commissioner shall have regard to the integrity, education, social status and representative character of such person.

(3) No person shall be appointed as a member of the Tribunal, other than the President, except after giving the parties concerned an opportunity of being heard and considering their objections, if any, to the appointment of such person.

6. **REFERENCE OF QUESTION TO A NEW TRIBUNAL IN CERTAIN CASES.** (1) Where a Tribunal declines or fails to give finding on any matter or issue referred to it, or misconduct itself, or where,

by reason of the death or illness or absence from the country of any member, or for any other sufficient cause, the Tribunal is, in the opinion of the Deputy Commissioner, unable to perform its functions, the Deputy Commissioner shall, unless he proceeds in accordance with sub-section

(2) by order in writing, stating the reasons therefor, constitute another Tribunal in accordance with section 5 and refer the matter or issue to the Tribunal so constituted.

(2) If any member of the Tribunal dies, refuses to act, ' becomes incapacitated from acting, or fails to attend any two meetings of the Tribunal without sufficient cause to the satisfaction of the President of the Tribunal, the President shall refer the matter to the Deputy Commissioner, who shall, as soon as may be, appoint another member in place of the defaulting member in accordance with the provisions of sub-section (2) and (3) of section 5.

7. **QUORUM.** The Tribunal shall not conduct any proceedings unless the President and at least two other members are present.

8. **PROCEDURE BEFORE THE TRIBUNAL.** (1) For the purpose of coming to a finding on a matter or issue referred to it, the Tribunal shall give opportunity to the parties to appear before it and take or hear, in such manner as it may think fit, such evidence as may be adduced on behalf of the parties or as may be called for by the Tribunal.

Provided that the Tribunal may in its discretion refuse to take or hear any evidence which in its opinion is being tendered for the purpose of vexation or delay or for defeating the ends of justice:

Provided further that the provisions of section 121 to 126 of the Evidence Act, 1872 (I of 1872), shall apply to any proceedings before a Tribunal as they apply to proceedings before a Judge or a Magistrate.

(2) The Tribunal shall give the parties' an opportunity of cross-examining the witnesses deposing against them.

(3) The Tribunal may administer oath to a witness in such form or manner, consistently with the religion of the witness, as it deems fit.

9. **TRIBUNAL TO HAVE CERTAIN POWERS OF A CIVIL COURT.** For the purpose of the performance of its function under this Ordinance, the Tribunal shall have the same powers as are vested in a Civil Court trying a suit under the Code of Civil Procedure, 1908 (V of 1908), in respect of enforcing attendance of any witness or production of any document or other thing.

10. **ACTION UPON THE REPORT OF THE TRIBUNAL.** (1) The finding of the Tribunal on a matter or issue referred to it under section 4 shall be given in accordance with law, or the custom or usage having the force of law, and shall be submitted to the Deputy Commissioner in the form of a report containing reasons for such finding.

(2) Upon receipt of a report of the Tribunal, the Deputy Commissioner may, if the report does not give a finding on any matter or issue referred to the Tribunal or any substantial part thereof, or if he is of the opinion that there has been material irregularity or that the proceedings of the Tribunal have been so conducted as to occasion a miscarriage of Justice, remand the matter or issue to the Tribunal or refer the matter or issue to a Second Tribunal constituted in accordance with section 5.

(3) Where the finding of the Tribunal on the matter or issue referred to it is unanimous or by a majority of its members and the Deputy Commissioner does not proceed under subsection (2), he shall decide the dispute and pass decree in accordance with such finding.

11. **APPEAL.** (1) Any party aggrieved by any decision given, decree passed or order made, by the Deputy Commissioner

under this Ordinance may, within sixty days of such decision, decree or order, prefer an appeal to the Commissioner.

EXPLANATION. In computing the period of sixty days mentioned in this sub-section, the day on which the decision, decree or order sought to be appealed against was given, passed or made, and the time requisite for obtaining a copy thereof, shall be excluded.

(2) The Commissioner shall not modify, alter or set aside any decision, decree or order appealed against except after giving the parties an opportunity of being heard.

(3) The Commissioner may, in deciding an appeal under sub-section (1), exercise all or any of the powers conferred on an Appellate Court by the Code of Civil Procedure, 1908 (V Of 1908).

(4) Subject to the provisions of this Ordinance, the decision of the Commissioner on an appeal under this section shall be final.

12. **REVISION.** (1) Government may, within ninety days of any order passed by the Commissioner on an appeal, either of its own motion or on the application of any party to a dispute, call for and examine the record of any appeal disposed of by the Commissioner, for the purpose of satisfying itself as to the correctness, legality or propriety of any decision, decree or order given, passed or made under this Ordinance, or as to the regularity of any proceedings thereunder and may, when calling for such record, direct that the execution of the decree or order in question be suspended pending the examination of the record:

Provided that nothing herein contained shall be deemed to authorise Government to vary or set aside a finding of a Tribunal on a question of fact where such finding has been accepted by the Commissioner unless it is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice.

(2) Government may, after examining any record called for under sub-section (1) and giving the parties an opportunity of being heard, pass such order as it may think fit.

13. **EXECUTION AND ENFORCEMENT OF DECREE OR ORDER.**

(1) Subject to the provisions of this Ordinance, a decree order passed by the Deputy Commissioner shall have the same force and effect as if it were a decree or order passed by the competent Civil Court and shall be enforced by the Deputy Commissioner in the same manner as such decree or order would have been enforced by such Civil Court.

(2) Every order made by the Commissioner in the exercise of his powers under section 11 or by Government in the exercise of its powers under section 12, shall be enforced as if it were an order of the Deputy Commissioner who shall do all acts and things necessary to give effect thereto.

14. **JURISDICTION OF COURTS BARRED.** Except as otherwise provided in this Ordinance, no proceeding under this Ordinance, and no decision given, decree passed or order made, in any such proceeding shall be called in question in any Court or before any other authority.

15. **DELEGATION.** The Deputy Commissioner may authorise any officer not below the rank of an Extra Assistant Commissioner to exercise or perform all or any of his powers or functions under this Ordinance, and may specify the areas within which, or the class of cases in respect of which such powers may be exercised.

16. **POWER TO MAKE RULES.** Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

17. **PENDING PROCEEDINGS.** Nothing in this Ordinance shall affect any proceedings relating to any dispute pending in or before any Court or other authority immediately before the commencement of this Ordinance, and such proceedings shall be continued and disposed of as if this Ordinance had not come into force.

18. **REPEAL.** The Quetta and Kalat (Civil and Criminal Law) Ordinance, 1965 (West Pakistan Ordinance No III of 1965), in so far as it relates to the adjudication and settlement of civil disputes, is hereby repealed.

THE FIRST SCHEDULE

See Section 1(2)

1. The Division of Quetta.
2. Nasirabad Sub-Division of Jacobabad District.
3. The Added Areas of Hazara District specified in the First Schedule to the North-West Frontier Province (Enlargement of the Area and Alteration of Boundary) Order, 1952 (G.G.O. No. 1 of 1952).
4. The Added Areas of Mardan District specified in Schedule A to the North-West Frontier Province (Increase of Area and Alteration of Boundary) Order, 1953 (G.G.O. No. 7 of 1953).
5. The Added Areas of Hazara District specified in the First Schedule to the North-West Frontier Province (Enlargement of the Area and Alteration of Boundary) Order, 1955 (G.G.O. No. 13 of 1955).
6. The former Excluded Areas of Upper Tanawal and the Baloch Area of Dera Ghazi Khan specified in the schedule to the Excluded Areas (Cesser of Exclusion) (West Pakistan) Order, 1961 (P.O. No. 3 of 1961).

THE SECOND SCHEDULE
SEE SECTION 3(1)

DISTRICT	TEHSIL	AREA
1. Sibi District	(i) Sibi	Sibi town excepting Gulu
	(ii) Sharig	1. Shahr, Kurk and Kajjak villages but including all the railway quarters on the West side of the Railway line in Sibi the Military Supply Dept, Public Works Department inspection bungalow and office and quarters. 2. Ziarat 3. Harnai The whole of Duki Tehsil.
2. Loralai District	Duki	
3. Chagai District	Nushki	Nushki Town.
4. Quetta-Pishin	Quetta 1.	Quetta city and cantonment.
	2.	Quetta Saddar:- The following Mouzas, etc. of the Quetta Tehsil exclusive of the area lying within the limits of the Police stations of Quetta City, Quetta Cantonment and Quetta Railways:- i) The entire area with appurtenant Mahals and Killies of Mouza Sirki, Khushkaba, Shaldaras Kansi, Tirkha, Kansi, Shaboo and

4. Quetta-
Pishin Pishin
District
Concl'd.

Chaman

- Kotwal.
- ii) Mahal Karez Lwar and Killi Lwar in Mauza Ahmad Khanzai.
- iii) Mahals Karez Sultan and Karez Khair Ullah with their Killiz in Mauza Karez at Beleli.
- iv) The Military Camp at Beleli.
- v) The area of the Beleli Spur comprising the area inhabited and used for any purpose by Hindustan Construction Company, Limited.
- vi) Balochistan textile Mills Sariab.
 - i. Pishin Town.
 - ii. Bostan Bazar.

Chaman Cantonment and Town.
All Railways Stations and lines in
Quetta Pishin District.



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 23rd June, 1988.

NOTIFICATION

No. Legis. 1 -45/Law/72. In exercise of the powers conferred by sub-section (3) of section 1 of the Civil Procedure (Special Provisions) Ordinance, 1968 (I of 1968), the Government of Balochistan is pleased to withdraw the application of the

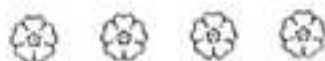
provisions of the said Ordinance within the Districts of Quetta, Sibi, Loralai, Chaghi, Pishin and Ziarat. wherever the said Ordinance is applicable.

2. In exercise of the powers conferred by sub-section (3) of section 1 of the Civil Courts Ordinance, 1962 (II of 1962), the Government of Balochistan is further pleased to extend the jurisdiction of Civil Courts Ordinance, 1962, to the above areas from where the Civil Procedure (Special Provisions) Ordinance, 1968, has been withdrawn.

3. Nothing in this Notification shall affect any proceedings by or before any Court or any authority under the Provisions of the said Ordinance, before the issuance of this Notification.

4. This Notification shall come into force at once.

BY ORDER OF
GOVERNOR BALOCHISTAN



PROVINCE OF WEST PAKISTAN (DISSOLUTION)
ORDER, 1970

(PRESIDENT'S ORDER NO. 1 OF 1970)
(Extract)

CONTINUATION AND ADAPTATION OF EXISTING WEST
PAKISTAN LAWS

[1st July 1970]

* x * x * x
19. Continuation and adaptation of existing laws. (1) Except as expressly provided by the under this Order all existing laws shall continue in force, so far as applicable and with the necessary adaptation, repealed or amended by the appropriate legislature or other competent authority.

(2) For the purpose of bringing the provisions of any existing law into accord with the provisions of this Order, in relation to laws in the Central legislative field, the President, and in relation to other laws, the Governor of the Province concerned, may, by order, make such adaptation, whether by way of modification, addition or omission, as deem necessary or expedient, and any order so made shall, unless otherwise provided therein, take effect or be deemed to have taken effect on the appointed day.

(3) Any Court, tribunal or authority required or empowered to enforce an existing law shall, notwithstanding that no actual adaptations have been made in such law by an order made under clause (2), construe the law with all such adaptations as are necessary to bring it into accord with the provisions of this Order.

Explanation. In this Article, "existing law" means any Act, Ordinance, Order, rule, regulation, bylaws, notification or other legal instrument which, immediately before the appointed day, had the force of law in the whole or any part of the province of West Pakistan whether or not it had been brought into operation.

* x * x * x

COMMENTARY

On 25th March 1969, Field Marshal Muhammad Ayub Khan, after making public address resigned. The Constitution of Islamic Republic of Pakistan, 1962, which was promulgated by him, expressly provided *inter alia* that when the President of Pakistan intends or wishes to resign, he would hand over the charge to the Speaker of the National assembly who would meanwhile perform his duties as Acting President till a suitable candidate is so elected, but instead violating his own promulgated Constitution, shifted his powers to the Commander-in-Chief of the Army, General Agha Muhammad Yahya. He at once dissolved the Constitution and the Assemblies, and declared Marshal Law throughout the country, which caused resentment to the general public especially population of eastern wing. This one man in his capacity as President of Pakistan and Chief Martial Law Administrator on 1st July, 1970 dissolved unilaterally One-Unit of the West Pakistan, and created four provinces: Balochistan, North western Frontier Province, Punjab, and Sindh. These were not based on geographical, cultural, administration, economic or ethnic factors. Even these were named by him without consultation or

advisory opinion being sought or obtained. Soon after and subsequent thereto the miseries of the people of underdeveloped areas could not be diminished nor lowered.

Concerning dissolution of West Pakistan (One-Unit), the Province of West Pakistan (Dissolution) Order, 1970 (President Order No. 1 of 1970) was promulgated by him. This Order provided the way and manner the legal and lawful changes are to be met and undergone. According to the said Order, the laws which were applicable in the then West Pakistan would remain applicable in all the provinces so formed till suitable amended by the appropriate legislation, Federal or by the respective Province in provincial matters. Subsequently in Balochistan all the laws containing nomenclature of West Pakistan were substituted as Balochistan. However, during the era of Nawab Muhammad Akbar Bugti, as its Chief Minister, the spellings of 'BALUCHISTAN' changed as 'BALOCHISTAN'. In this Chapter Extract of the said Order has been reproduced with a view to examine the legal amendments so having been introduced, otherwise reproduction of whole order is, as such, considered to be a lengthy exercise.



THE FRONTIER CRIMES REGULATION, 1901, AND ITS AFTER EFFECTS

The High Court of West Pakistan on 17th December 1964, in case entitled: Malik Muhammad Usman versus State reported in PLD 1965 (W.P.) Lahore 229, held the FCR to be unconstitutional. Although it was a judicial decision but the practical aspect as regards its after-effects and the manner in which such kind of lacunas were to be filled up not met, which instead of harmonizing the affairs further complicated them and the tribesmen of this country landed in troubles. In vast lands witnesses may not be easily available which state of affairs on account of its peculiar circumstances still continues. In regular

law guilt of an accused is required to be proved beyond every reasonable doubt which obviously visualises presence of trustworthy evidence. Anyhow, upon announcement of judicial verdict the FCR stood repealed as regards areas formerly forming part of British Balochistan and Leased but the tribal areas (PATA) remained unaffected and excluded as then the opinion was that the jurisdiction of High Court did not extend to those particular areas.

Thereafter Quetta and Kalat (Civil and Criminal Law) Ordinance, 1965 (W.P. Ordinance No. III of 1965) was promulgated in order to cover the field as well as its provisions extended to areas then forming part of Kalat Division. In the preamble provided that whereas the people of Quetta and Kalat Divisions and certain other areas in West Pakistan had desired the introduction of system of settlement of civil disputes and trial and punishment of offences more suited their requirement and in consonance with the special conditions prevailing in the said area. In this Ordinance the novel provision was grant of permission to legal practitioners to participate during trial proceedings. But by lapse of time it turned that the same was not exhaustive and required certain immediate measures. Thereon the Civil Procedure (Special Provisions) Ordinance, 1968 (W.P. Ordinance I of 1968) and the Criminal Procedure (Special Provisions) Ordinance, 1968 (W.P. Ordinance II of 1968) were promulgated on 16 January 1968 by the Governor of West Pakistan which were laid down before Provincial Assembly for approval which was accorded on 12th September 1968. The W.P. Ordinance I of 1968 was made applicable to Quetta Division as well as Nasirabad Sub-division of Jacobabad (which sub-division upon dissolution of One-Unit on 1st July 1970 annexed with Sibi District). This particular Ordinance by virtue of Notification dated 23rd June 1988, issued by the Government of Balochistan stood withdrawn.

As far W.P. Ordinance II of 1968 is concerned remained applicable to former areas of Quetta and Kalat Divisions except

the tribal areas. In this Ordinance besides the chairman of the Tribunal who was *Tehsildar* or *Naib-Tehsildar*, four other members required to be appointed and nominated regarding whom no specific qualifications were prescribed whereas under FCR the Council-of-Elders consisted of local tribesmen in the capacity of *Khan*, *Malik* or *Sirdar*. Further tribal responsibility also found non-existent. This Law remained in operation for number of years. The provisions thereof during 1973 by the government headed by Attaullah Mengal even extended and applied to local limits of Quetta Municipal area as well as Cantonment, which was unprecedented as regards established regular area but with the change of government also withdrawn from this particular area. However, vide Notification dated 23rd June 1988 the operation of W.P. Ordinance II of 1968 was deleted and withdrawn from thickly populated areas of different towns, simultaneously the appellate forum was changed from Commissioner to Sessions Judge and revisional powers entrusted to High Court instead of Government, Board of Revenue.



THE BALOCHISTAN PROHIBITION OF PUBLIC MEETINGS
(ON PUBLIC THOROUGHFARES)
ACT, 1973

[BALOCHISTAN ACT XI OF 1973]

[10th October 1973]

An Act to Provide for prohibition of holding of Public Meetings on Public Thoroughfares in the interest of public order and security.

WHEREAS it is expedient to prohibit holding of public meetings on public thoroughfares in the interest of public order and security;

It is hereby enacted as follows:-

1. (1) This Act may be called the Balochistan Prohibition of Public Meetings (on Public Thoroughfares) Act, 1973.

(2) It extends to the whole of the Province of Balochistan except Tribal Areas.

(3) It shall come into force at once.

2. For the purpose of this Act, unless there is anything repugnant in the subject or context—

(c) "District Magistrate" means the District Magistrate as defined in the Code of Criminal Procedure, 1898 (Act V of 1899);

- (a) "Meeting" means a meeting held for the purposes of discussion of matters of public interest, or, for the purpose of expression of views on such matters;
- (b) "Public Meeting" includes any meeting which the public or any section thereof are permitted to attend whether on payment or otherwise;
- (c) "Public thoroughfare" means any highway, any public bridge, road, including foot way, square to which the public have or are permitted to have access whether on payment or otherwise.
- (d) "promoter" means a person or class of persons who call, hold, arrange or address a public meeting.

3. Notwithstanding anything to the contrary contained in any other law, a District Magistrate may, by order, prohibit holding of a public meeting on any thoroughfare.

4. Notwithstanding anything in the Code of Criminal Procedure, 1898 (Act V of 1898) an offence under this Act shall be cognizable and non-bailable.

5. A promoter of a public meeting who violates an order issued under section 3 shall be liable to punishment with imprisonment which may extend to 6 months or fine which may extend to rupees one thousand or both.

6. The Prohibition of Public Meetings (on Public Thoroughfares) Ordinance, 1973, is hereby repealed.

COMMENTARY

The city of Quetta after being declared as capital of the newly formed province of Balochistan saw and met tremendous expansion, and growth. Public meetings were found being held in the centre of the city i.e. Meezan Chowk, Manan Chowk, and various other shopping centres which caused annoyance to general public on account of hindrance, obstructions, and blockade. Keeping also the political consideration, law in the shape of The Balochistan Prohibition of Public Meetings (on

Public Thoroughfares) Act, 1973 was introduced which subsequently passed by the Assembly turning thereby the Ordinance into Act. But throughout its observance and implementation found lacking. Laws are promulgated and enforced for implementation, execution, and if the authorities concerned are not in a position to implement the same, it would be better if these are taken, detached and deleted from the statute books. Non-observance and Mockery of law are at par with each other. By referring civilised states and countries, we infer where the law reigns supreme and even a 'king' can do no wrong.



CHAPTER 18

THE BALOCHISTAN CIVIL DISPUTES (*SHARIAT* APPLICATION) REGULATION, 1976

(BALOCHISTAN REGULATION OF 1976)

5th December, 1976

A Regulation to provide for the adjudication of certain civil disputes in the Tribal Areas of Balochistan according to Muslim (*Shariat*) Law.

WHEREAS it is expedient to provide for the adjudication of certain civil disputes in the Tribal Areas of Balochistan according to Muslim (*Shariat*) Law;

NOW, THEREFORE, in exercise of powers conferred by clause (4) of Article 247 of the Constitution of the Islamic Republic of Pakistan, the Governor of Balochistan, with the prior approval of the President, is pleased to make the following Regulation:

1. (1) This Regulation may be called the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976.

(2) It extends to the Tribal Areas of Balochistan.

(3) It shall come into force in such area or areas and on such date or dates as the Provincial Government may, by notification in the official Gazette, appoint in this behalf.

2. (1) Notwithstanding anything to the contrary contained in any law for the time being in force or any custom or

usage, all disputes of a civil nature, where the parties are Muslims, shall be decided in accordance with Muslim (*Shariat*) Law;

Provided that nothing in this sub-section shall apply to cases by or against the Federal Government or a Provincial Government or a local authority or a public corporation or a public servant acting in the discharge of his duty.

(2) If all the parties to a dispute of civil nature any of whom is a non-Muslim agree to the dispute being adjudicated upon under this Regulation, such dispute shall, as far as practicable, be adjudicated upon accordingly.

3. Notwithstanding anything contained in this Regulation the provisions of Code of Civil Procedure, 1908, hereinafter referred to as the Code, the Evidence Act, 1872, and the Limitation Act, 1908, shall *mutatis mutandis* apply to the proceedings under this Regulation.

4. (1) Notwithstanding anything contained in section 3, there shall be the following Courts, namely: -

- (a) The Court of *Qazi*, which shall be the Court of Original jurisdiction in respect of disputes wherein the subject-matter in amount or value does not exceed fifty thousand rupees; and
- (b) The *Majlis-e-Shura*, which shall be the first appellate court in respect of judgements, decrees and orders of the Court of *Qazi*, and shall also be the court of original jurisdiction in respect of all disputes wherein the subject-matter in amount or value exceeds fifty thousand rupees.

(2) Every *Majlis-e-Shura* shall be deemed to be a District Court within the meaning of the Code.

(3) An appeal from a judgement, decree or order of the *Majlis-e-Shura* shall lie to the High Court.

5. (1) The Provincial Government may, by notification in the official gazette, constitute such number of Courts of *Qazi* and *Majlis-e-Shura* as it may deem appropriate, and may, whenever it so considers necessary, specify the class of dispute in respect of

which a particular Court of *Qazi* or *Majlis-e-Shura* shall have jurisdiction under this Regulation.

(2) A *Majlis-e-Shura* shall consist of not less than two members, one of whom shall be designated by the Provincial Government to be the Chairman.

(3) The qualifications of *Qazis* and members of *Majlis-e-Shura* shall be such as may be prescribed by rules made under section 6.

(4) The territorial limits of jurisdiction of the Court of *Qazi* and *Majlis-e-Shura* shall be such as may be determined by the Provincial Government; and, until so determined, the territorial limits of a *Majlis-e-Shura* shall be the same as those of the District Court, and those of a court of *Qazi* the same as of the Civil Court of original jurisdiction irrespective of its pecuniary limits.

(5) In the case of a difference of opinion between the members of a *Majlis-e-Shura* in any case,

(a) If the *Majlis-e-Shura* is exercising its original jurisdiction, the case shall be decided in accordance with the opinion of the Chairman; and

(b) if the *Majlis-e-Shura* is exercising its appellate jurisdiction, the decision of the Court of *Qazi* in the case shall be deemed to be the decision of the *Majlis-e-Shura*.

6. (1) The Provincial Government may, by notification in the official Gazette, make rules to carry into effect the purposes of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the qualifications of *Qazis* and members of *Majlis-e-Shura*;

(b) seal of the Court of *Qazi* and *Majlis-e-Shura*;

- (c) the places where and the time when Courts of *Qazi* and *Majlis-e-Shura* shall sit and hold proceedings;
- (d) the fees to be paid to the Courts of *Qazi* and *Majlis-e-Shura*, and for processes issued therefrom, and the manner in which such fees shall be levied; and
- (e) the language and manner in which proceedings of the Courts of *Qazi* and *Majlis-e-Shura* shall be recorded and kept.

7. Upon the coming into force of this Regulation in any area, all suits and appeals pending in any District Court or a Civil Court subordinate thereto, or in any tribunal, involving a dispute which under this Regulation is to be adjudicated upon by a Court of *Qazi* or *Majlis-e-Shura*, shall stand transferred to the Court of *Qazi* or *Majlis-e-Shura*, as the case may be, having jurisdiction in the matter under this Regulation; and, upon such transfer, shall be deemed to have been instituted therein, and shall be heard and determined accordingly.

(This Regulation was promulgated by the Governor of Balochistan, published in the Balochistan: Gazette (Extraordinary) No. 50-A dated 5th December, 1976.)



BALUCHISTAN CIVIL DISPUTE (*SHARIAT* APPLICATION) REGULATION, 1976

(APPLICATION OF REGULATION TO TRIBAL AREAS)

Gazette of Balochistan, Extraordinary. Part 1, 18th
February, 1977.

No. 8-59/77-Sol (S&GAD). In exercise of powers conferred on it by sub-para (3) of para 1 of the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976, Government of Balochistan is pleased to notify that the said Regulation shall come into force in all tribal Areas of Balochistan with immediate effect.



BALUCHISTAN CIVIL DISPUTES *SHARIAT* APPLICATION RULES, 1977

18th February, 1977

In exercise of powers conferred on it by para 6 of the Balochistan Civil Disputes (*Shariat* Application) Regulation 1976, the Government of Balochistan is pleased to make and promulgate the following rules:-

1. SHORT TITLE AND COMMENCEMENT.—(1) These rules may be called the Balochistan Civil Disputes (*Shariat* Application) Rules, 1977.

(2) They shall come into force at once.

2. The Provincial Government may appoint *Qazis* under the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976, hereinafter referred to as the said Regulation at the places specified in schedule of these Rules to exercise jurisdiction within the area noted against each.

3. QUALIFICATION OF *QAZIS*.—A person possessing *Sanad/Dars-e-Nizami* from a recognised *Darul Uloom* (preferably English knowing) or a law graduate from recognised University may be appointed as *Qazi*, the minimum age being 28 years:

Provided that the Government may wherever deemed necessary relax the above condition.

4. APPOINTMENT OF MAJLIS-E-SHURA.— (1) The headquarters of *Majlis-e-Shura* shall be at Quetta.

(2) A person possessing a degree in Law from Recognised University or *Dars-e-Nizami* from *Darul Uloom* or equivalent institutes may be appointed as Member of *Majlis-e-Shura*.

(3) A person already in judicial service as Civil Judge or *Qazi* may be considered for appointment as Member of *Majlis-e-Shura*.

(4) The lower age limit for appointment as Member shall be 30 years:

Provided that the Provincial Government may if necessary relax the above condition.

5. MODE OF APPOINTMENT OF MEMBERS OF MAJLIS-E-SHURA AND QAZIS.—The appointment of the Members *Majlis-e-Shura* and the *Qazis* may be made through Public Service Commission, provided that the Government may make ad hoc appointment until selection by the Public Service Commission.

6. COURT-FEES.—Court-fee and process fee by thie Courts of *Qazi* and *Majlis-e-Shura* shall be levied according to the provisions of *Dastur-ul-Amal Diwani* of Kalat.

7. PROCEDURE AND TIMINGS.—All proceedings before the *Majlis-e-Shura* and Courts of *Qazi* shall be conducted as far as may be according to the Civil Procedure Code, 1908; provided that original civil suits may be filed in the Courts of Assistant Commissioner/Tehsildars who shall refer them to *Qazi/Majlis-e-Shura* as the case may be after framing issues.

SCHEDULE
(SEE PARA. 2)

(A) QUETTA DIVISION

1. Dalbandin One *Qazi* for Dalbandin Tehsil and

- Nokkundi Sub Tehsil with headquarters at Dalbandin.
2. Muslim Bagh One *Qazi* for Muslim Bagh Tehsil with headquarters at Muslim Bagh.
 3. Killa Saifullah One *Qazi* for Killa Saifullah Tehsil with headquarters at Killa Saifullah.
 4. Qamar Din Karez One *Qazi* for Qamar Din Karez Sub-Division including Qamar Din Tehsil, Loi Bund, Koshotto and Ashewat Sub-Tehsils with headquarters at Qamar Din Karez.
 5. Zhob One *Qazi* for Zhob Tehsil including Samboza Sub-Tehsil with headquarters at Zhob.
 6. Sherani One *Qazi* for Sherani Sub-Division with headquarters at Zhob.
 7. Musakhel One *Qazi* for Musakhel Sub-Division with headquarters at Musakhel.
 8. Barkhan One *Qazi* for Barkhan Sub-Division with headquarters at Barkhan.
 9. Bori One *Qazi* for Bori Tehsil including Mekhtar Sub-Tehsil with headquarters at Loralai.
 10. Sinjavi One *Qazi* for Sinjavi Sub-Tehsil and with headquarters at Sinjavi.

(B) SIBI DIVISION

1. Kohlu One *Qazi* for Kohlu Sub-Division with headquarters at Kohlu.
2. Kahan One *Qazi* for Kahan Sub-Division with headquarters at Kahan.
3. Mawand One *Qazi* for Mawand Sub-Division (excluding) Kot Mandai Sub-Tehsil with headquarters at Mawand.
4. Kot Mandai One *Qazi* for Kot Mandai Sub-Tehsil with headquarters at Bahar Kach.

5. Dera Bugti One *Qazi* for Dera Bugti Tehsil and Phelawagh Sub-Tehsil with headquarters at Dera Bugti.
6. Sui One *Qazi* for Sui Tehsil with headquarters at Sui.

COMMENTARY

In the Provincially Administrated Tribal Area of Balochistan the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976 has been made applicable as regards adjudication of litigants. Article 247 of the Constitution of Islamic Republic of Pakistan, 1973 relates about administration of Tribal Areas, and sub-article (2) thereof envisage that the President of Pakistan may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his function under this Article, comply with such directions. Although the Civil Disputes (*Shariat* Application) Regulation, 1976 state prior approval of the President having been obtained, but despite efforts could not find out any other separate document related therewith also with a view to locate and ascertain the specific Number of the Regulation. However, purporting in exercise of the powers conferred on it by para 6 of the Regulation, the Government of Balochistan has framed the rules called the Balochistan Civil Disputes (*Shariat* Application) Rules, 1977. Under the same para the Balochistan *Qazis* and Members, *Majlis-e-Shoora* (Appointment and Conditions of Service) Rules, 1980 have been promulgated. So as to have glance on the Regulation; the preamble thereof envisages a Regulation to provide for the adjudication of certain civil disputes in the Tribal Areas of Balochistan according to Muslim (*Shariat*) Law. The Provincial Government appointed the day of 18th February, 1977, by virtue of Notification No. S-59/77-sol (S&GAD), when the said Reg-

ulation came into force in all Tribal Areas with immediate effect. Para 2 of the Regulation is an important feature which states that notwithstanding anything to the contrary contained in any law for the time being in force or any custom or usage, all disputes of a civil nature, where the parties are Muslims, shall be decided in accordance with Muslim (*Shariat*) Law. Anyhow, proviso clause states that nothing so contained shall apply to cases by or against the Federal Government or a Provincial Government or a Local authority or a Public Corporation or a public servant acting in the discharge of his duties. Further that if all the parties to a dispute or any of whom are a non-Muslim agree to being adjudicated upon under this Regulation, be adjudication upon accordingly. According to para 3 thereof Code of Civil Procedure, 1908, the Evidence Act, 1872 (since repealed, and re-enacted as *Qanoon-e-Shahadat* Order, 1984) and the Limitation Act, 1908 to apply to the proceeding. The Court of *Qazi* to be the Court of original Jurisdiction in disputes wherein the subject matter in amount or value does not exceed fifty thousand rupees, and the *Majlis-e-Shura* to consist of not less than two members, in all other cases when the valuation exceeds, which Court shall be also the first appellate Court and deemed to be a District Court within the meaning of the Code. An appeal from a judgement, decree or order of the *Majlis-e-Shura* to lie to the High Court. The Provincial Government empowered to constitute such number of Courts of *Qazi* and *Majlis-e-Shura* as it may deem appropriate and to specify the class of disputes wherein the concerned Court shall have jurisdiction, and also their respective territorial limits, as may be determined. In the case of a difference of opinion between the members of a *Majlis-e-Shura* when exercising its original jurisdiction the opinion of the Chairman is to prevail, and when appellate jurisdiction the decision of the Court of *Qazi* shall be deemed to be the rule.

The Balochistan Civil Disputes (*Shariat* Application) Rules, 1977 provide as regards Qualification of the *Qazis* and the appointments and the establishment of *Majlis-e-Shura*. The other

provisions thereof relate about Court-fees, procedure and timings. Schedule appended therewith specify the places where the Provincial Government may make appointments. Therein sixteen such places and their respective headquarters have been shown. Rule 6 of the said Rules, 1977 relate about COURT-FEES. It states that Court-fee and process-fee by the Court of Qazi, *Majlis-e-Shura* shall be levied according to the provisions of *Dastur-ul-Amal Diwani* of Kalat. Related therewith the view expressed by the High Court of Balochistan reported in PLD 1986 Quetta 179 may be referred wherein held that Court-fee in special areas of Kalat would now be regulated by provisions of Court Fees Act, 1870 instead of *Dastoor-ul-Amal Diwani*, Kalat.

The Balochistan Qazis and Member, *Majlis-e-Shoora* Service Rules, 2002 provide constitution and composition of service, the appointing authority, method of recruitment and the requisite qualifications of the incumbents and their authority.

The *Dastoor-ul-Amal Diwani Riasat Kalat*, 1952 and the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976 assert to apply *Shariat* Law. Under the *Dastoor* the Court of Qazi has original unlimited pecuniary jurisdiction irrespective of valuation, whereas under the Regulation the same not to exceed fifty thousand rupees. Section 22 of the *Dastoor* and para 2 of the Regulation are statute in *pari materia* and envisage that *Shariat* to be the Law as far Muslims are concerned. However, judgement of different Court enunciate the law in terms that this exercise of powers is also subject to different other laws including also Central Laws (Statute Reform) Ordinance, 1960. Both the said Laws are substantive and procedural in nature and are applied in different areas of the Province of Balochistan. So far *Dastoor* is concerned; no separate Rules or Service Rules have been framed thereunder. Be that as it may, it is different proposition whether it is requirement of law or otherwise.

In case entitled: Amir Jan and others versus Commissioner, Quetta Division and others, High Court of Balochistan held:

There is, however, one more aspect of the case which has required our minute attention. During the pendency of the constitutional petition a Regulation was promulgated on 12-5-1976 by the Government of Balochistan with the prior approval of the President. This Regulation is known as W.P. Muslim Personal Law (*Shariat* Application Act) (Extension to the Tribal Areas of Balochistan) Regulation, 1976 (hereinafter referred as the "Regulation of 1976"). This Regulation applies to the Tribal Areas of Balochistan and the area where the property of subsection (1) of section 2 of this Regulation all disputes of civil nature where the parties are Muslims have to be decided according to Muslim (*Shariat*) Law by the Court of *Qazi* or *Majlis-e-Shura* constituted under section 4 and having pecuniary jurisdiction to try the same. By section 7 of Regulation all suits and appeals pending in District Courts or civil Courts subordinate thereto or any tribunal involving a dispute which under this Regulation is triable by a Court of *Qazi* or *Majlis-e-Shura* shall be transferred to the Court of *Qazi* or *Majlis-e-Shura*, as the case may be having jurisdiction in the matter under the Regulation and upon such transfer shall be deemed to have been instituted therein and shall be heard and determined accordingly. It shall thus be seen that section 7 of the Regulation has repealed by implication the provisions of section 8 of the FCR and the matters which were formerly triable under section 8 of the FCR are now to be heard and determined by the Court of *Qazi* or, as the case may be, the *Majlis-e-Shura* having jurisdiction in the matter under the Regulation of 1976. It is also noteworthy that subsequently by section 3 of the Criminal Law (Special Provisions) (Application to the Provincially Administered Tribal Areas of Balochistan) Regulation, 1979 (Regulation II of 1979) the whole of the FCR has been repealed in its application to the Provincially Administered Tribal Areas of Balochistan with effect from 16-10-1979.

We should consequently accept this petition, set aside the impugned orders of the respondents No. 1 and 2 and would

remand the case (application dated 17-7-1968 submitted by petitioners to D.C. Loralai) to the Court of Qazi, Bori-Sanjavi at Loralai, having jurisdiction under the Regulation of 1976, with the direction to adjudicate upon the matter in accordance with the provisions of the said Regulation. There shall be no order as to costs.

(PLD 1987 QUETTA 55)

The provisions of FCR remained operative in tribal areas till the year 1979 when the matter came up before the *Shariat* Bench of Balochistan High Court, as it was then constituted, in a case titled: Maulvi Muhammad Ishque Khosti versus Government of Balochistan.

"JUDGEMENT

As per ZAKAULLAH LODHI, J.— This application filed under Article 203-B of the Constitution of Islamic Republic of Pakistan, 1973 assails the validity of Frontier Crimes Regulation, 1901 (hereinafter referred to as the "F.C.R." on the ground that it was repugnant to the Injunctions of Islam as laid down in the Holy Quran and the *Sunnah* of the Holy Prophet (peace be upon him). _____ We would be dealing with these reports and decisions at suitable length towards the end of the Judgement. Presently the position is that with the enforcement of Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976 in the entire tribal belt of the Province, all civil cases are now triable in accordance with "*Shariat-e-Islam*" whereas, in the left over criminal field also it has recently given way to the laws pertaining to *Haddood*; as such, its scope stands greatly shrunk. This is as for as the precise background of this law was concerned. We shall now proceed to examine its repugnance, if any, with the Injunctions of Islam in the light of the contention raised before us on behalf of the applicant. _____. It is apparent that some of the Baloch and Pathans to whom F.C.R.

applies have been classified as a separate and distinct class of people from amongst the Pakistanis and subjected to this highly arbitrary legal system. Thus F.C.R. being patently opposed to the injunctions of Islam is a bad law and consequently liable to be struck down. ----- Accordingly in the light of above it shall be seen that F.C.R. was opposed not only to the injunctions of Islam as enshrined in Holy Book and the *Sunnah* of the Holy Prophet (peace be upon him) but was also repugnant to Fundamental Rights guaranteed by various Constitutions in Pakistan which being in consonance with Islam violate its principles. Beside Pakistan which being in consonance with Islam violate its principles. Beside this they are also responsible for peoples backwardness to a very greater extent. ----- We have already observed above that F.C.R. was strange mixture of interdependent substantive and procedural provisions and owed its very existence to sections 8 and 11 which are substantive provisions in their nature, hence once those provisions are held to be violative of the injunctions of the Holy Quran and the *Sunnah* of the Holy Prophet (peace be upon him) entire law is bound to fall as in the framework of F.C.R. there is no scope of saving any procedural provision and allow the remaining provisions to be erased form the scene."

(PLD 1979 Quetta 217)

Soon after the pronouncement of this judgement Ordinance II of 1968 was made applicable to Provincially Administered Tribal Areas (PATA) of the Balochistan vide Criminal Law (Special Provisions) (Application to the Provincially Administered Tribal Areas of Balochistan) Regulation, 1979.



NOTIFICATIONS ISSUED FROM TIME TO TIME
GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 3rd July, 1988.

NOTIFICATION

No. Legis.6-63/Law/80-IV (3). In supersession of this Department's notification of even number, dated 2nd November, 1987, and in exercise of powers conferred by sub-section (2) of section 5 of the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976, the Government of Balochistan is pleased to constitute the following Courts of *Majlis-e-Shoora* for Civil Disputes of Chagai, Loralai, Dera Bugti Agency, and Sibi to exercise jurisdiction under the said Regulation.

2. The Government of Balochistan is further pleased to determine territorial limits of the Civil Districts of Chagai, Loralai, Jafferabad and Sibi and direct that the *Majlis-e-Shoora*, Kalat, Loralai, Jaffarabad within the territorial limits of Chagai, Loralai, Jaffarabad and Sibi Civil District in pursuance of the said Regulation as follows:-

Name of Civil Districts.	Name of <i>Majlis-e-Shoora</i> exercising Civil original/ appellate powers.	Territorial limits.
Chagai..	<i>Majlis-e-Shoora</i> , Kalat with headquarters at Mastung.	Dalbandin Tehsil of revenue District of Chagai.
Loralai	<i>Majlis-e-Shoora</i> , Loralai with headquarters at Loralai.	1. Revenue District of Loralai except Duki Tehsil. 2. Revenue District of Zhob.
Jaffarabad.	<i>Majlis-e-Shoora</i> ,	Revenue District of

Jaffarabad with
headquarters at Dera
Allah Yar.

Dera Bugti Agency.

Sibi.

Majlis-e-Shoora, Sibi
with headquarters at
Sibi.

Revenue District of
Kohlu Agency.

3. The Government of Balochistan is further pleased to appoint the District Judges of Kalat, Loralai, Jaffarabad, and Sibi to be Chairman of the Court of *Majlis-e-Shoora*, Kalat, Loralai, Jaffarabad and Sibi respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY,
GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 20th September, 1988.

NOTIFICATION

No. Legis.6-63/Law/80-IV (3). In supersession of this Department's notification of even number, dated 3rd July, 1988, and in exercise of powers conferred by sub-section (2) of section 5 of the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976, the Government of Balochistan is pleased to constitute the following Courts of *Majlis-e-Shoora* for Civil

Disputes of Chagai, Loralai, Zhob, Dera Bugti Agency and Kohlu Agency to exercise jurisdiction under the said Regulation.

2. The Government of Balochistan is further pleased to determine territorial limits of the Civil Districts of Chagai, Loralai, Zhob, Dera Bugti and Kohlu Agency and direct that the *Majlis-e-Shoora*, Kalat, Loralai, Jaffarabad and Sibi shall exercise jurisdiction within the within the territorial limits of Chagai, Loralai, Zhob, Dera Bugti Agency and Kohlu Agency in pursuance of the said Regulation as follows :-

Name of Civil Districts.	Name of <i>Majlis-e-Shoora</i> exercising Civil original/ appellate powers.	Territorial limits.
Chagai.	<i>Majlis-e-Shoora</i> , Kalat with headquarters at Mastung.	Dalbandin Tehsil of revenue District of Chagai.
Loralai	<i>Majlis-e-Shoora</i> , Loralai with headquarters at Loralai.	1. Revenue District of Loralai except Duki Tehsil. 2. Revenue District of Zhob.
Jaffarabad.	<i>Majlis-e-Shoora</i> , Jaffarabad with headquarters at Dera Allah Yar.	Revenue District of Dera Bugti Agency.
Sibi.	<i>Majlis-e-Shoora</i> , Sibi with headquarters at Sibi.	Revenue District of Kohlu Agency.

3. The Government of Balochistan is further pleased to appoint the District Judges of Kalat, Loralai, Jaffarabad and Sibi to be Chairman of the Court of *Majlis-e-Shoora*, Kalat, Loralai, Jaffarabad and Sibi respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW



GOVERNMENT OF BALOCHISTAN
LAW DEPARTMENT

Dated Quetta, the 5th March, 1994.

NOTIFICATION

No. Legis.6-63/Law/80-IV(2)/731. In supersession of this Department's notification No. Legis. 6-63/Law/80-IV(3), dated 20th September, 1988, and in exercise of powers conferred by section 5 of the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976, the Government of Balochistan is pleased to constitute the Courts of *Majlis-e-Shoora* at Kalat, Loralai, Jaffarabad at Dera Allah Yar and Sibi for Civil Disputes of Chagai, Loralai, Zhob, Killa Saifullah, Musa Khel, Barkhan, Dera Bugti Agency and Kohlu Agency to exercise jurisdiction under the said Regulation.

2. The Government of Balochistan is further pleased to alter territorial limits of the Civil Districts of Chagai, Loralai, Zhob and direct that the *Majlis-e-Shoora*, Kalat, Loralai, Jaffarabad and Sibi shall exercise jurisdiction with the territorial limits of Chagai, Loralai, Zhob, Killa Saifullah, Musa Khel, Barkhan, Dera Bugti Agency and Kohlu Agency Civil District in pursuance of the said Regulation as indicated below :-

Name of Civil Districts.	Name of <i>Majlis-e-Shoora</i> exercising Civil Original/ appellate powers.	Territorial Limits.
Chagai.	<i>Majlis-e-Shoora</i> , Kalat with headquarters at Mastung.	Dalbandin Tehsil of revenue District of Chagai.
Loralai	<i>Majlis-e-Shoora</i> , Loralai with headquarters at Loralai.	<ol style="list-style-type: none"> 1. Revenue District of Loralai except Duki Tehsil. 2. Revenue District of Zhob. 3. Revenue District of Killa Saifullah. 4. Revenue District of Musa Khel. 5. Revenue District of Barkhan.
Jaffarabad.	<i>Majlis-e-Shoora</i> , Jaffarabad with headquarters at Dera Allah Yar.	Revenue District of Dera Bugti Agency.
Sibi.	<i>Majlis-e-Shoora</i> , Sibi with headquarters at Sibi.	Revenue District of Kohlu Agency.

3. The Government of Balochistan is further pleased to appoint the District Judges of Kalat, Loralai, Jaffarabad and Sibi to be the Chairman of the Court of *Majlis-e-Shoora*, Kalat, Loralai, Jaffarabad and Sibi respectively.

BY ORDER OF
GOVERNOR BALOCHISTAN

SECRETARY LAW
GOVERNMENT OF BALOCHISTAN

CHAPTER 19

THE BALUCHISTAN SYSTEM OF SARDARI (ABOLITION) ORDINANCE, 1978

[BALUCHISTAN ACT XII OF 1978]

[11th April 1978]

An Act to provide for the abolition of system of Sardari and for matters ancillary thereto.

WHEREAS the system of Sardari, prevalent in certain parts of Balochistan, is the worst remnant of the oppressive feudal and tribal system which, being derogatory to human dignity and freedom, is repugnant to the spirit of democracy and equality as enunciated by Islam and enshrined in the Constitution of the Islamic Republic of Pakistan and opposed to the economic advancement of the people;

AND WHEREAS the Governor of Balochistan is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (CMLA Order No. 1 of 1977) and exercise of

all powers enabling him in that behalf, the Governor of Balochistan is pleased to make and promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Balochistan System of Sardari (Abolition) Ordinance, 1978.

(2) It extends to the whole of Province of Balochistan.

(3) It shall come into force at once and shall be deemed to have taken effect from 15th day of March, 1978.

2. In this Ordinance, unless there is anything repugnant in the subject or context, "Sardar" means a person who is recognised as a Sardar, Tumandar or Chief of the tribe or who, under any custom or usage or otherwise, exercises any of the powers or enjoys any of the privileges as mentioned in Section 3 of this Ordinance.

3. Notwithstanding any custom or usage, as from the commencement of Ordinance, the system of Sardari shall stand abolished and no person shall:-

- (a) exercise any judicial powers not expressly conferred on him by or under any law for the time being in force; or
- (b) maintain any private jail; or
- (c) save as provided in the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force, arrest or keep in custody any person; or
- (d) take free labour from any person or compel any person to labour against his will; or
- (e) demand or receive, by reason of being or having been a Sardar, any tribute or any other payment, whether in cash or in kind.

4. Notwithstanding anything contained in the Ordinance, Government may grant to any person such individual service allowance as it may deem fit and

require such person to discharge such duties and perform such functions as Government may from time to time, direct.

5. Whoever contravenes any provision of this Ordinance shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both.

COMMENTARY

The tribal system presupposes the existence of a Sardar who is treated and taken as head of the tribe and occasionally of a clan. In tribal matters and disputes the Sardar is assisted by a nobleman which is a kind of advisory body and decisions are arrived at by majority view which again is not binding upon a Sardar who can formulate his independent view and conclusions. These noblemen are often styled as *Wadera* and *Takari*, the Sardar himself in few instances as *Nawab* and *Tumandar*. This designated institution has been hereditary as mostly the eldest son occupying the chair, and in rare cases a Sardar choser or elected. In the eventualities when a Sardar not survived by a heir apparent or deposed a next of kin also succeeded functioning as Sardar. The British kept this institution as active and working which also determined tribal liability and responsibility with respect to tribesmen and locality. When the Frontier Crimes Regulation, 1901 was then enforce these tribal Sardars had a vital role to play and majority of them were participants of *Shahi Jirga* at Sibi which has now been changed into annual Cattle Show.

During Ayub Khan era on account of political affiliations with opposition and causing resistance or non-co operative attitude some of the leading Sardars were deposed and imprisoned and new inducted which move almost in all cases repelled by its own tribal men and a few even killed in

retaliation. The impact of this system had been observed throughout which also dominated political sphere and influence. During Z.A. Bhutto's regime certain Sardars did not co-operate and not sided with him in political affairs and activities which then taken as cause of annoyance and Mr. Bhutto intended to get rid of unwanted and with that intentions declared abolishment of Sardari system on 10 May 1976 in a public gathering at Quetta. So as to afford judicial recognition the System of Sardari (Abolition) Ordinance, 1976 (No. XV of 1976) promulgated which subsequently shaped into Act of the Parliament under the nomenclature of System of Sardari (Abolition) Act, 1976. Section 4 thereof, however, provided saving clause wherein envisaged that nothing in this Act shall be deemed to prevent the Government from granting to any person such individual service allowance as it may deem fit and requiring such person to discharge such duties and perform such functions as Government may from time to time direct. This saving clause was taken as an exception to the general rule as least effecting and concerning some Sardars who supported his government and policy. This Act though may exist in statute books but could not serve as useful and beneficial to the general public rather those Sardars achieved and held public offices which gave them extra strength in managing the tribal affairs according to their own whims and discretion including victimisation of undesired and troublemakers within the tribe.



CHAPTER 20

THE SUCCESSION (BALOCHISTAN AMENDMENT) ORDINANCE, 1979

[BALOCHISTAN ORDINANCE I OF 1979]

[28th January 1979]

An Ordinance to amend the Succession Act, 1925 (XXXIX of 1925) in its application to the Province of Balochistan.

WHEREAS it is expedient to amend the Succession Act, 1925, (XXXIX of 1925) for the purpose hereinafter appearing;

AND WHEREAS the Governor is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (CMLA Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the Governor of Balochistan is pleased to make and promulgate the following Ordinance: -

1. (1) This Ordinance may be called the Succession (Balochistan Amendment) Ordinance, 1979.
(2) It shall come into force at once.
2. In clause (bb) of Section 2 of the Succession Act, 1925, after the word 'jurisdiction' the following words shall be added, namely: -
"and shall be deemed to include the Presidents of *Majlis-e-Shoora* in Kalat and Khuzdar Civil Districts."

COMMENTARY

The Preamble of the Succession Act, 1925 (Act No. XXXIX of 1925) provides that it is expedient to consolidate the law applicable to intestate (without leaving any will), and testamentary (when some will has been executed) succession, this law operates for obtaining Succession Certificate, Letter of Administration and Probate etc. Under Section 3 thereof the Government has been bestowed the powers to exempt any race, sect or tribe in the Province from operation of Act. This Act applied to all the religions i.e. Muslims, Hindu, Christians, Sikh, Buddhist, Parsis, as well as Europeans, Indians, Eurasians, Jews and Armenians etc. Kindred or consanguinity is the connection or relation of persons descended is the connection or relation of persons descended from the same stock or common ancestor. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, and so upwards in the direct ascending line, and so downwards in the direct descending line. Every generation constitutes a degree either ascending or descending. A person's father is related to him in the first degree and so likewise his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree and so on. Every person of sound mind, not being a minor, can dispose of his property by will; and the persons who are deaf or dumb or blind are not incapacitated for making will if they are able to know what they do by it. However, no person can make a will while he is in such a state of mind whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing. Will obtained by fraud, coercion or importunity is nullity in the eyes of law. A will may be revoked or altered. It is not necessary that any technical words or terms of art be used in a will, but only that the wordings be such that the intentions of the testator

(the person making the will) can be known therefrom. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are construed with reference to each other. Terminology also plays an effective role such as: children—grandchildren—nephews—nieces—cousins (first cousins or cousins-germane)—second cousins—issue—descendants—expressive or collateral relationship which apply alike to relatives of full and of half-blood, and relationship to a child in the womb who is afterwards born alive. Words expressing relationship denote only legitimate relatives, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative (legitimate). Bequest (conferment of property ownership rights through will) to religious, and charitable institutions and organisations are also permitted under the Act. A testator can bequeath to any person a specific part of his property. In relationship to the management and control of the property whether moveable or immovable, Executors and Administrator can also be appointed.

Under the law of succession, the personal faith, and religion of the deceased is treated as a matter of paramount importance. According to his personal law, legal heirs of the deceased are determined accordingly as the property so left is devolved and distributed among them. Under Hindu law a female member is not entitled for inheritance that is why because on the occasion of her marriage she is duly compensated by way of *Jehaz*; while under Christian law man and woman taken, treated and called as Mr. and Mrs., each one inheriting the other half. Under Islamic law the faith of the deceased also matters i.e. *Sunni* or *Fiqa Jafferia*. Parsis do have their own law of succession, and so the others.

At this juncture the concept and notion of *Aaq* (عاق) require discussion. Usually a news item often appears in the Mass Media, or made known to the public, in terms that such a person has exercised *Aaq* relating to some specific person or

persons, and excess to his property after his death denied to that particular would-be legal heir. This concept of *Aaq* has recognition in other religions but not so under Islamic laws. His property would automatically devolve upon all the legal heirs who under Islamic law are otherwise found entitled and being treated and taken as his legal heirs. Under Islamic law through will property more than one-third of total quantum cannot be alienated, the rest would automatically devolve upon the would-be-heirs. Any person who intends to deprive his would-be legal heirs from succession, the alternate course open to such person is that in his lifetime he can alienate all his property to person or persons of his choice including institutions, charitable organisation etc. then in such kind of cases all his property would stand exhausted, leaving thereby nothing for inheritance or succession of others. *Aaq* is as such a futile attempt.

When a person meet transition i.e. dies leaves behind three type or category of persons:

i) Legal heirs who has/have the right of inheritance, (ii) dependants, who depend on his wage-earning and provider of bread to them which usually include wife, minor children and ageing parents, whereas under the Workmen's Compensation Act, such kind of persons are only entitled for the grant of compensation to them, not proportionally but apportionately, and (iii) mourners and bereaved, who bear the loss with fortitude and pray for the rest of the departed soul in eternal peace and grant of patience to them, which circle might include public-at-large.



CHAPTER 21

THE COURT FEES (BALOCHISTAN AMENDMENT) ORDINANCE, 1980

[BALOCHISTAN ORDINANCE XXI OF 1980]

[9th December, 1980]

An Ordinance to amend the Court Fees Act, 1870 (VII of 1870), in its application to the Province of Balochistan.

WHEREAS it is expedient to amend the Court Fees act, 1870, for the purpose hereinafter appearing;

AND WHEREAS the Governor is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (CMLA Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the Governor of Balochistan is pleased to make and promulgate the following Ordinance: -

1. (1) This Ordinance may be called the Court Fees (Balochistan Amendment) Ordinance, 1980.

(2) It shall come into force at once.

2. Section 35-A of the Court Fees Act, 1870, shall be omitted.

3. Subject to the remission granted by Notification of Law Department of Balochistan Government dated 27th July, 1978 as amended by Notification dated 26th December, 1979, in Schedule I of the Court Fees Act, 1870, for the entries in columns No. 2 and

3 against Article No. 1, the following shall be substituted, namely: -

“Seven and half per centum on the amount or value of the subject matter in dispute subject to a maximum of fifteen thousand rupees.”

COMMENTARY

In all civil suits the plaintiff/ petitioner/ applicant/ appellant is required, and has been made mandatory for him, to pay and make payment of requisite Court-Fee under the Court Fees Act, 1870 (VII of 1870), and the Suit Valuation Act, 1887. In this process Government generates additional revenue. Even the Government is required to make payment of Court-Fee when it becomes and functions as party of the First Part before competent Court of Law, and is not exempt from payment of Court Fee. However, in criminal cases a nominal Court-Fee is charged but in such cases the Government has been declared exempt to pay the Court-Fee. Under the provisions of Code of Civil Procedure, 1908, a pauper is not required and has been exempted to pay the required Court Fee, which kind of suits are termed as Forma Paupers. Further the requirement of law is that the assets of the Paupeirs should not exceed Rs. 5,000/- (Rupees Five Thousands). Regarding payment to the Court Fee stamps are purchased from the Stamp Vendors, which are of required denomination. When heavy or substantial amount of Court Fee (which is no case to exceed Rs. 15,000) can also be purchased from Treasury Office through Challans. While coming across payment of Court Fee difference should also be made in between Court Fee Stamps and Stamps under the Stamps Act, 1899 which are required to be paid under the Transfer of Property Act, and/or in execution of documents relating to agreements (stamps) etc. Stamps are of various kinds such as postal stamps, adhesive stamps, revenue stamps etc.



CHAPTER 22

THE BALOCHISTAN SUBORDINATE JUDICIARY SERVICE LAWS AND PROCEDURE

THE JUDICIAL OFFICERS' PROTECTION ACT, 1850*

ACT NO. XVIII OF 1850

[4th April, 1850]

An Act for the protection of Judicial Officers.

PREAMBLE. FOR the greater protection of Magistrates and others acting judicially; It is enacted as follows: -

NON-LIABILITY TO SUIT OF OFFICERS ACTING JUDICIALLY, FOR OFFICIAL ACTS DONE IN GOOD FAITH, AND OF OFFICERS EXECUTING WARRANTS AND ORDERS. No Judge, Magistrate, Justice of the Peace Collector or other person acting judicially shall be liable to be sued in any civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he

* Short title given by the Short Title Act, 1897 (14 of 1897).

would be bound to execute, if within the jurisdiction of the person issuing the same.*



GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT

Dated Quetta, the 21st August, 1983

NOTIFICATION

No. SOKI(5)7/S&GAD-79. In pursuance of the provision contained in rule 2 (1) (b) of the Balochistan Civil Servants (Efficiency and Discipline) Rules, 1983, the Government of Balochistan is pleased to designate the officer competent to appoint any civil servant to be authority for such servant for the purposes of the said rules.

BY ORDER OF GOVERNOR
BALOCHISTAN

CHIEF SECRETARY
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT

Dated Quetta, the 6th April, 1989

NOTIFICATION

* It has been declared in force., and in Balochistan by the British Balochistan Laws Regulation, 1913 (2 of 1913), section 3.

No. SORI(5)7/S&GAD-86-VOL-V. In pursuance of rule 2 (1) (c) of the Balochistan Civil Servants (Efficiency and Discipline) Rules, 1983, the Government of Balochistan is pleased to designate the Chief Justice of the Balochistan High Court to be the authorised officer in respect of judicial officers in B-17 and above for the purpose of said rules.

BY ORDER OF GOVERNOR
BALOCHISTAN

CHIEF SECRETARY
GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMINISTRATION DEPARTMENT

(REGULATION-I)

Dated Quetta, the 16th, June, 1990

NOTIFICATION

No. SORI(5)7/S&GAD/90. In partial modification of this Department's Notification No. SOR(5)/7/S&GAD-79 dated 21st August, 1983, the Government of Balochistan is pleased to designate the Hon'ble Chief Justice of High Court of Balochistan as "Authority" in respect of (i) District and Sessions Judges (ii) Additional District and Sessions Judge (iii) Member *Majlis-e-Shoora* (iv) Civil Judges (v) *Qazis*, for the purpose of taking disciplinary action under Balochistan Civil Servants (Efficiency and Discipline) Rules, 1983.

* The tyranny of law is the forum prescribed for a Judicial Officer for invoking remedial measures.

2. This Department's Notification No. SORI(5)7/S&GAD/86-Vol-V, dated 6th April, 1989, designation the Chief Justice of the Balochistan High Court as "Authorised Officer" in respect of Judicial Officers in B-17 and above is hereby withdrawn.

BY ORDER OF GOVERNOR
BALOCHISTAN

CHIEF SECRETARY
GOVERNMENT OF BALOCHISTAN



BALOCHISTAN PROVINCIAL ASSEMBLY SECRETARIAT

NOTIFICATION

Dated Quetta, the 30th July, 1989.

No. PAB/LEGIS:III(6)/89. The Balochistan Subordinate Judiciary Service Tribunal Bill, 1989 having been passed by the Provincial Assembly of Balochistan on 8th July, 1989 and assented to by the Governor of Balochistan is hereby published as an Act of the Provincial Assembly.

THE BALOCHISTAN SUBORDINATE JUDICIARY SERVICE
TRIBUNAL ACT, 1989.

(BALOCHISTAN ACT NO. VI OF 1989)

(First published after having received the assent of the Governor of Balochistan in the Balochistan Gazette (Extra Ordinary) dated 30th July, 1989).

AN ACT to provide for the establishment of service Tribunal to exercise jurisdiction in respect of matters relating to the terms and conditions of service of members of subordinate judiciary of the Province of Balochistan.

PREAMBLE. WHEREAS it is expedient to provide for the establishment of Service Tribunal to exercise exclusive jurisdiction regarding the matters relating to the terms and conditions of members of subordinate judiciary of the Province of Balochistan for matters connected therewith or ancillary thereto;

It is hereby enacted as follows: -

1. (1) This act may be called Balochistan Subordinate Judiciary Service Tribunal Act, 1989.

(2) It applies to all members of subordinate judiciary, wherever they may be.

(3) It shall come into force at once.

2: DEFINITION. In this Act, unless there is anything repugnant in the subject or context, -

(a) "Chairman" means the Chairman of the Tribunal.

(b) "Government" means the Government of Balochistan;

(c) "Member" means the Member of the Tribunal;

(d) "Member of subordinate judiciary" includes Qazi, Member *Majlis-e-Shoora*, Civil Judge, Senior Civil Judge, Additional District and Sessions Judges, District and Sessions Judge (Inspection), Presiding Officer Labour Court and District and Sessions Judge; and

(e) "Tribunal" means the Service Tribunal established by this Act, or a Bench thereof.

3. TRIBUNAL. (1) The Government may, by notification in the official Gazette, establish one Service Tribunal in respect of

members of subordinate judiciary for the entire Province of Balochistan.

(2) The Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of members of subordinate judiciary, including disciplinary matters.

(3) The Tribunal shall consist of –

(a) a Chairman being the Chief Justice or Acting Chief Justice of the High Court of Balochistan; and

(b) two Members each of whom is the sitting judge of the High Court of Balochistan.

(4) The Chairman and Members of the Tribunal shall be appointed by the Government.

4. CONSTITUTIONS OF BENCHES. (1) Notwithstanding anything contained in section 3, the Chairman may constitute a Bench consisting of himself or one Member only or two Members without the Chairman or the Chairman and a Member and when so constituted a Bench shall be deemed to be a Tribunal.

(2) If a Bench is unable to arrive at a unanimous decision in an appeal, the matter shall be placed before the Full Tribunal and the decision of the Tribunal shall be expressed in terms of the opinion of the majority:

Provided that if the Chairman or the Member who was not already in the Bench cannot be associated or is unable for any reason to take part in the hearing of the appeal, the decision of the Tribunal shall be expressed in terms of the opinion of the senior Member of the Bench.

(3) The Chairman may, at any stage of hearing of an appeal, withdraw it from the Tribunal and entrust it to a Bench or may withdraw any appeal pending before a Bench and make it over to another Bench or the Tribunal.

5. APPEAL TO TRIBUNAL. Any member of subordinate judiciary aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of

the terms and conditions of his service, may within thirty days of the communication of such order to him or within six months of the establishment of the Tribunal whichever is later prefer an appeal to the Tribunal:

Provided that—

- (a) Where an appeal, review of representation to a departmental authority is provided under the Balochistan Civil servants Act, 1974, or any rules against any such orders no appeal shall lie to a Tribunal unless the aggrieved person has preferred an appeal or application for review representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was so preferred;
- (b) No appeal shall lie to a Tribunal against an order or decision of a departmental authority determining—
 - (i) the fitness or otherwise a person to be appointed to or hold a particular post or to be promoted to a higher post; or
 - (ii) the quantum of departmental punishment or penalty imposed on a member of subordinate judiciary as a result of departmental inquiry, except where the penalty imposed is dismissal from service, removal from service or compulsory retirement.

EXPLANATION – In this section 'departmental authority' means the authority, other than a Tribunal which is competent to make an order in respect of any of the terms and conditions of members of subordinate judiciary

6. POWERS OF TRIBUNAL. (1) The Tribunal, may on appeal, confirm, set aside, vary or modify the order appealed against.

(2) The Tribunal shall, for the purpose of deciding any appeal, be deemed to be a civil court and shall have the same powers as are vested in such court under the code of Civil Procedure, 1908 (Act V of 1908), including the powers of –

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents; and
- (c) issuing commission for the examination of witnesses and documents.

(3) No court-fee shall be payable for preferring an appeal to, or filing, exhibiting or recording any document in, or obtaining any document from a Tribunal.

7. LIMITATION. The provisions of section 5 and 12 of Limitation Act, 1908 (IX of 1908), shall apply to appeals under this Act.

8. TRANSFER OF APPEAL. All appeals pending before the Tribunal established under the Balochistan Service Tribunal Act, 1974 (V of 1974), relating to members of subordinate judiciary shall stand transferred to the Tribunal established under this Act.

9. RULES. The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

10. REPEAL. The Balochistan Subordinate Judiciary Service Tribunal Ordinance, 1989 (V of 1989), is hereby repealed.

Secretary,
Provincial Assembly of Balochistan



BALUCHISTAN PROVINCIAL ASSEMBLY SECRETARIAT

NOTIFICATION

Dated Quetta, the 30th July, 1989.

No. PAB/LEGIS:III(7)/89. The Balochistan Service Tribunal (Amendment) Bill, 1989 having been passed by the Provincial Assembly of Balochistan on 8th July, 1989 and

assented to by the Governor of Balochistan is hereby published as an Act of the provincial Assembly.

THE BALOCHISTAN SERVICE TRIBUNALS
(AMENDMENT) ACT, 1989.

(BALOCHISTAN ACT NO. VII OF 1989)

(First published after having received the assent of the Governor of Balochistan in the Balochistan Gazette (Extra Ordinary) dated 30th July, 1989).

AN ACT to further to amend the Balochistan Service Tribunals Act, 1974 (V of 1974).

PREAMBLE. WHEREAS it is expedient further to amend the Balochistan Service Tribunals Act, 1974, for the purpose hereinafter appearing;

It is hereby enacted as follows:-

SHORT TITLE AND COMMENCEMENT. 1. (1) This Act may be called the Balochistan Service Tribunal (Amendment) Act, 1989.

(2) It shall come into force at once and shall be deemed to have taken effect on 20th June, 1989.

AMENDMENT OF SECTION 2 OF ACT V OF 1974. 2. In the Balochistan Service Tribunal Act, 1974, for clause (a) of section 2, the following shall be substituted, namely:-

“(a) “civil servant” means a person who is or has been civil servant within the meaning of Balochistan Civil Servants Act, 1974 (IX of 1974), but does not include a person who is or has been a member of the subordinate judiciary, for the purposes of this Act.

EXPLANATION.- The member of the subordinate judiciary includes Qazi, Member *Majlis-e-Shoora*, Civil Judge, Senior Civil Judge, Additional District and Sessions Judge, District and Sessions

Judge (Inspection), Presiding Officer Labour Court and District and Sessions Judge."

REPEAL 3. The Balochistan Service Tribunal (Amendment) Ordinance, 1989 (VI of 198) is hereby repealed.

Secretary,
Provincial Assembly of Balochistan



GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMN: DEPARTMENT

(REGULATION-II)

Dated Quetta the 6th December, 1990

NOTIFICATION

No. SOR-II(22)/23/S&GAD.2184-2270. In exercise of the Power conferred by section 9 of the Balochistan Subordinate Judiciary Service Tribunal Act, 1989 (VI of 1989), the Government of Balochistan is pleased to make the following rules namely: -

SHORT TITLE AND COMMENCEMENT

1. (1) These rules may be called the Balochistan Subordinate Judiciary Service Tribunal Rules, 1990.
(2) They shall come into force at once.

2. The words and expressions used but not defined in these rules shall have the same meanings as assigned to them in the Balochistan Subordinate Judiciary Service Tribunal Act, 1989.

3. CONSTITUTION OF BENCH. (1) The Chairman of the Tribunal may constitute a Bench consisting of himself or one Member only or two Members without the Chairman or the Chairman and a Member and when so constituted a Bench shall be deemed to be a Tribunal.

(2) If a Bench is unable to arrive at a unanimous decision in an appeal, the matter shall be placed before the Full Tribunal and the decision of the Tribunal shall be expressed in terms of the opinion of the majority:

Provided that if the Chairman or the Member who was not already on the Bench cannot be associated or is unable for any reason to take part in the hearing of the appeal, the decision of the Tribunal shall be expressed in terms of the opinion of the senior Member of the Bench.

(3) The Chairman may, at any stage of hearing of an appeal, withdraw it from the Tribunal and entrust it to a Bench or may withdraw any appeal pending before a Bench and make it over to another Bench or to the Tribunal.

4. PROCEDURE. The Tribunal and its benches shall conduct business in accordance with the following procedure and every memorandum of appeal shall:-

- (a) be legibly, correctly and concisely hand-written, type-written or printed.
- (b) Be divided into paragraphs numbered consecutively each paragraph containing as nearly as may be a separate allegation;
- (c) Contain full name, official designation and place of posting of each party;
- (d) Clearly set out the relief claimed;
- (e) Be accompanied by—
 - (i) a copy of the order of the competent authority against;

- (ii) copies of rules, orders and other documents on which the appellant proposes to reply in support of his claim;
- (f) be signed by the appellant; and
- (g) be accompanied by three spare copies of the memorandum of appeal and as many other copies; thereof duly initialled by the appellant and accompanied by the documents referred to in sub-paragraph (c) as there are respondents.

(2) An appeal may be sent to the Registrar by a registered post acknowledgement, due or it may be presented to the Registrar during the working hours either by the appellant personally or through his advocate.

(3) In every memorandum of appeal, the competent authority shall be shown as the first respondent and thereafter all other parties to the dispute shall be shown as respondents.

(4) The Registrar shall scrutinise every Memorandum of appeal received by post or presented to him and shall—

- (i) if it be in order and drawn up in accordance with the provisions of paragraph I, caused it to be registered in the register of appeals to be maintained in the usual form in his office, and with the approval of the Chairman shall fix a date for its preliminary hearing before a Bench or the Tribunal, as the case may be; or
- (ii) if it is not drawn up in accordance with the provisions of paragraph, I, return it to the appellant for amendment, within a time to be specified in an order to be recorded by him or the memorandum of appeal, pointing out the deficiency.

If the memorandum of appeal is not resubmitted within the period specified under clause (ii) of sub paragraph (I) of paragraph (4) the appeal shall be dismissed.

5. DISMISSAL OF APPEAL. (1) This Bench or the Tribunal, as the case may be, after hearing the appellant or his Advocate on

the date fixed for preliminary hearing or on such subsequent dates to which such hearing may be adjourned, may dismiss the appeal in limine.

(2) If the appeal is not dismissed in limine, notice of admission of appeal and the day fixed for its regular hearing shall be served on the appellant, the respondents and such other persons as the Tribunal may deem proper.

6. NOTICE. (1) A notice under sub-paragraph (2) of paragraph 1 shall be in such form as may be approved by the Tribunal and may be served by registered post or in any other manner including publication in one or more daily newspapers as the Bench admitting the appeal or the Tribunal may direct; provided that the notice is directed to be served by publication in the newspapers it shall not be issued until the costs of its publication are deposited by the appellant.

(2) The notice to the respondent shall be accompanied by a copy of memorandum of appeal and copies of other documents referred to in sub paragraph (c) of the paragraph 1.

(3) Service of notice in accordance with the provisions of this paragraph shall be deemed to be due notice and it shall not be necessary to prove that a party has actually received the notice.

7. OBJECTIONS. (1) In response to the notice served under rule 5, the respondent may send his objection to the appeal by registered post acknowledgement due to Registrar or deliver the same to him either personally or through his Advocate on or before date fixed for hearing of the appeal.

(2) The objections shall be legibly and concisely handwritten, type written or printed, shall be signed by the respondent shall be accompanied by a copy of the order on other document on which the respondent wishes to rely in support of his objection.

(3) The written objection shall be accompanied by four spare copies thereof complete in all respects and containing copies of the order and documents referred in sub-paragraph (2).

Three of those copies shall be supplied for the use of the Tribunal and the fourth copy for the appellant or his Advocate.

(4) In case objections are not received or delivered within the time allowed under sub-rule (1), the respondent may be proceeded against ex-parte.

8. **AFFIDAVITS.** (1) Questions arising for determination by a Tribunal shall be decided ordinarily upon affidavits and documents proved by affidavits but the Tribunal may direct that such questions, as it may consider necessary, be decided on such other evidence and in sub manner as it may deem fit.

(2) The party affected by an affidavit may be permitted by the Tribunal to cross-examine the deponent with reference to the statements in the affidavit.

9. **SUMMONS OF WITNESS.** (1) An application for summoning witnesses before the Tribunal shall be made, as soon as possible, after the issue of notice of appeal under rule 4, if shall state:

- (a) the names, designation, and address of the witnesses to be summoned;
- (b) a brief resume of the evidence which each witness as expected to give; and
- (c) a brief description of the document to the summoned and name and location the office in which such document is expected to be.

(2) If the Tribunal is of the opinion that the evidence of any witness specified in the list of witnesses given under sub-rule (1) may be of material assistance in the disposal of an appeal before it, it shall direct him to be summoned on a date to be fixed by the Tribunal and direct that the daily allowance and travelling charges of such witness at the rate which would have been allowed by the High Court if it had summoned him should be deposited by the person calling him, within seven days of the date of the order.

(3) If a person applying for the summoning of a witness fails to deposit the requisite costs of the witness within the period specified in sub-rule (2) or within any extension thereof

that may be granted by the Tribunal the application on for summoning of witness, so far as it relates to such witness shall be deemed to have been rejected.

(4) If the Tribunal is of the opinion that the evidence of any witness is necessary for the disposal of an appeal before, it, it may direct him to be summoned.

(5) Where a Tribunal summons a witness under the provision of sub-paragraph (4); and

(a) if such witness is a Government Servant his travelling and daily allowance (if any) shall be borne by Government; and

(b) if the witness is not a Government Servant his travelling allowance and daily allowance shall be borne by such parties and to such extent, as may be determined by the Tribunal.

10. PROCESS. (1) Process for service on witnesses of high rank shall be sent in the form of a letter and acknowledgement received—

(2) Except in urgent cases or as otherwise ordered by the Tribunal, a summon requiring a public officer to give evidence or to produce a document shall be served through the head of his office.

11. LIST OF CASES. (1) A daily cause list shall be prepared under the orders of the Registrar, which shall be affixed on the notice board of the court-room of the Tribunal.

(2) Except as otherwise directed by the Tribunal cases will be sent down in the Cause List in the order of the date of admission.

12. EXAMINATION WITNESSES. (1) Evidence of a witness examined by the Tribunal shall be taken down under the superintendence of the Tribunal ordinarily in the form of a narrative and shall be signed by the members of the Tribunal and shall form part of the records.

(2) The parties or their Advocate may suggest any question to the Tribunal and the Tribunal may put such, besides any other question to the witness.

(3) The Tribunal may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

(4) The Tribunal may close the evidence of any party if there is inordinate delay or expense involved in its production, provided that the interest of justice so permits.

13. EX-PARTE PROCEEDINGS AND DISMISSAL OF APPEALS. (1) If on the date fixed for hearing of appeal or on a subsequent date to which hearing may be adjourned the respondent of any one or more of the respondents, in case there are more than one respondents or his/their Advocate, are not present before the Tribunal, the Tribunal may hear the appeal ex-parte against all or any of the respondents.

(2) If on the date fixed for hearing of appeal or on any subsequent date to which the hearing may be adjourned, the appellant or his Advocate is not present before the Tribunal, the Tribunal may dismiss the appeal or, if it thinks fit, may proceed to hear the other party and decide the same.

(3) Where an appeal has been dismissed under sub-rule (1) or the ex-parte proceedings have been taken under sub-rule (2) the Tribunal may on such order as to costs, as it may deem fit restore the appeal or set aside the ex-parte order as the case may be, or allow the defaulting party to rejoin the proceedings.

14. SUPPLY OF COPY. A copy of every order of final adjudication on an appeal shall be furnished by the Tribunal, free of cost, to the competent authority concerned.

15. CORRECTION OF ERRORS. Clerical or arithmetical mistakes in an order of final adjudication, arising therein from any accidental slip or Commission, may, at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.

Provided that where an application is made by a party, it shall be duly supported by an affidavit.

16. PROCEDURE FOR INSPECTION OF RECORDS. The provisions contained in the High Court Rules and Orders in regard to copies and Inspection of record shall mutatis mutandis, and to the extent practicable, apply to the proceedings before a Tribunal.

17. ENGAGEMENT OF A COUNSEL BY A TRIBUNAL. If a Member of subordinate judiciary is un-represented before a Tribunal and cannot afford to engage a counsel, the Tribunal may make arrangements to employ a counsel at Government expenses.

BY ORDER OF
GOVERNOR BALOCHISTAN

CHIEF SECRETARY
GOVERNMENT OF BALOCHISTAN



IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

No. 46-47/86-RHC/96

Dated the 19th March, 1996.

NOTIFICATION

The Hon'ble Chief Justice, High Court of Balochistan-cum-Chairman, Balochistan Subordinate Judiciary Service Tribunal is pleased to appoint/designate the Secretary to Chief Justice as Registrar of the Balochistan Subordinate Judiciary Service Tribunal, for receiving/scrutinising and entertaining of Appeals filed by any of the Judicial Officers.

BY ORDER OF
CHIEF JUSTICE-CUM-CHAIRMAN
BALOCHISTAN SUBORDINATE JUDICIARY
SERVICE TRIBUNAL

REGISTRAR



GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMN: DEPARTMENT
(REGULATION-I)

Dated Quetta, the 20th June, 1997

NOTIFICATION

No. SORI(5)7/S&GAD-97/3045-3175. In exercise of the powers conferred by Section 25 of the Balochistan Civil servants Act, 1974 (IX of 1974), the Government of Balochistan is pleased to amend the Balochistan Civil Servants (Efficiency and Discipline) Rules, 1992, with immediate effect namely: -

1.

2.
 3. For the existing schedule appended to the Rules the following shall be substituted:-

SCHEDULE
See rule 2(2) and 2(c)

S. No.	Category of Civil Servant	Author-ity	Authorised Officer
1.	2.	3.	4.
1.	Civil Servants belonging to Judicial Services in	Chief Justice	A Judge of the High Court to be nominated by the Chief Justice.
	(a) B-17 and above.		
	(b) B-16 and below serving in the High Court	Registrar High Court	Additional Registrar High Court.
	(c) B-16 and below serving in subordinate Courts	District and Session Judge	Additional District and Sessions Judge or Civil Judge to be nominated by the District and Session Judge.

2.

BY ORDER OF GOVERNOR
 BALOCHISTAN

CHIEF SECRETARY
 GOVERNMENT OF BALOCHISTAN



GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMN: DEPARTMENT
(SECTION-II)

Dated Quetta, 23rd October 2002.

NOTIFICATION

No. S-II-3(52)/2002-S&GAD: In exercise of powers conferred by Section-3(4) of the Balochistan Subordinate Judiciary Service Tribunal Act, 1989, the Government of Balochistan is pleased to re-constitute the Balochistan Subordinate Judiciary Service Tribunal follows:

1. Mr. Justice Raja Fayyaz Ahmad,
Chief Justice, High Court
Balochistan Chairman
2. Mr. Justice Akhtar Zaman
Malghani,
Judge, High Court Balochistan Member
3. Mr. Justice Muhammad Nadir
Khan,
Judge, High Court Balochistan Member

PERVAIZ SALEEM
CHIEF SECRETARY



IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

No. 561/83/RHC/2002 Dated Quetta the 28th October, 2002

NOTIFICATION

In exercise of powers conferred by sub-section (1) of Section 4 of the Balochistan Subordinate Judiciary Service

Tribunal Act, 1989 read with Rule 3(I) of the Balochistan Subordinate Judiciary Service Tribunal Rules, 1990, the Hon'ble Chief Justice, High Court of Balochistan-cum-Chairman, Balochistan Subordinate Judiciary Tribunal is pleased to constitute a Bench comprising Mr. Justice Akhtar Zaman Malghani and Mr. Justice Muhammad Nadir Khan as "Member" for disposal of appeals pending in the Balochistan Subordinate Judiciary Service Tribunal.

BY ORDER OF
THE CHIEF JUSTICE-CUM-CHAIRMAN
BALOCHISTAN SUBORDINATE JUDICIARY
SERVICE TRIBUNAL

REGISTRAR



THE HIGH COURT OF BALOCHISTAN, QUETTA.

Dated Quetta the 19th December, 2008

NOTIFICATION

No. 3697/83-RHC/2008 The Hon'ble Chief Justice, High Court of Balochistan/Chairman, Balochistan Subordinate Judiciary Service Tribunal has been pleased to order that Mr. Imtiaz Hussain, Registrar, High Court of Balochistan shall also hold the additional charge of the post of Registrar, Balochistan Subordinate Judiciary Service Tribunal, for receiving/scrutinising and entertaining Appeals filed by any of the Subordinate Judicial Officers.

BY ORDER OF
THE CHIEF JUSTICE-CUM-CHAIRMAN
BALOCHISTAN SUBORDINATE JUDICIARY
SERVICE TRIBUNAL

ADDITIONAL REGISTRAR (ADMN.)



TYRANNY OF LAW

It was during the year 1979 when posts of Presiding Officer, Labour Court (B-18) were advertised by the Balochistan Public Service Commission, to be filled by the Government of Balochistan, Industries and Labour Department. Prior to this Judicial Officers were being imported from other province of Sindh on deputation basis. On public demand that the people of the province are capable and qualified to perform and to have performed any task as a Judicial Officer, this Author applied for the said post when he was enrolled Advocate of High Court, and was having established practice. After selection, during January 1980, was posted as Presiding Officer, IInd Labour Court, Balochistan, when in all three Labour Courts stood established for the province with headquarters at Quetta. During July, 1982, the Government of Balochistan, abolished these post/cadre and merged the same with the cadre of District and Sessions Judge/Additional District and Sessions Judges. However, the incumbents were taken and treated as Additional District and Sessions Judges, but on the occasion of merger no Seniority List of these Judicial Officers neither prepared nor circulated. Thereafter during the year 1986 for the first time the required and long due Seniority List was circulated and name of the Author stood, and shown at Serial No. 1 which service right and promotion never bestowed upon him throughout his service career of 26 years. During this period he was never charge-sheeted nor any enquiry ever held as against him. Then 'Judicial Mafia' was in the process of making, and that bush has since turned into tree. Then everybody realised, and appreciated that my grievances as a Judicial Office were genuine and based on sound facts and grounds, and that I should come forward for the redress thereof, and the occasion had arisen to seek remedy from the High Court, in its extraordinary jurisdiction, through

preferring of Constitutional-Petition which was accordingly done in C.P. No. 430/1992.

The prominent jurist and Advocate, Mr. Muhammad Aslam Chishtee, rendered valuable help and assistance in the process of drafting the same.

The contents of Constitution Petition are reproduced hereunder for perusal: -

IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

Constitution Petition No. 430/1992

Mohammad Akbar,
Additional District and Sessions Judges,
Presently: Joint Director Labour
Welfare Balochistan, Quetta.

..... PETITIONER

Versus

1. Government of Balochistan through
Chief Secretary, Civil Secretariat,
Quetta.
2. Chairman, Balochistan Subordinate
Judiciary Service Tribunal through
Registrar, High Court Building,
Quetta.

..... RESPONDENTS

CONSTITUTION PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

It is most respectfully stated as under: -

1. That the petitioner belongs to the cadre of Additional District and Sessions Judge and presently working as Joint

Director Labour Welfare Balochistan-cum-"Commissioner" under the Workmen's Compensation Act, 1923, "Authority" under the Payment of Wages Act, 1936, and "Authority" under the W.P. Shops and Establishments Ordinance, 1969 in respect of the Province. However, bio-data enclosed herewith for kind perusal.

2. That in the year 1979 Balochistan Public Service Commission advertised the post of Presiding Officer, Labour Court and upon its selection appointed as such in Grade-18 by the Government of Balochistan, Industries Commerce, Mineral Resources and Labour Department vide Notification No. 9-2/78-Labour-532-34 dated the 30th January, 1980.

3. That unprecedently the Government of Balochistan, Services and General Administration Department issued Notification No. S-II.3(41)/80-S&GAD dated the 20th July, 1982 whereby the Grade of Presiding Officer, Labour Courts Balochistan established under Section 35 of the Industrial Relations Ordinance, 1969 abolished (whereas no such cadre ever existed) and all posts of Presiding Officers, Labour Courts Balochistan merged with the Cadre of Additional District and Sessions Judges/District and Sessions Judges. But unilaterally declared them as Additional District and Sessions Judges.

Under the circumstances it may be mentioned here that on the eve of this merger no options from the concerned invited and despite directions of the then Governor of Balochistan no joint seniority list ever prepared or circulated.

4. That services of Additional District and Sessions Judges are governed by Service Rules called "Balochistan Additional District and Sessions Judges/District and Sessions Judges Services Rules, 1980". It may be stated here that promotion to the post of District and Sessions Judge is made on the recommendations of the Chief Justice of High Court. Even for the purpose of initial appointment of this post recommendations by the Public Service Commission is made with association of the Chief Justice.

5 That it is submitted that like other Civil Servants, member of the services of Additional District and Sessions Judge are amenable to Balochistan Civil Servants Efficiency and Discipline Rules of 1983.

6. That petitioner and/other members of this service, are under the administrative control of the High Court and the Honourable Chief Justice. Apart from posting and transfers their respective Annual Confidential Reports are prepared by the Chief Justice (while Performance Evaluation Report require two sets: Reporting and Countersigning) whereas in the case of petitioner there is only one set i.e. Chief Justice).

7. That Government of Balochistan issued Notification No. SORI(5)7/S&GAD-79 dated the 21st August, 1983 designated the Officer competent to appoint any Civil Servant to the authority for such servants for the purposes of said rules. Subsequent thereto Government of Balochistan, Services and General Administration Department issued notification No. SORI(5)7/S&GAD-86-VOL-V dated 6th April, 1989 whereby the Chief Justice of the Balochistan High Court designated to be the Authorised Officer in respect of Judicial Officers in B-17 and above for the purposes of said rules.

8. That Government of Balochistan, Services and General Administration Department on 16th June, 1990 issued a Notification and same is reproduced hereunder for kind appreciation. It reads:

"GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT
(REGULATION-I)

Dated Quetta, the 16th, June, 1990

NOTIFICATION

No. SORI(5)7/S&GAD/90. In partial modification of this Department's Notification No. SOR(5)/7/S&GAD-79 dated 21st August, 1983, the Government of Balochistan is pleased to designate the Hon'ble Chief Justice of High Court of Balochistan as "Authority" in respect of (i) District and Sessions Judges (ii) Additional District and Sessions Judge (iii) Member *Majlis-e-Shoora* (iv) Civil Judges (v) *Qazis*, for the purpose of taking disciplinary action under Balochistan Civil Servants (Efficiency and Discipline) Rules, 1983.

2. This Department's Notification No. SORI(5)7/S&GAD/86-Vol-V, dated 6th April, 1989, designation the Chief Justice of the Balochistan High Court as "Authorised Officer" in respect of Judicial Officers in B-17 and above is hereby withdrawn.

BY ORDER OF GOVERNOR
BALOCHISTAN

CHIEF SECRETARY
GOVERNMENT OF BALOCHISTAN"

9. That initially for purpose of Efficiency and Discipline Rules, 1983 Appointing Authority was designated as the Authority. However, later the said Notification was partially modified by the Notification dated 16-6-1990; the effect of which was that Chief Justice of the High Court was designated as Authority in respect of Additional District and Sessions Judges and District and Sessions Judges and other members of Subordinate Judiciary. It was by this Notification that the

designation of the Chief Justice as an Authorised Officer was also withdrawn.

10. That pursuant to Article 212 of the Balochistan Service Tribunals Act, 1974 a Service Tribunal was established in Balochistan. However, since 23-6-1988, Balochistan Subordinate Judiciary Service Tribunals Ordinance No. 1 of 1988 was promulgated. However, later the said Ordinance became Act-VI of 1989. The said Act empowered the Government to establish a Service Tribunal in respect of Members of Subordinate Judiciary and as per sub-section (3) thereof, the Tribunal is to consist of a Chairman being Chief Justice or Acting Chief Justice and two members each of whom had to be sitting Judge of the High Court. In exercise of powers the first respondent constituted a Service Tribunal consisting of Chief Justice as Chairman and two other Judges as Members by virtue of Notification No. S-II-3(113)90-S&G.A.D dated 9th January, 1992.

11. That present position is that all administrative powers vested in the Honourable Chief Justice and the tyranny of law is that:

- a) Appointments are made on recommendations of the Commission but with the association;
- b) Promotion to the post of District and Sessions Judge is made on his recommendations.
- c) He is designated as Authority in respect of Members of Subordinate Judiciary under Balochistan Civil Service (Efficiency and Discipline) Rules which provide maximum punishment of dismissal from service.
- d) He also solely writes Annual Confidential Reports which have important bearing on further promotion, retention in service and even postings;
- e) On the side of administrative Control representations are also made to the Chief Justice;

Above all, by virtue of Act-VI of 1989 and Notification dated 9-1-1992 of respondent No. 1 he has also become

Chairman of Subordinate Judiciary Service Tribunal. Thus if a member of Subordinate Judiciary is aggrieved against any adverse Annual Confidential Report or any punishment awarded or any adverse order with respect to terms and conditions of his service is made, the Member of Subordinate Judiciary may not be in a position to seek any impartial and unbiased decision.

12. That the Balochistan Additional District and Sessions Judges and District and Sessions Judges Service Rules, 1980 are repugnant to justice, fair play and cause of hardships and such kind of Rules are not in vogue in other parts of the country. It would further reveal that in Subordinate Judiciary Service about ninety percent postings/appointments/promotions have been made in relaxation thereof; and Registrar High Court of Balochistan constrained and vide No. 190/25-RHS dated 21-8-1988, addressed to Secretary S&GAD, Government of Balochistan upon representation by the Additional District and Session Judges of Balochistan to suggest to amend the Rule 5(2) thereof as under: -

"5(2) The posts of District and Sessions Judges be filled by the promotion of Additional District and Sessions Judges on the basis of seniority-cum-fitness"; and suitable action thereon still awaited despite of lapse of considerable period whereas meanwhile one incumbent has succeeded in superseding these recommendations.

13. That aggrieved against provisions of Section 3 and other related provisions of Act-VI of 1989, Notification dated 16-6-1990 and Notification dated 9-1-1992 and having been left with no other adequate alternate remedy, petition is filed on the following interalia other

GROUNDS:-

A) That provisions of Section 3 of Act-VI of 1989 and other related provisions, making Chief Justice to be the Chairman of Subordinate Judiciary Service Tribunal are repugnant to

Objective Resolution as incorporated under Article 2A of the Constitution. The said provisions are also destructive of basic principles of justice as enshrined in Islam, Constitution, and Fundamental Principles of Administration of Justice that Justice should not only be done but should also seem to have been done. As such, said provisions are liable to be struck down as unconstitutional, un-Islamic and opposed to public policy and principles of natural justice.

B) That Notification dated 16-6-1990 designating Chief Justice of High Court as an Authority under Efficiency and Discipline Rules in respect of Members of Subordinate Judiciary is also in excess of lawful authority of the Government and is opposed to legal safeguard provided to Members of Subordinate Judiciary.

C) That Notification dated 9-1-1992 appointing Hon'ble Chief Justice as Chairman of the Tribunal is also liable to be struck down as violative of all principles of justice, rules of natural justice, and law. Indeed in view of Section 3 of Act-VI of 1989 the Notification to the extent of Chairman as being the Chief Justice is redundant because Act-VI of 1989 makes Chief Justice Ex-officio Chairman of the Service Tribunal.

D) That effect of impugned provisions of Act-VI of 1989 and two other impugned Notifications coupled with constitutional provision as for appointment of a Judge of the High Court is that all the powers are concentrated in him and petitioner or any other Member of Subordinate Judiciary may not be in a position to achieve justice under the present legal sphere.

PRAYER:

It is prayed that in consideration of above, this Honourable Court may kindly be pleased to declare provisions of Sub-Section (3) of Section 3 of Act-VI of 1989 and the two impugned Notification dated 16-6-1990 and 9-1-1992 as violative of the Constitution, Islamic Justice and basic Human Rights and to declare the same as of no legal effect; and

Such other consequential directory/or prohibitory order may kindly be passed as warranted in circumstances of the case.

PETITIONER

Quetta.

Dated: 28-11-1992.

(MUHAMMAD AKBAR)

For *Kacha-peshi* it was presented before Mr. Amirul Mulk, and Iftikhar Muhammad Chaudhary and the circumstances reveal that the judges had not read contents thereof and taking its face value on December 17, 1992 admitted the same for regular hearing without assessing or realising the gravity of the situation and consequence thus involved. Thereafter the Petitioner consulted number of lawyers, and the Advocates whose mentioned hereinafter signed their respective *Vakalt-namas* for appearance.

Surprisingly the Respondent No. 2, the Chairman Balochistan Subordinate Judiciary Service Tribunal, who then happened to be Chief Justice of High Court of Balochistan, never served/delivered the Notice of the pending C.P. However, during pendency on 05-8-1993 an APPLICATION was submitted which was in terms that the Judges before whom the matter is being fixed for hearing are also Members of the Balochistan Subordinate Judiciary Service Tribunal, who as such cannot act and function in their dual capacity; and the case was, therefore, adjourned sine die. Mr. Muhammad Nawaz Marri, and Mr. Javaid Iqbal were meanwhile elevated as Judges of the High Court, and a Special Bench consisting of them was constituted to hear and adjudicate upon the matter despite except grant of adjournments, no verdict/judgement was ever delivered or announced by them. Meanwhile considerable period had elapsed, and the matter had also taken political turn and shape.

On the fine morning of December 14, 1994 the matter was found to have been fixed and placed before D.B. (Divisional Bench) consisting of CJ Mr. Munawwar Ahmad Mirza, and

Iftikhar Muhammad Chaudhary J. When the case was called for hearing, their attention was invited by the Petitioner in-person that in this case a Special D.B. had already been constituted, and this D.B. is as such incapacitated to hear and adjudicate upon the matter. The Senior Member of the D.B., the Chief Justice, Mr. Munawwar Ahmed Mirza, in an open Court which was filled by the Advocate General, eminent lawyers, Judicial Officers, staff, and the general public, adopted submissive attitude and went on saying/speaking that he has since realised that the grievance of the Petitioner while in the capacity of a Judicial Officer, deserve and demand redressal, and here-in-after he would put no clog or hindrance from achieving the same. After request of pardon, he enquired from the Petitioner as to what he should dictate (to his Steno-Typist) whereupon the Petitioner acceded to his discretion, and the following order dictated by him:-

IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

BEFORE :- MR. JUSTICE MUNAWWAR AHMAD MIRZA CHIEF JUSTICE
MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY
C.P. No. 430/1992

Mohammad Akbar,
Additional District and Sessions Judges,
Presently: Joint Director Labour
Welfare Balochistan, Quetta.

..... PETITIONER

Versus

1. Government of Balochistan through Chief Secretary, Civil Secretariat, Quetta.
2. Chairman, Balochistan Subordinate Judiciary Service Tribunal through Registrar, High Court Building, Quetta.

..... RESPONDENT

CONSTITUTION PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

ORDER
14-12-1994

Petitioner Muhammad Akbar Azad in-person.
Mr. M. Salahuddin Mengal, A.A.G.

Petitioner pointed out probability of oppressiveness if the tribunal is headed by Chief Justice and the order also is passed in certain eventuality by same authority considering this aspect he feels satisfied if a bench is constituted to consider grievances of subordinate Judicial Officers consisting of such Members which have not been a party to an adverse order against aggrieved person.

Accordingly we observe that a bench may be constituted under the provisions of section 4 of the Balochistan Sub-ordinate Judiciary Service Tribunal Act, 1989.

Keeping in view above pre-cautions. Registrar to take immediate steps in that behalf.

In view of above observations for the trial being petition is not pressed, accordingly same is disposed of. There shall however, be no orders as to costs. (sic)

MUNAWWAR AHMAD MIRZA
CHIEF JUSTICE
IFTIKHAR MUHAMMAD CHAUDHRY
JUDGE.

A bare perusal of this matter would reveal that the same happened/happens to be of public nature, and importance as almost all the Judicial Officers in Pakistan have been subjected to tyranny of law as a single person, the Chief Justice, is the pivot round which all the matters and affairs revolve, and the members of Subordinate Judiciary hierarchy turned into as if they happen to be the employees of a Departmental Store.

So as to keep the record straight the GUNNIES PUBLISHING LTD. had been approached for publication so as to keep and preserve the same in the annals of history. The recourse and reply incorporated as under:-

M/S GUNNIES PUBLICATION LTD.
ENFIELD
ENGLAND

In the publication under the heading: THE HUMAN WORLD relating to Chapter of Judicial: an occasion has since emerged for inclusion and insertion of an entry relating to (Maximum) Number of:

Advocate/Attorney/Pleader/Lawyer/Solicitor/
Counsel/Counsello/Advisor/Defender/Vakil
Engaged—hired—selected
in a suit/case/petition/application/constitution-petition/

as 47 (forty-seven)

by Muhammad Akbar (Azad) of Pakistan
before High Court of Balochistan (Pakistan)
in Constitution-petition No. 430 of 1992

NAMES OF ADVOCATES

- | | |
|--------------------------------|-------------------------------|
| 1) Ch. Muhammad Yousaf | 2) Mr. Noor Mohammad Achakzai |
| 3) Mr. Amanullah Khan Yasinza: | 4) Mr. Khushnood Ahmad |
| 5) Mr. Mohamrnad Mohsin Javed | 6) Mr. Abdul Ghias |
| 7) Mr. Ahmed Khan Lashari | 8) Mr. M. Ehsan-ul-Haq Khan |
| 9) Mehta Kailash Nath Kohli | 10) Mr. Mohammad Ismail |
| 11) Mr. Khawaja Tariq Mahmood | 12) Mr. Rashid Awan |

- | | |
|--------------------------------------|---|
| 13) Mr. Mushtaq Ahmad
Anjum | 14) Sardar Nazir Ahmad |
| 15) Mr. Tariq Mahmood | 16) Mr. Basharat Iqbal |
| 17) Sheikh Ghulam Ahmad | 18) Mr. Muhammad Zahid
Moqim Ansari. |
| 19) Malik Sultan Mahmood
Kakayzai | 20) Mr. Saeed Ahmad Khan |
| 21) Syed Riaz-ul-Hassan | 22) Sardar Khair Muhammad
Khan |
| 23) Mirza Hussain Khan | 24) Mr. Muhammad Ali Khan |
| 25) Chaudhry Asghar Ali | 26) Mr. Muhammad Raza
Khan |
| 27) Mr. Inayatullah Khan Kasi | 28) Mr. Khadim Ali |
| 29) Mr. Salim Ansari | 30) Mr. Zafar Khan
Mandokhel |
| 31) Mr. Ali Ahmad Kurd | 32) Mr. Mumtaz H. Baqri |
| 33) Mr. Akhtar Zaman
Malghani | 34) Mr. Abdul Sattar |
| 35) Syed Ayaaz Zahoor | 36) Mr. M. Rafiq Ahmad |
| 37) Mr. Muhammad Arshad
Chaudhary | 38) Mr. Zahid Malik |
| 39) Mehta W. N. Kohli | 40) Mr. J.J. George |
| 41) Mr. Khalid Hamayune | 42) Mr. Muhammad Amjad
Malik. |
| 43) Mr. Narain D. Kapoor | 44) Mr. Amanullah Kanrani |
| 45) Mr. Gohar Iqbal K.
Yousafzai | 46) Mr. Muhammad Nawaz
Khan Barakzai |
| 47) Mr. M. Zafar | |



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Mr. M. Akbar
Quetta
PAKISTAN.

21st February 1994

Dear Mr Akbar

Thank you for your letter and enclosures which we received on 11 February 1994.

Whilst we were interested to read about this, we regret that it is not something that we shall be able to add to The Guinness Book of Records. We do have fairly extensive judicial section in the book, in addition to which we have a number of one-off letters about numerous other judicially-related matters. Space in the book is limited, so we have to confine ourselves to the most significant records. Unfortunately this means that we are not able to publish many of the claims which are submitted to us, however interesting they may be.

We are sorry to disappoint you but thank you again for your enquiry and interest in the Guinness Book of Records.

Yours sincerely

Sd-

Amanda Brooks
Correspondence Editor



SUBORDINATE JUDICIARY STAFF VERSUS HIGH-UPS

This Author was then functioning and performing the duties of Joint Director, Labour Welfare, Balochistan, to act as 'Commissioner' under the Workmen's Compensation Act, 'Authority' under the Payment of Wages Act, 'Authority' under the Shops and Establishments Ordinance, and 'Authority' under the Minimum Wages Ordinance, for the whole of Province. On one fine morning during May, 1995, Justice Javaid Iqbal (as then he was) telephoned him and said that controversy with the high-ups have since been resolved and he should meet in his chamber immediately. Upon meeting he desired that I should also meet Justice Mr. Amirul Mulk (as then as way) who would be acting as guarantor. Mr. Amirul Mulk furnished the assurance that since a wrong done to him (the incumbent—Additional District and Sessions Judge) would be duly rectified and his due promotion accorded to him accordingly. Upon his assurance and request the period of deputation got waived, and reported for duty before the High Court. Subsequent circumstances reveal that a plot and conspiracy had been hatched by them so as to keep the subordinate Judicial Officer under direct control rather under duress, and coercion as meanwhile he had also formed Balochistan Judicial Officers' Association, and claiming himself to be its Chairman, which capacity he used and utilised in issuing Press Releases, thereby causing provocation and annoyance for his superiors. Instead of conferring upon him his due promotion; on the initially as Presiding Officer, Labour Court, then as Additional District and Sessions Judge, Zhob, which move was duly resisted through representation and finally by preferring of a Petition before Balochistan Subordinate Judiciary Service Tribunal. During the pendency of the petition, not only the Petitioner but all his family members were put to starvation rather almost forced to begging. Even disbursement of monthly salary stopped and denied to him. The Petition contained the assertion in the following term:-

رہبر و ٹریبونل زیر بلوچستان ماتحت عدلیہ سروس ٹریبونل ایکٹ۔ بلوچستان۔

مقدمہ نمبر 2 سال 1996ء

محمد اکبر۔ پریزائنڈنگ آفیسر۔ لیبر کورٹ۔ بلوچستان
کوئٹہ۔

----- اپیلانٹ

بنام

مسٹر جسٹس منور احمد مرزا

چیف جسٹس۔ بلوچستان ہائی کورٹ

کوئٹہ۔

----- مسئول علیہ

اپیل زیر دفعہ 5 بلوچستان ماتحت عدلیہ سروس ٹریبونل ایکٹ مجریہ 1989ء
(ایکٹ VI سال 1989ء) برخلاف حکم مورخہ 26 نومبر 1995ء

جناب عالی!

حسب ذیل گزارش ہے:

1۔ کہ اپیلانٹ حکومت بلوچستان لیبر ڈیپارٹمنٹ نوٹیفیکیشن مورخہ
1980-1-30 کے تحت پریزائنڈنگ آفیسر لیبر کورٹ بلوچستان تعینات کیا گیا تھا۔ بعد ازاں
حکومت بلوچستان ایس اینڈ جی اے ڈی نے بروئے نوٹیفیکیشن مورخہ 82-7-20 جدت اختیار
کرتے ہوئے پریزائنڈنگ آفیسر لیبر کورٹس کو ایڈیشنل ڈسٹرکٹ و سیشن جج اڈسٹرکٹ و سیشن جج
کے کینڈر میں مدغم کیا۔ واضح رہے کہ اس ادغام کے موقع پر اپیلانٹ سے کوئی منشاء نہیں لی گئی تھی۔
اور اس کے بعد سے جو اس پر مسلسل بیت رہی ہے۔ جیسے کوئی پوچھنے والا نہیں۔

۲۔ کہ مذکورہ ادغام کے موقع پر حاکم الوقت گورنر بلوچستان نے واضح طور پر حکم صادر کیا تھا کہ متعلقہ عہدہ داران کی سینیاریٹی لسٹ بہ موقع ادغام مرتب کی جائے۔ ایس اینڈ جی اے ڈی نے مطلوبہ فہرست 20-7-82 تیار کی لیکن پوشیدہ ہاتھوں نے اسے جاری نہ ہونے دیا۔ بعد ازاں بسیار کوشش پہلے عبوری سینیاریٹی لسٹ مورخہ 4-12-86 کو شائع کی گئی۔ جس میں اپیلانٹ کا نام بہ حیثیت عہدہ سرفہرست تھا۔ مابعد دوسری سینیاریٹی لسٹ مورخہ 30-9-92 جاری ہوئی اس میں بھی اپیلانٹ کی حیثیت اولینہ رہی۔ ہر دفعہ اپیلانٹ کو اس کی ترقی کے جائزہ قانونی حق سے محروم رکھا گیا اور تاہنورز کوئی وجہ تک نہیں بتائی گئی بلکہ ان کو ترقی دی گئیں جن کے فیصلے کوئی دیگر تحریر کرتا ہے۔ اور جن کے پاس اس صوبہ کا رہائشی سٹوٹکیٹ تک نہیں۔ انہوں نے اس صوبہ میں کوئی تعلیم حاصل نہ کی۔ اور چند ایک کو بلا بلا کر تعینات کیا گیا جو کبھی عہدہ کے خواہشمند نہ تھے۔ عجب اتفاق کہ ہر ترقی کے موقع پر قواعد میں نرمی برتی جاتی رہی۔ اس بابت جملہ ریکارڈ ہائی کورٹ کے دفتر میں موجود ہے۔

۳۔ کہ شومی قسمت دیکھیے اپیلانٹ نے مارچ 89ء سے دیگر ملازمتوں پر کام کیا جن میں ڈپٹی سیکرٹری قانون اور کمشنر عوضانہ، آفیسر جلیس زیر اداگی اجرت ایکٹ، زیر دوکانات و ادارہ جات آرڈینمنٹ، زیر کم از کم اجرت آرڈینمنٹ وغیرہ شامل ہیں۔ سجدی کو نکلے کان کی حادثاتی رپورٹ آئی ایل او کو بھجوا دی گئی ہے۔ جس میں اپیلانٹ بطور ممبر (جوڈیشل) منسلک رہا جس کی اشاعت عنقریب متوقع ہے۔

۴۔ کہ اپیلانٹ کی بطور سائل دربارہ رٹ پیشین نمبر 430 سال 92ء کی سماعت 14-12-94 کو روبرو مسئول علیہ ہمراہ پیش ہوئی۔ جو اس مقدمہ میں بزمہ مسئول علیہ شامل تھے جب کہ اس پیشین کی سماعت کیلئے بروئے حکم خصوص پیشل ڈی بی قائم ہوئی تھی۔ مسئول علیہ نے بھری عدالت میں یقین دہانیاں کرائیں کہ وہ کسی کے حق کی راہ میں احائل نہ ہوں گے۔ ایک ایسی شخصیت جو صوبائی عدلیہ کا سربراہ ہو اور جس نے حلف بھی اٹھایا ہو اور خود یقین دہانیاں

جی کرانے تو ظاہری طور پر بے اعتباری کی کوئی وجہ نہیں تھی چنانچہ حسب خواہش رٹ پر زور نہیں دیا

گیا۔ ۵۔ کہ معاملات آگے بڑھتے رہے۔ 28-5-95 کو پھر مزید یقین دہانی

کرائی گئی کہ اپیلانٹ کو اس کا جائز ملازمتی حق دیا جائے گا چنانچہ 10-7-95 کو عدلیہ میں دوبارہ واپس آیا۔

۶۔ کہ مابعد یقین دہانیوں کو بالائے طاق رکھ کر برعکس اقدامات رونما

ہوئے۔ حکم بروئے محررہ 21-9-95 اپیلانٹ کو پریز انڈنگ آفیسر سیکنڈ لیبر کورٹ بلوچستان تعینات کیا گیا۔ اس بابت دفعہ 35 انڈسٹریل ریلیشنز آرڈیننس کا حوالہ دیا گیا لیکن لا حاصل رہا۔ اور پھر بروئے حکم 15-11-95 بحیثیت ایڈیشنل ڈسٹرکٹ و سیشن جج ٹروپ تبادلہ کیا گیا جس پر 22-11-95 کو معروضات پیش کی گئیں جو 26-11-95 کو بغیر کسی معقول وجہ بتائے بغیر مسترد کی گئیں لہذا ضرورت نالش ہے۔

چنانچہ مجبور ہو کر موجودہ اپیل حسب ذیل ودیگر وجوہات دائر کی جا رہی ہے۔

(ا) کہ ہائی کورٹ یا عدالت عالیہ ایک ادارہ ہے جس کا من اپیلانٹ ماتحتی

ہے۔ جو بروئے آرٹیکل 192 اور 202 اسلامی جمہوریہ پاکستان کے آئین کے تحت جملہ اقدامات بروئے کار لائے جاتے ہیں۔ یہ ادارہ کسی فرد واحد کے زیر اثر یا زیر نگیں نہیں۔

(ب) کہ من اپیلانٹ کو 1-9-86 سے اس کی ترقی بحیثیت ڈسٹرکٹ و سیشن

جج کے جائز و قانونی حق سے مسلسل محروم رکھا گیا باوجود بار بار جوع کئے جانے، اس سلسلہ میں کسی رکاوٹ کا تذکرہ تک نہیں بتایا گیا۔ اس بابت یہ ذکر بیجا نہ ہوگا کہ اپیلانٹ کی ترقی کا معاملہ جب سابق چیف جسٹس چوہدری عبدالقدیر کے روبرو پیش ہوا تو انہوں نے بجائے ہاں یا نہیں تحریر کیا کہ فلاں کو سیشن جج تعینات کر دیا جائے۔ جس نے اس عہدہ کیلئے درخواست تک نہیں دی تھی۔

(پ) کہ اپیلانٹ کے سرکاری فرائض منصبی کی ادائیگی ایک طرح سے رک گئی

ہے جب کہ حسب منشاء آئین عدالت عالیہ کا ماتحت رہا ہے۔ جس نے حسب آرٹیکل 192 بابت تبادلہ کوئی حکم جاری نہیں کیا۔

(ت) کہ اپیلانٹ کی جائز ترقی کا حق اس وجہ سے روکار ہوا کہ بلوچستان ایڈیشنل ڈسٹرکٹ و سیشن جج ایڈسٹرکٹ و سیشن جج رولز مجریہ 1980ء کے ترمیم شدہ رول 5 کے تحت سینئر عہدہ دار کی ترقی کی سفارش صرف چیف جسٹس کر سکتے ہیں۔ قطع نظر کہ ان رولز کی افادیت کیا ہے اگر ذاتی پسند یا ناپسند کا عنصر نمودار ہو جائے تو بغیر حصول انصاف دیگر اور چارہ کار نہیں۔

(ث) کہ ESTACODE SL NO. 64, PAGE 674 کی رو سے کوئی عہدہ دار کسی دیگر عہدہ کا چارج عرصہ تین ماہ سے زائد نہیں رکھ سکتا۔ برعکس ہدایات بیک وقت چار سے زائد عہدے صرف ایک عہدہ دار کو سونپے گئے ہیں۔ دوسری طرف قواعد کی رو سے کسی بھی مقام پر تعیناتی عرصہ تین سال کیلئے تصور کی جاتی ہے مگر ایک عہدہ دار کا عرصہ چھ ماہ میں چار مقامات پر تبادلہ کیا گیا جس سے سرکاری خزانہ پر غیر ضروری بوجھ ڈالا گیا۔

(ث) کہ عدالت عالیہ نہ صرف فریقین مقدمہ کو انصاف فراہم یا مہیا کرتی ہے بلکہ انتظامی لحاظ سے بھی انصاف کے پہلو کو ملحوظ خاطر رکھا جاتا رہا۔ جہاں تک اپیلانٹ کے معاملہ کا تعلق ہے اسے انتظامی طور پر نشانہ بنایا گیا اور سیناریو لسٹ کو پس پشت ڈال دیا گیا۔

(ج) کہ جہاں تک اپیلانٹ کی شخصی خدمات کا تعلق ہے اسے جائز اور مناسب طور پر نہیں سراہا گیا۔ کئی ایک جانتے ہیں کہ 7-4-76 کو بلوچستان کو بلوچستان بار ایسوسی ایشن کے وفد نے وزیر اعظم پاکستان سے ملاقات کی تھی۔ اور اپیلانٹ نے بحیثیت ممبر بار صوبہ کیلئے جدا ہائی کورٹ کے قیام کا مطالبہ کیا تھا جو اس وقت شرف قبولیت ہوا۔ اور یکم دسمبر کو عدالت عالیہ معرض وجود میں آئی۔

(ج) کہ صوبہ میں لاء کالج کے قیام کا معاملہ تھا یا سپریم کورٹ کے سرکٹ کا اجراء لیبر کورٹس کی تشکیل، کورٹ فیس میں کمی۔ جوڈیشل آفیسران کی تعداد میں اضافہ۔ قاضی

صاحبان کے گریڈ میں ترقی۔ عرض اپیلانٹ بحیثیت ممبر باران امور میں پیش پیش رہا اور سرخرو ہوا۔ اور جب اس کا ذاتی معاملہ پیش ہوا تو قواعد کی پاسداری یکسر موقوف کر دی گئی۔ غالباً جو درخت لگاتے ہیں وہ اس کا پھل نہیں کھاتے۔

(ج) کہ اپیلانٹ نے فیڈرل پبلک سروس کمیشن سے گریڈ 21 میں کامیابی حاصل کی۔ لیبر ڈویژن حکومت پاکستان نے بحیثیت ممبر این آئی آر سی گریڈ 20 میں سلیکشن کی لیکن فارغ نہیں کیا گیا کہ صوبہ میں عدالتی آفیسران کی کمی ہے۔ اس وقت بھی ماتحت عدلیہ میں گریڈ 19 کی چھ اسات آسامیاں ہیں۔ لیکن بغیر کوئی معقول وجہ اپیلانٹ کو اس کی ترقی کے جائز حق سے محروم رکھا جا رہا ہے۔ جو قابل مواخذہ ہے۔

(خ) کہ باوثوق ذرائع سے علم ہوا کہ ہائی کورٹ کی انتظامیہ کمیٹی کے ممبران جج صاحبان نے اپیلانٹ کی ترقی کی سفارش بھی کر دی ہے لیکن معاملہ آگ بڑھنے سے روک دیا گیا ہے لہذا اس بارے میں باز پرس لازم ہے۔

(د) کہ اپیلانٹ سرکاری ملازمتوں کے قوانین اور قواعد کے تابع ہے۔ اصول انصاف متقاضی ہے کہ اپیلانٹ سے برابری کا سلوک روا رکھا جائے۔ اور اُسے ذاتی پسند یا ناپسند کا نشانہ یا شکار ہونے سے بچایا جائے۔ اور اس کے جملہ حقوق اُسے عطا فرمائے جائیں جن میں غصب شدہ سنیارٹی اور موزوں تعیناتی شامل ہیں۔

(ذ) کہ بلوچستان سروس ٹریبونل (ترمیمی) ایکٹ مجریہ 1989ء (ایکٹ VII سال 1989ء) کی رو سے اراکین ماتحت عدلیہ کو سرکاری ملاز کے زمرے سے خارج کر دیا گیا ہے۔ چنانچہ اس بابت خلاء پیدا ہو گیا اگر عدالتی افسران سرکاری ملازم نہیں تو کیا ہیں۔ جب کہ اُن کی جملہ مراعات کا تعین گریڈ کے اعتبار سے کیا جا رہا ہے۔ حسب منشاء قانون معاملہ کی وضاحت ضروری ہے۔

(ز) کہ حسب قاعدہ 8 زیر بلوچستان ماتحت عدلیہ سروس ٹریبونل روڈ مجریہ

1990ء (شائع کردہ 6-12-90) دیگر حالات مقدمہ حسب موقع پیش کئے جائیں گے۔
 (ر) کہ دیگر کوائف دوران کارروائی حسب ضرورت بیان کئے جائیں گے اور
 ریکارڈز پر لائیں جائیں گے۔

لہذا التماس ہے بسلسلہ حصول انصاف اپیلانٹ کی دادرسی کی جائے اور بدیں مضمون
 اندریں بارہ احکام صادر فرمائے جائیں۔

(i) تبادلہ کے حکم مورخہ 15-11-95 کو کا اعدام اور غیر قانونی قرار دیا جائے
 کیونکہ وہ حسب منشاء آئین نہیں ہے۔

(ii) اپیلانٹ کو بحیثیت ڈسٹرکٹ و سیشن جج مورخہ 1-9-86 سے پرو فارما
 پروموشن دی جائے جس روز اس سے جو فیئر عہدہ دار کو ترقی بخش دی گئی تھی۔

(iii) کوئی اور دادرسی جو حالات مقدمہ کے تحت ضروری خیال فرمائی جائے عطا
 فرمائی جائے۔

اپیلانٹ

محمد اکبر

پریزائڈنگ آفیسر۔ لیبر کورٹ۔ بلوچستان

بقلم خود

(حال رخصت)

کوئٹہ

مورخہ 24-3-96

On the day of *Katcha Pechi* the following ORDER was passed:-

BEFORE THE BALOCHISTAN SUBORDINATE JUDICIARY SERVICE
TRIBUNAL, QUETTA

S.J.S.A. No. 02 of 1996

Mohammad Akbar, Presiding Officer,
Labour Court, Balochistan, Quetta.

..... APPELLANT

Versus

Mr. Justice Munawar Ahmed Mirza,
Chief Justice, Balochistan High Court,
Quetta.

..... RESPONDENT

APPEAL UNDER SECTION 5 OF THE BALOCHISTAN
(SUBORDINATE JUDICIARY) SERVICE TRIBUNAL, ACT, 1989,
AGAINST ORDER DATED 26-11-1995.

ORDER

14-4-1996. Mr. Muhammad Akbar is present in person.

We heard Mr. Mohammad Akbar who inter alia contended that his transfer from Quetta as Additional District and Sessions Judge/Presiding Officer IInd Labour Court to Zhob as Additional District and Sessions Judge, has been made by Hon'ble Chief Justice of Balochistan and not by the High Court of Balochistan. The appellant relied on Article 192 of the Constitution of Islamic Republic of Pakistan.

Before taking into consideration this legal point, we inquired from the appellant as to how this appeal would be maintainable in view of provision of section 5 of the Balochistan Subordinate judiciary Service Tribunal Rule 1990, which

envisages that such appeal would be competent in respect of any of the terms and conditions of service. The appellant contended that a transfer order without jurisdiction would fall within the terms and conditions of the service. We would like to assistance of learned Advocate General on this point. We direct the appellant to supply a copy of this appeal to learned Advocate General within three days so that he may be in a position to better assist this Tribunal. Date in office.

Mr. Justice
Sd/—Amir-ul-Mengal.
MEMBER

Sd/—Mr. Justice Iftikhar
Mohammad Chaudhry.
MEMBER

The fate of the Petition reproduced hereunder:-

BEFORE: THE BALOCHISTAN SUBORDINATE JUDICIARY SERVICE
TRIBUNAL, QUETTA.
MR. JUSTICE AMIR UL MULK MENGAL.
MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHARY

S.J.S.A. No. 02 of 1996

Mohammad Akbar
Presiding Officer,
Labour Court, Balochistan, Quetta.

..... APPELLANT

Versus

Mr. Justice Munawar Ahmed Mirza,
Chief Justice, Balochistan High Court,
Quetta.

... RESPONDENT

APPEAL UNDER SECTION 5 OF THE BALOCHISTAN
(SUBORDINATE JUDICIARY) SERVICE TRIBUNAL, ACT, 1989
AGAINST ORDER DATED 26-11-1995.

JUDGEMENT

Date of hearing: - 13-5-1996

(Announced on 21-5-1996)

Appellant: Mohammad Akbar, Presiding Officer Labour Court, Quetta in person.

Respondent: Mr. Justice Munawar Ahmed Mirza, Chief Justice Balochistan High Court, Quetta.
Mr. Yaqub Khan Yousafzai, A.G. on Court Notice.

AMIRUL MULK MENGAL, (MEMBER):- This appeal has been filed under section 5 of Balochistan Subordinate Judiciary Service Tribunal Act, 1989 (Act VI of 1989) challenging order dated 15-11-1995 as well as 26-11-1995.

2. Brief facts are that the appellant was initially appointed as Presiding Officer Labour Court vide order dated 30th January, 1980. Subsequent thereto vide Notification No. S.II.3(41)/80-S&GAD dated 20th July, 1982 the Government of Balochistan was pleased to merge the Labour Courts with the cadre of Additional District and Sessions Judges/District and Sessions Judges with immediate effect. As per provisional seniority list of Additional District and Sessions Judges as stood on 20.7.1982 appellant stood at S. No. 3.

3. Services of the appellant were, however, transferred to the Government of Balochistan and he acted as Deputy Secretary Law, Commissioner, Workmen's Compensation and Authority under the Payment of Wages Act, etc. However, again his services were placed under the High Court and vide order dated 21.9.1995 he was posted as Presiding Officer IInd Labour Court Balochistan. He did not take charge till 15.11.1995 when he was transferred as Additional District and Session Judge, Zhob.

Against such transfer and posting, he made a representation on 22.11.1995 which was rejected on 26.11.1995. Hence this appeal.

4. Before admitting the appeal for regular hearing it was deemed proper to issue pre-admission notice to learned Advocate General as the appellant wanted interpretation of Article 199 read with Article 202 of the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the "Constitution").

5. Heard appellant in person and learned Advocate General on Court's notice.

6. Appellant inter alia contended that the Chief Justice is not competent to transfer and post an Additional District and Sessions Judge. His argument was that it is the High Court which is competent to make such orders of transfers and postings. Thus relying on Article 192 of the Constitution it was argued that the High Court consists of Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President. Therefore, according to appellant, the transfers to Additional District and Sessions Judges shall have to be made by the High Court and not by the Chief Justice. In this regard our attention was drawn to Article 202 of the Constitution which stipulates that subject to the Constitution and Law, a High Court may make rules regulating the practice and procedure of the Court or of any court subordinate to it.

7. It may be worth to mention here that besides the above contentions it appears that appellant was also aggrieved that he being a senior most Additional District and Sessions Judge was entitled to promotion but he has not been promoted. It was alleged that according to his best knowledge the Administrative Committee of the High Court had made recommendations for his promotion, which however, has not been acted upon.

8. It is pertinent to mention here that in this appeal the appellant has made the following prayers: -

- ۱- تبادلہ کے حکم مورخہ ۱۱-۱۱-۹۵ کو کالعدم اور غیر قانونی قرار دیا جائے کیونکہ وہ حسب منشاء آئین نہیں ہے۔
- ۲- ایپیلانٹ کو بحیثیت ڈسٹرکٹ و سیشن جج مورخہ ۸۶-۹-۱ سے پروفارما پر موشن دی جائے۔ جس روز اس سے جو نیر عہدہ دار کو ترقی بخش دی گئی تھی۔
- ۳- کوئی اور دادرسی جو حالات مقدمہ کے تحت ضروری خیال فرمائی جائے عطا فرمائی جائے۔

Learned Advocate General at the very outset challenged the maintainability of this appeal relying on section 5 of Balochistan Subordinate Judiciary Service Tribunal Act, 1989. It was contended that no appeal is competent against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post. In this regard he relied on section 5(b) (i) which reads as under:-

5. Appeal to Tribunal: - Any member of subordinate judiciary aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service, within thirty days of the communication of such order to him or within six months of the establishment of the Tribunal, whichever is later, prefer an appeal to the Tribunal.

Provided that:

- (a)
 - (b) no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining: -
 - (i) the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post; or
 - (ii)
- Explanation:...."

It may be observed that in the instant case, the appellant is aggrieved of an order dated 15.11.1995 whereby he was transferred by the Hon'ble Chief Justice from the post of Presiding Officer, Labour Court to Additional District and Sessions Judge, Zhob. We find sufficient force and substance in the argument as advanced by learned Advocate General. The transfer of a subordinate judicial officer does not fall in the ambit of terms and conditions of service. No judicial officer can legitimately claim to hold a particular post in view of above provision of law. Thus appeal on this count is not maintainable and liable to be dismissed. However, the appellant challenged the authority of Chief Justice of Balochistan High Court for making an order of transfer of a appellant. In this respect he relied on certain cuttings of newspapers attached with the appeal and contended that it is the Chief Justice and Judges of the High Court who were competent to pass transfer orders. Reliance was placed on article 192 read with Article 202 of the Constitution. We have perused the said provisions and we reminded the appellant that the functioning of the High Court is governed by its own rules and orders framed from time to time and Article 192 has no application.

However, as far as Article 202 of the Constitution is concerned suffice it to observe that West Pakistan High Court Rules and Orders are being observed and acted upon by the High Court of Balochistan after it came into existence in December 1976.

It may be noted that on dissolution of Province of West Pakistan a joint High Court for Sindh and Balochistan was created and by virtue of Article 19 of the Province of West Pakistan (Dissolution) Order, 1970 the existing Rules governing the West Pakistan High Court were made applicable on newly created High Courts with necessary adaptation. Similarly vide Balochistan and Sindh (High Courts) Order, 1976 the High Court of Sindh and Balochistan were bifurcated and under Article 8 the laws, rules and powers which were available to respective High

Court were made applicable on newly created High Court of Sindh and Balochistan. During period of West Pakistan High Court in 1960 under High Court West Pakistan Delegation of Powers Rules, 1960 certain powers were conferred upon the Chief Justice and Judges of the High Court for effectively running the affairs of the High Court. Later on these Rules were amended in 1970 by means of which Chief Justice of High Court was exclusively empowered to effect transfer of Sessions Judges and Additional District and Sessions Judge. It was clearly laid down in the Appendix that the transferring authority for District and Sessions Judges and Additional District and Sessions Judges shall be the Chief Justice of the High Court.

It may be noted that appellant was initially appointed by the Government of Balochistan as Presiding Officer Labour Court vide Notification No. 9-2/78-Labour-532-34 dated 30th of January, 1980. Subsequently by means of Notification dated 20th July, 1982 vide No. S.II.3(41)/89-S&GAD the Government of Balochistan was pleased to abolished the posts of Presiding Officers, Labour Courts and ordered that all posts shall stand merged with the cadre of Additional District and Sessions Judges and District and Sessions Judges, with immediate effect. Thus in view of notification referred to here-in-above appellant who was initially appointed as Presiding Officer Labour Court was merged ad Additional District and Sessions Judge and as referred to hereinabove the transfer and posting powers of the appellant are to be exercised by the Chief Justice of the High Court.

As against this legal position, the appellant utterly failed to produce any notification bylaws, order etc. in support of his contention that it is not the Chief Justice who is competent to transfer Additional District and Sessions Judge except relying on some cuttings of newspapers which are inapt in his case.

From the above discussion we are inclined to hold that Chief Justice of Balochistan High Court is the exclusive authority for making transfers and order posting of Additional District

and Sessions Judges and subordinate judicial officers in any part of the Province.

So far as to remaining prayer made by the appellant in this appeal is concerned, the same is also incompetent in view of section 5(b) (i) of Balochistan Subordinate Judiciary Service Tribunal Act, 1989. In view of this clear legal position the appeal in its present form is not competent and is dismissed in limine.

It may further be observed that the appellant made a verbal request for release of his pay to him during the period when he refused to comply with the transfer order of the Chief Justice by making the present appeal. We have considered this request. It is abundantly clear that Accountant General Office shall face difficulty in releasing his pay because he is neither Presiding Officer Labour Court the post from which he was transferred nor he has taken charge of the Additional District and Sessions Judge, Zhob, the post of which he was transferred. This seems to be the reason that the Accountant General office addressed a letter No. GAD-II/High Court/1668 dated 14.4.1996 to the Registrar High Court of Balochistan by which salary of appellant has been stopped and officer has been requested to supply necessary documents such as Charge Assumption Report, Charge Relinquished Report, and non-accommodation certificate. In such view of the matter we are unable to pass any orders as to the release of salary to the appellant. Consequently the appeal is dismissed in limine.

Mr. Justice

Sd/—Amir-ul-Mengal.

MEMBER

Quetta,

Announced

Dated 21st May, 1996.

Sd/—Mr. Justice Iftikhar

Mohammad Chaudhry.

MEMBER

Fate followed the events, especially the financial constraints compelled the Petitioner to submit arrival report/assumption of charge report at Zhob, and the period during which he remained posted and stayed there is also included in the happy events of his life which is on account of courtesy shown and afforded by the people of the area, which relationships maintained till going to Press.



SERVICE RULES OF SUBORDINATE JUDICIARY

THE BALOCHISTAN ADDITIONAL DISTRICT & SESSIONS JUDGES, AND DISTRICT & SESSIONS JUDGES RULES, 2002

GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMN. DEPTT.

Dated Quetta the 15th November, 2002

NOTIFICATION

No. SOR(2)62/S&GAD/79/8181-981. In exercise of the powers conferred by section 25 of the Balochistan Civil Servants Act, 1974 (IX of 1974), the Government of Balochistan is pleased to make the following rules for appointment of Additional District and Session Judges, and District and Session Judges namely-

PART GENERAL

1. SHORT TITLE AND COMMENCEMENT. (1) These rules may be called the Balochistan Additional District and Sessions Judges, and District and Session Judges Service Rule, 2002.

(2) They shall come into force at once.

2. DEFINITIONS. In these rules, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them that is to say: -

- (a) "Administration Committee" means the Administration Committee of Hon'ble Judges constituted under High Court Rules and Orders;
- (b) "Chief Justice" means the Chief Justice of the High Court of Balochistan.
- (c) "Departmental Promotion Committee" means a Committee of not less than two Judges of the High Court to be nominated by the Chief Justice;
- (d) "Government" means the Government of Balochistan;
- (e) "High Court" mean the High Court of Balochistan;
- (f) "Provincial Judicial Selection Board" means the Administration Committee of the High Court or a Board comprising two Judges of the High Court as may be, nominated by the Chief Justice;
- (g) "Recognized University" means any University incorporated by law in Pakistan or any University declared by Government in consultation with the Chief Justice to be recognized University for the purpose of these rules;

3. CONSTITUTION OF THE SERVICES. The services shall comprise the posts of District and Session Judges and Additional District and Session Judges.

4. APPOINTING AUTHORITY. Appointment to the Service shall be made by the Chief Justice High Court.

5. METHOD OF RECRUITMENT. Appointment to the post of Additional District and Session Judges shall be made:-

(a) by initial recruitment against one third of the posts on the recommendation of the Provincial Judicial Selection Board.

(b) By promotion against one third of the posts on the recommendation of the Departmental Promotion Committee by the Chief Justice from amongst the Senior Civil Judges and Judicial Magistrates at the ratio of 50:50.

(c) By transfer against the remaining one third of the posts from offices belonging to Central and Provincial Governments by the Chief Justice;

Provided that if no suitable officers are available for transfer, the appointment against the reserved quota as mentioned in clause (b) may be made by promotion on the recommendation of the Departmental Promotion Committee by the Chief Justice from amongst the Senior Civil Judges.

(2) Appointment to the posts of District and Sessions Judges shall be made:-

(a) by promotion against 50% of the posts on the recommendation of the Departmental Promotion Committee by the Chief Justice from amongst the Senior Additional District and Sessions Judges.

- (b) By transfer against the remaining one third of the posts from offices belonging to Central and Provincial Governments by the Chief Justice of High Court;

Provided that if no suitable officers are available for transfer, the appointment against the reserved quota as mentioned in clause (b) may be made by promotion on the recommendation of the Departmental Promotion Committee by the Chief Justice from amongst the Senior Additional District and Sessions Judges.

- (c) By initial recruitment against the remaining 25% of the posts on the recommendation of the Provincial Judicial Selection Board.

(3) In case of ad-hoc appointment, the Chief Justice shall advertise the posts, invite applications and after selecting suitable candidates, make appointment on ad-hoc basis.

6. AGE. No person shall be appointed to the posts of Additional District and Session Judges and District and Session Judges by initial recruitment, if he is below 30 years or above 45 years of age.

7. QUALIFICATION AND EXPERIENCE. In case of appointment of District and Sessions Judges through initial recruitment a person should be law graduate from a recognized university and should have at least ten years practice as an advocate. In case of appointment of Additional District and Sessions Judges through initial recruitment a person should be Law graduate from a recognised university and should have at least five years practice as an Advocate. In case of promotion to the post of Additional District and Sessions Judge a person should have at least a minimum service of five years as Civil Judge. In case of promotion to the post of District and Sessions Judge a person

should have at least twelve years service as Civil Judge and Additional District and Sessions Judge combined.

8. PROBATION. (1) A person appointed to the service against a substantive vacancy shall remain on probation for a period of two years, if appointed by initial recruitment, and for a period of one year, if appointed otherwise.

EXPLANATION-I:- If a Junior officer in a lower grade is promoted to a higher grade temporarily in the public interest even though continuing later permanently in the higher grade, it would not adversely effect the interest of a senior in the fixation of his seniority in the higher grade.

EXPLANATION-II:- If a Junior officer in a lower grade is promoted to a higher grade by superseding a senior officer and subsequently that officer is also promoted for the same post, the officer promoted first shall rank senior to the officer promoted subsequently.

10. LIABILITY TO TRANSFER AND SERVE. The members of the service shall be liable to—

- a) transfer anywhere in Balochistan; and
- b) serve in any department of Government or any local authority or statutory body setup or established by Government.

Provided that where a member of service is required to serve in a post outside his service or cadre, his terms and conditions of services as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. GENERAL RULES. In all matters not expressly provided for in these rules, the members of service shall be governed by such rule as have been or may hereafter be prescribed by Government and made applicable to them.

12. RELAXATION. Any of these rules may, for the reasons to be recorded in writing be relaxed in individual case, if the Chief Justice High Court is satisfied that the strict application of these rules would cause undue hardship to the individual concerned.

14. REPEAL. The Balochistan Additional District and Session Judges and District and Session Judges Rules, 1980 are hereby repealed.

BY ORDER OF
GOVERNOR BALOCHISTAN

CHIEF SECRETARY,
GOVERNMENT OF BALOCHISTAN



THE BALOCHISTAN CIVIL JUDGES/JUDICIAL MAGISTRATES
SERVICE RULES, 2002.

GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMN. DEPTT.

Dated Quetta the 15th November, 2002

NOTIFICATION

No. SOR-II/146/S&GAD/81/829-80. In exercise of the powers conferred by section 25 of the Balochistan Civil servants Act, 1974 (IX of 1974), the Government of Balochistan is pleased to make the following rules regulating recruitment to the Civil

- Judges/Judicial Magistrates service and prescribing conditions of service for the persons appointed there to, namely: -

PART GENERAL

1. SHORT TITLE AND COMMENCEMENT. (1) These rules may be called the Balochistan Civil Judges/Judicial Magistrates Service Rules, 2002.

(3) They shall come into force at once.

2. DEFINITIONS. In these rules, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them that is to say: -

- (a) "Administration Committee" means the Administration Committee of Hon'ble Judges constituted under High Court Rules and Orders;
- (b) "Departmental Promotion Committee" means a Committee of not less than two Judges of the High Court to be nominated by the Chief Justice;
- (c) "Government" means the Government of Balochistan;
- (d) "High Court" mean the High Court of Balochistan;
- (e) "Initial Recruitment" means appointed made otherwise then by promotion transfer from any other service/Post/Department;
- (f) "Judicial Magistrate" means the Magistrate as defined in Section 6 of the Code of Criminal Procedure, 1898.
- (g) "Provincial Judicial Selection Board" means the administration Committee of the High Court or a Board comprising two Judges of the High Court as may be nominated by the Chief Justice;
- (h) "Recognized University" means any University incorporated by law in Pakistan or any University declared by Government in consultation with the

Chief Justice to be recognized University for the purpose of these rules;

- (i) "Service" means the Balochistan *Qazis* and Member *Majlis-e-Shoora* Service.

PART-II RECRUITMENT

3. ELIGIBILITY AND COMPOSITIONS OF SERVICE. (1) No person who is married to a foreign national shall be eligible for appointment to the service.

(2) The restriction imposed by sub rule (1) above may be relaxed by the Government in the case of person who is married to a citizen of India.

(3) The service shall comprise of the posts of specified in column of the Appendix and such other posts as may be determined by the Government from time to time.

4. APPOINTING AUTHORITY. Appointments to the Service shall be made by the Chief Justice of the High Court of Balochistan.

5. METHOD OF RECRUITMENT. Appointment to the post of Civil Judges and Judicial Magistrates shall be made:-

- (a) 90% by initial recruitment on the recommendation of Provincial Judicial Selection Board based on competitive examination in subjects specified in Appendix to these rules;
- (b) 10% of the remaining posts shall be filled in by transfer from amongst *Qazis* having degree in law and five years service as such.

(2) In case of ad-hoc appointment, the Chief Justice shall advertise the posts, invite applications and after selecting suitable candidates, make appointments on ad-hoc basis.

6. AGE. No person, who is less than 21 years or more than 30 years of age shall be appointed to the service by initial recruitment; provided that:

- (i) in the case of Government servant who has served in connection with the affairs of the province of Balochistan for a period of not less than four years, the upper age limit shall be 35 years;
- (ii) in case of Barrister or an Advocate of High Court and the Courts subordinate there to, or a pleader, the period during which he practised at a Bar subject to maximum period of three years shall for the purpose of upper age limit under this rule, be excluded from his age; and
- (iii) in the case of a person whose services under Government have been terminated for want of vacancy the period of Service already rendered by him shall, for the purpose of upper age limits under this rule, be excluded from his age.

(2) For the purpose of this rule age shall be reckoned as on the 1st of January of the year in which the examination is proposed to be held.

7. QUALIFICATION. (1) No person shall be appointed to a post in the service by initial recruitment unless he possesses a degree in Law from a recognized university or is a Barrister of England or Ireland.

(2) No person not already in Government Service shall be appointed to the post unless he produces a Certificate of

Character from the Principal, and also certificates of Character from two other responsible persons not being his relatives, who are well acquainted with his character and antecedents.

(3) No person shall be appointed by initial recruitment to the service unless he is declared to be physically fit by a Government Medical Officer not below the rank of District Health officer.

PART-III CONDITION OF SERVICE

8. PROBATION. (1) A person appointed to the service against a substantive vacancy shall remain on probation for a period of two years.

EXPLANATION:- Officiating service and service spent on deputation to a corresponding or a higher post may be allowed to count towards the period of probation.

(2) If the work or conduct of a member of the service during the period of probation has, in the opinion of the appointing authority, not been satisfactory, the appointing authority may, notwithstanding that the period of probation has not expired, dispense with his services, if he has been appointed by initial recruitment and if he has been appointed otherwise revert him to his former post, or if there be no such post, dispense with his services.

(3) On completion of the period of probation by a member of the service, the appointing authority may, confirm him in his appointment, or if his work or conduct has, in the opinion of the appointing authority, not been satisfactory--

- (a) dispense with his services; or
- (b) extend the period of probation by a period not exceeding two years in all, and during or on the

expiry of such period pass such orders as it could have passed during or on the expiry of the initial probationary period.

EXPLANATION:- I. If no order have been made by the day following the completion of the initial probationary period, the period of probation shall be deemed to have been extended.

EXPLANATION:- II. If no orders have been made by the day on which the maximum period of probation expires, the probationer shall be deemed to have been confirmed in his appointment from the date on which the period of probation was last extended or may be deemed to have been so extended.

(4) No person shall be confirmed in the Service unless he successfully completes such training and passes such departmental examinations as may be prescribed by Chief Justice from time to time.

(5) If a member of the service fails to complete successfully any training or pass any departmental examination prescribed under sub-rule(4), within such period or in such number of attempts as may be prescribed by Chief Justice, the appointing authority may dispense with his services.

9. SENIORITY. The inter se seniority of the members of service shall be determined in accordance with the order of merit assigned by the Provincial Judicial selection Board:

Provided that person selected for Service in an earlier selections shall rank senior to the persons selected in later selection.

EXPLANATION:- I. If a junior officer in a lower grade is promoted to a higher post temporarily in the public interest even though continuing later permanently in the higher grade, it

would not adversely effect the interest of a senior in the fixation of his seniority in the higher post.

EXPLANATION II. If a Junior officer in a lower post is promoted to a higher grade by superseding a senior officer and subsequently that officer is also promoted to the same grade for the same post the officer promoted first shall rank senior to the officer promoted subsequently.

EXPLANATION III. A Junior officer appointed to a higher post shall be said to have superseded a senior officer only if both the Junior and Senior officers were considered for the higher post and the junior officer was appointed in preference to the senior officer.

10. LIABILITY TO TRANSFER AND SERVE. The members of the service shall be liable to—

- a) transfer anywhere in Balochistan; and
- b) serve in any department of Government or any local authority or statutory body setup or established by Government.

Provided that where a member of service is required to serve in a post outside his service or cadre, his terms and conditions of services as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. GENERAL RULES. In all matters not expressly provided for in these rules, the members of service shall be governed by such rule as have been or may hereafter be prescribed by Government and made applicable to them.

12. RELAXATION. Any of these rules may, for the reasons to be recorded in writing be relaxed in individual case, if the Chief Justice High Court is satisfied that the strict application of these rules would cause undue hardship to the individual concerned.

13. DELEGATION. Government may delegate all or any of its powers under these rules to any officer subordinate to it.

14. REPEAL. The Balochistan Civil Judges/Judicial Magistrate Service Rules, 1984 are hereby repealed.

BY ORDER OF
GOVERNOR BALOCHISTAN

CHIEF SECRETARY,
GOVERNMENT OF BALOCHISTAN



THE BALOCHISTAN QAZIS AND MEMBER MAJLIS-E-SHURA
SERVICES RULES, 2002.

GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMN. DEPTT.

Dated Quetta the 15th November, 2002

NOTIFICATION

No. SOR-II(22)38/S&GAD/982-1081. In exercise of the powers conferred by section 25 of the Balochistan Civil servants Act, 1974 (IX of 1974), the Government of Balochistan is pleased to make the following rules regulating recruitment to the Balochistan *Qazis* and Member *Majlis-e-Shoora* service and prescribing conditions of service for the persons appointed there to, namely: -

PART GENERAL.

1. SHORT TITLE AND COMMENCEMENT. (1) These rules may be called the Balochistan *Qazis* and Member *Majlis-e-Shoora* Service Rules, 2002.

(2) They shall come into force at once and shall apply to the *Qazis* and Member *Majlis-e-Shoora* appointed under the *Dastoor-ul-Amal Deewani Kalat*, 1952, and the Balochistan Civil Disputes (*Shariat* Application) Regulation, 1976.

2. DEFINITIONS. In these rules, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them that is to say: -

- (a) "Administration Committee" means the Administration Committee of Hon'ble Judges constituted under High Court Rules and Orders;
- (b) "Appendix" means an appendix to these rules;
- (c) "Appointing Authority" means the authority specified in rule 4;
- (d) "Departmental Promotion Committee" means a Committee of not less than two Judges of the High Court to be nominated by the Chief Justice;
- (e) "Government" means the Government of Balochistan;
- (f) "High Court" mean the High Court of Balochistan;
- (g) "Initial Recruitment" means appointed made otherwise then by promotion transfer from any other service/Post/Department;
- (h) "Provincial Judicial Selection Board" means the administration Committee of the High Court or a board comprising two Judges of the High Court as may be nominated by the Chief Justice;

- (i) "Recognised *Darul-uloom* MEANS ANY *Darul-ulum* declared by Government in consultation with the Chief Justice to be recognised *Darul-ulum* for the purpose of these rules;
- (j) "Recognized University" means any University incorporated by law in Pakistan or any University declared by Government in consultation with the Chief Justice to be recognized University for the purpose of these rules;
- (k) "Service" means the Balochistan *Qazis* and Member *Majlis-e-Shoora* Service.

PART-II RECRUITMENT

3. ELIGIBILITY AND COMPOSITIONS OF SERVICE. (1) No person who is married to a foreign national shall be eligible for appointment to the service.

(2) The restriction imposed by sub rule (1) above may be relaxed by the Government in the case of person who is married to a citizen of India.

(3) The service shall comprise of the posts of specified in column of the Appendix and such other posts as may be determined by the Government from time to time.

4. APPOINTING AUTHORITY. Appointments to the Service shall be made by the Chief Justice of the High Court of Balochistan.

5. METHOD OF RECRUITMENT. Appointment to the Service shall be made as specified in the Appendix.

6. AGE. No person, who is less than 28 years or more than 40 years of age shall be appointed to the service by initial recruitment; provided that:

- (i) The upper age limit for appointment to the Service by initial recruitment shall be relaxable as per Government instructions enforce.
- (ii) In the case of a person whose services under Government have been terminated for want of a vacancy the period of Service already rendered by him shall, for the purpose of upper age limits under this, be excluded from his age.

(2) For the purpose of this rule age shall be reckoned.

- (i) where recruitment is to be made on the basis of written examination as on the 1st January of the year in which the examination is proposed to be held; and
- (ii) in other cases as on the last date fixed for submission of application for appointment.

7. QUALIFICATION. (1) No person shall be appointed to a post in the service by initial recruitment unless the possesses the qualifications prescribed for the post in column 3 of the Appendix.

(2) No person not already in Government Service shall be appointed to the post unless the produces a Certificate of Character from the Principal, and also certificates of Character from two other responsible persons not being his relatives, who are well acquainted with his character and antecedents.

PART-III CONDITION OF SERVICE

8. PROBATION. (1) A person appointed to the service against a substantive vacancy shall remain on probation for a period of two years, if appointed by initial recruitment and for a period of one year, if appointed otherwise.

EXPLANATION:- Officiating service and service spent on deputation to a corresponding or a higher post may be allowed to count towards the period of probation.

(2) If the work or conduct of a member of the service during the period of probation has, in the opinion of the appointing authority, not been satisfactory, the appointing authority may, notwithstanding that the period of probation has not expired, dispense with his services, if he has been appointed by initial recruitment and if he has been appointed otherwise revert him to his former post, or if there be no such post, dispense with his services.

(3) On completion of the period of probation by a member of the service, the appointing authority may, confirm him in his appointment, or if his work or conduct has, in the opinion of the appointing authority, not been satisfactory---

- (a) in case he has been appointed by initial recruitment, dispense with his services; or
- (b) in case he has been appointed otherwise, revert him to his former post, and if there be no such post dispense with his services; or
- (c) extend the period of probation by a period not exceeding two years in all and during or on the expiry of such period pass such orders as it could have passed during or on the expiry of the initial probationary period.

EXPLANATION:- I. If no order have been made by the day following the completion of the initial probationary period, the period of probation shall be deemed to have been extended.

EXPLANATION:- II. If no orders have been made by the day on which the maximum period of probation expires, the probationer shall be deemed to have been confirmed in his appointment from the date on which the period of probation was last extended or may be deemed to have been so extended.

9. SENIORITY. The inter se seniority of the incumbents in the various grades there of shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Provincial Judicial Selection Board provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in case of persons appointed otherwise, with reference to the date of their continuous appointment therein provided, that if the date of continuous appointment in respect of two or more officers is the same the older officers if not junior to the younger officer or officers in the next below grade, shall rank senior to the younger officer or officers in the next below grade, shall rank senior to the younger officer or officers.

EXPLANATION-I. If a junior officer in a lower grade is promoted to a higher grade temporarily in public interest even though continuing later permanently in the higher grade, it would not adversely affect the interest of a senior in the fixation of his seniority in the higher grade.

EXPLANATION-II. If a Junior officer in a lower grade is promoted to a higher grade by superseding a senior officer and subsequently that officer is also promoted to the same grade the officer promoted first shall rank senior to the officer promoted subsequently

EXPLANATION-III. A Junior officer appointed to a higher grade shall be deemed to have superseded a senior officer only if both the junior and senior officers were considered for the higher grade and the junior officer was appointed in preference to the senior officer.

(2) The seniority in the various grades of the service of the members appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined.

- (a) In case both the officers appointed by initial recruitment and the officer appointed otherwise have been appointed against substantive vacancies, or both have been appointed against temporary vacancies, with reference to the date of appointment to such vacancy in the case of officer appointed by initial recruitment and to the date of continuous appointment against such vacancy in the case of the officer appointment otherwise; provided that if the two dates are the same the officer appointed otherwise shall rank senior to the officer appointed by initial recruitment;
- (b) In case the officer appointed by initial recruitment has been appointed against a substantive vacancy and the officer appointed otherwise has been appointed against a temporary vacancy, the officer appointed by initial recruitment shall rank senior to the officer appointed otherwise; and
- (c) In case the officer appointed otherwise is appointed against a substantive vacancy and the officer

appointed by initial recruitment is appointed against a temporary vacancy, the officer appointed otherwise shall rank senior to the officer appointed by initial recruitment.

10. LIABILITY TO TRANSFER AND SERVE. The members of the service shall be liable to—

- a) transfer anywhere in Balochistan; and
- b) serve in any department of Government or any local authority or statutory body setup or established by Government.

Provided that where a member of service is required to serve in a post outside his service or cadre, his terms and conditions of services as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. GENERAL RULES. In all matters not expressly provided for in these rules, the members of service shall be governed by such rule as have been or may hereafter be prescribed by Government and made applicable to them.

12. RELAXATION. Any of these rules may, for the reasons to be recorded in writing be relaxed in individual case, if the Chief Justice High Court is satisfied that the strict application of these rules would cause undue hardship to the individual concerned.

13. DELEGATION. Government may delegate all or any of its powers under these rules to any officer subordinate to it.

14. REPEAL. The Balochistan *Qazis* and Member *Majlis-e-Shoora* (Appointment and Conditions of Service Rules, 1983 are hereby repealed.

BY ORDER OF
GOVERNOR BALOCHISTAN

APPENDIX
(SEE RULE 3(3) AND 7(1))

S. NO.	NOMENCLATURE OF THE POST	MINIMUM QUALIFICATION PRESCRIBED FOR APPOINTMENT BY INITIAL RECRUITMENT	METHOD OF RECRUITMENT.
1.	Member <i>Majlis-e-Shoora</i> (B-18)	<i>Sanad</i> in <i>Dars-e-Nizami</i> from a recognized <i>Dar-ul-Ulm</i> (Preferably English knowing) Or Bachelor's Degree in Law and three years practice as Advocate or 3 years experienced as <i>Qazi</i> .	i. One third by initial recruitment. ii. Two third by promotion from amongst the holder of the post of <i>Qazi</i> .
2	<i>Qazi</i> (B-17)	<i>Sanad</i> in <i>Dars-e-Nizami</i> from a recognized <i>Dar-ul-Ulm</i> (Preferably English knowing) Or Law Graduate from a recognize University.	By initial recruitment.



ARTICLES OF AN ENGAGEMENT CONCLUDED BETWEEN THE
BRITISH GOVERNMENT AND MEHRAB KHAN, THE CHIEF OF
KALAT, 1839

Whereas a Treaty of lasting friendship has been concluded between the British Government and His Majesty Shah Shuja-ul-Mulk, and Mehrab Khan, the Chief of Kalat, as well as his predecessors, has always paid homage to the Royal House of Saddozais; therefore, with the advice and consent of the Shah the undermentioned Articles have been agreed upon by Mehrab Khan and his descendants from generation to generation. As long as the Khan performs good services, the following Articles will be fulfilled and preserved :-

ARTICLE 1.

As Nasir Khan and his descendants, as well as his tribe and sons, held possession of the country of Kalat, Kachhi, Khorasan, Mekran, Ketch, Bela and the port of Sonmiani in the time of the lamented Ahmed Shah Durrani they will in future be masters of their country in the same manner.

ARTICLE 2.

The English Government will never interfere between the Khan, his dependants, and subjects, particularly lend no assistance to Shah Nawaz Fateh Khan, and the descendants of the Mohabbatzai branch of the family, but always exert itself to put away evil from his house. In case of His Majesty the Shah's displeasure with the Khan of Kalat the English Government will exert itself to the utmost to remove the same in a manner which may be agreeable to the Shah and according to the rights of the Khan.

ARTICLE 3.

As long as the British army continues in the country of Khorasan, the British Government agrees to pay to Mehrab Khan

the sum of One and a half Lakh of Company's rupees from the date of this engagement by half yearly instalments.

ARTICLE 4.

In return from this sum the Khan, while he pays homage to the and continues in friendship with the British nation agrees to use his best endeavours to procure supplies, carriage, and guards to protect provisions and stores going and coming from Shikarpur by the route of Dozan, Dhadar, the Pass of Bolan, through Shal to Kuchlak from the frontier to another.

ARTICLE 5.

All provisions and carriage which may be obtained through the means of the Khan, the price of the same is to be paid without hesitation.

ARTICLE 6.

As much as Mehrab shows his friendship to the British Government by service and fidelity to the Saddozai family, so much the friendship will be increased between him and the British Government and on this he should have the fullest reliance and confidence.

This agreement having been fully concluded, signed and sealed by Lieutenant Colonel Sir Alexander Burnes, Kt., Envoy on the part of the Right Honourable George, Lord Auckland, G.C.B., Governor General of India and Mehrab Khan of Kalat, on the part of himself, the same shall be duly ratified by the Right Honourable the Governor General.

Done at Kalat, the 28th day of March, A.D., 1839 corresponding with the 12th day of Muharram, AH. 1255.

A. BURNES,
ENVOY TO KALAT

APPENDIX-II

TREATY ENTERED INTO BETWEEN THE GOVERNMENT OF INDIA AND MEER NASEER KHAN, CHIEF OF KHELAT, 1841

Whereas Meer Naseer Khan, son of Mehrab Khan, deceased having tendered his allegiance and submission, the British Government and His Majesty Shah Shuja-ool-Moolk reconise him, the said Nasir Khan, and his descendants as Chief of the Principality of Khelati-Naseer on the following terms:-

ARTICLES 1

Meer Nasir Khan acknowledges himself and his descendants the vassals of king of Cabool, in like manner as his ancestors were formerly the vassals of His Majesty's ancestors.

ARTICLES 2

Of the tracts of country resumed on the death of Mir Mehrab Khan, namely, Cutchs, Moostung, and Shawl, the two first will be restored to Meer Nasir Khan and his descendants through the kindness of His Majesty Shah Suja-ool-Moolk.

ARTICLE 3

Should it be deemed necessary to station troops, whether belonging to the Honourable Company of Shah Suja-ool-Moolk, in any part of the territory of Kalat, they shall occupy such positions as may be thought advisable.

ARTICLE 4

Mir Nasir Khan, his heirs and successors, will always be guided by the advice of the British officer residing at Dhadar.

ARTICLE 5

The passage of merchants and others into Afghanistan from the river Indus on the one side, and from the sea port of

Sonmiani on the other, shall be protected by Mir Nasir Khan as far as practicable, nor will any aggression be practised on such persons, or any undue exactions beyond an equitable toll fixed by the British Government and Mir Nasir Khan.

ARTICLE 6

Mir Nasir Khan binds himself, his heirs and successors, not to hold any political communications or enter into any negotiations with foreign powers without the consent of the British and of His Majesty Shah Suja-ool-Moolk and in all cases to act in subordinate co-operation with the Governments of British India and of the Shah; but the usual amicable correspondence with neighbours to continue as heretofore.

ARTICLE 7

In case of an attack on Mir Nasir Khan by an open enemy, or of any difference arising between him and any foreign power, the British Government will afford him assistance as it may judge to be necessary or proper for the maintenance of his rights.

ARTICLE 8

Mir Nasir Khan will make due provision for the support of Shah Newaz Khan, either by Pension to be paid through the British Government on condition of that Chief residing within the British territory, or by grant of estates within Kalat possessions, as may hereafter be decided by the British Government.

Done at Kalat this 6th day of October A.D. 1841, corresponding with the 20th Shaban A.H. 1258.

SEAL.
SD/- MEER NASEER KHAN.

Sd/- AUCKLAND.
SEAL

Ratified and signed by the Right Honourable the
Governor General of India in Council, at Fort William in Bengal,
this 10th day of January 1842.

Sd/- T.H. MADDOCK.
Secretary to the Government of India.



APPENDIX-III

TREATY BETWEEN THE BRITISH GOVERNMENT AND NASIR KHAN, CHIEF OF KALAT, CONCLUDED ON THE PART OF THE BRITISH GOVERNMENT BY MAJOR JOHN JACOB, C.B. IN VIRTUE OF FULL POWERS GRANTED BY THE MOST NOBLE THE MARQUES OF DALHOUSIE, KT ETC. GOVERNOR OF INDIA, AND BY MIR NASIR KHAN OF KALAT, 1854.

Whereas the course of events has made it expedient that a new agreement should be concluded between the British Government and Mir Nasir Khan, Chief of Kalat, the following Articles have been agreed on between the said Government and His Highness: -

ARTICLE 1

The Treaty concluded by Major Outram between the British Government and Mir Nasir Khan, Chief of Kalat on the 6th October 1841, is hereby annulled.

ARTICLE 2

There shall be perpetual friendship between the British Government and Mir Nasir Khan, Chief of Kalat, his heirs and successors.

ARTICLE 3

Mir Nasir Khan binds himself his heirs and successors, to oppose to the utmost all the enemies of the British Government, in all cases to act in subordinate co-operation with the Government, and enter into negotiation with other States without its consent, the usual friendly correspondence with neighbours being continued before.

ARTICLE 4

Should it be deemed necessary to station British troops in any part of the territory of Kalat, they shall occupy such positions as may be thought advisable by the British authorities.

ARTICLE 5

Mir Nasir Khan binds himself, his heirs and successors, to prevent all plundering or other outrage by his subjects within or near British territory; to protect the passage of merchants to and from between the British dominions and Afghanistan, whether by way of Sindh or by the seaport of Sonmiani, or other seaports of Mekran and to permit no exactions to be made beyond equitable duty to be fixed by the British Government and Mir Nasir Khan, and the amount to be shown in the Schedule annexed to this Treaty.

ARTICLE 6

To aid Mir Nasir Khan, his heirs and successors, in the fulfilment of these obligations, and on condition of a faithful performance of them year by year, the British Government binds himself to pay to Mir Nasir Khan, his heirs and successors annual subsidy of fifty thousand (50,000) Company's Rupees.

ARTICLE 7

If during any year the conditions above mentioned shall not be faithfully performed by the said Mir Nasir Khan, his heirs and successors, then the annual subsidy of fifty thousand (50,000) Company's Rupees will not be paid by the British Government.

Done at Mastung, this fourteenth day of May one thousand eight hundred and fifty four.

Sd/ JOHN JACOB, MAJOR,
Political Superintendent and Commandant
On the Frontier of Upper Sindh.

MASTUNG.
14th May, 1854

Schedule showing amount of duty to be levied on merchandise passing through the dominions of the Khan of Kalat referred to in Article 5 of this Treaty.

On each camel-load, without respect to value, from the northern frontier to the sea, either to Karachi or other port, company's Rupees 6.

On each camel, as above, from the northern frontier to Shikarpur, Company's Rupees 5.

The same duties to be levied on merchandise passing in the contrary direction from the sea, or from Sindh to the Kalat territory.

Sd/ JOHN JACOB, MAJOR,
Political Superintendent and Commandant
On the Frontier of Upper Sindh.

The foregoing Articles of Treaty having been concluded between the British Government and the Khan of Kalat and signed and sealed by Major John Jacob, C.B., on the one part, and Mir Nasir Kar on the other part at Mastung on the 14th May A.D. 1854, corresponding with 16th Shahban A.H. 1270, a copy of the same will be delivered to His Highness, duly ratified by the Governor General in Council, within two months from this date.

Sd/- DALHOUSIE.
" J. DORIN.
" J. LOW.
" J. P. GRANT.
" B. BEACOCK.

Ratified by the Most Hon'able the Governor General in Council, Fort William, this 2nd day of June 1854.

Sd/- G. F. Ed. PMSTPME.
Secretary to the Government of India.



Proclamation and Notification under General Statutes.

Extract from the Proceedings of the Government of India in the Foreign Department No. 2219-E, dated Simla, the 1st November, 1887.

RESOLUTION. The Governor General in Council had recently had occasion to consider the administration of the districts known as Pishin, Shorarud, Kach, Kawas, Harnai, Sibi and Thal Chotiali.

2. The administration of these district has hitherto been carried on under the control of the Governor General's Agent in Baluchistan and the executive orders of the Governor General in Council in accordance with local customs and with the main principles which guide the Govt of the older and more advanced Indian possessions of her Majesty the Queen, Empress of India. But the people of the districts have now become familiar with British rules; the local customs which are worth preserving have been ascertained; and the conditions of the districts have been largely developed by the extension of the frontier railways. The Governor General in Council is therefore of the opinion that the time has come for brining the districts more closely within the regular system of British India and for placing their administrative arrangements on a sound legislative basis.

3. The Governor General in Council is pleased in the first place to district that the districts shall be formed into a Chief Commissionership to by styled the Chief Commissionership of British Baluchistan and that the Agent of the Governor General

in Balochistan shall be ex-officio the Chief Commissioner. The Secretary to the Government of India in the Foreign Department will now take the necessary steps with a view to lay before His Excellency in Council the legislative and executive details which require settlement in pursuance of these orders; and a copy of this Resolution will be forwarded to the Governor's Agent in Baluchistan for information and guidance.

By Order of

*His Excellency the Viceroy and
Governor General in Council*



APPENDIX - IV

THE MUSTUNG CONVENTION AND TREATY OF 1876.

1. Whereas quarrels for some years past have existed between the Kalat Government, Mir Jam Ali Khan, son of Jam Mir Khan, Ruler of Lus Beyla, and the Sarawan and Jhalawan Chiefs, Major Sandeman, Deputy Commissioner of Dera Ghazi Khan, on special duty was deputed by the British Government to mediate between the said Khan of Kalat, Mir Jam Ali and the Jhalawan and Sarawan Sirdars; and whereas the said Major Sandeman has so mediated and given his advice to the Khan of Kalat and his Sirdars, and the said parties having availed themselves of it, have willingly agreed to make peace [the terms of which are recorded herein] and we do hereby declare it.
2. We, the Sarawan and Jhalawan Sardars, do announce our submission and allegiance to His Highness Mir Khodadad Khan, Khan of Kalat, which we make in accordance with ancient rule and custom, His Highness having restored to us [in accordance with ancient law and precedent] our ancient rights and privileges, and having promised for the future to treat us with every kindness and consideration, provided we continue loyal and faithful to the Kalat Government according to old State usage.
3. His Highness the Khan has granted the following concessions to us, his Sirdars: -
 1. His Highness confirms the election of Sirdar Asad Khan, son of Sirdar Mulla Muhammad, to be the Sirdar of the Sarawans, and has acknowledged him as such in Durbar, and has presented him publicly with the usual *Khillut*.
 2. His Highness acknowledges and confirms the election of Sirdar Gauhar Khan of Zehri by the Jhalawans as Sirdar of Zehri in room of the late Taj

Mohammad and has presented him with the usual *Khillut*.

3. His Highness recognises Mir Shakar Khan, son of the late Sirdar Noor Din, as Sirdar of the Mengals, and agrees that Mir Ibrahim Khan, his uncle, shall act for him until he is of age. He has received the usual *Khillut* from His Highness.
4. We, Mir Jam Ali Khan, son of Jam Mir Khan, and the Sarawan and Jhalawan Sirdars having made public submission to His Highness according to precedent and ancient custom, and having presented the Khan with a petition asking His Highness to intercede with the British Government for the release of Jam Mir Khan, now in confinement in British territory, and His Highness the Khan having received the petition having granted it; His Highness forwarded it under cover of a letter from himself to Major Sandeman asking that officer to send both to the British Government with a view to Jam Mir Khan being released. This wish we repeat in this record for the consideration of the British Government.
5. His Highness presented Mir Jam Ali with a *Khillut* as an acknowledgment of peace having been declared between Kalat and Lus Beyla and of his having been taken into favour.
6. The complaints and grievances brought by the Sarawan and Jhalawan Sirdars regarding the confiscation of lands, etc., against the Kalat Government were settled by a Committee appointed by His Highness the Khan. The members of the Committee were Sirdars Mulla Mohammad of Sarawan, Imam Bakhsh Khan, Mazari, and Jamal Khan, Laghari on the part of the Sirdars, and Wakil Nawab Mohammad Khan, Mustaufi Fakir Mohammad, and Mulla Abdullah Jan on the part of His Highness the Khan. The Committee having carefully inquired into each case recorded their opinion in writing, which was presented to His Highness, who also recorded his opinion and order on each case. The papers containing the list of cases, the result of each

inquiry and final decision are separate, but, we the Brahui Sirdars, agree to the decisions recorded therein by His Highness the Khan, and will abide by them.

7. The separate agreement recorded in writing come to by Major Sandeman with His Highness the Khan regarding the protection of the Bolan Pass trade, we, the Khan of Kalat and the Sarawan Sirdars, do hereby agree to and will abide by its terms.

8. His Highness the Khan hereby agrees to treat his Sirdars of Sarawan and Jhalawan with kindness and consideration in accordance with their respective positions, which have been handed down to them from their forefathers. On the other hand the Sirdars do promise to obey the Khan of Kalat's order according to old usage. His Highness the Khan and Sarawan and Jhalawan Sirdars do hereby agree that what has passed between them be forgotten, for the future should the Khan's Naib or other officials cause any Brahui injury or oppress him, the matter will be referred to the Khan for inquiry and decision, and the Sirdars on this account will not rebel against the Kalat Government; but should the Khan not do justice, will first refer the disputed point to the British Government for decision. In the same way the Khan will not wage civil war against the Sirdars for any offence until His Highness has first referred the point in dispute through the Political Agent to the British Government. Mir Khodadad Khan, Khan of Kalat, and we, his Sirdars of Sarawan and Jhalawan agree to this condition. In short, we all bind ourselves to hold (1) by the conditions contained in the memorandum which set forth the preliminary conditions of peace; (2) by the settlement papers containing the award of the arbitrators confirmed by the Khan; (3) by the Bolan Pass agreement, to which we [the Khan of Kalat and his Sirdars of Sarawan] have affixed our seals, and we swear to be bound by their conditions. Further we (the Khan of Kalat and his Sirdars of Sarawan and Jhalawan), do hereby heartily agree to aid to the best of our power in keeping open the trade routes, to

preserve the peace of the country, and we swear we will do nothing to violate this our written agreement of peace.

This our joint agreement we make over to the British Government as a record of the terms of peace made between us, and to which we have affixed our seals.

(Seal of) Mir Khodadad Khan, Khan of Kalat.

(Seal of) Mir Jam Ali, of Lus Beyla.

(Seal of) Sirdar Mulla Muhammad of Sarawan.

(Seal of) Sirdar Gauhar Khan of Zehri.

(Seal of) Sirdar Ibrahim Khan Mangel.

(Seal of) Wadera Shadi Khan, Bungalzai Chief.

(Seal of) Sirdar Said Khan Mohammed Shahi.

(Seal of) Sirdar Allah Dina Kurd.

(Seal of) Sirdar Rahman Khan, Zagar, Chief of
Pishki.

(Seal of) Sirdar Kadir Bakhsh Sarpara.

(Seal of) Sirdar Alam Khan.

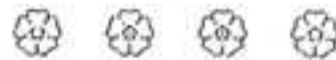
(Seal of) Sirdar Chakar Khan.

(Seal of) Sirdar Jhanda Khan Shahwani.

(Seal of) Sorab Khan.

Witnessed and signed by Major Sandeman,
Deputy Commissioner, Sirdars Imam Bakhsh Khan and
Jamal Khan.

Camp Mastung, 13 July 1876.



TREATY BETWEEN THE BRITISH GOVERNMENT AND
THE KHELAT STATE, 1876.

Whereas it has become expedient to renew the Treaty of 1854 between the British Government and Naseer Khan, Khan of Khelat, and to supplement the same by certain additional provisions calculated to draw closer the bonds of friendship and amity between the two Governments, the following additional Articles are herewith agreed upon between the two Governments, the following additional Articles are herewith agreed upon between the Right Hon' able Edward Robert Bulwer Lytton, Baron Lytton of Knebworth, in the Country of Herford, and a Baronet of the United Kingdom, Viceroy and Governor General of India and Grand Master of the Most Exalted Order of the Star of India, on behalf of the British Government on the one hand and His Highness Meer Khodadad Khan, Khan of Khelat, on the other:-

ARTICLE 1

The Treaty concluded between the British Government and Meer Naseer Khan, Khan of Khelat, on the 14th of May 1854, is hereby renewed and reaffirmed.

ARTICLE 2

There shall be perpetual friendship between the British Government and Meer Khodadad Khan, Khan of Khelat, his heirs, and successors.

ARTICLE 3

Whilst on his part, Meer Khodadad Khan, Khan of Khelat, binds himself, his heirs, successors and Sirdars to observe faithfully the provisions of Article 3 of the Treaty of 1854, the British Government on its part engages to respect the

independence of Khelat and to aid the Khan in case of need in the maintenance of a just authority and the protection of his territories from external attack, by such means as the British Government may at the moment deem expedient.

ARTICLE 4

For the further consolidation of the friendship herewith renewed and re-affirmed between the two Governments, it is agreed on the one hand that British Agents with suitable escorts shall be duly accredited by the British Government to reside permanently at the Court of the Khan and elsewhere in His Highness's dominions, and on the other hand, that a suitable representative shall be duly accredited by His Highness to the Government of India.

ARTICLE 5

It is hereby agreed that should any dispute, calculated to disturb the peace of the country, arise hereafter between the Khan and the Sirdars of Khelat, the British Agent at the Court of His Highness shall in the first place use his good offices with both parties to effect, by friendly advice, an amicable arrangement between them, failing which the Khan will with the consent of the British Government, submit such dispute to its arbitration, and accept and faithfully execute its award.

ARTICLE 6

Whereas the Khan of Khelat has expressed a desire on the part of himself and his Sirdars for the presence in his country of detachment of British troops, the British Government, in accordance with the provisions of Article 4 of the Treaty of 1854, and in recognition of the intimate relations existing between the two countries, hereby assents to the request of His Highness, on condition that the troops shall be stationed in such positions as the British Government may deem expedient and be withdrawn at the pleasure of that Government.

ARTICLE 7

It is also agreed that such lines of telegraph or railway as may be beneficial to the interests of the two Governments shall be from time to time constructed by the British Government in the territories of the Khan, provided that the conditions of such construction be a matter of previous arrangement between that Government and the Government of His Highness.

ARTICLE 8

There shall be entire freedom of trade between the State of Khelat and the territories of the British Government subject to such conditions as the British Government may, at any time, in concert with the Khan of Khelat, deem necessary for the protection of fiscal interests.

ARTICLE 9

To aid Meer Khodadad Khan, his heirs, and successors in the efficient fulfilment of the obligations contracted by them under the Treaty of 1854 and the present supplementary engagement, the British Government hereby undertakes to pay to the said Khan, his heirs, and successors an annual sum of one lakh of rupees, so long as they shall faithfully adhere to the engagements heretofore and hereby contracted.

ARTICLE 10

The British Government further undertakes to contribute Rupees twenty thousand five hundred annually towards the establishment of posts and development of traffic along the trade routes in His Highness's territories provided such money is expended by the Khan in the manner approved of by the British Government.

Executed at Jacobabad, this eighth day of December one thousand eighth hundred and seventy six Anno Domini.

Seal of Khan of Khelat.

[Sd.] LYTTON,
Viceroy and Governor General of

India

Khelat:

In the matter of spelling Oriental names followed, a system prescribed by the Government of India, and carried out in Sir William Hunter's Imperial Gazetteer. Under the system the vowels are ordinarily sounded as in Italian, but an exception is made in the case of names of places, the spelling of which has been fixed by usage. In accordance with these principles the name has been spelled *Khelat*, not Kalat; and the place of Sir Robert's burial *Lus Beyla* not Las Bela.



APPENDIX-VI

TREATY OF GANDAMAK

The following Articles of a Treaty for the restoration of peace and amicable relations have been agreed upon between the British Government and His Highness Muhammad Yakub Khan, Amir of Afghanistan and its dependencies:

ARTICLE 1

From the day of the exchange of the ratifications of the present Treaty there shall be perpetual peace and friendship between the British government on the one part and His Highness the Amir of Afghanistan and its dependencies, and his successors, on the other.

ARTICLE 2

His Highness the Amir of Afghanistan and its dependencies engages, on the exchange of the ratifications of this Treaty, to publish a full and complete amnesty, absolving all his subjects from any responsibility for intercourse with the British forces during the war, and to guarantee and protect all persons of whatever degree from any punishment or molestation on that account.

ARTICLE 3

His Highness the Amir of Afghanistan and its dependencies agrees to conduct his relations with Foreign States, in accordance with the advice and wishes of the British Government. His Highness the Amir will enter into no

engagements with Foreign States, and will not take up arms against any Foreign State, except with the concurrence of the British Government. On these conditions, the British Government will support the Amir against any foreign aggression with money, arms, or troops, to be employed in whatsoever manner the British Government may judge best for this purpose. Should British troops at any time enter Afghanistan for the purpose of repelling foreign aggression, they will return to their stations in British territory as soon as the object for which they entered has been accomplished.

ARTICLE 4

With a view to the maintenance of the direct and intimate relations now established between the British Government and His Highness the Amir of Afghanistan and for the better protection of the frontiers of His Highness's dominions, it is agreed that a British Representative shall reside at Kabul, with a suitable escort in a place of residence appropriate to his rank and dignity. It is also agreed that the British Government shall have the right to depute British Agents with suitable escorts to the Afghan frontiers, whensoever this may be considered necessary by the British Government in the interests of both States, on the occurrence of any important external fact. His Highness the Amir of Afghanistan may on his part depute an Agent to reside at the Court of His Excellency the Viceroy and Governor-General of India, and at such other places in British India as may be similarly agreed upon.

ARTICLE 5

His Highness the Amir of Afghanistan and its dependencies guarantees the personal safety and honourable treatment of British Agents within his jurisdiction; and the British Government on its part undertakes that its Agents shall never in

any way interfere with the internal administration of His Highness's dominions.

ARTICLE 6

His Highness the Amir of Afghanistan and its dependencies undertakes, on behalf of himself and his successors, to offer no impediment to British subjects peacefully trading within his dominions so long as they do so with the permission of the British Government, and in accordance with such arrangements as may be mutually agreed upon from time to time between the two Governments.

ARTICLE 7

In order than the passage of trade between the territories of the British Government and of His Highness the Amir of Afghanistan may be open and uninterrupted, His Highness the Amir of Afghanistan agrees to use his best endeavours to ensure the protection of traders and to facilitate the transit of goods along the well-known customary roads of Afghanistan. These roads shall be improved and maintained in such manner as the two governments may decided to be most expedient for the general convenience of traffic, and under such financial arrangements as may be mutually determined upon between them. The arrangements made for the maintenance and security of the aforesaid roads, for the settlement of the duties to be levied upon merchandize carried over these roads, and for the general protection and development of trade with, and through the dominions of His Highness, will be stated in a separate Commercial Treaty, to be concluded within one year, due regard being given to the state of the country.

ARTICLE 8

With a view to facilitate communications between the allied Governments and to aid and develop intercourse and commercial relations between the two countries, it is hereby agreed that a line of telegraph from Kurram to Kabul shall be constructed by, and at the cost of the British Government, and the Amir of Afghanistan hereby undertakes to provide for the proper protection of this telegraph line.

ARTICLE 9

In consideration of the renewal of a friendly alliance between the two States which has been attested and secured by the foregoing Articles, the British Government restores to His Highness the Amir of Afghanistan and its dependencies the towns of Kandahar and Jellalabad, with all the territory now in possession of the British armies, excepting the districts of Kurram, Pishin, and Sibi. His Highness the Amir of Afghanistan and its dependencies agrees on his part that the districts of Kurram and Pishin and Sibi, according to the limits defined in the schedule annexed, shall remain under the protection and administrative control of the British Government; that is to say, the aforesaid districts shall be treated as assigned districts, and shall not be considered as permanently severed from the limits of the Afghan kingdom. The revenues of these districts after deducting the charges of civil administration shall be paid to His Highness Amir.

The British Government will retain in its own hands the control of the Khyber and Michni Passes, which lie between the Peshawar and Jelalabad districts, and of all relations with the independent tribes of the territory directly connected with these Passes.

ARTICLE 10

For the further support of His Highness the Amir in the recovery and maintenance of his legitimate authority, and in consideration of the efficient fulfilment in their entirety of the engagements stipulated by the foregoing Articles, the British Government agrees to pay to High Highness the Amir and to his successors an annual subsidy of six lakhs of Rupees.

Treaty between the British Government and Mohammad Yakub Khan, Amir of Afghanistan and its dependencies, concluded at Gandamak by Amir Mohammad Yakub Khan on his own part, and on the part of the British Government by Major P.L.N. Cavagnari, Political Officer on special duty, in virtue of full powers vested in him by the Viceroy of India, 26 May 1879.



APPENDIX-VII

QUETTA, NUSHKI, AND NASIRABAD AGREEMENTS

QUETTA AGREEMENT

Agreement entered into by His Highness the Khan of Kelat Mir Khudadad Khan on the one part and by Sir Robert Sandeman, K.C.S.I., Agent to the Governor-General in Balochistan, on the other part, subject to the confirmation of His Excellency the Viceroy in Council executed at the Dasht Plain on the 8th day of June 1883.

Whereas in the year 1879 an arrangement was finally agreed to between the British Government and His Highness Mir Khudadad Khan of Kelat by which the district and niabat of Quetta were placed under the administration of the British Government on certain conditions and for a certain period, and whereas the period fixed by the said arrangement is almost expired, and whereas it has been found by experience to be to the advantage of both Governments that the district and Niabat of Quetta should be exclusively managed by the officers of the British Government, and whereas it appears desirable to His Excellency the Viceroy and Governor-General of India and to His Highness the Khan of Kelat, that a similar arrangement should be made regarding the levy of dues and other matters connected therewith in the Bolan Pass in consideration of the losses suffered by His Highness the Khan of Kelat owing to the opening of the Hurnai route by the British Government, it is hereby declared and agreed as follows: -

1. Mir Khudadad Khan, of Kelat on behalf of himself and his heirs and successors hereby makes over and entrusts the entire management of Quetta District and Niabat absolutely and with all the rights and privileges as well as full revenue, civil and criminal jurisdiction, and all other powers of administration, to

the British Government with effect from 1st April 1883, on the following conditions:-

- (1) That the said District and Niabat shall be administered on behalf of the British Government by such officer or officers as the Governor-General in Council may appoint for the purpose.
- (2) That in lieu of annual surplus of revenue hitherto paid to His Highness the Khan of Kelat under the arrangement of 1879 above cited, the British Government shall pay to His Highness on the 31st March in every year, beginning from 1st March 1884, a fixed annual rent of Rupees 25,000 (twenty-five thousand) which has been settled as a fair average equivalent of His Highness the Khan's right to the annual net surplus of the revenues of the said District and Niabat.
- (3) The aforesaid sum of Rupees 25,000 (twenty-five thousand) shall be paid to His Highness without any deductions for cost of administration, so long as the said District and Niabat are administered by the British Government.

2. His Highness the Khan hereby transfers to the British Government absolutely, with effect from the 1st day of April 1883, all his rights to levy dues or tolls on the trade travelling through the Bolan to and from British India and Afghanistan, as well as to and from Kachi and Khorasan, as provided by the Treaty of 1854, or on the trade travelling to and from British India and the districts of Sibi, Quetta and Pishin.

3. In return for the concession last mentioned the British Government agree to pay to His Highness the Khan the sum of Rs. 30,000 (thirty thousand) per annum free of all deductions, in two half-yearly instalments, on the 1st October and 1st April of each year beginning from the 1st October 1883. In addition the Viceroy and Governor-General agree to pay to the Sarawan and

Kurd Sidars a fixed sum yearly for certain service in the Pass representing their shares respectively of the transit and escort fees.

4. In order to facilitate the arrangements of the British Government for the collection of tolls on its own behalf in the Bolan Pass, His Highness the Khan hereby cedes to the British Government full civil and criminal jurisdiction and all other powers of administration within the limits of the said pass and within the land purchased by the British Government at Rindali for a railway station and other buildings.

NUSHKI AGREEMENT

Agreement entered into by His Highness the Khan of Kalat, Mir Muhmud Khan, G.C.I.E., on the one part, and by Colonel Henry Wylie, C.S.I., Officiating Agent to the Governor-General in Baluchistan, on the other part, subject to the confirmation of His Excellency the Viceroy in Council, -1899.

Executed at Kalat on the first day of July 1899.

Whereas it has been found by experience to be to the advantage of both the British Government and His Highness Mir Muhmud Khan, Khan of Kalat, that the District and Niabat of Nushki should be exclusively managed by the officers of the British Government, it is hereby declared and agreed as follows:

Mir Muhmud, Khan of Kalat, on behalf of himself and his heirs and successors, hereby makes over and entrusts, in perpetuity, the entire management of the Nushki District and Niabat absolutely and with all the rights and privileges, state or personal, as well as full and exclusive revenue, civil and criminal jurisdiction, and all other powers of administration, including all rights to levy dues and tolls, to the British Government with effect from the 1st July 1899 on the following conditions: -

- (1) that the said district and Niabat shall be administered on behalf of the British Government by or through such officer or officers as the Governor-General in Council may appoint for the purpose;
- (2) that the British Government shall pay to His Highness, on the 1st September 1899, and thereafter annually on the 1st September, a fixed annual rent of Rs. 9,000, nine thousand only, which has been settled as a fair average equivalent of His Highness the Khan's right to the annual revenues of the said District and Niabat; and
- (3) that the aforesaid sum of Rs. 9,000, nine thousand only, shall be paid to His Highness without any deduction for cost of administration.

NASIRABAD AGREEMENT

Agreement entered into by His Highness the Khan of Kalat, Mir Muhmud Khan, G.C.I.E., on the one part, and by the Hon'able Colonel C.E. Yate, G.S.I., C.M.G., Agent to the Governor-General in Balochistan, on the other part, subject to the confirmation of His Excellency the Viceroy and Governor-General in Council, — 1903.

Executed at Sibi, on the seventeenth day of February one thousand nine hundred and three.

I. Whereas it has been found by experience to be to the advantage of both the British Government and His Highness Beglar Begi Mir Muhmud Khan, G.C.I.E., Khan of Kalat, that the *Niabat* of Nasirabad should be exclusively managed by the officers of the British Government, it is hereby declared and agreed as follows: -

His Highness Mir Muhmud Khan, Khan of Kalat, on behalf of himself and his heirs and successors, hereby makes over and cedes in perpetuity to the British Government the entire management of the Nasirabad Niabat absolutely and with all the rights and privileges, state or personal, as well as full and exclusive, revenue, civil and criminal jurisdiction and all other powers of administration, including all rights to levy dues and tolls on the following conditions: -

- (1) That the said Niabat shall be administered on behalf of the British Government by or through such officer or officers as the Governor-General in Council may appoint for the purpose, with effect from the first day of April one thousand nine hundred and three, or such subsequent date as the Government of India may take it over.
- (2) That the British Government shall pay to His Highness on the first day of April one thousand nine hundred and four and thereafter annually on the first day of April, each year, a fixed annual rent of Rs. 1,15,000 (one lac and fifteen thousand).
- (3) That the aforesaid sum of Rs.1,15,000 (one lac and fifteen thousand) shall be paid to His Highness without any deduction for cost of administration.

II. The boundary of the Nasirabad *Niabat* as described by His Highness the Khan of Kalat's Niab, Ghaus Bakhsh, in July 1902 is as follows: -

On the south the Sind border, on the north commencing eastwards at the Leni Burj it runs north-eastwards along the Mazari Border to the Bugti hills. It follows the foot of these hills running in a westerly direction to their nearest point to the Shahpur road near the Manak Garhi Nullah. It there follows this nullah as far as the Shahpur road, then follows the Shahpur road south as far as the Deh Chattan lands (generally known as Dodaika) and then turns west following the boundary of Dodaika

to the Nurwah channel above the point to where the water reaches. It then follows the Nurwah as far as the junction of the latter with the Dur Muhammad Wah, which is shown on most maps as the Shahiwah, a continuation of the main desert canal. From this point it follows the Dur Muhammad Wah right along its course to the west and south-west, crossing the railway at mile 368, five miles north of Jhatpat station, until it meets the line of pillars erected about four years ago by the Magassis and Jamalis as their mutual boundary. It then follows this line of pillars southwards to the Sind border passing about 500 yards to the west of the point where the Sonwah has been closed.

III. Whereas it is possible that the lower portion of the Manjuti lands enclosed by a straight line drawn from the place where the Dur Muhammad Wah crosses the railway near mile 368, to a point on the Jacobabad-Shahpur road, 8 miles to the north of where the Dur Muhammad Wah crossed that road, may hereafter be brought under irrigation, His Highness the Khan of Kalat hereby agrees on behalf of himself, his heirs, and successors to make over and cede to the British Government in perpetuity that portion of the Manjuti land in the same manner as the Nasirabad Niabat *above* referred to, and it is hereby agreed that the British Government shall pay to His Highness annually an additional rent of Rupees two thousand five hundred making a total quit-rent of Rs. 1,17,500 to be paid on the first day of April one thousand nine hundred and four and subsequent years.

IV. And whereas it is advisable that any further Kalat State lands outside the present boundary of the Nasirabad Niabat which may hereafter possibly be brought under irrigation by branches and extensions from existing British canal should also come under British administration in the same manner as the Nasirabad Niabat *above* referred to, His Highness the Khan agrees to make over on lease in perpetuity any lands in the Lehri Bhag and Gandawa Niabats that may hereafter be found to be

irrigable from existing British canals at a fair quit-rent which can be determined when the surveys have been completed.



APPENDIX-VIII

BALUCHISTAN STATES UNION MERGER AGREEMENT

AGREEMENT made this first day of January 1955 between the Governor General of Pakistan and the Khan-i-Azam, the President of the Council of Rulers of the Baluchistan States Union (hereinafter referred to as "The Union") on behalf of the Council of Rulers.

WHEREAS the Rulers of Kalat, Mekran, Las Bela and Kharan entered into a covenant for the formation of the Union on the 11th day of April, 1952.

AND WHEREAS the Khan-i-Azam executed on behalf of the Council of Rulers an instrument of accession on the 3rd November 1952 which was accepted by the Governor General on the 2nd December, 1952.

AND WHEREAS in the best interests of the Union as well as of the Dominion of Pakistan, it is desirable to provide for the cession of the territories of the said Union to the Dominion of Pakistan and for the merger of the same in the proposed Unit of the said Dominion to be known as West Pakistan.

NOW THEREFORE it is hereby agreed as follows:-

ARTICLE I

His Highness the Khan-i-Azam hereby ceases to the Government of the Dominion of Pakistan his sovereignty and all his rights, authority and powers as President of the Council of Rulers of the Union, together with all his territories including the territories known as the lease areas and having been duly authorised to that end by the Council of Rulers, that is to say governance of the said Union and territories shall vest in the

Government of the Dominion on and from the day to be fixed by The Governor General of Pakistan, hereinafter referred to as "the said day".

As from the said day the Government of the Dominion shall exercise all powers, authority and jurisdiction for the governance of the said Union and territories in such manner and through such agency as it may think fit.

ARTICLE II

The Members of the Council of Rulers shall be entitled to receive annually from the Government of Pakistan FOR THEIR PRIVY PURSE FREE OF ALL TAXES the amount given below: -

His Highness the Khan-i-Azam of Kalat	Rs. 6,50,000
(Rupees six lacs and fifty thousand only)	
The Nawab of Mekran	Rs. 2,25,000
(Rupees two lacs and twenty five thousand only)	
The Jam Sahib of Las Bela.	Rs. 2,00,000
(Rupees two lacs only)	
The Nawab of Kharan	Rs. 70,000
(Rupees seventy thousand only)	

The said amount is intended to cover all the expenses of the Rulers and their families including expenses on account of their personal staff, bodyguard, tours, hospitality, maintenance of their residences, marriages and all family ceremonies.

The said amount shall be payable to the Rulers in four annual instalments at the beginning of each quarter in advance, which is guaranteed.

ARTICLE III

The Rulers shall be entitled to the full ownership, use and enjoyment of all the jewels, jewellery, ornaments, shares, securities and other private properties, movable as well as immovable, being State properties, belonging to them on the date of this Agreement.

If any dispute arises as to whether any item of property is the private property of the ruler or State property, it shall be decided by the Governor General of Pakistan whose decision shall be final and binding on all concerned.

ARTICLE IV

The Rulers, their wives and children shall be entitled to all the personal privileges, dignities and titles enjoyed by them whether within or outside the territories of the State immediately before the date of this Agreement.

ARTICLE V

The Government of Pakistan guarantees the succession according to law and custom of the State concerned to the personal rights, privileges, dignities and titles as specified in Article II to IV above.

ARTICLE VI

This Agreement abrogates all the Instruments of Accession and Agreements between the Governor General of Dominion of Pakistan and Council of Rulers who appended their signatures on this first day of January, 1955.

Sd/- Ghulam Mohammed
Governor General of Pakistan.

Sd/- Mir Ahmed Yar Khan
President of the Council of
Rulers

This agreement has been made by the President on our behalf and with our authority on behalf of our heirs and successors and shall be binding upon us, our heirs and successors.

1. Sd/- Mir Ahmed Yar Khan
Ruler of Kalat.
2. Sd/- Mir Bai Khan,
Ruler of Makran.
3. Sd/- Mir Ghulam Qadir Khan
Ruler of Las Bela.
4. Sd/- Mir Mohammed Habibullah
Khan
Ruler of Kharan.



APPENDIX-IX

INSTRUMENT OF ACCESSION OF KHARAN STATE

INSTRUMENT OF ACCESSION OF KHARAN STATE.....

WHEREAS the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as Pakistan, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of Pakistan;

AND WHEREAS the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of Pakistan by an Instrument of Accession executed by the Ruler thereof:

NOW THEREFORE

I NAWAB MIR MOHD HABIBULLAH KHAN.....
Ruler of KHARAN STATE.....
in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of Pakistan with the intent that the Governor-General of Pakistan, the Dominion Legislature, the Supreme Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of ...

.....KHARAN.....(hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of Pakistan on the 15th day of August, 1947, (which Act as so in force in hereinafter referred to as "the Act")

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule

hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of Pakistan on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of Pakistan.

6. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of Pakistan or to fetter my discretion to enter into arrangements with the Government of Pakistan under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as

Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

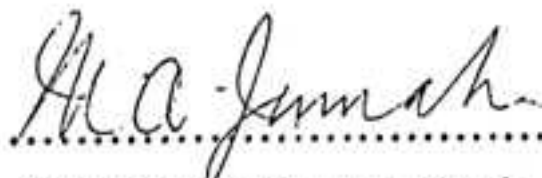
Given under my hand this....17th.(Seventeenth) day of MARCH.....Nineteen hundred and forty eight.



.....
NAWAB MIR MOHD HABIBULLAH KHAN
.....

I do hereby accept this Instrument of Accession.

Dated this 17th.....
day of March.....Nineteen hundred and forty eight.



.....
(Governor-General of Pakistan).
.....

(Habibullah Khan Nausharwani, Sardar, Nawab, Sardar Bahadur, was then the Ruler, Amir of Kharan. He was born about 1879, the eldest son of Sardar Yakub Khan and grandson of Sardar Sir Nauroz Khan. He was installed as Sardar in an open Durbar at Quetta on 19 September 1911. He was made a Sardar Bahadur in January 1919).

Similar Instruments of Accession, on the same day, were executed by Nawab Bai Khan, Amir of Makran and Mir Ghulam Qadir Khan, Jam of Lus Beyla. However, His Highness Khan of Kalat, Mir Ahmed Yar Khan, Beglar Begi on 27 March 1948, executed identical Instrument.

Another feature of the present document is that Quaid-e-Azam Muhammad Ali Jinnah having expressed that the Indian Independence Act, 1947 which received royal Assent on Friday, July 18, 1947, provided that as from fifteenth day of August, 1947, there shall be setup an independent Dominion, known as Pakistan.



APPENDIX-X
SANAD CONFERRED UPON MALIK GHULAM HUSSAIN



S A N A D

To

Malik Ghulam Hussain,
Mustafi,
Kalat State,
Mastung.

I hereby confer upon you the title of
Khan Sahib as a personal distinction.

Viceroy and Governor General
of India.

New Delhi,
The 19th November 1935.



Sanad conferred by Viceroy and Governor-General India,
upon Malik Ghulam Hussain, *Mustafi*, Mastung, Kalat State—
maternal grandfather of Author—for the services rendered in
1935 after the earthquake of Mastung.

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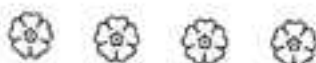
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ABOUT THE AUTHOR



Muhammad Akbar Azad, born in 1949, received education up to Secondary School level in the area of former Kalat States. Obtained 1st Class in B.A. from the Punjab University, and secured 1st Class 1st Position in LL.B. Examination from Karachi University and awarded Gold Medal. Secured second position in M.A. (Pol. Sc.) from Balochistan University. Remained enrolled as an Advocate to practice before High Court and Subordinate Courts for a period of ten years stretching from 1970. Certain reported cases in Law Journals mention him as of Legal Expert. Honorary Lecturer, University Law College, Quetta from 1971 onwards with intervals. Joined as Presiding Officer, Labour Court Balochistan, in January 1980; whereas also functioned as Additional District and Sessions Judge at different stations in Balochistan. Affiliated with Law Department, GoB, during 1989 as Deputy Secretary. In March 1990 appointed as Joint Director Labour Welfare in respect of whole of the Province. Selected by the Federal Public Service Commission for the post of Judicial Member, Income Tax Appellate Tribunal of Pakistan. Functioned as Member, NIRC at Islamabad and Lahore. GoP replaced his services with GoB, which during October 2000, turned him as OSD. Voluntarily retired from Government Service in July 2006, whereafter assumed Legal profession.

He contributed many articles on different subjects. His earlier publications are: Special Civil Laws in Balochistan (First Edition), Governance, Law and Customs in Balochistan, and **تاریخ و تہذیب بلوچستان**. Fluent in speaking all the regional languages of the country.

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