

## DUE PROCESS OF LAW

**Citation Name:** 2007 PLD 39 PESHAWAR-HIGH-COURT-NWFP

**Side Appellant:** Messrs GUL COOKING OIL AND VEGETABLE GHEE (PVT.) LTD.  
through Chief Executive

**Side Opponent:** PAKISTAN through Chairman Revenue Division, Central Board of Revenue,  
Islamabad

Laws Involved:

Articles 247, 89 & 128 of the constitution

Headnote:

Powers of the President and Governor to make applicable the law enacted by the Parliament--- President or Governor of the Province had been empowered to make applicable the law enacted by Parliament for the settled areas of the country and for extending an Act of Parliament or Ordinance promulgated under Article 89 or 128 of the Constitution to the Tribal Areas--- Constitution had imposed certain duties upon the President and the Governor; he would satisfy himself about the interest of the people and necessity of extension of the Act to the Tribal Areas and he would also consider as to whether the Act of Parliament or Provincial Assembly or Ordinance, which was to be extended to Federally Administered Tribal Areas or Provincially Administered Tribal Areas would be in the same form or with modifications therein or exceptions thereto---Powers of the President under S.247 of the Constitution was not to be exercised as prerogative powers which was not supported by the Constitution---Said powers were co-relative duties and obligations conferred upon the President---Being special status of Tribal Areas, Parliament or Provincial Assembly could not directly legislate for the Tribal Areas and Legislation enacted by the Parliament or Provincial Assembly, would be extended to those areas after examining the same by President or Governor---If an Act of Parliament or Provincial Assembly could not legislate directly for the Tribal Areas then it could not be done even indirectly---When a law was amended, it would be presumed to be altered---If principal Act was amended by amending Act of the Parliament, it would be presumed that the former had been changed/alterd---Amendment made by the Parliament or Provincial Assembly, in circumstances, would not apply to the Tribal Area automatically, but with due process as envisaged in Article 247 of the Constitution---Act of Parliament amending or repealing the principal statute could not be extended to Tribal Areas without approval of the President and in accordance with the prescribed procedure under Cl. (3) of Article 247 of the Constitution.

**Citation Name:** 2007 PLD 544 KARACHI-HIGH-COURT-SINDH

**Side Appellant:** FAISAL

**Side Opponent:** State

Laws Involved:

Article 9 of the constitution

Headnote:

Right of access to justice to all---Such right is equally found in the doctrine of 'due process of law'---Right of access to justice includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial court of tribunal---Term 'due process of law' summarized as follow:

- 1) Accused shall have due notice of proceedings which effects his rights;
- 2) He shall be given reasonable opportunity to defend;
- 3) The Tribunal or Courts before which his rights are to be adjudicated shall be so constituted as to give reasonable assurance of its honesty and credibility; and
- 4) It shall be a court of competent jurisdiction.

**Citation Name:** 2007 PTD 1065 FEDERAL-TAX-OMBUDSMAN-PAKISTAN

**Side Appellant:** Messrs WEAVING AND WEAVING, KARACHI

**Side Opponent:** SECRETARY, REVENUE DIVISION, ISLAMABAD

Laws Involved:

S.21--- Sales Tax Act,1990

Headnote:

Complaint was filed by proprietor of firm that his unit had been blacklisted by Sales Tax Department without intimating and without issuing any show-cause notice to him---Since no illegalities had been committed by complainant and no charges were framed by Sales Tax Department against complainant, there was no justification to blacklist his unit---Besides unjust blacklisting, Department had raised several objections to prolong its illegality instead of providing relief to complainant who was put to hardship and his business had suffered because of alleged illegal blacklisting of his unit---Officer empowered under S.21(4) of Sales Tax Act, 1990, was supposed to observe due process of issuing a notice and giving opportunity of hearing before blacklisting a registered person or suspending his registration---Action taken by Sales Tax

authorities, was arbitrary, perverse unjust, oppressive and based on irrelevant grounds--Present case was a one of maladministration as defined under sub-section (3) of S.21 of Sales Tax Act, 1990, it was recommended that C.B.R. should direct Collector of Sales Tax to cancel blacklisting of complainant within fifteen days and compliance report be sent within thirty days.

**Citation Name:** 2006 YLR 1556 LAHORE-HIGH-COURT-LAHORE

**Side Appellant:** PAKISTAN RAILWAYS through General Manager

**Side Opponent:** Mst. KISHWAR BIBI

Laws Involved:

Ss.42 & 53 of the Civil Procedure Code (V of 1908), O.XXXIX, Rr. 1 & 2---Punjab Kachi Abadis Act (VII of 1992), S.6 (2)---Central Government Lands and Buildings (Recovery of Possession) Ordinance (LIV of 1965), S.3

Headnote:

Suit for declaration of title along with permanent injunction---Plaintiff, in her suit asserted that land in dispute (owned by Railways) was allotted to her by Directorate General of Kachi Abadis under Punjab Kachi Abadis Act, 1992---Contention of Railways/defendant was that land was owned by it and Development Authority or Provincial Government had no power to allot the same to plaintiff---Suit was decreed and decree was upheld in appeal---Validity---Provisions of S.6 of Punjab Kachi Abadis Act, 1992, authorized the Director-General, Kachi Abadi to declare any area or part thereof to be Kachi Abadi except area belonging to Federal Government---Railways, undeniably, was a Federal authority therefore, Director-General Kachi Abadis had no power to declare the land in question as Kachi Abadi, nor he could allot the same---Findings of Courts below that land was validly allotted to plaintiff by Director-General, was without lawful basis---However, even if disputed land was owned by Railways but plaintiff could not be dispossessed without issuing the notice and following procedure laid down in Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965--Since no such notice had been issued, Railways was restrained from dispossessing the plaintiff without due process of law.

**Citation Name:** 1969 &nbsp;PLD &nbsp;14 SUPREME-COURT  
**Side Appellant:** GOVERNMENT OF WEST PAKISTAN AND ANOTHER  
**Side Opponent:** BEGUM AGHA: ABDULKARIM SHORISH KASHMIRI

Laws Involved:

Constitution of Pakistan 1962 Articles 2 & 98(2) (b)

Headnote:

Word "law" in Article 2 and words "in an unlawful manner" in Article 98(2) (b)-Connotation-Determination whether detention "in an unlawful manner"-Court to see whether action has been in accordance with "law"-Word "law" Not confined to statute law alone but used in generic sense and includes even judicial principles laid down by superior Courts from time to time-"Law" here as comprehensive as the American "due process" clause.

**Citation Name:** 1964 &nbsp;PLD &nbsp;729 LAHORE-HIGH-COURT-LAHORE  
**Side Appellant:** ABDUR REHMAN  
**Side Opponent:** EVACUEE PROPERTY TRUST BOARD GOVERNMENT OF PAKISTAN

Laws Involved:

Displaced Persons (Compensation and Rehabilitation) Act 1958 S. 16-A read with para. 18 of Scheme framed by Chief Settlement Commissioner

Headnote:

Power of "maintenance, control and administration" vesting in Evacuee Property Trust Board- Does not include power to summarily eject tenant or person in possession without having recourse to due process of law.

**Citation Name:** 1989 &nbsp;PCRLJ &nbsp;2459 KARACHI-HIGH-COURT-SINDH  
**Side Appellant:** SAFDAR ALI  
**Side Opponent:** ALI MARDAN

Laws Involved:

Criminal Procedure Code (Cr.P.C) ---S. 491--Penal Code (XLV of 1860), Ss. 343 & 347--  
Habeas corpus

Headnote:

Detenus, comprising men, women and children, vocally alleged in open Court that they were subjected to forced labour by respondent at a brick kiln--Respondent stated that alleged detenus owed money to him aggregating to Rupees two lacs (two hundred thousands rupees) and by their work they had been discharging their liabilities--Respondent further stated that he had no objection if detenus were set at liberty if respondent was permitted to claim his dues from each of them as might be liable to him, in accordance with law, and on pursuing due process of law--No justification, reason or cause existed for detenus to be compelled to work with respondent--Detenus were thus set free--Respondent was advised to pursue such lawful remedy as permissible under law for claim of his money--No one could be forced to work for another even though there be a lawful contract of service applicable to him or her and in any case contract of minor was void ab-initio--Small children of tender age could not be made to partake in brick-making activities against their will and all cherished human values--Matter required to be dealt with in all seriousness and could not be trifled with.