

CONTENTS

| | |
|----------------|------|
| Preface | viii |
| Acknowledgment | x |
| Table of Cases | xii |

Part I Article 184(3) of the Constitution

| | |
|---|----|
| Introduction | 1 |
| 1 Article 184(3) | 3 |
| 1.1 Without prejudice to the provisions of Article 199 | 3 |
| 1.2 Public Importance | 4 |
| 1.3 Enforcement of Fundamental Rights under Articles 9 & 10 of the Constitution | 5 |
| 1.4 Contrary view | 16 |
| 1.5 Enforcement of Fundamental Rights provided under Articles 17, 19 & 25 of the Constitution | 18 |
| 1.6 Dissolution of National Assembly: Enforcement of Fundamental Rights under Article 17 of the Constitution | 31 |
| 1.7 Enforcement of Fundamental Rights under Articles 18 & 23 of the Constitution | 35 |
| 1.8 Enforcement of Fundamental Rights under Article 25 of the Constitution | 36 |
| 1.9 Resolution of Fundamental Rights during the pendency of appeal in the Supreme Court: (under Article 25 of the Constitution) | 38 |
| 1.10 Discrimination with female students of Medical Colleges | 42 |
| 1.11 Challenge to Proclamation of Emergency and Order of suspension of Fundamental Rights | 43 |
| 1.12 Challenge to the appointment of Judges of Superior Courts | 46 |
| 1.13 Liberal Interpretation | 51 |

| | |
|--|----|
| 1.14 Concept of liberal interpretation to achieve the purpose of enforcement of Fundamental Rights | 52 |
| 1.15 Violation of Article 32 cannot invoke jurisdiction under Article 184(3) of the Constitution | 54 |
| 1.16 Prayer of grant of bail not allowed under Article 184(3) of the Constitution | 55 |

Part II Article 199 of the Constitution

| | |
|--|-----|
| 2 Article 199 | 58 |
| 2.1 Article 226 of the Interim Constitution which is pari materia to Article 199 of the Constitution of Pakistan | 59 |
| 2.2 Article 170 of the 1956 Constitution of Pakistan — Powers of High Courts to issue certain writs, etc. — Jurisdiction of High Court | 60 |
| 2.3 Article 98 of the 1962 Constitution of Pakistan — Jurisdiction of High Court | 60 |
| 2.4 Article 201 of the Interim Constitution of Islamic Republic of Pakistan — Jurisdiction of High Courts | 62 |
| 2.5 Article 199 of the 1973 (present Constitution of Islamic Republic Pakistan) — Jurisdiction of High Court | 64 |
| 3 Clause (1) of Article 199 of the Constitution | 67 |
| 3.1 Clause (1) | 67 |
| 3.2 Subject to the Constitution | 67 |
| 3.3 No other adequate remedy is provided by law? | 70 |
| 3.4 Discretion must not be used to promote injustice | 71 |
| 3.5 Is availability of alternate remedy a complete bar? | 75 |
| 3.6 Clause (1)(A) — "Aggrieved party" | 78 |
| 3.7 Can a registered Society be an aggrieved party? | 82 |
| 3.8 The appointment of children of deceased officers in the bank | 83 |
| 3.9 Registration of political parties | 91 |
| 3.10 Clause (1)(A)(i) | 96 |
| 3.11 Writ of Prohibition: To refrain from doing anything not permitted by law to do | 97 |
| 3.12 Writ of Mandamus: To direct to do anything required by law to do | 102 |
| 3.13 Discrimination in telecasting | 104 |
| 3.14 Delay in performance of a duty amounts to not doing something required by law | 106 |
| 3.15 Mandamus cannot be issued to enforce contractual obligation | 107 |

| | |
|---|-----|
| 3.16 Writ of mandamus is not a writ of right | 108 |
| 3.17 Mandamus cannot be issued in absence of territorial jurisdiction | 109 |
| 3.18 Clause (1)(A)(ii) — Writ of Certiorari: Declaring any act done or proceeding taken without lawful and is of no legal effect | 110 |
| 3.19 Jurisdiction to quash | 115 |
| 3.20 Certiorari where appeal/adequate remedy is available? | 116 |
| 3.21 Certiorari cannot be issued suo-motu | 118 |
| 3.22 In writ of certiorari a relief cannot be given unless it is prayed | 119 |
| 3.23 Jurisdiction to issue Certiorari is a supervisory jurisdiction | 120 |
| 3.24 Constitutional difference between Prohibition and Certiorari | 123 |
| 4 Clause (1)(b)(i) of Article 199 of the Constitution | 124 |
| 4.1 Writ of Habeas Corpus | 124 |
| 4.2 Modern procedure of Habeas Corpus in England | 126 |
| 4.3 India: History of Habeas Corpus in India | 127 |
| 4.4 Pakistan: Habeas Corpus writs in Pakistan | 130 |
| 4.5 According to Pakistan Supreme Court Rules, 1980 Part III Order XXV | 131 |
| 4.6 The courts may satisfy itself that detenu is not being held without lawful authority or in unlawful manner | 131 |
| 4.7 Difference between language of Article 98 of 1962 Constitution and Article 199 of 1973 Constitution at one side and language of Article 170 of 1956 Constitution and Article 226 of the Indian Constitution on the other side | 134 |
| 4.8 Proceedings pending in Baluchistan cannot be questioned/quashed by the Lahore High Court | 139 |
| 4.9 Question of Court fee in Habeas Corpus | 143 |
| 4.10 Difference between preventive detention and punitive detention | 146 |
| 4.11 Registration of case does not justify arrest/detention in all circumstances | 148 |
| 4.12 Granted bail in detention matter | 150 |
| 4.13 Can husband be allowed to keep his wife against her will? | 151 |
| 4.14 Detention under Maintenance of Public Ordinance, 1960 | 152 |
| 4.15 Clause (1)(b)(ii) — Writ of Quo-Warranto: who may apply for quo warranto jurisdiction to issue Quo Warranto? | 15 |
| 4.16 Delay | 15 |

| | |
|---|-----|
| 4.17 Effect of not doing a thing when it is provided under the law to do in a certain manner | 158 |
| 4.18 Issue of a writ Quo-Warranto is discretionary with the Court | 158 |
| 4.19 Omis of proof | 160 |
| 4.20 Quo-Warranto cannot be issued unless likely affectee is made party | 160 |
| 4.21 Quo-Warranto can be issued even against an elected person | 168 |
| 4.22 Bona fide of the petitioner? | 168 |
| 4.23 Disqualification must exist at the time of institution or decision of the petition | 169 |
| 4.24 Writ of Quo-Warranto should be encouraged | 170 |
| 4.25 Laches in cases of Quo-Warranto | 171 |
| 4.26 Effect of settlement between parties in Quo-Warranto | 172 |
| 4.27 Public office being illegally usurped | 173 |
| 5 Clause (1)(c) | 177 |
| 5.1 Jurisdiction to enforce the Fundamental Rights against any person or authority including any Government | 177 |
| 5.2 Writ of habeas corpus when Fundamental Rights stand suspended | 177 |
| 5.3 Powers of High Court and Supreme Court to strike down a law inconsistent with Fundamental Rights | 178 |
| 5.4 Role of High Court in protection of Fundamental Rights | 179 |
| 5.5 Can compensation be awarded by a High Court to a victim of violation of Fundamental Rights? | 180 |
| 6 Clause (2) of Article 199 of the Constitution | 183 |
| 6.1 Right to move to High Court for enforcement of Fundamental Rights unbridged | 183 |
| 6.2 Oath to protect the Constitution | 183 |
| 6.3 Effect of Article 199(1)(c) and Article 199(2) | 185 |
| 6.4 Restriction of issuing writ only to a person performing functions within the territorial jurisdiction is not applicable under clause (2) of Article 199 | 187 |
| 6.5 Article 199(2) and violation of principles of natural justice | 187 |
| 6.6 High Court means a High Court having territorial jurisdiction | 188 |
| 6.7 Requirement of "Aggrieved Person" in clause (2) of Article 199 | 190 |

| | |
|---|-----|
| 7 Clause (3) of Article 199 of the Constitution | 191 |
| 7.1 Clause (3) | 191 |
| 7.2 Irregularities in the arrest does not affect the jurisdiction? | 191 |
| 7.3 Article 98(3) of 1962 Constitution | 195 |
| 7.4 Can retired officers be tried under the Army Act? | 198 |
| 7.5 Doctrine of Nexus | 199 |
| 7.6 Defence service? | 201 |
| 7.7 Is bar absolute? | 205 |
| 7.8 Article 184(3) and Article 199(3) | 205 |
| 7.9 Public Importance | 206 |
| 7.10 Right to move a High Court for the enforcement of Fundamental Rights under clause (2) is not barred by clause (3) | 210 |
| 7.11 Najam Sethi case | 214 |
| 8 Clause (4) of Article 199 of the Constitution | 222 |
| 8.1 Clause (4) | 222 |
| 8.2 Clause (4-A) | 224 |
| 8.3 Six months time for Interim Order? | 226 |
| 8.4 Definition of Public Revenue | 236 |
| 8.5 Does time limit curtail independence of judiciary? | 237 |
| 8.6 Finding | 237 |
| 8.7 Period provided in clause (4-A) may not be applicable where the impugned proceedings are without jurisdiction | 239 |
| 8.8 What cannot be done directly, the same could not be done indirectly | 241 |
| 8.9 Effect of clause (4-A) on a mala fide or coram-non-judice Order | 241 |
| 8.10 Clause (4-B) | 24 |
| 8.11 Suggestion of the Court | 24 |
| 8.12 Clause (4-A) and (4-B) to be read with Article 254 of the Constitution | 24 |
| 8.13 History and background of clause (4-A) and (4-B) | 24 |
| 9 Clause (5) of Article 199 of the Constitution | 24 |
| 9.1 Clause (5) | 2 |
| 9.2 Body Politic or Corporate | 2 |
| 9.3 Contrary View | 2 |
| 9.4 Local Authority | 2 |
| 9.5 Performing Functions | 2 |
| 9.6 Difference between private person or person performing functions in connection with the Federation or a Province etc. | 2 |

| | |
|---|-----|
| 9.7 A registered company | 250 |
| 9.8 Can a writ be issued against a judge of High Court or against a High Court? | 250 |
| 9.9 Sub-ordinate courts are included in the definition of "person"? | 272 |
| 9.10 Does clause (5) include Federal Shariat Court? | 272 |
| 9.11 A persona designata and a High Court | 274 |
| 9.12 Administrative Orders of High Court are also exempted | 275 |
| 9.13 Non-judicial actions/orders etc. of High Court and clause (5) | 276 |
| 10 Some Important Principles: | 279 |
| 10.1 Principle of Locus Poenitentiae | 279 |
| 10.2 Locus poenitentiae is not a principle of law | 280 |
| 10.3 Findings of facts cannot be interfered with | 281 |
| 10.4 Principle of Laches | 282 |
| 10.5 Contractual obligation not enforceable under writ jurisdiction | 282 |
| 10.6 Res-Judicata | 284 |
| 10.7 Suppression of facts or approaching a court with un-clean hands | 285 |
| 10.8 Writ jurisdiction in relation to police: registration of FIR/Second FIR, quashment of FIR etc. | 287 |
| 11 Conclusion | 295 |
| 12 Appendix | 302 |