

**IN THE HIGH COURT OF SINDH**  
**CIRCUIT COURT AT HYDERABAD**

**CP.No.D-451 of 2016**

Ghulam Ali S/o. Kamal Khan Leghari  
Vs.  
Province of Sindh & others

Before: **SALAHUDDIN PANHWAR, J**  
**ADNAN IQBAL CHAUDHRY, J**

Petitioner : through M/s. Ali Ahmed Palh and Abdul Sattar Sarki, Advocates.

Respondent: through Mr. Allah Bachayo Soomro, Addl. A.G. Sindh.

Amicus curia: M/s. Jhamat Jethanand, Muhammad Suleman Dahri, Jawad Ali Sahar.

Date of hearing: 30.07.2019.

Date of announcement : 01. 10.2019

**J U D G M E N T**

**SALAHUDDIN PANHWAR, J:-** Petitioner has invoked constitutional jurisdiction of this Court by filing captioned petition and has prayed that:

- a) Direct the Respondents No.1 to 4 to take necessary actions for recovery of the possession of land as the Petitioner /Tenant/HARI was forcibly evicted by the *Zamindar* Mumtaz Ali Junejo and his brothers without adopting the legal procedure laid down in Tenancy Act and take stern legal action against them in accordance with law.
- b) Direct the Respondents No.5 to 7 to provide due protection to the Petitioner and his family members and Respondents may also be restrained from implicating or detaining the Petitioner and his family members in any false case on behest of Respondents No.8 to 13 and treat them as respectable citizens of Pakistan as guaranteed in the Constitution of Islamic Republic of Pakistan, 1973 and no any case be register against the Petitioner or his other family members without prior permission of this Honourable Court.
- c) To direct the Respondents No.7 to 13 to restore the properties to the Petitioner and his other family members, allowing them to live in their respective houses with assurance that they would not be harassed in any way.
- d) Any other relief (s) which this Honourable Court deems fit, just and proper may be awarded in favour of the Petitioner.

2. Briefly, relevant facts, as set out in this petition, are that the Petitioner was cultivating agricultural land of Zameendar Leemon Khan Junejo as a Tenant/"HARI" since last 35 years, where his pacca houses were constructed. After the death of Leemon Khan, the tenancy/Harpship continued with his sons Mumtaz Ali and others, but since last 32 years Mumtaz Ali did not settle the accounts with Petitioner, however, some neckmards were appointed to settle the account of Petitioner. Thereafter, an amount of Rs.26,17,871/- were calculated as an outstanding amount by neckmards to be paid to the Petitioner by the *Zamindar* Mumtaz Ali and his other brothers. However, when Petitioner demanded above mentioned amount from Mumtaz Ali, he became annoyed and directed the Petitioner to vacate the said land as he intended to arrange another HARI/tenant in place of Petitioner. Petitioner has made application before Assistant Commissioner/Tenancy Tribunal Sinjhoru on 20.11.2013, but nothing happened. Thereafter, Petitioner again made application before Assistant Commissioner/Tenancy Tribunal Sinjhoru on dated 20.08.2014 and finally he passed order dated 08.09.2014 declaring the Petitioner as a permanent tenant of *Zamindar* Mumtaz Ali and Mumtaz Ali was restrained from evicting the Petitioner from his lands. After passing of order dated 08.9.2014 by Assistant Commissioner/Tenancy Tribunal Sinjhoru whereby he restored the harpship of Petitioner, Zameendars Mumtaz Ali and his other brothers became annoyed; that due to not settlement of accounts, Petitioner also filed tenancy Appeal No.44/2014 before Additional Commissioner Sanghar; that on 03.01.2015 due to said annoyance *Zamindar* Mumtaz Ali, his relatives and brothers duly armed with weapons made firing in order to dispossess the Petitioner and his family members from land and also gave threats that if petitioner will not vacate the house from their land they will have to face dire consequence; that the Petitioner filed

Application for registration of FIR before Sessions Judge Sanghar and after passing of order, Petitioner lodged FIR No.07/2015 of P.S Sinjhoru but police of Sinjhoru malafidely conducted investigation of case under the influence of private Respondents and FIR was disposed of under 'B' Class; that on 25.1.2015, Petitioner along with his other family members was sleeping, at night time 5.00 there was firing in all four corners of the house of the petitioner and private Respondents entered inside the house of petitioner by making firing with deadly weapons with intention to kill them, and fortunately petitioners saved themselves from the clutches of the cruel *Zamindar*; that meanwhile Mumtaz Junejo and Ejaz Junejo set fire to Lorho (hedge) surrounded to the house of Petitioner and resultantly Lorho (hedge) and shelter of cattle became ash; that meanwhile 30 persons were standing outside came inside they also harassed and illegally detained Petitioner and his family members, thereafter Mumtaz Ali Junejo and other respondents took away household articles and cattle from the house of the petitioner forcibly; that the women folk prayed mercy in the name of Allah & Rasool upon which they expelled them from houses, petitioner and his family stayed outside under open sky and on the same day Mumtaz demolished their pacca houses, taken away remaining articles from houses and ply Tractor on Harp land; that Petitioner and his family members approached local Police but nothing happened; that same news were also published in different newspapers and some social and political parties also condemned it and recorded protest against the *Zamindar* Mumtaz Ali Junejo and other respondents; that Petitioner's son submitted application for registration of FIR in the court of District and Sessions Judge Sanghar and the court passed order for registration of FIR. Petitioner's son lodged FIR No.9/2015 of PS Sinjhoru but police of Sinjhoru malafidely conducted investigation of case under the influence of private

Respondents and FIR was disposed of under "B" Class; that thereafter direct complaint was filed but the police is fully supporting the *Zamindar* Mumtaz Ali Junejo and his accomplices; that during pendency of tenancy Appeal No.44/2014 before Additional Commissioner Sanghar, petitioner submitted application for restoration of HARPSHIP/Tenancy as he was illegally dispossessed by the *Zamindar* without giving any notice; that Additional Commissioner Sanghar sent office letter No.REV/DC/SGR/413/OF 2015 Sanghar dated 27.05.2015 to the Mukhtiarkar (Revenue) Sinjhoru and ordered him to restrain *Zamindar* Mumtaz Ali Junejo from evicting the Petitioner, but due to high influencing of *Zamindar* Mumtaz Ali Junejo, nothing happened; that on 08.09.2015 Additional Commissioner Sanghar/Additional Collector-I Sanghar, dismissed the tenancy Appeal No.44/2014; that on 30.10.2015 Petitioner again submitted application before the Additional Commissioner Sanghar/Additional Collector-I Sanghar for restoration of HARPSHIP/Tenancy as he was illegally dispossessed by the *Zamindar* without giving any notice; that Additional Commissioner Sanghar sent his letter No.REV/DC/SGR/0853 of 2016 Sanghar dated 11.02.2016 to the Assistant Commissioner/Tenancy Tribunal Singhoru and ordered him to restrain *Zamindar* Mumtaz Ali Junejo from evicting the Petitioner forcibly without adopting the legal procedure laid down in Tenancy Act, but due to high influence of *Zamindar* Mumtaz Ali Junejo, nothing happened; that the petitioner's family was being maltreated regularly by issuing threats and attacked on the petitioner, his family members and relatives. As no action was taken in the matter inasmuch as the police officials fully support *Zamindar* Mumtaz Ali Junejo and Petitioner finding no alternative, is invoking the constitutional jurisdiction of this court in the public interest as after this incident he is shocked due to humiliation of

their male and female persons, due to fear of their lives at the hands of Police; that Petitioner also sent many applications to high-ups for protection to his life and his family members and for justice; that Petitioner cannot go back to his house unless protection is provided to him by police and their animals and valuable articles are recovered from *Zamindar Aijaz Ali Junejo*; that private Respondents tried to save their skin and filed a false FIR against Petitioner, his sons and other HARI of locality to pressurize him to withdraw from his claim; that on one hand local police of Sinjhor and District Sanghar declared the FIRs lodged by Petitioner and his son as false and disposed them of under "B" class and on other hand they challaned FIR No.1/2015 of P.S. Sinjhor lodged by *Zamindar Aijaz Ali Junejo* for which Sessions case (re-State vs. Ghulam Ali & others) is pending adjudication before 2<sup>nd</sup> Additional Sessions Judge Sanghar; that Petitioner never filed any false application against the private Respondents or any of his family members; that all accused persons are highly influential persons who have made high handedness and due to the cruel act of landlords of the area have made the lives of the petitioner, his family and relatives miserabe who are being deprived of their fundamental rights; that irrespective of the alleged encounter, the families cannot be deprived of their houses and the valuables articles, which are seized by *Zamindar* and police without lawful authority. The very act of police is illegal, unfair, malafide, against principle of natural justice and also in violation of fundamental rights. The land and valuable articles are required to be restored to the petitioner; that in the above circumstances, when the petitioner & family are in the state of fear and harassment, they have no courage to approach any authority for redress of their grievances particularly when the incident has been colored to be an adventure, hence invoking constitutional jurisdiction this court for

protection and restoration of their properties, being their fundamental right; that Petitioner is “aggrieved person” within the ambit of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as his fundamental rights guaranteed and protected under the umbrella of the Constitution of Islamic Republic of Pakistan, 1973 have seriously been infringed; that under such compelling circumstances the petitioner has no other efficacious and alternate remedy left but to knock the door of this Court by invoking its extra ordinary constitutional jurisdiction.

3. By order dated 25.07.2019 a legal question was framed, being relevant that order is reproduced herewith:-

“Urgency granted. Instant petition is emanating from Tenancy Appeal No.44/2014. By order dated 08.09.2015 tenancy appeal was dismissed against order dated 08.09.2014 passed by Assistant Commissioner Sinjhor/Tenancy Tribunal Sinjhor. By that tenancy application petitioner was seeking direction to respondent No.2 to maintain the harap right of petitioner and also pay the amount of Rs.2,617,871/- being the saving of the produce of 32 years crops.

Admittedly, Tenancy Act, 1950 provides a mechanism which is a Tribunal headed by Mukhtiarkar and such Tribunal has magisterial powers. Since the separation of judiciary from Executive, it is strange that yet such Tribunal under what law can be headed by a Mukhtiarkar instead of a Civil Judge which is against the principle of separation of powers enshrined in Articles 175, 202 and 203 of the Constitution of Islamic Republic of Pakistan, 1973. Accordingly, issue notice on this point to Additional Advocate General as well Law Secretary to assist this Court. Further to get assistance on this point it would be appropriate to appoint *amicus*. Accordingly, Mr. Jhamat Jethanand, Mr. Noor-ul-Haq Qureshi, Raja Jawad Ali Sahar and Mr. Sajjad Ahmed Chandio, advocates are appointed as *amicus* to address this issue. This order shall be communicated to Law Secretary as well Chief Secretary and shall be provided to above named *amicus*.”

4. M/s. Ali Ahmed Palh and Abdul Sattar Sarki, learned counsel for the petitioner raised the above legal question with regard to jurisdiction of the Mukhtiarkar/Assistant Commissioner as head of tenancy tribunal.

According to them Mukhtiarkar was heading the tenancy Tribunal, however, in 2012 there was an amendment whereby Assistant Commissioner was heading the tribunal but after abolition of Sindh Local Government Ordinance 2002 again Mukhtiarkar is the head of the tribunal. They referred Section 34 of the Sindh Tenancy Act, which is that:-

34. Penalty - (1) If any landlord or tenant contravenes any of the provisions of this Act or of the Rules made thereunder, he shall on conviction by a Magistrate, not lower in rank than that of a second class Magistrate, be liable to a fine which may extend to Rs.500 and in default of payment of fine to simple imprisonment which may extend to one month.

Provided that the penalty under sub-section (1) shall not be enforced until the period of appeal has expired, or if the appeal be actually filed until such time as the appeal is finally decided.

(2) The court may, when passing judgment, order the whole or any part of the fine recovered to be applied in the payment to any part as compensation for any loss or injury caused to him by the offence.

5. They contend that tenancy tribunal provides two types of adjudication, one pertains to civil nature and second is of criminal nature. According to them at present Mukhtiarkar(s) and Assistant Commissioners are executive officers only and they have no magisterial powers, therefore, this section is practically redundant and cannot be exercised by the Mukhtiarkar.

6. Mr. Ali Ahmed Palh further contends that in original enactment of 1950 there was barring clause whereby family members of the *HAARIs* were not allowed to work on *beggar*, however, in 2013 by amendment zamindar has been allowed to take beggar (free labour) that is completely against the humanity in this 21<sup>st</sup> Century present legislatures have allowed *Zamindars* to take *beggar* of family members of the *HAARIs* without any payment/compensation.

7. As per learned amicus Mr Suleman dahri Advocate: though our country is agro based country and 60% population are peasants but out of them not a single person is member of legislative assembly and only the influential persons and *Zamindars* are the members of legislative assemblies, therefore, since 1950 there is no amendment or new legislation in respect to the rights of peasants(harees) who live in rural areas having no basic facilities and in routine their fundamental rights are being violated by their *Zamindars*(landlords).

8. According to the facts set out in the petition: petitioner's father was HARI of private respondent and there was issue of settlement of accounts in respect of which, despite approaching the tenancy tribunal, he failed to get any relief and due to his resistance he was evicted from the subject matter land, however, subsequently its possession was again restored; that respondents tried to forcibly evict the petitioner and Mukhtiarkar is not so competent to pass any appropriate order by restraining *Zamindars* from forcible eviction and to provide protection as he lacks Magisterial powers.

9. Mr. Jhamat Jethanand, senior advocate/Amicus contends that a committee was constituted by Province of Sindh regarding new legislation of peasants and zamindar relations around fifteen years back and that committee held a series of meetings wherein issues of *HAARIs* and landlords were deliberated and a proposed draft was prepared in 2007 but yet such proposed draft is without any sanctity. He contends that at the time when Tenancy Act 1950 was promulgated, the Mukhtiarkar was having magisterial powers and he was so powerful at that time to maintain the writ. He also referred the story of a known landlord of District Larkana; according to him due to misbehavior of that

landlord/Zamindar with Mukhtiarkar that *Zamindar* was extradited from the Province of Sindh, however, however at present revenue officers are not effective and capable to protect the rights of peasants. Besides he contends that there is mechanism of record of rights wherein temporary and permanent *HAARIs* have different rights and in record of rights there is a provision of entry of *HAARIs* in village form VI. Since Mukhtiarkar is custodian of record of rights, therefore, it would be in the interest of justice that he shall supervise marking of village form VI. According to him even Land Revenue Act provides the mechanism with regard to maintaining the record of rights and appellate authority and to challenge that record of rights also lies in the revenue hierarchy.

10. Mr. Jawad Ali Sahar, learned Amicus contends that in view of PLD 2009 SC 507, confinement or *beggar* by the *Zamindars* is declared as illegal. Also he referred Articles 175, 202 and 203 of Constitution and contends that Tenancy Act is based on two different parts, one pertains to civil nature and second pertains to criminal nature. Admittedly, Assistant Commissioner or Mukhtiarkar are not competent to act as Magistrate, hence, it would be in the interest of justice to declare that section ultra vires and all cases including this case shall be transferred to the civil judges.

11. At the outset learned AAG Sindh while conceding the plea of jurisdiction raised, has contend that tenancy tribunal should be presided over by judges like Labour Courts.

12. Before attending to question(s), involved, it is material to mention that *normally* a *HAARI (peasants)* appears to be a labourer. Labouring, *normally* defines a *physical hard work* and his availability and supervision at the site which, if is with consent of *two* on equitable terms, the same is recognized by God Almighty as *righteous* one. Labouring, in short, is a

contract where one agrees to provide his services (*doing hard physical work*) against certain considerations which, in no *law*, is an offence till the time object (*labour*) is legal. The purpose of *labouring* could be nothing but to earn a livelihood for needs of one's self, including his family but same must never be at the cost of his *liberty, life* and *dignity* which, otherwise, are considered as unalienable rights of a *free man* which, a man, even with his consent, can't trade. Thus, where one becomes to be a *Hari (peasant)* he, *otherwise*, agrees to provide his services against certain consideration which the landlord / zamindar is always legally obliged to provide. This *meant* existence of a contract between two (Hari/peasant and Zamindar/landlord) wherein the rights and obligations are *presumably* agreed therefore, *mere* naming of such *rights* and *obligations* as an **ACT** were never of much *importance*, being already *presumably* agreed between two individuals unless the ACT provides mechanism of enforcement of rights and obligations couple with an action, in case of breach. Things had never been so *simple* because *normally* there had always been serious violation of obligations on part of the *landlord / zamindar* without any specific law. This has been the situation which were portrayed in a single verse by great poet Allama Iqbal as:-

جس کھیت سے دہقاں کو میسر نہیں روزی  
اس کھیت کے ہر خوشہ گندم کو جلا دو

We shall have to add that '**rozi/livelihood**' is never confined to bread *only* but it always includes unalienable guaranteed fundamental rights which, include, but not limited to *liberty* and *dignity*. There had been **protest** in name of *peasants' rights* all over the world. The protests were never for; or in relation to *lands* or agreed terms and conditions but begging was for

those rights which a *free* soul always *presumably* carries while entering into such like contracts even of *labouring*.

13. Here, it is important to give a background of enactment of the “**The Sindh Tenancy Act 1950**”, in question, because it is always the background of an enactment which, through law, is attempted to satisfy. The year of enactment of the ACT i.e ‘**1950**’ is itself an acknowledgment of the fact that there accrued justification for making legislation addressing *specifically* to such **class of people**, attempting not only to acknowledge the status of **HAARI** as *independent* but also to ensure certain rights?. Before giving details of reasons, it is worth to hammer here that diversity of humanity into many races and ethnicities is a testament to God’s majesty and wisdom. Therefore, racial superiority and discrimination is prohibited *normally* everywhere on chest of the *earth*. When it comes to Allah (God Almighty), HE (ALLAH ALMIGHTY) sketches no line of *discrimination* merely because of difference of birth place of a soul rather always addressed *all* as *mankind*. In short, Allah clearly declares that in His sight, the only distinguishing factors between humans are righteousness and piety:

“People, We created you all from a single man and a single woman, and made you into races and tribes so that you should recognize one another. In God’s eye, the most honoured of you are the ones most mindful of Him: God is all knowing , all aware.” (49:13).

14. Thus, the difference of *caste*, *colour* or *creed* and even *status* should not be of any *arrogance* or *shame* whenever souls are to be compared towards *fundamental rights* or that of *rights* and *obligations* towards each other. This concept is exemplified in the final sermon of Prophet Muhammad (صلى الله عليه وسلم) who proclaimed:

*“No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man any superiority over the white man. You are all the children of Adam, and Adam was created from clay”.*

However, we shall have to acknowledge that hearing of the word '**HARI**' normally brings a picture of some *downtrodden*, torn clothes; barefooted person with a *spade* on his shoulder regardless of his / her *sex* or *age* even. In short, perhaps the word **HARI** itself operated and operates as an *eraser* to erase the guaranteed *dignity* of the soul who, not with his choice but within wisdom of God Almighty, dressed in a *Hari's* family. Worth to add that neither the **God** Almighty nor any civilized society permits any such concept. The word *Hari*, regret to acknowledge, in our custom (*typical way of thinking*) not only allows but even encourages *feudal* (JAAGIRDAR/ZAMINDAR) to openly behave as **MASTERS** of soul and body of **HARI**.

15. Now, before viewing present day, let's have a look at those reasons which had occasioned in addressing such class of people within *few* days of our independence. The record, available on chest of *past (history)* shows that even before partition there was a serious protest regarding *miseries* of Hari(s) thus to strengthen the movement for the rights of the Hari(s) (peasants) Hyder Bux Jatoi joined the movement by resigning the post of Collectorship. Realizing the gravity of the situation our National Hero Quaid-e-Azam Muhammad Ali Jinnah, constituted *the Sind Hari Committee* to submit its proposal with regard to legislation between *Zamindar* and HAARI because he (the Qaid) was a true believer of "*all are equal in rights*" as he had stated:

*“We follow the teachings of Prophet Muhammad (may peace be upon him). We are members of the brotherhood of Islam in which all are equal in right, dignity and self-respect.”*

*Consequently we have a special and very deep sense of unity".*

*(Broadcast Talk to the People of Australia, 19 February, 1948)*

Further, he always knew (which, perhaps, we have ignored) that progress and prosperity of a nation is always dependent upon prevailing of a sense of equity among *masses* regardless of their stature or wealth. He stated in Presidential Address to the Constituent Assembly of Pakistan, 11 August, 1947 as:-

*"If we want to make this great State of Pakistan happy and prosperous we should wholly and solely concentrate on the wellbeing of the people and especially of the masses and the poor".*

Let us remind that the creation of this (*Pakistan*) was always meant to provide a place, assuring *human rights* to all, as was affirmed as:-

Brotherhood, equality and fraternity of man—these are all the basic points of our religion, culture and civilization. And we fought for Pakistan because there was a danger of denial of these human rights in this sub-continent.

*(Address to Public Reception, Chittagong, 26 March, 1948)*

Islam stands for Justice, equality, fair play, toleration and even generosity to non-Muslim who may be under our protection. They are like brothers to us and would be the citizens of the State.

*(Address at The Muslim University Union, Aligarh, 2 November, 1941)*

Mr. Masood Khadarposh, (Collector District Nawab shah) as a member of the aforesaid Sind Hari Committee, dissented with the committee's report, however, that dissenting report was not made public and thereafter, at a belated stage, in the year 1952 due to serious protest that report was published but till such time the ACT stood enacted, therefore, legally and logically it cannot be presumed that the *report*, kept in dark, was considered while making such legislation.

16. Before going any further, it would be appropriate saying something onto *concealed* report and to refer *dissenting* note thereof. The living of the

**HARI** was found too miserable to be compared with a *slave*. Even, in very first chapter of the report, the Committee had to insist that the **HARI** is a **human** despite admission of his importance in giving Sindh the distinguished name of the **Granary of Pakistan**. Being relevant, chapter No. I of the Khadarposh Report is reproduced herewith:-

### “Chapter 1

#### The Hari and the Zamindar

*They are human beings, and as such, rational animals and though they drudge like domesticated animals, they enjoy no privileges of rationality, nor any rights of human beings. Such are the haris of Sindh, who form the bulk of its population, who till the land and give Sindh the distinguished name of the Granary of Pakistan.*

17. Here, it is needful to add that declaring the **HARI** as domesticated animal was never the word of some sympathy but it was *undeniable* conclusion of facts, noticed by the pen (writer). The Khadarposh Report further says:-

It has been my good fortune to have been associated with the poor people as an Assistant Collector and Collector for over eight years in Bombay Presidency and Sindh. In Sindh, I was shocked to see the miserable conditions of the *haris* and was at once reminded of the similar conditions of the aborigines of India, the *bhils*, amongst whom I worked for several years for their uplift. **The haris of Sindh are no better than serfs. They live in the most primitive conditions with no concept of social, political, or economic rights; they have only one interest in life; food, with which to keep body and soul together.** No other aspect of life interests them because the fundamental problem of living remains unresolved for them.

The *haris* have no organized life, nor has the consciousness of organized living developed in them. They live scattered, far from one another, in small hamlets consisting of thatched mud houses. The average revenue village, *deh* may have half a dozen scattered village sites within it, some of which may be inhabited, others deserted; Most of the *haris* share their huts with cattle. Their

household belongings consist of a cot or two, a few earthen pots and metal utensils, some tattered rags and an occasional wooden box.

The *hari*, whose family may have cultivated a piece of land for several generations, does not know how long he will be allowed to stay on it. **Fear reigns supreme in the life of the *hari*; fear of imprisonment, fear of losing his land or his wife.** The *zamindar* may, at any time, get annoyed with him and oust him; **he might have to leave his crop half ripe, his cattle snatched, he may be beaten out of the village, may suddenly find himself in police fetters under enquiry for theft, robbery or murder or, more often, under section 110 of the Criminal Procedure Code.** The fate of the *haris* who incurred the wrath of the *zamindar* were wrongfully locked up in ill-ventilated, congested and suffocating sub jails for very long periods, eventually suffering longer terms of imprisonment and awaiting trial than they would have - suffered on conviction!

**The *hari* fears the *zamindar's* punishment much more than the torture of hell, as he frequently sees the *zamindar's* bullies in action.** 'Once a *hari* abducted a woman, and his brother was summoned by the *zamindar* to give information regarding him. He denied any knowledge of his whereabouts. The *zamindar* did not believe him and ordered his men to hang him upside down from a tree and beat him. So violent was the beating that he became unconscious and was carried home by another brother. The *zamindar* posted a few watchmen at the house of the injured *hari* to see that nobody went out to lodge information with the authorities. The old mother of the *hari* wept and wailed and was desperate to take her unconscious, beaten, bleeding son to a doctor, but the *zamindar's* watchmen did not permit anyone to go out. After four days the son of the poor-wailing mother died. The *kamdars* of the *zamindar* removed his corpse to a graveyard and buried it. The old mother was allowed to go out after a few days and, almost mad with shock and grief, she went around telling her painful story to other *zamindars* and begging them for help, but no avail. She failed to secure the help of the police and, at last, came to my Hindu Sub-Divisional Magistrate. The body of her son was exhumed and the crime of the *zamindar* came to light. Non-bailable warrants were issued but the *zamindar* who, the day before the issue of the warrants,

had been seen in town, was the next day reported by the police to have absconded! This case occurred in Kandiaro Taluka, a few days before I left charge of the Nawabshah district. Such cases are not rare in the petty feudal kingdoms of the *zamindars*, though very few of them come to light.

**The zamindar might at any time send for the hari for begar (forced labour) for the construction of his house or the sinking of a well, or some other minor work.** He might be called to come with his plough and bullocks to cultivate the private fields of the *zamindar* or to spend a few days on a shoot with him, or to render some domestic service. He is thus always at the beck and call of the *zamindar*, and dare not refuse him as that could spell his doom.

**A pretty wife is a constant source of danger for the hari as he might be asked to surrender her.** He may be subjected to intimidation, threat or coercion and if he does not yield, **the wife could be kidnapped, or he be arrested in a false criminal case and the wife left alone is then compelled to live with the zamindar.** The *hari* can even be murdered if the *zamindar* sees no other hope of success. A shocking case of this type was narrated to me by a *hari* woman who, along with her mother, had traveled about a hundred miles to tell me her tragic story. Her husband had disappeared and her mother had heard some body say that the *zamindar's* men had murdered him. The facts of the case briefly were that the *zamindar* had tried to seduce her and her husband had expressed resentment. Thereupon the *zamindar* dismissed him from his services and so he shifted to another house in the same village. One day he went out to graze his cattle and never returned home. After a few days the wife received a message from the *zamindar*: **"Now that your husband is done away with, will you not come over to be my mistress?"**

**Elections are a calamity for the poor hari. The rival candidates pull him in opposite directions, but he is interested in none.** The *zamindar*, who will receive a large amount of money or an alluring promise for future gain for himself or his relatives in the form of a contract for control shops or employment, **calls the hari and warns him to vote for his candidate. The hari gives a submissive, "yes" and quickly takes the Quran in his hands to assure the zamindar.** When the voting is over and the results are declared, the success of the rival

candidate brings fresh miseries for the unfortunate voter. He is troubled and harassed by the party men of the newly elected Member of Legislative Assembly whom he had opposed under orders of the *zamindar*. As the control shops of the area are now under the direct or indirect control of the MLA, the *hari* is unable to get his quota of cloth and sugar. He may also be threatened with false prosecution, theft of his cattle or injury to his person.

**The *hari* behaves like a helpless slave when he has to face the *zamindar*. It is not an unusual sight to see numerous *haris* coming and touching the feet of the *zamindar*. As soon as the *zamindar* appears on the fields the *hari* and his children go and bow before him till they touch his feet, then rise up to kiss his hand. They do this neither out of respect for him, nor for his spiritual attainments, nor for any other quality of his, but to make him feel that they are his humble creatures who prostrate before him and live at his mercy. I have not seen a single *hari* who will stand before the *zamindar* and greet him with dignity. What man has done to man never wore a more tragic look than when helpless *hari* men and children touch the feet of the *zamindar*.**

Islam teaches the greatness of God and submission to no one except Him, but when the *hari's* Islam is put to test in the fields where the *zamindar* has taken hold of all the resources of the Earth in the name of Islam and can at any moment starve the poor *hari* to death, the great ideals of Islam vanish from the *hari's* mind, he forgets the greatness of God Almighty at once and bows in abject submission to the *zamindar*.

The ideal of the equality of mankind, taught by Islam, becomes a fiction to his mind. No *hari* can dare sit side by side, with or even in front of a *zamindar*, or even as high as the *zamindar's* level of seat, even if it be a stump of a tree or a pile of bricks or a heap of sand. He must sit at a lower level on the bare ground, and if he dares to sit on a level equal to the *zamindar's*, he is impertinent, insolent and unfit to live on the land on which his forefathers worked for generations. *Pirs* and *Maulvis* who are friends of the *zamindar*, console the *hari* with the doctrine of *taqdir* (fate) which is *he is low forever because God has made him so*.

**The *hari*, having lived under oppression and tyranny for several generations, has now begun to feel that perhaps this is the destiny chalked out for him by God Almighty (his *taqdir*), and therefore it is no use**

**bewailing his lot.** He thus gets used to his misery and appears to be an ease-loving man content with mere requirements of himself and his family in food and clothing. His forced and unreal contentment and happiness is like that of a long-term prisoner who, after long years in jail, gets reconciled to it by the sheer force of circumstances. Given freedom from oppression, and given the power of expression, which has been denied by illiteracy, the *hari* would narrate a harrowing tale of woe and misery. The age-long oppression has given him an inextricable inferiority complex, and he dreads even menial government servants and petty officials, such as a *kotar*, a *patawala*, a constable or a *tapedar*, who can insult, abuse or beat him without any fear of retaliation or protest to their superiors.

The average holding of the *hari* varies from 16-18 acres; he may have about 8 acres of *Rabi* and 8 acres of *Kharif* crops every year. When the crop is ready, a *kamadar* of the *zamindar* will demand that the crop be removed to the threshold of the *zamindar*, where it will lie untouched by the *hari* until the *batai* is over. The *hari* has laboured for a year, and when the harvest is ready, he looks at it sadly, knowing that all of it will go to the *zamindar* who will decide how much will be given back to him. He is thus like a hungry man who, having secured food after long toil and suffering, has to surrender it to his cruel master who takes away a large part of it, leaving the hungry man only a small portion which does not suffice for his empty stomach. An agent of the *zamindar* makes the *batai*. **The unwritten law is equal shares for the zamindar and the hari, but illegal levies and abwabs under various heads are imposed on the hari's share.** These *abwabs* are called *customary abwabs* probably imposed long ago by the forefathers of the *zamindars* who were such powerful feudal lords that it was impossible for the *hari's* elders to contest; even today. If the *zamindar* wanted to impose a new *abwab*, the *hari* dare not defy him. The so-called sanction of custom in the *abwab* is purely a matter of force and not of choice for the *hari*, who has no hope of help or mercy if he does not submit. After the deduction of *abwabs*, the share, which is left to the *hari*, is too little to sustain him for the whole year and out of this he has to give something to the village artisan, the *pir* and the beggars! The question of *batai* does not arise in the case of cash crops which are already mortgaged with the *zamindar* against the debts which are due from the *hari*, who is obliged to borrow from the *zamindar* for his clothes and household necessities, for seed and bullocks.

The produce of his land is insufficient to sustain him. The hari has to borrow and labour year after year to pay off the inextinguishable debt as generations die in pursuit of the mirage of solvency. Debt accounts are kept by a munshi of the zamindar, who is generally dishonest, making false entries in the debit account of the hari who has to accept them perforce. The *bania zamindar* and the lessees fleece the *hari* mercilessly. The Muslim *zamindars*, who do not charge interest, impose heavy *abwabs*. As *hari* sees no hope of the debt being ever paid off, he cannot even think of running away, as he would have to surrender his cattle and few household belongings, which mean everything to him. Besides, he would not be accepted by another *zamindar* because of a *code of honour* amongst them; that an indebted *hari* will not be accepted unless his debt is paid off. Such a *code of honour* existed among the slave traders of medieval times. The poor *hari* has therefore to stay, and live in misery and distress. The fetters of debt make him stick to the cruel master.

What saves the *hari* from destitution in his cattle wealth? Every *hari* has a number of cattle, which he breeds enthusiastically and which give him supplementary income for his household requirements. *Zamindars* complain that the *haris* give more attention to cattle breeding than to the cultivation of fields, but that is only natural as since they share their cattle with no one else and the cattle remain their property exclusively. If the breeding of cattle had also been put on the *batai* system, the cattle wealth of the whole Province would have dried up long ago. The livestock from Sindh enjoy good reputation all over Pakistan and India, and it is due to the kindness of nature that this item of the haris industry did not come under the control of the zamindar.

The Chapter-IV of the report speaks about Islamic commandments / teachings which permit one to hold only such area which he himself can cultivate. We however, would not go in such details because the same are not subject of the *issue*.

18. The *first* Chapter of the report, however, made it quite obvious and clear that *normally* the status of *Hari* is even worse than that of a *slave*

who (slave), per Islamic commandments, requires to be assured of his *fundamental rights* and that of *dignity*. He is to be given that food what one (master) chooses for himself; he has to be given that clothing what one (master) chooses for himself. In short, he (slave) is to be treated *alike* when it comes to *earthly* needs and he (slave) must have fair opportunities to compete. Islamic history, when speaking about personality, leaves the label of *slave* much behind but requires one to remember a personality of his *qualities* or *lacking*. Needless to add that *presently* there exists no concept of **slave and master** in present days.

19. The first *Chapter*, referred above, had made it quite clear and obvious that *normally* the status of a **JAAGIR** is nothing short of a **KINGDOM** which has got complete command and control of the **ZAMINDAR/JAGIRDAR** over his such *territory/kingdom* hence he may act as **MASTER** not only of the body of his Peasant masses (*Hari*) but his soul *too*. He (*Hari*) *normally* does not have a right of *choosing* but only has to nod the words of **Zamindar/Jagirdar**.

20. Since, it is, *prima facie*, evident that such report was never published till time of enactment of the Sindh Tenancy Act 1950 therefore, the ACT never addressed those *miseries* which, *otherwise*, were the *true* causes of the "*protests*". These appear to be the reason that the ACT in question only speaks about *rights* and *obligations* of these two i.e *peasant (Hari)* and '*Landlord (Zamindar)*' as is evident from *preamble* thereof which reads as:-

"Whereas it is expedient to regulate by law the rights and liabilities of agricultural tenants and their landlords in lands in the Province of Sindh, and matters connected therewith; It is hereby enacted as follows:-

but nothing is there which assures *measures* to guarantee *unalienable* fundamental rights of such class of people whose whole *world*, otherwise, was / is believed to be *territory* and *wish* of the landlord / zamindar.

21. Here, we are compelled to add that disadvantage of keeping the report into dark had been the cause that the ACT appears to be dealing with *issues* of two *free* person (s) although the person (*HARI*), per report and event facts, was never a *free* man therefore, things have not much *changed* even today. Because of *electronic source*, we do come to know that such *miseries* are continuing in such like *self-built KINGDOMS*. At this juncture, it may well be added here that a *legislation*, unless meeting the needs of its enactment, (objectives) can never be said to be a *good law*. The *special law* (s) may not *necessarily* for *general* application thereof but are always meant to tackle *specific* situations not only by admitting *violation* of *rights* but also by providing *legal remedies* against such violation of *rights*. Here, we are compelled to add that if a *law* only speaks about *violation* of *rights* but does not provide remedy thereof shall be an *unjust* law which, per **St. Augustine**, is no law at all. Needful to add that the motto (*An unjust law is no law at all*) was used by St. Thomas Aquinas and quoted by Martin Luther King Jr. during Civil Rights Movements to describe racial segregation and discrimination against African Americans. The segregation and discrimination (*treating them as something else other than a breathing body*), surfaced in the report, we are compelled to say, were never addressed despite enactment of the Act.

22. We do not want to go into causes of not touching such an *issue* by quarter concerned (*legislature*) for such long period (more than seventy years) which, *otherwise*, amounts letting '**states/kingdoms**' into '**THE STATE**' and even resulted into cases of Mai Jundo Tando Bhawal includes

*MANNO BHEEL*; e.t.c and even allows one to say in *today's time* that some *Zamindars / Jagirdars* keep their own *JAILS* whereby the very *guaranteed life* and *liberty* is denied (CPs under section 491 constantly filed with such *plea*). The issue always was requiring *proper* legislation but today the importance of proper legislation has become unavoidable because we (*Pakistan*):-

- i) *is a Islamic republic;*
- ii) *has its Constitution, guaranteeing fundamental rights to every single soul without any discrimination of colour, caste, creed or stature;*

which (*constitution*), at time of legislation of the ACT, was not in field. The Constitution carries *heavy* burden of assuring true enforcement of Article 4(2) which reads as:-

(2) In particular –

(a) no action, detrimental to the life, liberty, body reputation or property of any person, shall be taken except ' in accordance with law'

**(b) no person shall be prevented from, or be hindered in doing that which is not prohibited by law; and**

**(c) no person shall be compelled to do that which the law does not require him to do**

This *guarantee*, however, normally is not available to a *Hari* though we are in 21<sup>st</sup> Century and we have voted in favour of United Nation declaration 2018 regarding the rights of peasants and persons being in rural areas which, brings nothing new, but affirms all those rights which were always made available to every single soul by its *Creator* (God Almighty) but were, *in particularly*, remained denied to *peasants* all over the world. We are conscious that a question may be thrown that when the Constitution and other general laws do provide a *general* protection to all then why special enactments?. To this, we would insist that things were never so

*easy* or *simple* else there would not have been *long* protests over / regarding *peasants rights* all over the world. Such protests have been an admission that *normally* those working / residing within private lands / Jagirs and in far flung areas normally remain away from guarantee, provided by the Constitution or other existing laws of a **land**.

23. At this juncture, it has become unavoidable to show how *legislatures* have been *unjust* towards the *Haris* and even went on to include such '*amendments*' which, even are against the Article 8 of the Constitution but that of specific directives of honourable Apex Court, hence in negation to Article 189. Before referring to such *Article* and that of directives of Honourable Apex Court, it would be appropriate to say that the *original ACT* has a *barring* clause whereby the landlord / zamindar was not authorized to take any '*begar*' from the tenant or his family and even this was affirmed when amendments were made in year 2002 (Sindh Ordinance No.XXXII of 2002) as and clause (C) of section 24 of the ACT was to read as:-

“(c) he shall be responsible for payment of land revenue, water rate, zaket, ushr and other taxes, cess, surcharge and levies in respect of land and for providing seed, and the cost of fertilizer and pesticides shall be borne equally by the landlord and the tenant **but the landlord shall not take any free labour from the tenant or a member of his family against his will.**”

However, such '*begar / free labour*' has been allowed by amendment, made in section 24 of the ACT (Sindh Act No.XX of 1950) through the Sindh Tenancy (Amendment) Act 2013, as:-

“6. In the said Act, in section 24, in clause (c), after the words “and the tenant”, the full stop be added **and the words “but the landlord shall not take any free labour from the tenant or a member of his family against his will” shall be omitted**”.

The reason for *omitting* such '*barring clause*' appears to be with no *legal reasoning* or *justification* rather appears to be for giving a license to take

*'free labour'* from tenant as well his *family* which, otherwise, is in complete negation to what every citizen, per Article 4(2), has guarantee of. We are unable to appreciate how one can be authorized to take *free labour* even *presumably* which even is in complete negation to what has been assured in Chapter-II of the Constitution. The STATE may have authority to make any *law* but same cannot / shouldn't be in negation to Article 8 of the Constitution which says as:-

“8(1). Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the right conferred by Chapter, shall, to the extent of such inconsistency, be void;

(2) The State shall not make any law which takes away or abridges the right so conferred and any law made in contravention of this clash shall, to the extent of such contravention, be void.”

Though to declare such *amendment* as void the referral to article 8 of the Constitution is always sufficient, however, we would also add that due to frequent petitions regarding confinement and begars particularly at Circuit Court Hyderabad many petitions were clubbed together and decided in favour of zamindar but honourable apex court in the case of **Human Rights Commission of Pakistan and others vs. Government of Pakistan and others** reported in PLD 2009 SC 507 set aside that judgment and declared that confinement or forced labour is against constitution. At this juncture, it would be conducive to refer the relevant paragraphs of referred dictum as under:-

“18. From the above provisions we are of the opinion that the Sindh Tenancy Act does not, strictly speaking, create a pure employer employees relationship between landlords and tenants. On the contrary it creates a quasi-partnership whereby the tenant acquires certain interests in the land and does not receive wages but only a share in the produce in so far as his obligations as a tenant are concerned. This nevertheless does not lead to the conclusion that a tenant could be forced to perform his obligations under the Act. The obligation to cultivate land is a condition precedent for protection of a tenant's valuable rights in property and in the event of his failure to do so the consequences are spelt out in the Act itself inasmuch as his tenancy could be terminated in accordance with section-13. Indeed a person may forfeit his legal rights acquired under a statute or a contract upon failure to perform his obligations but there could be no

justification for forcing him to work against his will in flagrant violation of his fundamental rights guaranteed by the Constitution. The landlord's contention in the para-32 of the impugned judgment, therefore, merited outright rejection."

"35. Our conclusion from the above somewhat lengthy discussion may be summarized as follows:--

(i) that the Bonded Labour System (Abolition) Act, 1992 not merely ensures that no fetters on the workers rights guaranteed under Articles 11, 15 and 23 are placed, even through voluntary agreements but also wipes out any financial liability that the worker might have incurred on the basis whereof such fetters have been imposed;

(ii) that the provisions of the aforesaid Act are also applicable to all persons employed in agriculture other than those enjoying rights as tenants under the Sindh Tenancy Act;

(iii) that the above however does not mean that no credit could be advanced by an employer to his employee but only that a condition making the employee subject to the Bonded Labour System cannot be imposed. In cases of debts not accompanied by any condition which makes an employee a bonded worker under the Act, may be enforceable through ordinary legal channels;

(iv) that even the Sindh Tenancy Act does not empower a landlord to require a tenant to work on his lands against the latter's will. The only consequence provided for a refusal on the part of the tenant is forfeiture of his tenancy rights on grounds of abandonment etc. and through mechanism provided for in section 23 of the Act;

(v) that even an undertaking by a tenant to work without remuneration or for remuneration less than the amount stipulated in section 22(2) would be unenforceable;

(vi) section 25 of the Sindh Tenancy Act stipulates a mechanism for appropriation of a debt from a tenant to his landlord. Subsection (4) only stipulates that upon termination of a tenancy the entire outstanding amount of the debt would be recoverable notwithstanding the provisions relating to appropriation through the normal legal channels;

(vii) that in cases where wrongful detention or forced labour is complained of the onus to prove that the person detained was a tenant would lie on the landlord. The person detained would nevertheless invariably be entitled to restoration of his liberty and the freedom of his movement and the only difference would be that in the event of proof of his tenancy, the landlord would be entitled to recover the debt through normal legal

channels;

(viii) that in a petition under Article 199(1)(b)(i) of the Constitution or section 491, Cr.P.C. it is the duty of the court to satisfy itself that a person allegedly deprived of his liberty is detained under some authority of law;

(ix) that there is no requirement of law that stricter scrutiny of, a petition regarding detention in private custody is to be made before issuing appropriate directions. Nevertheless in cases where the right to keep a person in private custody is claimed' on the basis of some authority in law, the court may require that such right be adjudicated upon in properly held proceedings before the appropriate forum before issuing directions under section 491, Cr.P.C.; and

(x) the Jurisdiction of superior courts to enforce fundamental rights under Article 199(1)(c) of the Constitution is not merely exercisable against persons performing functions in connection with the affairs of the Federation or Province or a local authority but against any person or authority including a Government. Some of the fundamental rights by their very nature may be impaired by private persons and there is no embargo on the powers of the High Court to issue such direction as may be appropriate for enforcement of such rights."

24. In view of above the *legislatures* are always believed to be well aware of four corners of their powers as well that of *binding* directives of honourable Apex Court which, *prima facie*, have entirely been ignored while making the amendment in Section 24 (c) of the ACT. This, *perhaps*, has been done for the reason, as was pointed out by learned counsel for the petitioner, that there is no representation of *peasants / Haris* in law-makers. We do not want to go deep into *reason* for such *amendment* but we feel it quite necessary to add that **We** are living in a *globe* and are *signatories/members* of number of '*International Councils*', having functions to deal with affairs, beyond limitation of a single *state*. Our '*Constitution*' is, in fact, our representation to the '*WORLD*' so as to show how the *rights* of people, living or stepping onto this piece of land (*Pakistan*), are **safe and protected** therefore, *Legislature* despite enjoying their authority / power, are required to honour the *limitations* which,

otherwise, are created by the *Constitution* itself or *interpretation* thereof by Apex Court. Hopefully, such *limitations* shall always be honoured and *legislations* shall never be for *pleasing* one but to meet well with *problems / needs*. Therefore, following the dictum of the Supreme Court in *Human Rights Commission of Pakistan v. Government of Pakistan* (PLD 2009 SC 507), the amendment brought into section 24 (c) of the Act, through section 6 of the Sindh Tenancy (Amendment) Act 2013, is unconstitutional as *ultra vires* Articles 11, 15 and 23 of the Constitution of Pakistan and '*void*', hence section 24(c) of the Act is to be read as it was before such *amendment*.

25. Resuming, we add here that after considerable protests, there came an approval of *peasants rights declaration* in thirty-ninth session of Human Rights Council. The reproduction of relevant portion of declaration, being material, is made hereunder:-

**Human Rights Council**

**Thirty-ninth session**

10-28 September 2018

Agenda item 3

**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

**Algeria,\* Bolivia (Plurinational State of),\* Cuba, Ecuador, El Salvador,\* Egypt, Haiti,\* Kenya, Nicaragua,\* Paraguay,\* Philippines, South Africa, Togo, Venezuela (Bolivarian Republic of), State of Palestine:\* draft resolution**

**39/... United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas**

*The Human Rights Council,*

*Recalling* all relevant Human Rights Council resolutions on the right to food, and recalling in particular Council resolutions 21/19 of 27 September 2012, 26/26 of 27 June 2014, 30/13 of 1 October 2015, and 36/22 of 29 September 2017 on the promotion and protection of the human rights of peasants and other people working in rural areas,

*Welcoming with appreciation* the constructive negotiations, participation and active engagement in the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas during its five sessions, and welcoming the report on its fifth session,<sup>1</sup>

1. *Adopts* the United Nations Declaration on the Rights of Peasants and Other People Working in Rural

Areas, as contained in the annex to the present resolution;

2. *Recommends* that the General Assembly, in accordance with paragraph 5 (c) of its resolution 60/251 of 15 March 2006, adopt the following draft resolution:

*"The General Assembly,*

*Welcoming* the adoption by the Human Rights Council, through its resolution [39/x] of 28 September 2018, of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas,

1. *Adopts* the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, as contained in the annex to the present resolution;

2. *Invites* Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to disseminate the Declaration and to promote universal respect and understanding thereof"

\* State not a member of the Human Rights Council.  
A/HRC/39/67.

Annex

## **"United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas\*\***

*The Human Rights Council,*

*Recalling* the principles proclaimed in the Charter of the United Nations, which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

*Taking into account* the principles proclaimed in the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, relevant conventions of the International Labour Organization and other relevant international instruments that have been adopted at the universal or regional level,

**Reaffirming the Declaration on the Right to Development, and that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized,**

*Reaffirming also* the United Nations Declaration on the Rights of Indigenous Peoples,

*Reaffirming further* that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and **must be treated in a fair and equal manner, on the same footing and with the same emphasis, and recalling that the promotion and protection of one category of rights should never exempt States from the promotion and protection of the other rights,**

**Recognizing the special relationship and interaction between peasants and other people working in rural areas, and the land, water and nature to which they are attached and on which they depend for their livelihood,**

*Recognizing also* the past, present and future contributions of peasants and other people working in rural areas in all regions of the world to development and to conserving and improving biodiversity, which constitute the basis of food and agricultural production throughout the world, and their contribution in ensuring the right to adequate food and food security which are fundamental to attaining the internationally agreed development goals, including the 2030 Agenda for Sustainable Development,

*Concerned that* peasants and other people working in rural areas suffer disproportionately from **poverty, hunger and malnutrition,**

*Concerned also* that peasants and other people working in rural areas suffer from the burdens caused by environmental degradation and climate change,

*Concerned further* about peasants ageing around the world and youth increasingly migrating to urban areas and turning their backs on agriculture owing to the lack of incentives and the drudgery of rural life, and recognizing the need to improve the economic diversification of rural areas and the creation of non-farm opportunities, especially for rural youth,

*Alarmed* by the increasing number of peasants and other people working in rural areas **forcibly evicted or displaced every year,**

*Alarmed also* by the **high incidence of suicide of peasants in several** countries,

*Stressing that* peasant women and other rural women play a significant role in the economic survival of their families and in contributing to the rural and national economy, including through their work in the non-monetized sectors of the economy, but are often denied tenure and ownership of land, equal access to land, productive resources, financial services, information, employment or social protection, and are often victims of violence and discrimination in a variety of forms and manifestations,

*Stressing also* the importance of promoting and protecting the rights of the child in rural areas, including through **the eradication of poverty, hunger and malnutrition, the promotion of quality education and health, protection from exposure to chemicals and wastes, and the elimination of child labour, in accordance with relevant human rights obligations,**

*Stressing further* that several factors make it difficult for peasants and other people working in rural areas, including small-scale fishers and fish workers, pastoralists, foresters and other local communities to make their voices heard, to defend their human rights and tenure rights, and to secure the sustainable use of the natural resources on which they depend,

*Recognizing* that access to land, water, seeds and other natural resources is an increasing challenge for rural people, and stressing the importance of improving access to productive resources and investment in appropriate rural development,

*Convinced that* **peasants and other people working in rural areas should be supported in their efforts to promote and undertake sustainable practices of agricultural production that support and are in harmony with nature, also referred to as Mother Earth in a number of countries and regions, including by respecting the biological and natural ability of ecosystems to adapt and regenerate through natural processes and cycles,**

*Considering* the hazardous and exploitative conditions that exist in many parts of the world under which many peasants and other people working in rural areas have to work, often denied the opportunity to exercise their fundamental rights at work, and lacking living wages and social protection,

*Concerned that* individuals, groups and institutions that promote and protect the human rights of those working on land and natural resources issues face a high risk of being subject to different forms of intimidation and of violations of their physical integrity,

*Noting* that peasants and other people working in rural areas often face difficulties in gaining access to courts, police officers, prosecutors and lawyers to the extent that they are unable to seek immediate redress or protection from violence, abuse and exploitation,

*Concerned* about speculation on food products, the increasing concentration and unbalanced distribution of food systems and the uneven power relations along the value chains, which impair the enjoyment of human rights,

*Reaffirming* that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized,

*Recalling* the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources,

*Recognizing* that the concept of food sovereignty has been used in many States and regions to designate the right to define their food and agriculture systems and the right to healthy and culturally appropriate food produced through ecologically sound and sustainable methods that respect human rights,

*Realizing* that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Declaration and in national law,

*Reaffirming* the importance of respecting the diversity of cultures and of promoting tolerance, dialogue and cooperation,

*Recalling* the extensive body of conventions and recommendations of the International Labour Organization on labour protection and decent work,

*Recalling also* the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity,

*Recalling further* the extensive work of the Food and Agriculture Organization of the United Nations and the Committee on World Food Security on the right to food, tenure rights, access to natural resources and other rights of peasants, in particular the International Treaty on Plant Genetic Resources for Food and Agriculture, and the Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication and the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,

*Recalling* the outcome of the World Conference on Agrarian Reform and Rural Development and the Peasants Charter adopted thereat, in which the need for the formulation of appropriate national strategies for agrarian reform and rural development, and their integration with overall national development strategies, was emphasized,

*Reaffirming* that the present Declaration and relevant international agreements shall be mutually supportive with a view to enhancing the protection of human rights,

*Determined* to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity,

*Convinced* of the need for greater protection of the human rights of peasants and other people working in rural areas, and for a coherent interpretation and application of existing international human rights norms and standards in this matter,

*Solemnly adopts* the following declaration on the rights of peasants and other people working in rural areas:

*Article 1*

1. For the purposes of the present Declaration, a peasant is any person who engages or who seeks to engage alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organizing labour, and who has a special dependency on and attachment to the land.

2. The present Declaration applies to any person engaged in artisanal or small-scale agriculture, crop planting, livestock raising, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of peasants.

3. The present Declaration also applies to indigenous peoples and local communities working on the land, transhumant, nomadic and semi-nomadic communities, and the landless, engaged in the above-mentioned activities.

4. The present Declaration further applies to hired workers, including all migrant workers regardless of their migration status, and seasonal workers, on plantations, agricultural farms, forests and farms in aquaculture and in agro-industrial enterprises.

*Article 2*

1. States shall respect, protect and fulfil the rights of peasants and other people working in rural areas. They shall promptly take legislative, administrative and other appropriate steps to achieve progressively the full realization of the rights of the present Declaration that cannot be immediately guaranteed.

2. Particular attention shall be paid in the implementation of the present Declaration to the rights and special needs of peasants and other people working in rural areas, including older persons, women, youth, children and persons with disabilities, taking into account the need to address multiple forms of discrimination.

3. Without disregarding specific legislation on indigenous peoples, before adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect the rights of peasants and other people working in rural areas, States shall consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions, engaging with and seeking the support of peasants and other people working in rural areas who could be affected by decisions before those decisions are made, and responding to their contributions, taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.

4. States shall elaborate, interpret and apply relevant international agreements and standards to which they are a party in a manner consistent with their human rights obligations as applicable to peasants and other people working in rural areas.

5. States shall take all necessary measures to ensure that non-State actors that they are in a position to regulate, such as private individuals and organizations, and transnational corporations and other business enterprises, respect and strengthen the rights of peasants and other people working in rural areas.

6. States, recognizing the importance of international cooperation in support of national efforts for the realization of the purposes and objectives of the present Declaration, shall take appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of peasants and other people working in

rural areas, among others. Such measures could include:

- (a) Ensuring that relevant international cooperation, including international development programmes, is inclusive, accessible and pertinent to peasants and other people working in rural areas;
- (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
- (c) Facilitating cooperation in research and in access to scientific and technical knowledge;
- (d) Providing, as appropriate, technical and economic assistance, facilitating access to and sharing of accessible technologies, and through the transfer of technologies, particularly to developing countries, on mutually agreed terms;
- (e) Improving the functioning of markets at the global level and facilitating timely access to market information, including on food reserves, in order to help to limit extreme food price volatility and the attractiveness of speculation.

#### *Article 3*

1. Peasants and other people working in rural areas have the right to the full enjoyment of all human rights and **fundamental freedoms recognized in the Charter of the United Nations**, the Universal Declaration of Human Rights and all other international human rights instruments, **free from any kind of discrimination in the exercise of their rights based on any grounds such as origin, nationality, race, colour, descent, sex, language, culture, marital status, property, disability, age, political or other opinion, religion, birth or economic, social or other status.**

2. Peasants and other people working in rural areas have the right to determine and develop priorities and strategies to exercise their right to development.

3. States shall take appropriate measures to eliminate conditions that cause or help to perpetuate discrimination, including multiple and intersecting forms of discrimination, against peasants and people working in rural areas.

#### *Article 4*

1. States shall take all appropriate measures to eliminate all forms of discrimination against peasant women and other women working in rural areas and to promote their empowerment in order to ensure, on the basis of equality between men and women, that they fully and equally enjoy all human rights and fundamental freedoms and that they are able to freely pursue, participate in and benefit from rural economic, social, political and cultural development.

2. States shall ensure that peasant women and other women working in rural areas enjoy without discrimination all the human rights and fundamental freedoms set out in the present Declaration and in other international human rights instruments, including the rights:

- (a) To participate equally and effectively in the formulation and implementation of development planning at all levels;
- (b) To have equal access to the highest attainable standard of physical and mental health, including adequate health-care facilities, information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To receive all types of training and education, whether formal or non-formal, including training and education relating to functional literacy, and to benefit from all community and extension services in order to increase their technical proficiency;
- (e) To organize self-help groups, associations and cooperatives in order to obtain equal access to economic opportunities through employment or self-employment;
- (f) To participate in all community activities;
- (g) To have equal access to financial services, agricultural credit and loans, marketing facilities and appropriate technology;

- (h) To equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes;
- (i) To decent employment, equal remuneration and social protection benefits, and to have access to income-generating activities;
- (j) To be free from all forms of violence.

*Article 5*

1. Peasants and other people working in rural areas have the right to have access to and to use in a sustainable manner the natural resources present in their communities **that are required to enjoy adequate living conditions, in accordance with article 28 of the present Declaration.** They also have the right to participate in the management of these resources.

2. States shall take measures to ensure that any exploitation affecting the natural resources that peasants and other people working in rural areas traditionally hold or use is permitted based on, but not limited to:

- (a) A duly conducted social and environmental impact assessment;
- (b) Consultations in good faith, in accordance with article 2.3 of the present Declaration;
- (c) Modalities for the fair and equitable sharing of the benefits of such exploitation that have been established on mutually agreed terms between those exploiting the natural resources and the peasants and other people working in rural areas.

*Article 6*

1. **Peasants and other people working in rural areas have the right to life, physical and mental integrity, liberty and security of person.**

2. Peasants and other people working in rural areas shall not be subjected to arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, and shall not be held in slavery or servitude.

*Article 7*

1. Peasants and other people working in rural areas have the right to recognition everywhere as persons before the law.

2. States shall take appropriate measures to facilitate the freedom of movement of peasants and other people working in rural areas.

3. States shall, where required, take appropriate measures to cooperate with a view to addressing transboundary tenure issues affecting peasants and other people working in rural areas that cross international boundaries, in accordance with article 28 of the present Declaration.

*Article 8*

1. Peasants and other people working in rural areas have the right to Freedom of thought, belief, conscience, religion, opinion, expression and peaceful assembly. They have the right to express their opinion, either orally, in writing or in print, in the form of art, or through any other media of their choice, at the local, regional, national and international levels.

2. Peasants and other people working in rural areas have the right, individually and/or collectively, in association with others or as a community, to participate in peaceful activities against violations of human rights and fundamental freedoms.

3. The exercise of the rights provided for in the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*order public*), or of public health or morals.

4. States shall take all necessary measures to ensure protection by the competent authorities of everyone, individually and in association with others, against any violence, threat, retaliation, de jure or de facto discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise and defence of the rights described in the present Declaration.

*Article 9*

1. Peasants and other people working in rural areas have the right to form and join organizations, trade unions, cooperatives or any other organization or association of their own choosing for the protection of their interests, and to bargain collectively. Such organizations shall be independent and voluntary in character, and remain free from all interference, coercion or repression.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

3. States shall take appropriate measures to encourage the establishment of organizations of peasants and other people working in rural areas, including unions, cooperatives or other organizations, particularly with a view to eliminating obstacles to their establishment, growth and pursuit of lawful activities, including any legislative or administrative discrimination against such organizations and their members, and provide them with support to strengthen their position when negotiating contractual arrangements in order to ensure that conditions and prices are fair and stable and do not violate their rights to dignity and to a decent life.

*Article 10*

1. Peasants and other people working in rural areas have the right to active and free participation, directly and/or through their representative organizations, in the preparation and implementation of policies, programmes and projects that may affect their lives, land and livelihoods.

2. States shall promote the participation, directly and/or through their representative organizations, of peasants and other people working in rural areas in decision-making processes that may affect their lives, land and livelihoods; this includes respecting the establishment and growth of strong and independent organizations of peasants and other people working in rural areas and promoting their participation in the preparation and implementation of food safety, labour and environmental standards that may affect them.

*Article 11*

1. Peasants and other people working in rural areas have the right to seek, receive, develop and impart information, including information about factors that may affect the production, processing, marketing and distribution of their products.

2. States shall take appropriate measures to ensure that peasants and other people working in rural areas have access to relevant, transparent, timely and adequate information in a language and form and through means adequate to their cultural methods so as to promote their empowerment and to ensure their effective participation in decision-making in matters that may affect their lives, land and livelihoods.

3. States shall take appropriate measures to promote the access of peasants and other people working in rural areas to a fair, impartial and appropriate system of evaluation and certification of the quality of their products at the local, national and international levels, and to promote their participation in its formulation.

*Article 12*

1. Peasants and other people working in rural areas have the right to effective and non-discriminatory access to justice, including access to fair procedures for the resolution of disputes and to effective remedies for all infringements of their human rights. Such decisions shall give due consideration to their customs, traditions,

rules and legal systems in conformity with relevant obligations under international human rights law.

2. States shall provide for **non-discriminatory access, through impartial and competent judicial and administrative bodies, to timely, affordable and effective means of resolving disputes in the language of the persons concerned, and shall provide effective and prompt remedies, which may include a right of appeal, restitution, indemnity, compensation and reparation.**

3. **Peasants and other people working in rural areas have the right to legal assistance.** States shall consider additional measures, including legal aid, to support peasants and other people working in rural areas who would otherwise not have access to administrative and judicial services.

4. States shall consider measures to strengthen relevant national institutions for the promotion and protection of all human rights, including the rights described in the present Declaration.

5. States shall provide peasants and other people working in rural areas with effective mechanisms for the prevention of and redress for any action that has the aim or effect of violating their human rights, arbitrarily dispossessing them of their land and natural resources or of depriving them of their means of subsistence and integrity, and for any form of forced sedentarization or population displacement.

#### *Article 13*

1. Peasants and other people working in rural areas have the right to work, which includes the right to choose freely the way they earn their living.

2. **Children of peasants and other people working in rural areas have the right to be protected from any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to a child's health or physical, mental, spiritual, moral or social development.**

3. States shall create an enabling environment with opportunities for work for peasants and other people working in rural areas and their families that provide remuneration allowing for an adequate standard of living.

4. In States facing high levels of rural poverty and in the absence of employment opportunities in other sectors, States shall take appropriate measures to establish and promote sustainable food systems that are sufficiently labour-intensive to contribute to the creation of decent employment.

5. States, taking into account the specific characteristics of peasant agriculture and small-scale fisheries, shall monitor compliance with labour legislation by allocating, where required, appropriate resources to ensuring the effective operation of labour inspectorates in rural areas.

6. **No one shall be required to perform forced, bonded or compulsory labour, be subject to the risk of becoming a victim of human trafficking or be held in any other form of contemporary slavery.** States shall, in consultation and cooperation with peasants and other people working in rural areas and their representative organizations, take appropriate measures **to protect them from economic exploitation, child labour and all forms of contemporary slavery, such as debt bondage of women, men and children, and forced labour, including of fishers and fish workers, forest workers, or seasonal or migrant workers.**

#### *Article 14*

1. Peasants and other people working in rural areas, irrespective of whether they are temporary, seasonal or migrant workers, have the rights to work in safe and healthy working conditions, to participate in the application and review of safety and health measures, to select safety and health representatives and representatives in safety and health committees, to the implementation of measures to prevent, reduce and control hazards and risks, to have access to adequate and appropriate protective clothing and equipment and to adequate information and training on occupational safety, to work free from violence and harassment, including sexual harassment, to report unsafe and unhealthy working conditions, and to remove

themselves from danger resulting from their work activity when they reasonably believe that there is an imminent and serious risk to their safety or health, without being subject to any work-related retaliation for exercising such rights.

2. Peasants and other people working in rural areas have the right not to use or to be exposed to hazardous substances or toxic chemicals, including agrochemicals or agricultural or industrial pollutants.

3. States shall take appropriate measures to ensure favourable safe and healthy working conditions for peasants and other people working in rural areas, and shall in particular designate appropriate competent authorities responsible, and establish mechanisms for intersectoral coordination for the implementation of policies and enforcement of national laws and regulations on occupational safety and health in agriculture, the agro-industry and fisheries, provide for corrective measures and appropriate penalties, and establish and support adequate and appropriate systems of inspection for rural workplaces.

4. States shall take all measures necessary to ensure:

(a) The prevention of risks to health and safety derived from technologies, chemicals and agricultural practices, including through their prohibition and restriction;

(b) An appropriate national system or any other system approved by the competent authority establishing specific criteria for the importation, classification, packaging, distribution, labelling and use of chemicals used in agriculture, and for their prohibition or restriction;

(c) That those who produce, import, provide, sell, transfer, store or dispose of chemicals used in agriculture comply with national or other recognized safety and health standards, and provide adequate and appropriate information to users in the appropriate official language or languages of the country and, on request, to the competent authority;

(d) That there is a suitable system for the safe collection, recycling and disposal of chemical waste, obsolete chemicals and empty containers of chemicals so as to avoid their use for other purposes and to eliminate or minimize the risks to safety and health and to the environment;

(e) The development and implementation of educational and public awareness programmes on the health and environmental effects of chemicals commonly used in rural areas, and on alternatives to them.

#### *Article 15*

1. Peasants and other people working in rural areas have the right to adequate food and the fundamental right to be free from hunger. This includes the right to produce food and the right to adequate nutrition, which guarantee the possibility of enjoying the highest degree of physical, emotional and intellectual development.

2. States shall ensure that peasants and other people working in rural areas enjoy physical and economic access at all times to sufficient and adequate food that is produced and consumed sustainably and equitably, respecting their cultures, preserving access to food for future generations, and that ensures a physically and mentally fulfilling and dignified life for them, individually and/or collectively, responding to their needs.

3. States shall take appropriate measures to combat malnutrition in rural children, including within the framework of primary health care through, inter alia, the application of readily available technology and the provision of adequate nutritious food and by ensuring that women have adequate nutrition during pregnancy and lactation. States shall also ensure that all segments of society, in particular parents and children, are informed, have access to nutritional education and are supported in the use of basic knowledge on child nutrition and the advantages of breastfeeding.

4. Peasants and other people working in rural areas have the right to determine their own food and agriculture systems, recognized by many States and regions as the right to food sovereignty. This includes the right to participate in decision-making

processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures.

5. States shall formulate, in partnership with peasants and other people working in rural areas, public policies at the local, national, regional and international levels to advance and protect the right to adequate food, food security and food sovereignty and sustainable and equitable food systems that promote and protect the rights contained in the present Declaration. States shall establish mechanisms to ensure the coherence of their agricultural, economic, social, cultural and development policies with the realization of the rights contained in the present Declaration.

#### *Article 16*

1. Peasants and other people working in rural areas have the right to an adequate standard of living for themselves and their families, and to facilitated access to the means of production necessary to achieve them, including production tools, technical assistance, credit, insurance and other financial services. **They also have the right to engage freely, individually and/or collectively, in association with others or as a community, in traditional ways of farming, fishing, livestock rearing and forestry and to develop community-based commercialization systems.**

2. States shall take appropriate measures to favour the access of peasants and other people working in rural areas to the means of transportation, and processing, drying and storage facilities necessary for selling their products on local, national and regional markets at prices that guarantee them a decent income and livelihood.

3. States shall take appropriate measures to strengthen and support local, national and regional markets in ways that facilitate, and ensure that peasants and other people working in rural areas have, full and equitable access and participation in these markets to sell their products at prices that allow them and their families to attain an adequate standard of living.

4. States shall take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production. States shall stimulate sustainable production, including agroecological and organic production, whenever possible, and facilitate direct farmer-to-consumer sales.

5. States shall take appropriate measures to strengthen the resilience of peasants and other people working in rural areas against natural disasters and other severe disruptions, such as market failures.

6. States shall take appropriate measures to ensure fair wages and equal remuneration for work of equal value, without distinction of any kind.

#### *Article 17*

1. Peasants and other people living in rural areas have the right to land, individually and/or collectively, in accordance with article 28 of the present Declaration, including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.

2. States shall take appropriate measures to remove and prohibit all forms of discrimination relating to the right to land, including those resulting from change of marital status, lack of legal capacity or lack of access to economic resources.

3. States shall take appropriate measures to provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems. States shall protect legitimate tenure, and ensure that peasants and other people working in rural areas are not arbitrarily or unlawfully evicted and that their rights are not otherwise extinguished or infringed. States shall recognize and protect the natural commons and their related systems of collective use and management.

4. Peasants and other people working in rural areas have the right to be protected against arbitrary and unlawful displacement from their land or place of habitual residence, or from other natural resources used in their activities and necessary for the enjoyment of adequate living conditions. States shall incorporate protections against displacement into domestic legislation that are consistent with international human rights and humanitarian law. States shall prohibit arbitrary and unlawful forced eviction, the destruction of agricultural areas and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as a means or method of war.

5. Peasants and other people working in rural areas who have been arbitrarily or unlawfully deprived of their lands have the right, individually and/or collectively, in association with others or as a community, to return to their land of which they were arbitrarily or unlawfully deprived, including in cases of natural disasters and/or armed conflict and to have restored their access to the natural resources used in their activities and necessary for the enjoyment of adequate living conditions, whenever possible, or to receive just, fair and lawful compensation when their return is not possible.

6. Where appropriate, States shall take appropriate measures to carry out agrarian reforms in order to facilitate broad and equitable access to land and other natural resources necessary to ensure that peasants and other people working in rural areas enjoy adequate living conditions, and to limit excessive concentration and control of land, taking into account its social function. Landless peasants, young people, small-scale fishers and other rural workers should be given priority in the allocation of public lands, fisheries and forests.

7. States shall take measures aimed at the conservation and sustainable use of land and other natural resources used in their production, including, among others, through agroecology, and ensure the conditions for the regeneration of biological and other natural capacities and cycles.

#### *Article 18*

1. Peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their lands, and of the resources that they use and manage.

2. States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment.

3. States shall comply with their respective international obligations to combat climate change. Peasants and other people working in rural areas have the right to contribute to the design and implementation of national and local climate change adaptation and mitigation policies, including through the use of practices and traditional knowledge.

4. States shall take effective measures to ensure that no hazardous material, substance or waste is stored or disposed of on the land of peasants and other people working in rural areas, and shall cooperate to address the threats to the enjoyment of their rights that result from transboundary environmental harm.

5. States shall protect peasants and other people working in rural areas against abuses by non-State actors, including by enforcing environmental laws that contribute, directly or indirectly, to the protection of the rights of peasants or other people working in rural areas.

#### *Article 19*

1. Peasants and other people working in rural areas have the right to seeds, in accordance with article 28 of the present Declaration, including:

(a) The right to the protection of traditional knowledge relevant to plant genetic resources for food and agriculture;

(b) The right to equitably participate in sharing the benefits arising from the utilization of plant genetic resources for food and agriculture;

(c) The right to participate in the making of decisions on matters relating to the conservation and sustainable use of plant genetic resources for food and agriculture;

(d) The right to save, use, exchange and sell their farm-saved seed or propagating material.

2. Peasants and other people working in rural areas have the right to maintain, control, protect and develop their own seeds and traditional knowledge.

3. States shall take measures to respect, protect and fulfil the right to seeds of peasants and other people working in rural areas.

4. States shall ensure that seeds of sufficient quality and quantity are available to peasants at the most suitable time for planting, and at an affordable price.

5. States shall recognize the rights of peasants to rely either on their own seeds or on other locally available seeds of their choice, and to decide on the crops and species that they wish to grow.

6. States shall take appropriate measures to support peasant seed systems, and promote the use of peasant seeds and agrobiodiversity.

7. States shall take appropriate measures to ensure that agricultural research and development integrates the needs of peasants and other people working in rural areas, and to ensure their active participation in the definition of priorities and the undertaking of research and development, taking into account their experience, and increase investment in research and the development of orphan crops and seeds that respond to the needs of peasants and other people working in rural areas.

8. States shall ensure that seed policies, plant variety protection and other intellectual property laws, certification schemes and seed marketing laws respect and take into account the rights, needs and realities of peasants and other people working in rural areas.

#### *Article 20*

1. States shall take appropriate measures, in accordance with their relevant international obligations, to prevent the depletion and ensure the conservation and sustainable use of biodiversity in order to promote and protect the full enjoyment of the rights of peasants and other people working in rural areas.

2. States shall take appropriate measures to promote and protect the traditional knowledge, innovation and practices of peasants and other people working in rural areas, including traditional agrarian, pastoral, forestry, fisheries, livestock and agroecological systems relevant to the conservation and sustainable use of biological diversity.

3. States shall prevent risks of violation of the rights of peasants and other people working in rural areas arising from the development, handling, transport, use, transfer or release of any living modified organisms.

#### *Article 21*

1. Peasants and other people working in rural areas have the human rights to safe and clean drinking water and to sanitation, which are essential for the full enjoyment of life and all human rights and human dignity. These rights include water supply systems and sanitation facilities that are of good quality, affordable and physically accessible, and nondiscriminatory and acceptable in cultural and gender terms.

2. Peasants and other people working in rural areas have the right to water for personal and domestic use, farming, fishing and livestock keeping and to securing other water-related livelihoods, ensuring the conservation, restoration and sustainable use of water. They have the right to equitable access to water and water management systems, and to be free from arbitrary disconnections or the contamination of water supplies.

3. States shall respect, protect and ensure access to water, including in customary and community-based water management systems, on a non-discriminatory basis, and shall take measures to guarantee affordable water for personal, domestic and productive uses, and improved sanitation, in particular for rural women and girls, and persons belonging to disadvantaged or marginalized groups, such as nomadic pastoralists, workers on plantations, all migrants regardless of their migration status, and persons living in irregular or informal settlements. States shall promote appropriate and affordable technologies, including irrigation technology, technologies for the reuse of treated wastewater, and for water collection and storage.

4. States shall protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, from overuse and contamination by harmful substances, in particular by industrial effluent and concentrated minerals and chemicals that result in slow and fast poisoning.

5. States shall prevent third parties from impairing the enjoyment of the right to water of peasants and other people working in rural areas. States shall prioritize water for human needs before other uses, promoting its conservation, restoration and sustainable use.

#### *Article 22*

1. Peasants and other people working in rural areas have the right to social security, including social insurance.

2. States shall, according to their national circumstances, take appropriate steps to promote the enjoyment of the right to social security of all migrant workers in rural areas.

3. **States shall recognize the rights of peasants and other people working in rural areas to social security, including social insurance, and, in accordance with national circumstances, should establish or maintain their social protection floors comprising basic social security guarantees.** The guarantees should ensure at a minimum that, over the life cycle, all in need **have access to essential health care and to basic income security,** which together secure effective access to goods and services defined as necessary at the national level.

4. Basic social security guarantees should be established by law. Impartial, transparent, effective, accessible and affordable grievance and appeal procedures should also be specified. Systems should be in place to enhance compliance with national legal frameworks.

#### *Article 23*

1. **Peasants and other people working in rural areas have the right to the enjoyment of the highest attainable standard of physical and mental health.** They also have the right to have access, without any discrimination, **to all social and health services.**

2. Peasants and other people working in rural areas have the right to use and protect their traditional medicines and to maintain their health practices, including access to and conservation of their plants, animals and minerals for medicinal use.

3. States shall guarantee access to health facilities, goods and services in rural areas on a non-discriminatory basis, especially for groups in vulnerable situations, access to essential medicines, immunization against major infectious diseases, reproductive health, information concerning the main health problems affecting the community, including methods of preventing and controlling them, maternal and child health care, as well as training for health personnel, including education on health and human rights.

#### *Article 24*

1. Peasants and other people working in rural areas have the right to adequate housing. They have the right to sustain a secure home and community in which to live in peace and dignity, and the right to non-discrimination in this context.

2. Peasants and other people working in rural areas **have the right to be protected against forced eviction from their home, harassment and other threats.**

3. States shall not, arbitrarily or unlawfully, either temporarily or permanently, remove peasants or other people working in rural areas against their will from the homes or land that they occupy without providing or affording access to appropriate forms of legal or other protection. **When eviction is unavoidable, the State must provide or ensure fair and just compensation for any material or other losses.**

*Article 25*

1. Peasants and other people working in rural areas have the right to adequate training suited to the specific agroecological, sociocultural and economic environments in which they find themselves. **Issues covered by training programmes should include, but not be limited to, improving productivity, marketing, and the ability to cope with pests, pathogens, system shocks, the effects of chemicals, climate change and weather-related events.**

2. **All children of peasants and other people working in rural areas have the right to education in accordance with their culture, and with all the rights contained in human rights instruments.**

3. States shall encourage equitable and participatory farmer-scientist partnerships, such as **farmer field schools, participatory plant breeding, and plant and animal health clinics to respond more appropriately to the immediate and emerging challenges that peasants and other people working in rural areas face.**

4. States shall invest in providing training, market information and advisory services at the farm level.

*Article 26*

1. Peasants and other people working in rural areas have the right to enjoy their own culture and to pursue freely their cultural development, without interference or any form of discrimination. **They also have the right to maintain, express, control, protect and develop their traditional and local knowledge, such as ways of life, methods of production or technology, or customs and tradition. No one may invoke cultural rights to infringe upon the human rights guaranteed by international law, nor to limit their scope.**

2. Peasants and other people working in rural areas have the right, individually and/or collectively, in association with others or as a community, **to express their local customs, languages, culture, religions, literature and art, in conformity with international human rights standards.**

3. **States shall respect, and take measures to recognize and protect, the rights of peasants and other people working in rural areas relating to their traditional knowledge, and eliminate discrimination against the traditional knowledge, practices and technologies of peasants and other people working in rural areas.**

*Article 27*

1. The specialized agencies, funds and programmes of the United Nations system, and other intergovernmental organizations, including international and regional financial organizations, shall contribute to the full realization of the present Declaration, including through the mobilization of, inter alia, development assistance and cooperation. Ways and means of ensuring the participation of peasants and other people working in rural areas on issues affecting them shall be considered.

2. The United Nations and its specialized agencies, funds and programmes, and other intergovernmental organizations, including international and regional financial organizations, shall promote respect for and the full application of the present Declaration, and follow up on its effectiveness.

*Article 28*

1. **Nothing in the present Declaration may be construed as diminishing, impairing or nullifying the rights that peasants and other people working in rural areas and indigenous peoples**

currently have or may acquire in the future.

2. The human rights and fundamental freedoms of all, without discrimination of any kind, shall be respected in the exercise of the rights enunciated in the present Declaration. The exercise of the rights set forth in the present Declaration shall be subject only to such limitations as are determined by law and that are compliant with international human rights obligations. Any such limitations shall be non-discriminatory and necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and for meeting the just and most compelling requirements of a democratic society.

*(Underlining is provided for emphasis)*

26. Thus, the State is, *prima facie*, left with no option but to make legislation particularly in line of what has been chalked out in the said *declaration* and *the Constitution of Pakistan*. Such law should not only describe *rights* and *obligations* of *peasant* in respect of *lands* but should also include such mechanism whereby:

- i) eliminating the *discriminative behavior* with or towards *Hari/peasant*;
- ii) *assuring not mere guarantee of fundamental rights but enjoyment thereof*;
- iii) *assuring restrain on sudden* eviction as well *illegal* eviction;
- iv) assuring compensation against *illegal* and *sudden* eviction;
- v) assuring protection to education of children in case of sudden and illegal eviction;
- vi) *assuring easy access to judicial system as well law enforcing agencies*;
- vii) *assuring easy access to healthcare facility*;
- viii) *assuring compulsory education* to children;
- ix) *assuring a sense of protection to their women and children*;
- x) *ensure compulsory life insurance of the peasants and their family members during or at time of creation of any such relationship so as to cover accidental death, harm or serious ailment of Hari, if receives while performing his any of the duties as HARI*;

- xi) *ensure social security by the State for the laborers/peasants working in the agricultural sector by introducing fair and transparent mechanism for welfare and help of Hari in event of dire need like daughter's marriage, higher education of children etc; in that regard Province of Sindh should allocate basic funds, establish board/authority to receive requisite amount from landlord on yearly basis which would be adjustable at time of settlement of account;*

Since, the legislation is *pure* duty of the *legislators* therefore, things are left open but with hope *rather* belief that such legislation shall meet chalked out objective (s) and shall be made within *least* practicable period not exceeding four months.

27. We would add here that no *law* shall serve its purpose and object unless the *peasants (Haris)* are made enrolled / registered in some official **record**. Such enrollment / registration shall not only operate as a *caution* for Zamindar / Jagirdar in honouring his obligation (s) towards *Haris* but shall also operate as a *restrain* in prejudicing any *fundamental rights* of Hari. Such record should not confine to *mere* entry but must be required to be maintained on *yearly* basis so that it could also help in managing and maintaining the record of *increase* or *decrease* in number of *Hari*. The maintaining of the record (Form VI), as insisted in the ACT, was aimed so which, despite its legal existence, seems to have never been properly maintained. Accordingly, such provision shall be kept alive even in new *enactments* even by preserving or making better the Rule 3 of Sindh Tenancy Rules, 2002 which reads as:-

**"3. Maintenance of Record: (1)** The Tapedar shall record during each cropping season the Field Book prescribed under the Land Revenue Rules and also in columns 11 and 27 of village Form VI, the name of the actual cultivators in respect of each unit of assessment.

(2) ...

(3)...

Since, such record shall not only help in new *legislation* on / towards *peasants rights* but is also requirement of existing ACT, therefore, the compliance of the above Rule must be made in letter and spirit.

28. At this juncture, we find it necessary to reiterate that *normally* no one shall choose to part with his *job* (source of living) but the provision of section 491 of the *Code (habeas corpus petition (Article 199))* frequently are used by *Hari*, which, *ultimately*, operates as a *sword* to terminate the '*tenancy*' though same has to be resorted per provision of section 13 of the ACT *only*. We are conscious that *normally* the *Haris* join same profession / work but with other *landlord/zamindar*. This has been one of the reasons of great concern for all those, involved in profession of *cultivation*. The reasons, *prima facie*, could be nothing but negation to what, *prima facie*, provided in the ACT itself i.e balancing rights and obligations between *two* even in respect of land. The *Hari*, per ACT *itself*, is entitled to:-

i) an area for accommodation;

ii) know his *legal* status as '*tenant*' , having certain *rights*;

iii) have *prescribed area* (on *prescribed conditions*) for *growing cattle-fodder as well vegetable cultivation for personal use* (section 24 of the ACT);

If there have been *protected* and *guaranteed* rights of the *Haris*, the same shall, *hopefully* and *logically*, shall operate as a '*barrier*' in termination of the *Tenancy* by any other way but what the law (ACT) provides.

29. We are also conscious of the fact that because of *imbalance* as well failure of *true* enforcement of the ACT and advancement through technology also resulted in making the landlords / Zamindars to think to introduce concept of *AGRO LABOUR* which, since, has been a completely new *phenomena* therefore, such like *labourers* have no law to have their rights and privileges protected like labourers working in industries. It is

needless to say that since such *agro labour* cannot be prohibited being creation of *self-agreed* contract between two but requires to be brought under some '*mechanism*' so as to maintain a balance in obligations / duties of *employer / landlord* and that of Government because legally the rights towards *labour / work* is undeniable duty of employer / landlord while assuring enjoyment of guarantee of fundamental rights is *undeniable* duty of the State. The above principle of *balance* has been insisted not only in our *Constitution* but also in religion (*Islam*) which obligation the *STATE* did take by signing the referred declaration. The Prophet Muhammad (صلى الله عليه وسلم) is reported to have said :

*"Your employees are your brothers upon whom Allah has given you authority, so if a Muslim has another person under his control, he / she should feed them with the like of what one eats and clothe them with the like of what one wears and you should not overburden them with what they cannot bear and if you do so, help them in their jobs."*

Thus, the government is under an obligation to make necessary legislation for *agro labourers* like industrial labourers. It may, however, be added that objective cannot be achieved unless first the Government:

- i) makes it compulsory to bring on record all *labourer* by adopting a mechanism to register every single labourer, including *agro labourer*;

This shall make it easy not only to keep a watch over *duties* of an employer or landlord/zamindar which he owes towards his employee / hari but shall also help the Government in assuring providing him (employee / hari) the right to enjoy *life* which, needless to add, is not limited to mere act of breathing but includes:-

'reasonable labour money, access to education; health care facility; information, technology; legal help / aid and justice etc'

Therefore, while making *legislation* on the subject, we expect that the Government will keep in mind the concept of *AGRO LABOURERS* discussed above including those aspects highlighted in *DECLARATION* so as to ease a *little* what was complained by Dr. Allama Iqbal as:-

تو قادر و عادل ہے مگر تیرے جہاں میں  
ہیں تلخ بہت بندہ مزدور کے اوقات

30. Now, we would revert to the question of jurisdiction, so was framed vide order dated 25.07.2019. There can *hardly* be any dispute with regard to status of '**Revenue hierarchy**' as that '*Executive/administrative*' and this, *prima facie*, had been the *sole* reason because of which all the *judicial powers* were taken away from such '*Executives*' which, *earlier*, were being exercised by such Revenue Officers except one under issue. The judiciary was, in fact, completely separated from executive through Law Reforms Act, 1997 (which was promulgated in compliance of the judgment of Hon'ble Supreme Court passed in *Sharaf Faridi Case* [PLD 1994 Supreme Court 105]) read with Law Reforms Ordinance, 1972 which manifests itself in Article 175(3) of 1973 Constitution of Pakistan.

31. To make things a *little* easy for understanding the issue, it would be appropriate to refer the opening of the *judgment* of case of *Sharaf Faridi* which reads as:-

"The Constitution of the Islamic Republic of Pakistan, 1973 in its preamble (now made a substantive part thereof vide Article 2-A) declares that "**the independence of the judiciary shall be fully secured**" therein.

Now according to consensus of the jurists, the independence of the judiciary means---

- a) That *every Judge is free* to decide matters before him in accordance with *his assessment of the facts* and *his understanding of the law* without improper **influences, inducements or pressures, direct or indirect, from any quarter or for any reason;** and

- b) That **the judiciary is independent of the Executive and Legislature**, and has jurisdiction, directly or by way of review , over **all issues of a judicial nature**;

In our Constitution, the specific provision designed to secure this independence is contained in clause (3) of Article 175 by enacting that:

**“The Judiciary shall be progressively separated from the Executive....”**

The above opening, to best of our belief and understanding, left nothing ambiguous that all issues of *judicial nature* shall never be available for *adjudication / determination* by any other person / authority but a **Court or least by a quasi-judicial Tribunal**. The word *‘Tribunal’*, per Black’s Law Dictionary (*Ninth Edition*) means :-

“(1) A Court or other *adjudicatory* body. (2)The seat, bench, or place where a **judge** sits.

The Black’s Law Dictionary (*Ninth Edition*) does define the words *“adjudicate”* and *‘adjudication’* as:-

**“Adjudicate:-** (1) To rule upon *judicially*”

**“Adjudication:-** (1) The legal process of resolving a dispute; the process of judicially deciding a case”

32. Since, *prima facie*, both Court (s) and Tribunal (s) make *judicial* determination therefore, both can be termed as *synonyms* to each other to such an *extent*. However, if the erection of a *Tribunal* is meant *“to impose liability or to affect the rights”* then such a *Tribunal*, though constituted under *special enactment* for *specific* purpose (issue), would fall within meaning of a *“Court”*. We would add that an *AUTHORITY* , even if named as *Tribunal*, shall not necessarily fall within meaning of a *‘Court’* but only those *Tribunals* shall fall within such definition which are to exercise *judicial power* thereby passing a conclusive *judgment* determining *rights and liabilities*, capable of being enforced by it. The

*difference of Court and Tribunal* did come into discussion in the case of *Iftikhar Ahmed v. MCB Ltd.* (PLD 1984 Lahore 69). The operative parts, being relevant, are reproduced hereunder:-

“6. In order to appreciate the point, we must first know the meaning and the difference between the two concepts *i.e* “Court” and “Tribunal”. It is historically accepted that only the Courts exercise judicial power. Coke said; Court is a place where justice is judicially administered. According to “Words and Phrases Legally Defined’ Volume 1, page 367, the term “Court” has acquired the meaning of the place where justice is administered and as come to mean the persons who exercise judicial functions under authority either immediately or immediately from the Sovereign and not by reason of merely submission to their jurisdiction”. The 20 Am. Jurisdiction 2<sup>nd</sup> page 386 gives the definition as under:-

“Generally speaking, the word ‘Court’... describes an organ of Government consisting of one person or of several persons, called upon and authorized to administer justice. Whether a government agency is a Court is determined not by its name or title but by its organizational character, its purpose or its function.”

‘9. Many Courts and legal philosophers who attempted to give the exact meaning and scope of the term ‘*judicial power*’ have opined that is not possible to adopt any exhaustive and exclusive definition. However, in re: *The Judiciary Act (2)*, it was stated that ‘all these opinions indicate that a matter under the judicature provisions of the Constitution must involve some right or privilege or protection given by law or prevention , redress or punishment of some act inhibited by law’. A passage from *R.V. Local Government Board for Ireland (3)*, has been quoted by Dixon, C.H of the High Court of the Commonwealth of Australia, in *The Queen v. Davison (4)* as under:-

“I have always thought that to erect a tribunal or ‘jurisdiction’, so as to make its determination judicial, the essential element is that it should have powers, by its determination within jurisdiction to impose liability or affect rights. By this I mean that the liability is imposed, or the right affected by the determination only, and not by the fact determined, and so that the liability will exist, or the right will be affected, although the determination be wrong in law or in fact.”

.....

Kitto, J. in a very learned judgment in *The Queen v. Trade Practices Tribunal (5)* concluded:-

“Thus, a judicial power involves, as a general rule, a decision settling for the future, as between defined persons or classes of persons, as to existence of a right or obligation, so that as exercise of the power creates a new charter by reference to which that question is in future to be decided as between those persons or classes of persons. In other words, the process to be followed must generally be an inquiry concerning the law as it is and the facts as they are, followed by an application of the law as determined to the facts as determined; and the end to be reached must be an act which, so long as it stands, entitles and obliges the persons between whom it intervenes, **to observance of the rights and obligations that the application of law to fact has shown to exist**”.

“11. The Indian view also on the scope and extent of judicial power is not much different. In *Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhun wala* (8) Hidayatullah, J. observed :-

“In my opinion, a Court in the strict sense is a Tribunal which is a part of the ordinary hierarchy of Courts of civil judicature maintained by the State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction.”

In contrast the tribunals are those bodies of men who are appointed to decide controversies arising under certain special laws. The same Supreme Court in *Shankar Lal Aggarwal v. Shankar Lal Poddar* (9) observed that it is ‘conceived that **an administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of the parties or confers or refuse to confer rights to property which are subject of adjudication before the Courts**. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of authority, particularly if that authority were a Court, and if the discretion has to be exercised on objective as distinguished from a purely subjective, consideration if they were a judicial decision.” Later, Bachawal, J. of the Indian Supreme Court in *A.C. Companies v. P.N. Sharma* devised a test to say:--

“For the purpose of this case it is sufficient to say that **any outside authority empowered by State to determine conclusively the right of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial power of the State**.”

.....Professor S.A. De Smith at page 41 of *Judicial Review of Administrative Action*, 18<sup>th</sup> Ed. Discussed this aspect. The test formulated by him is as under:--

“An authority acts in a judicial capacity when, **after investigation and deliberation it determines an issue conclusively by the application of a pre-existing legal rule or any fixed objective standard to the facts of the situation.**”

“15. The Supreme Court in *Tariq Transport company's case* (1) held that it is not presence or absence of the trappings of a Court **but the character of action taken in a given case and nature of rights it operates which determines whether that action is judicial, ministerial or legislative or whether it is simply the act of a public agent.** ..

Having discussed *pros and cons*, it was concluded as:-

“18. Despite the collection of elaborate views above, it has been generally observed that the definitions so far attempted are not exhaustive of the term ‘Court’. However, inspired by all that has been said so far, and without claiming that it will be exhaustive, in my humble view, ‘judicial power’ is the legal right, ability and authority to hear and decide, objectively and after allowing opportunity to produce evidence, a justifiable issue, dispute, or controversy, concerning the existing legal rights, duties or interests of persons or property, arising out of relations and dealings, between two or more parties, who bring the same for an authoritative decision, binding on them and may include the authority to execute or get executed its decision and protect rights prevent and redress wrongs and punish offences through legal process. Further, the judicial power must be conferred by the State and Constitution or law and not the mere consent or parties, one person who are paid by the State and removable by it only. The authority or body in which this power is vested is generally called a ‘Court’ and in performing its functions it declares, construes and applies law or custom or usage, having the force of law. **The ‘judicial power’ is thus the instrument to be used by the Court.**

33. Being guided by above legal position, now, we find ourselves quite safe in concluding that all those ‘*Tribunals*’ shall include into ‘*Courts*’ if:

- i) it has been erected for determination of rights and liabilities with reference to a law;
- ii) the determination of rights and liabilities is subject to a ‘*due process*’ ;
- iii) it has to appreciate not only the facts/documents and evidence but interpretation of provisions of law;

- iv) it has to pass a conclusive *decision / judgment* thereby asking one party to do what *specific law, per duty / obligation, demands to do*;
- v) such *decision / judgment* has status of *finality*, may be after exhausting other available remedies of appeal etc;

We would add here that in Article 175, the use of phrase '*progressively separated*' is always meant that at that *time* it, perhaps, was not practicable to part the *Executives* from assigned *judicial powers* but since it, even at such time, found to be not advisable to leave *judicial powers* with *executives* so '**progressive (complete) separation**' was insisted because a '*judicial power*' shall, as was insisted in case of *Sharaf Faridi* cannot be asked unless the person, assigned such duty, :

- a) *his understanding of the law*; and
- b) without improper *influences, inducements or pressures, direct or indirect, from any quarter or for any reason*; and

Understanding of the law, we shall emphasis, for determination of a *right* and *liability*, shall always demand '*judicial determination*' which without proper knowledge and skill in understanding and interpretation of law cannot be hoped, hence mere acquaintance of law in addition to specifically assigned '*executive or administrative*' duties / works to an '**official**' would never be sufficient to assign him with power of *jurisdiction*, requiring **judicial power**. This, *prima facie*, has been the reason that in referred para(b) of case of *Sharaf Faridi* it was categorically stated that '**judiciary is independent of the Executive and Legislature**'. The term '*complete separation and independence*' of judiciary from *Executive / Administrative*' shall never find satisfaction if any '**Executive**' is allowed to continue exercising jurisdiction which, otherwise, falls within *four corners* of above criterion because such *job* can never fall within meaning of *Executive or Administrative* and at the most could fall

within meaning of *quasi-judicial*. Guidance is taken from the case of Younas Abbas and others v. Additional Sessions Judge, Chakwal & others (PLD 2016 SC 581) wherein it is *categorically* held as:-

“11. ....The functions, the Ex-Officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. His functions as described in Clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are **quasi-judicial** as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him **demands discretion and judgment** . **Functions so performed cannot be termed as executive, administrative or ministerial on any account.** We thus don't agree with the ratio of the judgments rendered in the cases of Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others (PLD 2005 Lah. 470) and Muhammad Ali v. Additional I.G. (PLD 2015 SC 753) inasmuch as it holds that the functions performed by the Ex-Officio Justice of Peace are executive, administrative or ministerial.”

34. So far discussion couple with *binding* judgments, pronounced by honourable Apex Court, help us in saying that an authority / form, though not named as '**Court**', if is found to be exercising *judicial powers* or has been vested with power to pass a '*conclusive & binding judgment*' then letting it continue functioning as such would be nothing but a negation to all *binding* judgments of honourable Apex Court as well violation of Article 175 of the Constitution. Such fact, once comes to notice of this Court *even*, would always require an *action* so as to bring things, as per commandment of *binding* legal position. In case titled "YOUNAS ABBAS and others v. ADDITIONAL SESSIONS JUDGE, CHAKWAL and others" (PLD 2016 Supreme Court 581), the apex Court has held that a provision of law can be declared ultra vires if it is violative of the provisions of the Constitution which guarantee fundamental rights, independence of judiciary or its separation from the executive. In another case titled "PROVINCE OF SINDH through Chief Secretary and another v.

RASHEED A. RIZVI and others" (PLD 2012 Supreme Court 649), the Hon'ble Supreme Court of Pakistan has also held as under:-

20. The SPSC, to which certain functions of the Provincial Government of Sindh have by law been delegated under Article 138 of the Constitution, has correctly been deemed by the High Court as an executive authority. It is clearly performing an executive function and for this very reason, it cannot be given the task of making appointments to the Judicature. It may, however, be noted that while it remains a part of the Executive branch, for the effective discharge of its duties, it has been provided a certain degree of autonomy from the political executive. **Where such autonomy is unlawfully impinged upon by the Executive in a given situation, the remedy lies in rectifying the specific situation under Article 199 of the Constitution, rather than declaring an Executive body to be incompetent or to be acting mala fide.**"

In case titled "Sh. RIAZ-UL-HAQ and another v. FEDERATION OF PAKISTAN through Ministry of Law and others" (PLD 2013 Supreme Court 501), similar view was taken by the August Court and held that:-

"41. It is pertinent to mention here that as the Service Tribunals are not only deemed to be a civil Court but also exercise judicial powers, therefore, they are included in the term 'Court' mentioned in Article 175 of the Constitution. As such, these Tribunals are to be manned, controlled and regulated in accordance with the law relating to management, regulation and control of Courts in Pakistan.

42. It is to be noted that independence of judiciary has been recognized as a universal human right. In terms of Article 10 of the Universal Declaration of Human Rights, G.A, 1948, everyone is entitled to full equality to a fair and public hearing by an independent and impartial Tribunal. In Pakistan, the independence of judiciary is a basic principle of the constitutional system of governance. The Preamble and Article 2A state that "the independence of judiciary shall be fully secured". This Court while interpreting Article 175 has further strengthened the principle of the independence of judiciary, by emphasizing the separation of Judiciary from the Executive. The Constitution makes it the exclusive power/responsibility of the Judiciary to ensure the sustenance of the system of "separation of powers" based on checks and balances. This is a legal obligation assigned to the Judiciary. It is called upon to enforce the Constitution and safeguard the Fundamental Rights and freedom of individuals. To do so, the Judiciary has to be properly organized and effective and efficient enough to quickly address and resolve public claims and grievances; and also

has to be strong and independent enough to dispense justice fairly and impartially. ....

45. The Principle of separation and independence of judiciary as envisaged in Article 175 of the Constitution is also applicable to the lower judiciary as it is the part of the judicial hierarchy. **Thus, its separation and independence has to be secured and preserved as that of superior judiciary. In terms of Article 175 read with Article 203 of the Constitution,** the lower judiciary should be separated from the Executive and the High Court shall supervise and control all courts subordinate to it...As it has been held that Service Tribunal discharges judicial functions, thus falls within the definition of a "Court" in view of the above discussion, therefore, the Tribunals have to be separated from Executive following the principle of independence of judiciary in view of Article 175(3) of the Constitution."

35. Here, it needs to be clarified that we are quite conscious of the fact that mere performance of *quasi-judicial* functions by *itself* alone may not be sufficient to bring such *Authority / Forum* within meaning of a 'Court' if the purpose thereof is *solely* meant to *investigate / inquire* into a dispute for issuance of a *direction / recommendation* without a '*binding effect*' regarding rights and liabilities of contesting parties or that purpose thereof is only to regulate affairs and to maintain the records. Conclusion is, *humbly*, made while keeping in view of above conclusion as well view of Honourable Apex Court, so recorded in case of *Shafaatullah Qureshi v. Federation of Pakistan* PLD 2001 SC 142 wherein authority / forms, performing *quasi-judicial* function, were not brought into definition of 'Court' for reason of lacking jurisdiction to deliver a *binding judgment*.

The relevant portion thereof reads as:-

"10. It is significant to note that in the Order of 1983, nowhere is stated that Ombudsman / Mohtasib is to serve as a Court or Judicial Tribunal. Had, so being the intention of the Legislature, the same would have been specifically been mentioned therein. By implication status of Court cannot be conferred upon the office of Wafaqi Mohtasib. **He cannot deliver a binding judgment which is a condition precedent for being a Court...**

12. ...Performance of quasi-judicial functions by itself does not convert an authority into Court, whether an act is quasi-judicial or purely executive depends on the interpretation of rules/ law under which the authority exercises its jurisdiction. It is true that the administrative authority also is to act bona fide, but it is different from saying that it must act judicially. Many authorities are not Court, although they have to decide questions and have to act judicially in the sense that the proceedings shall be conducted with fairness and impartiality. **In order to constitute a Court in strict sense, it shall have power to give a decision or a definitive judgment which has finality and authoritativeness.**

(underlining has been supplied for emphasis)

The above discussed legal position has *itself* encouraged me to go on in deciding the question, raised in the instant petition.

36. Now, we shall attend the 'ACT' while keeping in above concluded *criterion* which for sake of convenience are reproduced hereunder again:-

- i) it has been erected for determination of rights and liabilities with reference to a law;
- ii) it has to appreciate not only the facts/ documents and evidence but interpretation of provisions of law;
- iii) the determination of rights and liabilities is subject to a '*due process*';
- iv) it has to pass a conclusive *decision / judgment* thereby asking one party to do what *specific law, per duty / obligation, demands* to do;
- v) such *decision / judgment* has status of *finality*, may be after exhausting other available remedies of appeal etc;

For point No.(i), we would say that since, the *preamble* normally operates as a '*key*' to an enactment therefore, a referral to the *preamble* of the ACT, being relevant, is made hereunder:-

"Whereas it is expedient to **regulate by law the rights and liabilities of agricultural tenants and their landlords** in lands in the Province of Sindh, and matters connected therewith; It is hereby enacted as follows:-"

The above referral is sufficient to show that the purpose of the ACT is meant to determine the *rights and liabilities* between two independent parties i.e **agricultural tenants** and **landlords**. we would add that word **'regulate'** , used in *preamble*, should not be of any substance so as to prejudice the term **'determination'** which, *otherwise*, is the duty of the *Tribunal*.

37. Be that as it may, let's proceed further. Perusal of the ACT further shows that provisions of Sections 23 and 24 of the ACT describe *specific 'duties'* of the **'tenant'** and that of **'landlord'** as:-

**23. Duties of the tenant.**—The following shall be the duties of a tenant in respect of his tenancy, namely:--

(a) he shall be responsible for the provision of requisite animal labour, and manual labour or use of mechanical equipment or machinery for ploughing, leveling, weeding, to enable the crops grown by him to be efficiently cultivated;

Provided that in case of use of mechanical equipment or machinery for ploughing, leveling, weeding, harvesting, threshing or other work including carriage or transport of farm inputs and produce; the expenses shall be calculated at the prevalent market rates and shall be borne equally by the landlord and the tenant;

(b) he shall be responsible for the proper weeding of all the crops grown by him and for the cost of such weeding;

(c) he shall be responsible for necessary construction and proper maintenance of irrigation funds and water-course within the land allotted to him and for the cost of such construction and maintenance;

(d) he shall not cultivate the land of any other landlord, if he has been allotted a family holding;

(e) Omitted by Sindh Ordinance XXXII of 2002;

(f) Omitted by Sindh Ordinance XXXII of 2002;

(g) he shall be responsible for growing such crops and such areas of crops and in such manner as may be specified by the landlord;

Provided that the tenants cultivating right under this Act shall not be affected;

(h) any other duties as may be prescribed from time to time;

**24. Duties of the landlord.** – the following shall be the duties of a landlord namely:-

- (a) he shall be responsible for the proper maintenance of the main water-courses leading from the canal-modules to the land, and for the cost of such maintenance; provided that the tenant shall be bound to give his labour for the silt-clearance of such water-course during the irrigation season and in return therefor the landlord shall be bound to adequately compensate the tenant in cash;
- (b) he shall be responsible for ensuring the supply of the proper share of available irrigation water including lift and tube-well to the land allotted to his tenant;
- (c) he shall be responsible for payment of land revenue, water rent, zakat, ushr and other taxes, cess, surcharge and levies in respect of the land and for providing seed, and the cost of fertilizer and pesticides shall be borne equally by the landlord and the tenant but the landlord shall not take any free labour from the tenant or a member of his family against his will;
- (d) any advance of food-grains by the landlord to a tenant for domestic needs shall be repaid in cash at the time it was lent or in kind of equivalent value;
- (e) he shall be responsible for allotting a prescribed area on prescribed conditions to the tenant for growing cattle-fodder and vegetable cultivation for the personal use of the tenant in areas where only cotton or sugar-cane or tobacco or such other crops are grown which do not provide fodder for the cattle;
- (f) any other duties as may be prescribed from time to time;

38. It may safely be said that a '*duty*' always creates a '*right*' hence it is the *defined* '**duties**' of the tenant/ hari which earn him certain rights which is not limited to receive what tenant/ hari is entitled from *cultivation* only but includes a right to enjoy protection against ejection / termination of *tenancy*.

The perusal of the ACT further shows that :

- (i) a *permanent tenant* has a right to transfer his *tenancy right* with permission of landlord (section 3(a);
- (ii) a *permanent tenant* has a right to transfer his cultivation right to any other **deh** in which the landlord holds land with permission of landlord (section 3(b);
- (iii) the rights of a *permanent tenant* is detailed as a *inheritable rights* (section 10);
- (iv) section 11 thereof gives the status of **rights** of permanent tenant as *unalienable and unattachable*;
- (v) section 12 thereof permits continuity of *tenancy* even in case of *incapacity* of a *permanent tenant*;

All these have been detailed in the law *itself* hence a question of breach or enforcement of any of the recognized *rights* shall always require determination which, *prima facie*, is not requiring maintaining of a record but of *rights* and *duties*.

39. Bet that as it may, the ACT does have section 13 which details how a *tenancy* can be terminated. The section 19 thereof defines the *production of a land* to be in '**joint possession**' of both tenant and landlord. If all these provisions, detailing rights and obligations, are read with *key* of the ACT, it can safely be concluded that purpose of *Tribunal* is nothing but to decide such *pre-existing / detailed* rights and obligations thereby imposing liabilities; remedies as well punishment for breach thereof (section 34 of the ACT). This finds affirmation from provision of section 28 of the ACT *itself* which reads as:-

**“Procedure and powers.—(1)** A tenant or a landlord may personally or by their agent make an application to the Tribunal appointed for the area in which the land in question is situated **to decide any dispute between the tenant and the landlord arising out of the application of the provisions of the Act...**”

The above discussion makes it quite clear that purpose and object of the ACT is one that shall require exercise of *judicial power* as it is meant to

decide **rights and liabilities**, created by ACT itself, as well consequences thereof.

40. The perusal of the subsections of section 28 of the ACT shows that:-

- (a) Application must be in *writing* and must give full particulars regarding nature of the **dispute, ..**;  
(such detail is meant to know as to which right or claim recognized in the ACT, requires determination)
- (b) The Tribunal shall have to issue a notice to opponent;  
(this is an assurance of right of *hearing*)
- (c) The tribunal shall have power, as available to a Court under CPC, for purpose of summoning parties and witnesses as well to compel production of documents;  
(this means that tribunal not only shall allow examination of witnesses and production of documents but can competently do so by *itself* if circumstances so warrant to *justly* decide the dispute. This cannot be hoped unless the man (performing such duty) is well aware with *pros and cons* of such powers and right way of exercising the same)

Thus, it is quite evident that such *decision* by a Tenancy Tribunal is not confined to *mere* examination of record and hearing parties thereto but involves application of number of *laws* including Qanun-e-Shahadat and CPC. Such exercise shall always require **judicial** skill and complete understanding of *law*. We may add here that *Executives / Administrators* normally indulge in **public dealings** therefore their *partiality* is always easy to be alleged which, *normally*, is rare / hard to allege in matters of **judicial officers** who, per law, are to follow *specific Code*. Thus, point No.(ii) and (iii) of given criterion also, *prima facie*, exist.

41. Point No.(iv) needs no much debate because the procedure and power (section 28 of the ACT), *prima facie*, is aimed to pass a '**conclusive decision**' which, however, has been termed as '**award**'. Use of such word *alone* since carries force of being enforcement hence shall be of no *confusion* rather would operate as a **judgment / order**. Here a referral to *explanation*, given at foot of section 13 of the ACT, shall make position clear which reads as:-

*“A permanent tenant shall not (be) ejected otherwise than in execution of any order of the Tribunal.”*

For point No.(v), it would suffice to refer the section 32 of the Act which reads as:-

**“Orders to be final.** – An order made by the Commissioner under section 31 and subject to the provisions of that section an award of the Tribunal or the **order of the Collector shall be final** and **shall not be called in question in any Court.**”

42. The above discussion is sufficient to conclude that purpose and object of the *Tribunal* i.e regulating rights and liabilities of tenants and landlord shall require exercise of *judicial power* therefore, it (*Tribunal*) cannot be allowed to be headed by an *Executive* (Assistant Commissioner), as provided in Section 27 of the ACT which reads as:-

**“Constitution of Tribunals.**—The Tribunal shall consist of one member only who shall be the **Assistant Commissioner** for the time being in office.”

This, perhaps, had been the reason which had encouraged the learned AAG to concede on competence of ‘**Assistant Commissioner**’ to act as Presiding Officer of *Tenancy Tribunal* which, being well in line, is worth appreciating.

43. In addition to all above discussion on criterion, there is another *single* fact which is sufficient to declare the Section 27 of the ACT as *ultra vires* and *void*. A referral to section 34 of the ACT shall make things clear that the ACT is never meant for correction of the record *only* but is attempted to **determine rights and obligations** the contravention whereof (*rights and obligations*) even has been made as liable to punishment. The section reads as :-

**“34. Penalty.—(1) If any landlord or tenant contravenes any of the provisions of this Act or of the Rules made thereunder, he shall on conviction by a Magistrate not lower in rank than that of a Second Class Magistrate, be liable to a fine which may extend to Rs.500 and in default of payment of fine to simple imprisonment which may extend to one month;**

The *bare* reading of above shows that **‘punishment’** is to be awarded by a *second class Magistrate* which (*punishment*) undeniably could not be without due process / trial. Undeniably, the Assistant Commissioner does not have *Magisterial powers* but, per law, he (Assistant Commissioner) is authorized to hear and determine all **‘disputes’** regarding alleged contravention of **‘ANY OF THE PROVISIONS OF THE ACT OR OF THE RULES’**. Such position is nothing but portrays that **‘ASSISTANT COMMISSIONER’** can decide all such contravention but *legally* is not in a position to pass a conviction as such powers are lying with Magisterial Courts hence his status involves an *authority* to determine rights and liabilities of people as well enforcement thereof. Accordingly, the legal and binding position of law, allow us to declare the section 27 of the ACT as *ultra vires* Article 175 of the Constitution of Pakistan. It may well be added here that *prima facie*, the **‘Executives, including Assistant Commissioner’** cannot act as **‘Tenancy Tribunal’** nor can deal with appeal, revision etc, particularly when the Section 27 of the Act stood declared as *ultra vires* and void, which *legal* position was, even, consented by learned State representation. This, here, raises a question as to what would happen to present pending petitions etc (arose because of the Act) before such authorities or for those (*landlord & Tenant*), who gets a right to approach such Tribunal **TODAY?** Since, right and entitlement, arose from the Act *itself*, cannot be kept hanging for days together (*till amendment*) because from now on any decision by **Executives** would but nothing but *corum non*

*judice*, therefore, we find it in all fairness to authorize Civil Judge & JM to exercise jurisdiction of *Tenancy Tribunal* and to entertain all petitions which, per Act, are maintainable, till the section 27 of the Act is amended by *legislature* by any mode within their *wisdom* subject to satisfaction of true spirit of Article 175 of the Constitution.

44. In view of above discussions and directions the petition stands disposed of. We, however, for *easy* compliance of all directives, reiterate the same, *in brief*, as:-

- (1) After the separation of the judiciary from the executive, the Assistant Commissioner, the Additional Commissioner and the Commissioner/Collector, do not have jurisdiction to make judicial determination under sections 27, 29 and 30 of the Sindh Tenancy Act, 1950, and to that extent the said provisions are *ultra vires* Article 175, 202 and 203 of the Constitution of Pakistan, 1973;
- (2) Till such time necessary amendments are made to the Sindh Tenancy Act 1950, the proceedings pending under sections 27, 29 and 30 of the Sindh Tenancy Act, 1950 shall be transferred to the District Court concerned where the District Judge shall assign tenancy applications under section 27 to the Civil Court exercising territorial jurisdiction, and the appeals and revisions pending under sections 29 and 30 shall be decided by the concerned District Judge or Additional District Judge;
- (3) The *amendment* of section 27 of the Act shall, however be made within a period of **one month** by *legislature* by any mode within their *wisdom* subject to satisfaction of true spirit of Article 175 of the Constitution. The jurisdiction, exercised by Civil Judge & JM, till such amendment shall also be kept in view by Legislature so as to keep rights and interests of parties protected.
- (4) The orders passed by the Assistant Commissioner and the Additional Commissioner in the case of the Petitioner under sections 27 and 29 respectively of the Sindh Tenancy Act, 1950 are set-aside and the tenancy application of the Petitioner shall be decided afresh by the Civil Judge under section 27 of the Sindh Tenancy Act, 1950 preferably within a period of three months;

- (5) Section 6 of the Sindh Tenancy (Amendment) Act, 2013, whereby section 24(c) of the Sindh Tenancy Act, 1950 was amended to omit the prohibition on '*begar*' /free labor, is *ultra vires* Articles 11, 15 and 23 of the Constitution of Pakistan and shall be treated to have never existed;
- (6) The Chief Secretary, Sindh is directed to issue directions to Secretary, Revenue department, Deputy Commissioner(s) all over Sindh to ensure compliance of Rule 3(1) of the Sindh Tenancy Rules, 2002 and such report regarding maintenance of Form-VI shall be submitted to this Court. Such process must be completed within a period of four months;
- (7) The Commissioner(s), while issuing directions for preparation of Form VI, shall also direct the '*Mukhtiarkar(s)*' to make sure that *Haris* have an area for **accommodation** as well for **cattle and vegetable cultivation** for the personal use of *Haris* without any payment (*Aero*) as per the spirit of section 24(e) of the Sindh Tenancy Act, 1950
- (8) The Government shall make necessary amendments in Sindh Tenancy Act, 1950 so as to bring it in line with the Constitution of Islamic Republic of Pakistan, 1973 as well *peasant rights*, detailed in referred United Nations Declaration while keeping in view the aspects, discussed in para-26 *supra* which are:-

“Such law should not only describe *rights* and *obligations* of *peasant* in respect of *lands* but should also include such mechanism whereby:

- i) eliminating the *discriminative behavior* with or towards *Hari/peasant*;
- ii) *assuring not mere guarantee of fundamental rights but enjoyment thereof*;
- iii) *assuring restrain on sudden* eviction as well *illegal* eviction;
- iv) *assuring compensation against illegal and sudden* eviction;
- v) **assuring protection to education of children in case of sudden and illegal eviction**;
- vi) *assuring easy access to judicial system as well law enforcing agencies*;
- vii) *assuring easy access to healthcare facility*;
- viii) *assuring compulsory education* to children;

- ix) *assuring a sense of protection to their women and children;*
- x) *ensure compulsory life insurance of the peasants and their family members during or at time of creation of any such relationship so as to cover accidental death, harm or serious ailment of Hari, if receives while performing his any of the duties as HARI;*
- xi) *ensure social security by the State for the laborers/peasants working in the agricultural sector by introducing fair and transparent mechanism for welfare and help of Hari in event of dire need like daughter's marriage, higher education of children etc; in that regard Province of Sindh should allocate basic funds, establish board/authority to receive requisite amount from landlord on yearly basis which would be adjustable at time of settlement of account;*

Since, the legislation is *pure duty* of the *legislators* therefore, things are left open but with hope *rather* belief that such legislation shall meet chalked out objective (s) and shall be made within *least* practicable period not exceeding four months."

- (9) The Government shall, within six months, also make necessary legislation for **AGRO LABOUR** as discussed above, particularly in para-29 *supra* of judgment which is:

*"makes it compulsory to bring on record all labourer by adopting a mechanism to register every single labourer, including agro labourer;*

This shall make it easy not only to keep a watch over *duties* of an employer or landlord/zamindar which he owes towards his employee / hari but shall also help the Government in assuring providing him (employee / hari) the right to enjoy *life* which, needless to add, is not limited to mere act of breathing but includes:-

*'reasonable labour money, access to education; health care facility; information, technology; legal help / aid and justice etc'*

Copy of this judgment shall be sent to the Advocate General Sindh, Chief Secretary Sindh and all learned District and Sessions Judges, through MIT, for information and compliance.

**J U D G E**

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