

**Amendment in the Evacuee Trust  
Properties (Management and Disposal)  
Act, 1975**

**Report No. 120**

## **AMENDMENT IN THE EVACUEE TRUST PROPERTIES (MANAGEMENT AND DISPOSAL) ACT, 1975**

The Evacuee Trust Properties (Management and Disposal) Act, 1975, is in force to provide for the management and disposal of evacuee properties attached to charitable, religious or educational trusts or institutions.

Sections 8, 9, 10, 14 and 21 of the Evacuee Trust Properties Act, 1975, provide for declaration of property as Evacuee Trust Property, exemption of property in Trust Pool from process, validation of certain transfers, bar of jurisdiction and power of Chairman etc., as civil court”, respectively.

The above referred sections of the said Act had been challenged in the Federal Shariat Court as being repugnant to the injunctions of Islam. The Federal Shariat Court in its judgment dated September 16, 1991, in the case of Mufti Iftikharuddin versus Federal Government [1992, PLD (FSC) 188] declared that “sections 8,9,10,14, and 21 are repugnant to the Quran and Sunnah and cannot be retained. They would cease to have effect from 30<sup>th</sup> December, 1991.”

Feeling aggrieved from the judgment of Honourable Federal Shariat Court, the Federal Government filed a Shariat appeal against the said Judgment. The Supreme Court (Shariat Appellate Bench) in its judgment dated March 25, 2000 held that only section 8 of the said Act may be amended to make provision for filing an appeal against the judgment of the Chairman under section 8 of the said Act. The Supreme Court made the following directions.

“the providing of right of appeal against order of the Chairman passed under section 8 of Act XIII of 1975 should have been provided to comply with the requirements of principles of administration of justice in Islam as immunity sought to be granted such an order by providing an inadequate remedy of revision would be repugnant to the injunctions of Islam. The appellant is accordingly directed to suitably amend the Evacuee Trust properties. (Management and Disposal) Act, 1975 (Act XII of 1975) by inserting a provision providing right of appeal against the order passed

by the Chairman under section 8 of Act XIII of 1975. Such an appeal can be provided before the High Court in line with the resource adopted in the Displaced Persons (Compensation and Rehabilitation) Act, 1958 and the Displaced Persons (Land Settlement) Act, 1958. If the declaration as to the nature of the property made by the Chief Settlement Commissioner and later by the Chairman could be made scrutable through an appeal to the High Court, no possible objection can be raised to the providing of the same remedy now under Act XIII of 1975. It is also to be noted that against the order passed on other matter by the officers appointed by the Board, appeal has been provided to the higher officers of the hierarchy including the Chairman and against the orders so passed the revision lies to the Federal Government. The said course of action can continue as before, as final order so passed is further assailable before the High Court by invoking the constitutional jurisdiction vesting in it under Article 199 of the Constitution and a further petition for leave to appeal before the Supreme Court under Article 185 of the constitution of Islamic Republic of Pakistan, 1973. The remedies, so provided, considering the nature of the legislature are in such matter sufficient and adequate. The amendment direction in the above terms shall be made in Act XIII of 1975 by the appellant by the 30<sup>th</sup> July, 1999.

A bare reading and contents of section 8 *ibid* show that the said section has not been amended so far according to the observations of the Honorable Supreme Court. Said section is reproduced as under:-

- “8. Declaration of property as evacuee trust property.—
- (1) If a question arises whether an evacuee property is attached to a charitable, religious or educational trust or institution or not, it shall be decided, by the Chairman whose decision shall be final and shall not be called in question in any Court.
  - (2). If the decision of the Chairman under sub-section (1) is that an evacuee property is evacuee trust

property, he shall, by notification in the official Gazette, declare such property to be evacuee trust property.

- (3). If a property is declared to be evacuee trust property under sub-section (2), the Chairman may pass an order cancelling the allotment or alienation, as the case may be, take possession and assume administration control, management and maintenance thereof:

Provided that no declaration under sub-section (2) order sub-section (3) shall be made of passed in respect of any property without giving the persons having interest in the property a reasonable opportunity of being heard.”

### **Legislative Proposal**

In view of the forgoing, it is suggested that the following amendments in the Evacuee Trust Properties (Management and Disposal) Act, 1975, may be made, namely:-

(a) In section 8,

- (i) In sub-section (1), the words in the end “whose decision shall be final and shall not be called in question in any Court”, may be omitted;
- (ii) In sub-section (2), for the full stop, in the end, a colon may be substituted and thereafter the following proviso may be added, namely:-

“Provided that no declaration shall be made under sub-section (2) in respect of any property without giving the persons having interest in the property a reasonable opportunity of being heard.”;

- (iii) In sub-section (3), for the existing proviso the following shall be substituted namely:-

“Provided that no order under sub-section (3) shall be passed in respect of any property till the decision of the appeal preferred under section 8A or, as the case may be, a revision under section 17.”;

- (b) After section 8, the following new section shall be inserted, namely:-

“8A. Appeal to the High Court.- Any person aggrieved by a declaration made under sub-section (2) of section 8 may, within thirty days from the date on which the notification referred to in the said sub-section is published in the official Gazette, prefer an appeal to the High Court.”; and

- (c) In section 17, in the proviso, for the full stop, at the end, a colon shall be substituted and thereafter the following new proviso shall be added, namely:-

Provided further that any person who has preferred an appeal under section 8A shall not be eligible to file a revision under this section.”

The matter was placed before the sub-Committee of LJCP, which agreed with all the proposals except amendment in Section 17 by adding a second proviso for bearing the person who has preferred an appeal under section 8A to file a revision under this section. Revision and inserted recommended to omit this proviso.

## COMPARATIVE TABLE

Existing	Proposed	Recommendations of the Sub- committee of LJCP
<p>8. Declaration of property as evacuee trust property.-(1) If a question arises whether an evacuee property is attached to a charitable, religious or educational trust or institution or not, it shall be decided, by the Chairman <u>whose decision shall be final and shall not be called in question in any Court.</u></p> <p>(2). If the decision of the Chairman under sub-section (1) is that an evacuee property is evacuee trust property, he shall, by notification in the official Gazette, declare such property to be evacuee trust property.</p>	<p>8. Declaration of property as evacuee trust property.- (1) If a question arises whether an evacuee property is attached to a charitable, religious or educational trust or institution or not, it shall be decided, by the Chairman. Omitted.</p> <p>(2). If the decision of the Chairman under sub-section (1) is that an evacuee property is evacuee trust property, he shall, by notification in the official Gazette, declare such property to be evacuee trust property.</p> <p><b>Provided that no declaration shall be made under sub-section (2) in respect of any property without giving the persons having interest in the property a reasonable opportunity of being heard.</b></p>	<p><b>Approved</b></p>

<p>(3). If a property is declared to be evacuee trust property under sub-section (2), the Chairman may pass an order canceling the allotment or alienation, as the case may be, take possession and assume administrative control, management and maintenance thereof:</p>	<p>(3). If a property is declared to be evacuee trust property under sub-section (2), the Chairman may pass an order canceling the allotment or alienation, as the case may be, take possession and assume administrative control, management and maintenance thereof:</p> <p><b>Provided that no order under sub-section (3) shall be passed in respect of any property till the decision of the appeal preferred under section 8A or, as the case may be, a revision under section 17.</b></p> <p><b>8A. Appeal to the High Court. – Any person aggrieved by a declaration made under sub-section (2) of section 8 may, within thirty days from the date on which the notification referred to in the said sub-section is published in the official Gazette, prefer an appeal to the High Court.</b></p>	<p><b>Approved</b></p>
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<p>17. <b>Revision.</b> The Federal Government may at any time, of its own motion or otherwise, call for the record of any case or proceedings under this Act, which is pending or in which the Chairman, and Administrator, a Deputy Administrator or an Assistant Administrator has passed and order, for the purpose of satisfying itself as to the correctness, legality or propriety of such an order, and may pass such order in relation thereto as the Federal Government think fit:</p> <p>Provided that the record of any case or proceedings in which the chairman, an Administrator, a Deputy Administrator or an Assistant Administrator has passed an order shall not be called for under this section on the application of any aggrieved person made after the expiration of fifteen days from the date of such order.</p>	<p>No Change</p>	<p><b>Provided further that any person who has preferred an appeal under section 8A shall not be eligible to file a revision under this section.</b></p>
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### **Commissions deliberations on 4<sup>th</sup> June, 2011**

The Commission observed that since the issue pertains to the implementation of judgment; therefore, the same may be referred to the Secretary, Ministry of Law, Justice and Parliamentary Affairs for implementation of the judgment.