Worth of Inquiry Reports formulated by Tribunals constituted under The [Punjab] Tribunals of Inquiry Ordinance, 1969

It has been the practice of provincial and federal governments to conduct inquiries into matters they deem are of definite public importance by way of appointment of commissions, tribunals, and inquiry committees. While the sitting commission, tribunal or inquiry committee which is appointed by the government under S.3 of The [Punjab] Tribunals of Inquiry Ordinance, 1969 has the limited powers of a civil court while conducting an inquiry under the Code of Civil Procedure, 1908 in respect of the following matters, namely, summoning and enforcing the attendance of person and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavits and issuing commissions for the examination of witnesses or documents, under S.4 of the ordinance - according to the Indian case of *Manohar Lal v. Union of India* ***[AIR 1970 Del 178]***, the report formulated by the commission is merely of a recommendatory nature and is not binding on the Government in any way. In India, the same procedure is followed by making use of the powers conferred in "The Commission of Inquiry Act, 1952". Following are the extracts from the case of *Manohar Lal* and the two other cases the judgment in *Manohar Lal* was based on.

In AIR 1970 Del 178, *Manohar Lal v. Union of India*, at paragraphs 14 and 16:

"14. The Supreme Court had, on two occasions, pointed out that a Commission of Inquiry appointed under the Commission of Inquiry Act was for fact finding purposes and that the report of the Commission had no force proprio vigore; vide State of Jammu and Kashmir v. Bakshi Ghulam Mohammad, ***AIR 1967 AC 122*** *and P.V. Jagannath Rao v. State of Orissa,* ***AIR 1969 SC 215.****"*

"16. It is thus clear that the Commission was only asked to make the recommendations, which was made by that Commission. The Commission's Report, therefore, could have no force proprio vigore, to use the expression adopted by the Supreme Court in both the above said decisions."

In the case of State of *Jammu and Kashmir v. Bakshi Ghulam Mohammad*, **AIR 1967 AC 122** at paragraph 20:

"20. The report of the commission has no force proprio vigore."

In the case of *P.V. Jagannath Rao v. State of Orissa*, **AIR 1969 SC 215** at paragraph 11:

"11. It was pointed out by this court in ***1959 SCR 279 = AIR 1958 SC 538*** *that the inquiry cannot be looked upon as a judicial inquiry and the order ultimately passed cannot be enforced proprio vigore. The inquiry and the investigation by the commission*

do not therefore amount to usurpation of the function of the courts of law. The scope of the trial by the courts of law and the commission of inquiry is altogether different."

While these tribunals may have the powers of a civil court in some aspects, and furthermore, may constitute of members of judiciary, as S.10 of the 1969 Ordinance suggests that the members must be public servants, the outcomes of their inquiries are not exactly referred to as judgments, and are referred to as reports, which as mentioned earlier are of mere recommendatory nature, and are not binding. However, the question which may and does arise is, whether such reports are public documents or not.

We have on one hand Article 19-A of the Constitution of the Islamic Republic of Pakistan, which is titled as 'Right to Information' and reads as *"every person shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law"* and within this article the provision to keep the information secret by way of legislation and/or regulation. As discussed earlier, the Tribunals and commissions in the province of Punjab are formed under S.3 of the 1969 ordinance, which does not make any mention about the outcome of their inquiry, and the scope of the report, so we may have to rely upon case law to resolve the issue at hand. It may also be pointed out without prejudice to the members of the commission that since they are sitting in the tribunal, commission or an inquiry committee under the 1969 Ordinance, they are, by law obliged to follow the same ordinance strictly, and abide by the guidelines laid down therein, and have no powers to determine whether or not the report they have formulated is a public document.

It may be false to state that the reports of such tribunals have never been made public, The Lahore High Court website hosts electronic copies of Judicial Inquiry reports formulated on issues including Floods and the recent defective drug dilemma at Punjab Institute of Cardiology which indicates that these reports are not state secrets after all, and may be published if deemed necessary. While in the above mentioned reports, the number of people involved may have been a large quantity, it may be concluded without doubt this may not be the reason to make these reports public and available to all. Perhaps, as discussed earlier, since such reports are mere recommendations, it may be the purpose of the Judiciary to let the public at large know, what useful recommendations, if any, were made to the concerned Government about the issues.

Other provisions of the 1969 Ordinance, provide with very definitive guidelines on the powers of the tribunal so constituted, and about the statements furnished to the tribunal, which are not capable of being used against the person who makes them in any civil or criminal proceedings, except a prosecution for giving false evidence by such statement, and as mentioned above and now again as laid down in the case of **PLD 1957 SC 301** at 311, that the jurisdiction of the Tribunal is not as wide as a Civil Court, and that the Tribunal has no power to raise suo motu an issue quite independent of the points raised in the petition.

In the Indian case of *Bakshi Gulam Mohammad*, the Supreme Court has accepted the proposition that when a commission is inquiring into the conduct of an individual, and allegations made against him, the commission has to observe the principle of natural justice subject to the provisions contained in the Act and the rules. Also, the court has emphasized that in determining what norms of natural justice are reasonably applicable in the commission's proceedings, two aspects have to be kept in mind

(i) It is a fact-finding body;
(ii) Its report has no force *proprio vigore*, which means it does not have any power independently.

It does not of course mean that the commission is a quasi-judicial body or is discharging judicial functions according to the case of *Ram Krishna Dalmia v. Justice Tendolkar* ***AIR 1958 SC 538***. A commission of inquiry constituted under S.3(1) of Commissions of Inquiry Act, 1952 is not a court for the purposes of S.195(i)(b) of Code of Criminal Procedure Code, 1973, and according to the case of *Baliram Waman Hiray v. Justice B. Lentin;* ***AIR 1988 SC 2267****, para 36,* it is fictionally a court for limited purposes.

We may find a solution to the problem in the case of *The State Vs. Zulfiqar Ali Bhutto,* ***PLD 1978 Lahore 523*** at paragraphs 355, 356 and 358 which state expressly that the reports of the tribunals cannot be held to be a judgment. The extracts from the judgment are as follows:

"354. Now the Tribunal constituted under the above Ordinance is not a Court and is not competent to render any judgment. The Tribunal is appointed under section 3 of the above Ordinance by the Government for the purpose of making an inquiry into any definite matter of public importance."

"355. The Ordinance does not envisage the adjudication of any controversy, between two contending parties or trial of any offence. These provisions neither confer upon the Tribunal the status of a Court (except for the limited purpose expressed in the above two sections) nor render its report effective or executable in any manner, or even binding upon the Government. The report cannot be held to be a judgment."

"358. The report being merely an opinion of a Tribunal based upon the evidence recorded by it is not relevant under any section of the Evidence Act nor reference to any such section was made by the learned counsel during arguments."

Now, under Pakistani Law, we may safely conclude that since the report prepared by a tribunal or commission is not a judgment, therefore, not a public document, and even if Article 19-A of the Constitution of Pakistan is brought into play, the article itself provides with a provision to keep the reports limited subject to regulation and law, and the decision of **PLD 1978 Lahore 523**, stands valid as law on that matter. It may still remain to be a point of contention and there is room to raise arguments in this regard, but a

connection can easily be drawn between the provisions of the 1969 Ordinance, the Constitution of Pakistan, and the judgment in *The State v. Zulfiqar Ali Bhutto*.

We may now turn our attention towards the United Kingdom. The general rule is that a tribunal, like a court of law, may decide by a majority of its members and need not be unanimous according to the case of *Picea Holdings Ltd. V. London Rent Assessment Panel* ***[1971] 2 QB 216***. In addition its rules of procedure may provide for majority decisions; but even where they do not, the general rule will apply in the absence of contrary intent in the statute. According to the now reversed decision of *President of the Methodist Conference v. Parfitt* ***[1984] ICR 176***; ***[1984] QB 368***, it does not appear to make any difference that the tribunal may be composed of members chosen from panels representative of opposed interests; or that two lay members overrule a legal chairman on a question of law.

Once announced, the tribunal has no power to re-open or reconsider the case according to the case of *Akewushola v. Home Secretary* ***[2000] 1 WLR 2295***, unless of course its decision is quashed by the High Court. There is exceptional power to reopen the case where the tribunal's decision is given in ignorance that something has gone wrong, e.g. that a notice sent to one of the parties has miscarried. But this power must be exercised sparingly and only where the party prejudiced by the mistake has a reasonable excuse.

Reasoned decisions are not only vital for the purpose of showing the citizen that he is receiving justice: they are also a valuable discipline for the tribunal itself.

The Tribunals and Inquiries Act 1992, replacing similar provisions in the earlier Acts, requires the tribunals listed in the Act to furnish a statement, either written or oral, of the reasons for the decision if requested, on or before the giving or notification of the decision, to state the reasons.

We shall now discuss inquiries and it will be well to start by setting out the different forms clearly. On the one hand, by far the most common is the statutory inquiry which is the standard technique for giving a fair hearing to objectors before the final decision is made on some question of government policy affecting citizens' rights or interests. What is characteristic of these inquiries is that they assist in proper formation of policy in the decision-making process. They generally take place in public.

One the other hand, there is the inquiry which essentially finds facts and may attribute responsibility once something has gone wrong. Into this category falls the accident inquiry or the inquest into an unnatural death. The law generally requires such inquiries to be held once certain events have occurred. But the law does not always require an inquiry and then such inquiries are discretionary. Whether they are held at all depend upon the strength of the political pressure calling for an inquiry. Specific statutory provision exists for such inquiries, but such inquiries may also be set upon in a non-statutory basis.

What all these forms of inquiry have in common is the independence of the person (or persons) who conducts the inquiry and writes the report. Very different forms of procedure may be adopted. The inquiry may sit in public or private. But in every case the person conducting the inquiry must act free from external influence and report accordingly.

The person appointed by the Secretary of State to hold the inquiry or hearing is in most cases an inspector from the Planning Inspectorate. The ‘case’ is then ‘heard’ before an official who is not from the department concerned. The local authority and the objectors may be legally represented, and an important inquiry will have some of the atmosphere of a trial. The inspector may conduct the inquiry as he wishes, subject in some cases to procedural regulations. The inspector, like a judge, will often take very little party in the argument; his task is to hear the objections and the arguments and then give advice to the minister.

In due course the inquiry is closed, and the inspector makes his report. Until 1958 the normal practice was to refuse disclosure of this report to the objectors; it was treated like any other confidential report from a civil servant to his department. Eventually the minister’s decision would be given; but usually it would be unaccompanied by reasons. The failure to disclose the report and to state reasons was the source of much of the dissatisfaction with inquiries before the reforms of 1958. Although the controversies which raged round these questions have now passed into history, they provide a classic illustration of the clash between the legal and administrative points of view.

Therefore, we are now of the opinion and may conclude that, as far as the Islamic Republic of Pakistan is concerned, despite the Article 19A of the Constitution, the tribunal may not be obliged to make the report a public document, as according to case law, such reports, are not judgments of courts, since, while tribunals have limited powers of civil courts, they are not entirely to be regarded as civil courts, and there reports are mere recommendations, and not binding on the Government, at any level. An almost same view is adopted in India, and is supported by relevant decisions of their Supreme and subordinate courts. The position is radically different in the United Kingdom where as it is said, the best model of democracy and protection of public interests can be observed, and their legislation, not only provides for such reports to be published but also by law, requires furnishing of reasons for those judgments.

Faizan Sharif
3rd Year, L.lb (Hons.), University of London
Research Associate
Office of the Advocate General Punjab, Lahore.