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Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT.

Case No. ICA No.77347/2017

Province of Punjab

Versus

Qaisar Iqbal etc.

JUDGMENT

Dates of hearing	25.9.2017, 02.10.2017, 03.10.2017,10.10.2017, 11.10.2017,18.10.2017,19.10.2017,24.10.2017, 25.10.2017,27.10.2017,30.10.2017,31.10.2017, 01.11.2017,06.11.2017,09.11.2017,14.11.2017, 16.11.2017,21.11.2017,22.11.2017 and 24.11.2017.
Appellants by	M/S Khawaja Haris Ahmad assisted by M/s Khurram Shahzad Chughtai, Ghulam Subhani, Islam Bin Haris, Ateeq Rafique, Hajra Zia, Ramsha Shahid and Saleem Akhtar Sheikh, Advocates. Mr. Shan Gull, Additional Advocate General Punjab. M/s Azam Nazir Tarar, and Barrister Asad Ullah Chatha, Advocates for the appellant in connected matter (ICA No.86398/2017). Mr. Ali Zia Bajwa, Advocate assisted by Ms. Aalia Ijaz, Advocate for the appellant in connected matter (ICA No.81068/2017). Malik Adeel Ehsan, Advocate.
Respondents by	Syed Ali Zafar, Advocate assisted by Mr. Zahid Nawaz Cheema, Mr. Mubashir Aslam Zar, Mr. Jahanzeb Sukhera, Ms. Sara Majeed, Ms. Naima Arif and Ms. Namra Raees Advocates.

	M/S Khawaja Ahmad Tariq Raheem, Muhammad Azhar Saiddique, Adeel Hassan, Sajid Ali Khan, Hassam Tariq Khawaja, Ms. Hafza Mafia Kausar, Humayon Faiz Rasool, Nasir Iqbal Qadri, Abdullah Malik, Ishtiaq A. Chaudhary, Muhammad Rizwan, S. Parveen Mughal, Muhammad Irfan, Munir Ahmad, Mian Shabbir Asmail, Usman Azam Gondal, Uzma Razzaq Khan, Naeem ud Din Chaudhry, Shakeel Maneka, Ans Gull and Malik Yasir Siddique, Advocates.

Abid Aziz Sheikh, J.- This judgment will also decide ICA No.81068/2017 and 86398/2017 as common questions of law and facts are involved in these appeals, which are also against same impugned judgment. These Intra Court Appeals are directed against judgment dated 21.9.2017 passed by learned Single Bench of this Court in writ petition No.62821/2017.

2. Brief facts are that a political party namely Pakistan Awami Tehreek **(PAT)** staged a protest against Government in the month of June, 2014. The procession started from Idara Minhaj-ul-Quran situated at Model Town, Lahore on 16.6.2014. On the evening of 16.6.2014, when the procession started, local administration carried out strategic operation which lasted till 17.6.2014. During this operation, 14 persons lost their lives and about 85 sustained fire arm injuries (Incident hereafter referred to as

Model Town incident). The occurrence was flashed through electronic and print media throughout the country. There were allegations and counter allegations between the parties. Resultantly, FIR No.510 of 2014 was registered at Police Station Faisal Town, Lahore. Subsequently, in pursuance to order passed by this Court, FIR No.696/2014 was also registered by same Police Station. In both these FIRs, two separate Joint Investigation Teams **(JITs)** were constituted in terms of provisions of Anti-Terrorism Act and interim Challans were submitted. In view of sensitivity of incident, Provincial Government (Government) approached Registrar, Lahore High Court through letter No.SO (Judl-III) 9-53/2014 dated 17.6.2014 whereby request was made to appoint Judicial Commission to conduct judicial inquiry under section 176 of Cr.P.C, to ascertain the real facts, causes of incidents and fix responsibility if any and to make recommendations to avoid such incident in future. Through supplemental letter of even number and date, it was clarified that appointment of Tribunal or Commission or Committee may be made in terms of section 3 of Punjab Tribunal of Inquiry Ordinance, 1969 **(Ordinance 1969)**. Finally in consultation of Hon'ble Chief Justice, Lahore High Court, Lahore, One Man Tribunal of Hon'ble Mr. Justice Ali Baqar Najafi **(Tribunal)** under section 3 and 5 of the Ordinance 1969 was

notified on 17.6.2014 which commenced its working on 19.6.2014. Proceedings of the inquiry were completed by One Man Tribunal on 09.8.2014 and final report shared with Government of Punjab through office of Secretary, Home Department, Government of the Punjab on 09.8.2014. Thereafter, number of writ petitions were filed which are detailed in Para 2 and 3 of this appeal. In some of the writ petitions, establishment of One Man Tribunal was challenged whereas in other writ petitions, prayer was made to public the Tribunal report in terms of Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973 **(Constitution)**. These writ petitions were heard by learned Full Bench comprising of three Judges of this Court. Meanwhile, during summer vacations in this year 2017, another writ petition No.62821/2017 was filed by respondents who claimed to be legal heirs of deceased and injured in Model Town incident. This writ petition came up before learned Single Bench and was allowed vide impugned judgment dated 21.9.2017 and Secretary, Home Department, Government of Punjab was directed to immediately provide a copy of report to the aggrieved persons for their consumption without fail. The appellants being aggrieved of impugned judgment have filed these appeals.

3. Khawaja Haris Ahmed, Advocate/Learned counsel for the appellant (Province of Punjab) in ICA No.77347/2017 bifurcated his arguments in two parts. In first part, he argued the procedural impropriety and the mannerism in which, the impugned judgment was passed and in second part, he addressed the merits and the questions of law involved in his appeal. He submits that first part of argument has four components i.e. (i) justice should not be done but seems to have been done (ii) Respondents approached Court with unclean hands (iii) Notice under Order XXVII-A CPC was not issued and (iv) writ was not maintainable being alternative remedy available.

4. On first point, he argued that when number of writ petitions on same subject matter were already pending before learned Full Bench of this Court, the learned Single Bench could not decide the matter in isolation and should have referred the matter to be heard alongwith connected matters before learned Full Bench. He submits that pendency of similar matters before learned Full Bench was brought to the notice of learned Single Bench, however, the said plea was repelled on the ground that those petitions are not filed by aggrieved parties, whereas writ petition No.62821/2017 was filed by legal heirs of deceased and injured in the Model Town incident. Learned counsel submits that this

reasoning was not sustainable because connection of the cases for being heard together should have been determined on the basis of subject matter and not parties to lis. Further submits that by declaring that petitioners before learned Full Bench have no locus standi, learned Single Bench has determined the fate of those writ petitions which were yet to be decided by learned Full Bench. He submits that if contents of writ petition No.62821/2017 filed by respondents is compared with already pending writ petition before learned Full Bench including writ petition No.19354/2014, writ petition No.22334/2014, writ petition No.22833/2014, writ petition No.31752/2014 and writ petition No.33702/2014, it will be seen that more or less all these petitions are same. He in particular referred to grounds and prayer made in writ petition No.33702/2014 to show that they were exactly the same as in writ petition No.62821/2017. He further submits that out of above referred writ petitions, writ petition No.22334/2014, writ petition No.22833/2014 and writ petition No.33702/2014 were also came up before learned Single Benches but thereafter referred to learned Full Bench being connected matters already pending therein whereas writ petition No.31752/2014 being similar matter was directly fixed before learned Full Bench after approval of the Hon'ble Chief Justice. He adds that another writ petition No.33522/2016 was though not

directly related matter but being relating to One Man Tribunal, was referred to learned Full Bench. He in the circumstances argued that in order to ensure that justice is not only done but was seen to be done, learned Single Bench should have referred the matter to learned Full Bench. Learned counsel submits that manner in which judgment was passed does not show that justice has been done, hence the impugned judgment is liable to be set aside. He placed reliance on *Government of Sindh and others vs. Saiful Haq Hashmi and others* **(1993 SCMR 956)**, *Syed Ghulam Abbas Ashraf Ex-Auditor vs. Provincial Director etc* **(2009 PLC (C.S) 630)**, *Ahmed Kuil Khan Khattak vs. R.A. Faruqi and 6 others* **(2005 YLR 2496)**, *Federation of Pakistan vs. Muhammad Akram Shaikh* **(PLD 1989 Supreme Court 689)**, *Tumahole Bereng vs. King* **(PLD 49 Privy Council 47)**, *S.L. Kapoor vs. Jagmohan and others* **(AIR 1981 Supreme Court 136)**, *General Manager, Lyallpur, Cotton Mills vs. Sardar Muhammad and others* **(1977 PLC Lahore 139)**, *Arignar Anna Weavers vs. State of Tamil Nadu and others* **(AIR 1999 Madrass 254)**.

5. Learned counsel for the appellant next argued that writ petitioners/respondents had not come with clean hands. He submits that in "certificate" of writ petition No.62821/2017, it was incorrectly mentioned that it was first writ petition on the subject

matter, whereas number of similar writ petitions mentioned above were already pending before learned Full Bench. Further submits that regarding unclean hands, perusal of documents shows that in writ petition No.62821/2017 note was given that it is first writ petition whereas the same learned counsel on behalf of another petitioner had already filed writ petition No.33702/2014 which fact was deliberately concealed. Further submits that when the matter came up for hearing before learned Single Bench on 25.8.2017, it was urged by petitioner counsel that this matter has no nexus with the cases pending before learned Full Bench and to support this contention, documents were placed on Court record through C.M.No.1/2017, however, copy of writ petition No.33702/2014 which was replica of writ petition No.62821/2017 was intentionally not appended with the said application. Submits that in Para 10 of writ petition No.62821/2017, it was claimed that application dated 27.7.2017 was filed before Commission under The Punjab Transparency and Right to Information Act, 2013 **(Act of 2013)** but in fact, no such application was ever filed by writ petitioners/respondents. Further submits that if at all, any such application was filed, the petitioners/respondents were required to show the receipt of such application in terms of section 10 of the Act of 2013. He contends that as per Lahore High Court summer

vacation case filing plan of 2017, only cases of urgent nature with the permission of Hon'ble Chief Justice or Senior Judge could be filed. Submits that in writ petition No.62821/2017, neither such urgency was shown nor even permission from the Hon'ble Chief Justice or Senior Judge was sought before fixation of said case. Learned counsel submits that mere perusal of urgent form with the writ petition also shows that no urgency was pleaded and in any case, once similar matter already pending before learned Full Bench since 2014, there could not be any grave urgency by the writ petitioners to file this petition during summer vacation. He submits that there is a gross misrepresentation and concealment of fact on part of respondents and jurisdiction of this Court based on equity cannot be exercised in favour of persons who come to this Court with unclean hands. He placed reliance on judgment passed by august Supreme Court of Pakistan in *Raja Ali Shan vs. Essam Hotel Limited* **(2007 SCMR 741)**, *Muhammad Afzal vs. Ghulam Muhammad* **(1982 SCMR 371)**, *Abdul Hafeez vs. Board of Intermediate and Secondary Education etc* **(1983 SCMR 566)**, *Principle KE Medical College vs. Ghulam Mustafa* **(1983 SCMR 196)** and *M/s Airport Support Services vs. Air Port Manager* **(1998 SCMR 2268)**

6. Next argued that despite important questions of law and interpretation of constitution involved, no notice to Advocate General, Punjab under Order XXVII-A CPC was issued by learned Single Bench. Submits that requirement of notice under Order XXVII-A of Code of Civil Procedure, 1908 **(CPC)**, to the Advocate General of Punjab is mandatory and failure to issue such notice, vitiate the judgment passed by learned Single Bench. He argued that notice issued by learned Single Bench to the Advocate General on 25.8.2017 did not fulfil the requirement of Order XXVII-A CPC as no such notice was actually received by Advocate General. He submits that word "giving notice" as per Lexicon Dictionary, means the actual service of notice. He placed reliance on *Federation of Pakistan etc vs. Aftab Ahmad Khan Sherpao etc.* **(PLD 1992 Supreme Court 723)**, *Federal Public Service Commission and others vs. Syed Muhammad Afaq and others* **(PLD 2002 Supreme Court 167)**, *Superintendent Central Jail, Adyala Rawalpindi vs. Hammad Abbasi* **(PLD 2013 Supreme Court 223)**.

7. Learned counsel for appellant next argued that being alternative remedy available under the Punjab Transparency and Right to Information Act, 2013, Constitutional petition under Article 199 of the Constitution was not maintainable. He submits that Article 19-A of the Constitution is also subject to regulations

and restrictions and once alternative remedy under the Act of 2013 was available, the provisions of Article 19-A through Article 199 of the Constitution could not be invoked without availing alternative remedy. He submits though in the writ petition, it was recorded that application under the Act of 2013 was filed, however, no such application was received by the Commission. He in the circumstances argued that writ petition without availing alternative remedy is not maintainable. He placed reliance on *M/s Faridsons Limited vs. Govt. of Pakistan etc* **(PLD 1958 Supreme Court 437)**, *Mehboob Ali Malik vs. The Province of West Pakistan etc*. **(PLD 1963 (West Pakistan) Lahore 575)** and *Dr. Sher Afgan Khan Niazi vs. Ali S. Habib* **(2011 SCMR 1813)**.

8. Before arguing merits of the case, learned counsel for the appellant points out that this appeal was referred to this Full Bench, keeping in view the fact that number of similar Writ Petitions were already pending before this Full Bench. Submits that during pendency of this appeal, as those Writ Petitions have already been withdrawn by these petitioners, therefore, this appeal may be placed before Division Bench of this Court under Law Reforms Ordinance, 1972 **(Ordinance of 1972)**. He further submits that in case this matter is to be decided on merits by this Court, then the appellant may be allowed to file written statement in the main Writ Petition.

9. On merits, learned counsel for the appellant submits that observations and opinion made in Para No.9 of the impugned judgment are un-called for. He submits that in the impugned judgment, provisions of section 5(5) of The (Punjab) Tribunals of Inquiry Ordinance, 1969, Section 4 (m) of Criminal Procedure Code, 1898 **(Cr.P.C)**, Section 85 of The Qanoon-e-Shahadat Order, 1984 **(Order 1984)** were misconstrued to determine that proceedings before the Tribunal were judicial proceedings and report of Tribunal was public document, hence, should be available to public in terms of Article 87 of the Order 1984. He submits that there was no discussion at all in the impugned judgment on various provisions of Punjab Transparency and Right to Information Act, 2013 and Article 19-A of the Constitution. Submits that learned Single Bench was required to refer the case law relied on by the appellant and thereafter decide the matter dispassionately. He submits that in the impugned judgment the case law discussed has no relevance to the moot issue i.e. whether report of the Tribunal should be made public or not.

10. The learned counsel submits that proceedings before the Tribunal under the Ordinance, 1969 are not judicial proceedings. He submits that definition of judicial proceedings under section 4 (m) of Cr.P.C. relied upon in impugned judgment is only confined

to the Cr.P.C and not to any other law unless specifically applied. In this context he referred to preamble, section 1(2), 4 & 5 of Cr.P.C. He further submits that word "Includes" mentioned in section 4(m) of Cr.P.C. also shows that definition of judicial proceedings under section 4(m) is not exhaustive. Reliance is placed on *Muhammad Saeed and 4 others vs. Election Petition Tribunal etc* **(PLD 1957 SC 91)**, *Sheikh Liaquat Hussain vs. The State* **(1997 P Cr.L.J. 61)** and *Chimansingh vs. State* **(AIR (38) 1951 Madhya Bharat 44)**. He next submits that provisions of section 5(5) of the Ordinance of 1969 were also misconstrued. Submits that the proceedings before the Tribunal u/s 5(5) of the Ordinance of 1969 shall be judicial proceedings only for the purpose of section 193 and 228 of PPC. Submits that proceedings before Tribunal when declared as judicial proceedings by way of fiction, it will only apply for that particular purpose. He placed reliance on *M.V. Rajwade vs. Dr. S.M. Hassan* **(AIR 1954 Nagpur 71)**. Further submits that report of Tribunal has no legal force and same is also not enforceable under law, therefore, no purpose would be served by making said report public. Learned counsel submits that constitutional jurisdiction of this Court cannot be exercised for academic purpose, especially when report has not been accepted by concerned Provincial Government.

11. In support of his argument regarding the nature of Tribunal report, he placed reliance on *T.T. Antony vs. Stae of Kerala etc* **(AIR 2001 Supreme Court 2637)**, *Shi Jai Dayal Dalmia v. Shri Justice etc* **(AIR 1958 Supreme Court 538)**, *Kehar Singh and others vs. The State (Delhi Admn.)* **(AIR 1988 Supreme Court 1883)**, *Md. Ibrahim Khan vs. Susheel Kumar etc* **(AIR 1983 Andra Pardash 69)**, *Dr. Baliram Waman Hiray vs. Mr. Justice B. Lentin and others* **(AIR 1988 Supreme Court 2267)**, *Dr. Shubramanian Swamy vs. Arun Shourie* **(AIR 2014 Supreme Court 3020)**. Learned counsel for the appellant also placed reliance on judgments passed by Pakistani Courts in *State vs. Zulfiqar Ali Bhutto* **(PLD 1978 Lahore 523)** and *Saleem Malik vs. Pakistan Cricket Board and 2 others* **(PLD 2008 Supreme Court 650)**. Learned counsel for the appellant while explaining status of the Tribunals report based on judgments referred supra, submits that Tribunal/Commission is fact finding body, it meant to instruct mind of government, Tribunal/Commission does not produce any document of judicial nature, no accuser or accuse is before the Tribunal/Commission, no dispute inter see parties which is to be decided by the Tribunal/Commission, no authority attached to the finding given by the Tribunal/Commission, findings of Tribunal/Commission are not same as of judgment, findings of

Tribunal/Commission are not executable or enforceable, the findings of Tribunal/Commission are not binding on the appointing Authority.

12. Submits that Commission under Ordinance of 1969 may be termed as Tribunal or vice versa but it is neither Court nor performing any judicial functions. Submits that nature of functions to be performed by Commission shows that these are neither purely administrative nor purely judicial but quasi-judicial functions of the Commission. He placed reliance on *Iftikhar Ahmad vs. Muslim Commercial Bank Limited* **(PLD 1984 Lahore 69)**, *Bahadur vs. State* **(PLD 1985 Supreme Court 62)** and *Dr. Zahid Javed vs. Dr. Tahir Riaz* **(PLD 2016 Supreme Court 637)**. Learned counsel for the appellant also referred to Law Commission of India Report No.24 dated December, 1962 where in Para 16 of the report, it was opined that it should be the discretion of Government to public report or not.

13. Learned counsel next argued that even if report is to be treated as public document under Article 85 of the Order 1984, it does not mean that copy of report be supplied to public. He submits that section 85 only define public document whereas Article 87 of the Order 1984 provides that public document can only be given to said person who has right to inspect the document. He submits that

as respondents had no right to inspect the document, therefore, even if report was to be treated as public document, it could not be supplied to the writ petitioners.

14. Learned counsel submits that Article 19 and 19-A of the Constitutional are not absolute rights but they are subject to exceptions and conditions prescribed by law. Submits that those exceptions are provided u/s 13 of the Act of 2013. He in particular refer to section 13(1)(a, e & f) of the Act of 2013. He submits that the publication of Tribunal's report shall, or likely to harm "public order", "right to life" and "administration of justice". He submits that at present, trial in two FIRs and one criminal complaint referred in Para 2 above (**Trial**) is pending before the Trial Court in which evidence is being recorded, therefore, release of the Tribunal's report at this stage will not only materially affect the trial but may also prejudice the mind of the public as well as the Trial Court. He submits that Article 10-A of the Constitution ensures fair trial, therefore, this Court must draw a balance between right of fair trial under Article 10-A and right of information and freedom of speech provided under Article 19 and 19-A of the Constitution. Learned counsel submits that without prejudice to his earlier argument and without conceding for a moment whatsoever stated above, if at all this Court comes to conclusion that report is to be

published, then same be published only after the conclusion of the trial like in U.K. so as to ensure that no prejudice be caused to the persons facing trial. In this regard, he placed reliance on *Sahara India Real Estate Corporation Limited and others vs. Securities and Exchange Board of India and another* **(2012) 10 SC 603**), *Reliance Petrochemicals Ltd vs. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd and others* **(AIR 1989 SC 190)**, *Naresh vs. State* **(AIR 1967 SC 1)**, *Rao Harnarain vs. Gumani Ram* **(AIR 1958 Punjab 273)**, *Ram Dulari Saran vs. Yogeshwar* **(AIR 1969 Allahabad 68)**, *In re Subrahmanya, Editor, Tribune and others* **(AIR 1943 Lahore 329)** and *The Crow vs. Faiz Ahmad Faiz* **(AIR 1950 Lahore 84)**. In conclusion, the learned counsel produced the record of proceedings before the Trial Courts and while relying upon cases reported as *Dwijendra Mohan Banerjee vs. State of West Bengal and others* **(1967) 71 Cal WN 912** and *Philips vs. Nova Scotia (Commission of Inquiry Into the Westray Mine Tragedy)* **[1995] 2 SCR 97,** argued that where inquiry report overlap trial proceedings, it cannot be published. He also distinguished *Gokulananda Roy vs. Tarapada Mukharjee and others* **(AIR 1973 Cal 233)**.

15. Mr. Azam Nazir Tarar, Advocate/learned counsel for the appellant in (ICA No.86398/2017) argued that though appellant in

this appeal was not party in writ petition, however, appellant is aggrieved of the judgment passed by learned Single Bench, hence this appeal is maintainable in view of law laid down by august Supreme Court in *H.M. Saya and Co. Karachi vs. Wazir Ali Industry Limited Karachi and others* **(PLD 1969 SC 65)**. He submits that appellant is a Police Inspector and besides being injured in the Model Town incident, he is also accused in the private complaint. Submits that judgment passed by learned Single Bench where it is held that report of Tribunal is a public document and proceedings before Commission are judicial proceedings, will render this report admissible in evidence against appellant, therefore, appellant has right to be heard against impugned judgment. He submits that Full Bench of this Court vide judgment dated 05.9.2016 in writ petition No.33522/2016 decline to release copy of the Tribunal report on the ground that it may prejudice case before trial Court. Learned counsel in the circumstances submits that report may not be released till trial of the appellant and another accused be concluded. Learned counsel also referred to similar laws in U.K and Ireland and submits those reports cannot be published which may prejudice on going trial. Learned counsel submits that right of information under Article 19-A of the Constitution being a qualified fundamental right cannot over ride unqualified

fundamental right of fair trial and due process of law guaranteed under Article 4, 9, 10-A and 14 of the Constitution.

16. Learned counsel for the appellant Mr. Ali Zia Bajwa, Advocate in (ICA 81068/2017) adopted the above arguments of the appellants counsel. He further submits that in inquiry report, it is not specifically mentioned that same be made public, therefore, it will be presumed that this inquiry report should not be published. In this context, he referred to similar judicial inquiry reports regarding flood inquiry and Punjab Institute of Cardiology, where it was specifically recorded that inquiry be published. He submits that under section 9 of the Ordinance 1969, the decision of inquiry Tribunal not to publish the report cannot be called in question. He further submits that in other countries including Canada, U.K and USA, similar inquiry reports which may prejudice the trial Court cannot be published.

17. Khawaja Ahmad Tariq Rahim, Advocate assisted by Mr. Muhammad Azhar Saddique, Advocate on behalf of respondents raised preliminary objection on the maintainability of appeal filed by government by submitting that the language of this appeal specially grounds (f)(g)(h)(j)(k)(m) and (q) are written in a manner to scandalize the learned Single Judge. Submits that not only the appeal is liable to be dismissed on this ground but appellants are

also liable for contempt of Court proceedings. He placed reliance on *The Crown vs. Amin-ud-Din Sahrai and others* **(PLD 1949 Lahore 410)**, *The Editor, Printer and Publisher vs. Arabinda Bose etc* **(AIR 1953 Supreme Court 75)**, *In the matter of Lewis Duncan, Esquire, One of Her Majesty's Counsel, of the city of Toronto, in the Province of Ontario* **(1958 SCR 41 (case from Canadian jurisdiction)**, *The State vs. Sir Edward Snelson K.B.E, Secretary to Government of Pakistan, Ministry of Law* **(PLD 1961 (West Pakistan) Lahore 78)**. Learned counsel further submits that it is actually the appellant government who is not entitled for the grant of equitable relief as it has not come with clean hands. The learned counsel also raised objection on maintainability of ICAs, where appellants were not party before learned Single Bench.

18. Learned counsel next argued that matter pending before learned Full Bench was different in nature, therefore, learned Single Bench had rightly not referred the matter to learned Full Bench. He explained that writ petition No.19354/2014 was filed to challenge the notification dated 17.6.2014 and vide order dated 19.7.2014, the matter was referred to learned Full Bench. Submits that question referred to learned Full Bench in order dated 19.7.2014 did not include question regarding right of information under Article 19-A of the Constitution or for providing copy of report of Tribunal.

Submits that even in subsequent writ petition No.22833/2014, jurisdiction of Tribunal was under challenge and not the act of the respondents government for not providing copy of Tribunal report. Further submits that petitioners in petition before learned Full Bench were not directly related to victims, therefore, learned Single Bench had rightly not referred the matter to learned Full Bench. Learned counsel for the respondents while replying to argument on equity and unclean hands, submits that order dated 25.8.2017 passed in writ petition shows that three notices including notice to Advocate General, Punjab were issued. Submits that on 12.9.2017, learned Law Officers appeared and sought time to prepare the brief and case was adjourned for one week. Submits that during this period, it was the responsibility of appellant government to file written statement/written reply if they wanted. Submits that now at this stage, it cannot be argued that no opportunity was given to government to file written statement/written reply or Advocate General was not given notice under Order XXVII-A CPC. He submits that in any case, there was no vires of law under challenge, therefore, notice under Order XXVII-A CPC was not required.

19. Mr. Muhammad Azhar Sadique, Advocate appeared on behalf of respondents submits that respondents had no adequate remedy before the Information Officer under Act of 2013 because

vide letters dated 23.9.2014 and 24.11.2014 (mentioned in pages 173 and 175 of C.M No.1/2017), they had already refused to supply report inter alia on the touch stone of exceptions under section 13 of the Act of 2013. He further submits that respondents grievance is against the Government and under section 5 of the Act of 2013, the Commission is appointed by Government, therefore, remedy before said Authority was an eyewash. He submits that there was no Chief Information Commissioner or Information Commissioner available at relevant time, because they were retired on 30.4.2017 and 31.5.2017 respectively and new Commissioner was appointed finally on 19.10.2017, therefore, argued that when writ petition was filed in August, 2017, there was no Commission in existence in view of section 5(2) of the Act of 2013. He submits that in any case, petitioner relief regarding publication of report is not covered under the Act of 2013 but this relief could only be granted under Article 19-A of the Constitution in constitutional jurisdiction of this Court.

20. Mr. Ali Zafar, Advocate, learned counsel for the respondents addressed his arguments on merits of these appeals. He submits that constitutional petition was filed by those persons whose relatives were either killed or injured in the day light incident where government itself was involved. Submits that

petitioners only want to know real facts which resulted into death and injuries to their relatives. Submits that vide letter dated 17.6.2014 to the Registrar High Court, the request was made for judicial inquiry in the incident for the public interest. Submits that the purpose of inquiry was not only for the personal information of the government but it is for the information of public including petitioners whose relatives have been killed or injured. He submits that no doubt that report of Tribunal is neither judgment nor binding but it is a "fact finding probe" to make aware the public as well as government regarding the real facts of the incident. He submits that matter being of public importance, it cannot be kept secret. He further submits that under provision of Ordinance 1969, the Tribunal is at higher pedestal comparing to commission or committee and therefore any report produced by Tribunal is a public document, hence should be available for the hands of public.

21. He submits that the proceedings before Tribunal may be judicial, quasi-judicial or purely administrative but that will not render the report secret document. Submits that purpose of Tribunal inquiry is relevant and determining factor whether such report be available to public or not. Submits that once the letters and notification dated 17.6.2014 themselves acknowledged that judicial inquiry is to find out the real facts and it is in the public interest

then such inquiry should be available to the public for their information. He submits that till date, there are 51 notifications issued for different judicial inquiries and all those judicial inquiries have been published. Submits that there is no justification why this particular judicial inquiry should not be published.

22. Learned counsel next submits that earlier right of information was inbuilt in right of freedom of expression provided under Article 19 of the Constitution. Submits that through Article 19-A of the Constitution, a specific “right to know” has been made. Submits that this right is an independent and intrinsic right and not dependent on any condition i.e. that for what purpose, such information is required. In response to Court query, he submitted that under Constitution, this right is equal for all citizens including respondents who are relatives of victims. Further submits that only conditions on which the information can be refused are prescribed in Article 19 of the Constitution which does not include “administration of justice”. He further submits that in any case, mere disclosure of the report will not affect the pending trial or administration of justice nor its usage if at all will affect administration of justice. Submits that Courts have ample power to take appropriate measures in this regard.

23. He next argued that purpose of Article 19-A of the Constitution and purpose to constitute Tribunal under Ordinance, 1969 are same i.e. to find out truth, therefore, the decision of Government not to disclose the report not only frustrated Article 19-A of the Constitution but also very purpose of the constitution of Tribunal under Ordinance 1969 through notification dated 17.6.2014. He next referred to Law Commission of India report of year 1962 to explain the nature of inquiry under the Ordinance 1969 which is similar to the Commission of Inquiry Act of 1952 prevailing in India. He referred to various Paras in report to submit that purpose of inquiry is not trial or investigation but it is only fact finding probe to ascertain the truth. He therefore submits that such report is not only for the consumption of the government but also for the people who have right to know that what has actually happened and also to see the role of public functionaries and their representatives who came through their right of vote. He placed reliance on *M.V. Rajwade vs. Dr. S.M Hassan* **(AIR 1954 NagPur 71)**, *Brajnandan Sinha vs. Jyoti Narain* **(AIR 1956 Supreme Court 66)**, *Ram Krishna Dalmia vs. Justice Tendolkar* **(AIR 1958 Supreme Court 538)**, *State of J. and K. and others vs. Bakshi Gulam Mohammad and another* **(AIR 1967 Supreme Court 122)**, *P.V. Jagannath Rao and others vs. State of Orissa and others* **(AIR**

1969 Supreme Court Supreme Court 215), *M. Karunnanidhi vs. The Union of India etc* **(AIR 1977 Madrass 192)**, *State of Karnataka vs. Union of India and others* **(AIR 1978 Supreme Court 68)**, *Sham Kant vs. State of Maharashtra* **(AIR 1992 Supreme Court 1879)**, *T.T. Antony vs. State of Kerala* **(AIR 2001 Supreme Court 2637)** and *A and A Enterprises vs. State of Madhya* **(1993 MPLJ 104)**.

24. Learned counsel next argued that freedom of information under Article 19 and 19-A of the Constitution is fundamental right of people and same cannot be restricted by any subordinate legislation. He submits that on the basis of anticipated consequences of disclosure of report, fundamental right of information cannot be denied. He placed reliance on *Wattan Party and others vs. Federation of Pakistan etc* **(PLD 2012 Supreme Court 292)**. Learned counsel submits that right of information is not a new concept but same is a right recognized in all the countries. He referred various United Nations and Human Rights conventions where this right was recognized.

25. Learned counsel for the respondents next argued that report of Tribunal being a public document in terms of Article 85 of Order 1984, respondents are entitled for certified copies of said report. He elaborates that through notification dated 17.6.2017,

judicial tribunal was appointed to probe into the matter. Submits that under Article 85(1),(ii) of the Order 1984, acts of "Tribunal" is public document and therefore, under Article 87 of the Order 1984, the respondents have right to inspect the report.

26. Submits that beside report being a public document and respondents having fundamental rights of information under Article 19 and 19-A of the Constitution, even under the Act of 2013, respondents have right to obtain copy of the inquiry report. To support above contention, learned counsel referred to preamble and section 2 and 4 of the Act of 2013. Learned counsel further submits that publication of report does not hit by any of the exception under section 13 of the Act. He reiterated that under Article 19-A of the Constitution, only exceptions applicable are provided under Article 19 of the Constitution, hence administration of justice is not an exception to Article 19-A of the Constitution. He therefore, submits that in any case, exception provided in section 13 regarding "public order" and "administration of justice" are not available to the appellants. Submits that when Model Town incident and consequent FIRs and private complaint had not caused any public order, there is no reason to believe that disclosure of real facts through report will harm the public order. Adds that report being not a binding document and only a fact finding probe will not and

cannot affect the pending trial. Further submits that under section 13(2) of the Act of 2013, in any case, right of public to know real facts outweigh the apprehensions of harm to public order and administration of justice.

27. He submits that no concealment of fact was made by the writ petitioners as pendency of earlier writ petitions were disclosed in Para 12 of the writ petition. Further submits that "certificate" in petition that it was first petition was to the affect that petitioner has filed first petition. Adds that in any case, pendency of cases before learned Full Bench were disclosed before learned Single Bench and learned Single Bench after considering the arguments of parties decided not to refer the case to the learned Full Bench, therefore, it cannot be said that any concealment of fact was made. He further submits that question pending before learned Full Bench was regarding constitution of Tribunal and not enforcement of Article 19-A of the Constitution. Adds that in any case, now when the matter has been heard by this Full Bench at length, therefore, this matter may be decided on merits regardless of the findings of learned Single Bench. He concluded his arguments by submitting that in the circumstances, not only the report be made public but even the reasons for not accepting the report by the Government, if any, should be disclosed for information of public.

28. We have heard learned counsel for the parties and perused the record with their able assistance.

29. This judgment to meet the sequence of arguments will accordingly be divided into two parts. In first part, we will be dealing with the arguments regarding the procedural impropriety and preliminary objections raised by respective parties, whereas in second part, we will be dilating upon the merits of the matter.

DISCUSSION ON PRELIMINARY OBJECTIONS AND PROCEDURAL IMPROPRIETY.

30. Learned counsel for the appellants vehemently argued that as no notice under Order XXVII A CPC was issued to the Advocate General Punjab by the learned Single Bench, therefore, the impugned judgment is nullity in the eyes of law. In this context, we have gone through the order sheet of writ petition No.62821 of 2017 and found that on 25.08.2017 learned Single Bench after admitting the petition for regular hearing issued two separate notices. The first notice was a routine notice to the parties, whereas the second notice was specifically issued to the "Advocate General" to address the Court on the subject. In addition, on Court's call the Learned Law Officer entered appearance on 25.08.2017 and undertook to address the Court regarding the subject in issue especially whether report of Judicial Commission is a public

document or not. There is no cavil with the proposition advanced by the learned counsel for the appellants which is also well settled law by the apex Court that notice under XXVII A CPC in the matters involving interpretation of constitutional provisions is a mandatory requirement under the law. However, in the present case, notice to the Advocate General Punjab was specifically issued on 25.08.2017, therefore, it cannot be said that requirement of notice under Order XXVII A CPC was not adhered to. No doubt the provision of Order XXVII A CPC was not specifically recorded by the learned Single Bench in order dated 25.08.2017, while issuing notice to the Advocate General Punjab, however, it is well settled law that mere non-mentioning or wrong citation of a provision of law would not per se vitiate the judgment. In this regard reliance is placed on cases titled as *RAUF B. KADRI v. STATE BANK OF PAKISTAN* reported in **(PLD 2002 Supreme Court 1111)** & *THE STATE through Advocate-General, Sindh v. ZAHID ALI* reported in **(2007 SCMR 1017)**.

31. The next argument of the appellants that no notice was received by the Advocate General Punjab is also not reflected from the order sheet of learned Single Bench. On the very first date of hearing i.e. 25.08.2017 the Assistant advocate General appeared on Court's call and on the next date of hearing i.e. 12.09.2017 the

Additional Advocate General alongwith Assistant Advocate General appeared and sought time to peruse the documents and also to further prepare the brief. Finally on 19.09.2017 the Additional Advocate General appeared and argued the case but neither Advocate General Punjab appeared nor it was asserted by the Additional Advocate General before learned Single Bench that Advocate General Punjab has no notice of these proceedings. In view of the above position on record, we are of the view that requirement of notice under Order XXVII-A CPC was complied with, hence, this objection is repelled.

32. The second objection raised by the appellants is that being adequate alternate remedy available under Act of 2013, the constitutional petition was not maintainable. We have carefully considered this argument. Perusal of prayer clause of writ petition No.62821 of 2017 shows that petitioners therein made two prong prayer. In first part, the writ petitioners sought direction to immediately provide them the report of the Tribunal and in the second part the petitioners sought direction to make the report public to ensure the fundamental rights of the petitioners as well as people of Pakistan under Article 19-A of the Constitution. The first part of prayer for providing the report to the petitioners was indeed covered under the jurisdiction of the Public Information Officer

under the Act of 2013, however, the second relief sought to make the report public for information of people of Pakistan was not within the domain of the Public Information Officer under the Act of 2013 but the said relief could only be granted through enforcement of fundamental right of all citizens of Pakistan under Article 19-A of the Constitution. The august Supreme Court in case titled as *WATAN PARTY and others v. FEDERATION OF PAKISTAN and others* reported in **(PLD 2012 Supreme Court 292)** held that constitutional right under Article 19-A of the Constitution is much broader and more assertive than the statutory right which by its own term is restricted to disclosure of official record. **Andhra Pradesh High Court** in a case titled as *M. Narayan Reddy v. The Govt. of India, Ministry of Home Affairs, Rep. by Home Secretary, New Delhi and another* reported in **(2011(3) ALT 317)** while rejecting the similar preliminary objection of the government held that the writ petition filed for a direction to government to furnish copy of the note of report of the Committee is not hit by the alternate remedy available under the "Indian Right of Information Act 2005" as writ is for enforcement of fundamental right of "freedom of expression" under Article 19 of the Indian Constitution.

33. Further learned counsel for the respondents referred the letters dated 23.09.2014 and 24.11.2014 (mentioned at pages 173 and 175 of the C.M. No.1 of 2017 in this appeal) where the Public Information Officer already refused to supply Tribunal report on the ground that the same falls under the exceptions of section 13 of the Act of 2013. These letters are not specifically denied or disputed by the other side. Once the Public Information Officer has already expressed his mind for not releasing the report, the remedy to approach said officer by the writ petitioners was merely a futile exercise and it could not be said that petitioners had adequate alternate remedy. Learned counsel for the respondents informed this Court that neither Chief Information Commissioner nor Commissioner, was available when the writ petition was filed in August 2017, as they already stood retired on 30.04.2017 and 31.05.2017 respectively. It was argued that under section 5(5) of the Act of 2013, the Punjab Information Commission (Commission) consists of not more than three Information Commissioners and therefore, in absence of any of the Commissioner, the "Commission" was not in existence, hence, alternate remedy was not available. We found substance in this argument, keeping in view the fact that non-availability of any of the Commissioner in August, 2017 when writ petition was filed, has not been disputed by

the appellants through any supportive document. Notwithstanding the above legal position, the writ petitioners also asserted in Para No.10 of their writ petition that they filed application with the Commission under the Act of 2013, for supply of report and copy of the same was also annexed with writ petition. Though, this assertion is vehemently denied by the other side by submitting that no such application was received. However, mere fact that application is not available on the record of the Commission does not necessarily mean that writ petitioners had not approached the Commission for supply of report, which admittedly till date has not been supplied by Commission. It is also not case of the appellant that Commission is ready to provide copy of the report, rather appellant Government is also pleading exceptions under section 13 of the Act of 2013 in line with Commission's letters dated 23.09.2014 and 24.11.2014 supra. In view of the above discussion, argument of availability of alternate remedy has no force.

34. The next argument of the appellants is that respondents approached the Court with unclean hands and therefore were not entitled for equitable relief. The main stress of appellant's counsel was on concealment of facts from the learned Single Bench regarding pendency of similar cases before the learned Full Bench. We have considered this argument in the light of available record.

In this behalf reading of Paragraph No.12 of the writ petition No.62821 of 2017 shows that pendency of similar writ petitions No.33702/2014 and 22844/2014, which were also pending before the learned Full Bench were specifically mentioned therein. Further perusal of first order dated 25.08.2017 passed by the learned Single Bench shows that learned Judge was informed regarding pendency of similar petition before the learned Full Bench, however, it was submitted that the said petition was filed on different premises. The record shows that in pursuance to undertaking before learned Single Bench, on 12.09.2017 learned counsel for the writ petitioners through C.M. No.1 of 2017 placed on record the copies of the writ petitions alongwith orders pending before the learned Full Bench. Further in Para No.7 of the final judgment dated 19.09.2017, learned Single Bench specially recorded the fact regarding pendency of six similar writ petitions before learned Full Bench, however, repelled preliminary objection for referring matter to learned Full Bench on the ground that petitioners are legal representatives of deceased and injured persons and therefore, their petition was required to be adjudicated independently. Without commenting at this stage on the final conclusion drawn by the learned Single Bench on the preliminary objection, this fact is evident from above, that no concealment was made by the writ

petitioners/respondents before learned Single Bench regarding the pendency of similar writ petitions before the learned Full Bench.

35. The other argument of the appellants is that in the "certificate" of the writ petition it was wrongly mentioned that the same was first petition on the subject matter and the writ petition was also entertained without necessary approvals during summer vacations in violation of Lahore High Court case filing plan of 2017. These objections are not only hypertechnical but are also not supported by record. The "certificate" at the bottom of the writ petition being the first petition on the subject matter, has to be construed that writ petitioner meant that it is the first petition on subject matter by the petitioners. Any other meaning to this certificate will be absurd as writ petitioners could not give certificate regarding other petitions on the subject matter not filed by the petitioners. It is not the case of the appellants that any of the earlier writ petitions was filed by the petitioners/respondents. Further once petitioners in Paragraph No.12 of petition had already mentioned about pending petitions, no intentional concealment of fact for misleading the Court can be attributed to writ petitioners for said "certificate". Regarding entertaining the writ petition during summer vacations, we have noted that alongwith the writ petition, C.M. No.2 of 2017 for grant of interim relief "to restrain

respondents from tempering or manipulating in any manner the report" was filed and therefore it being a case of urgent nature was rightly entertained during summer vacations under the Lahore High Court case filing plan of summer vacation 2017. The other apprehension of the appellant that no prior approval of the Hon'ble Chief Justice or Senior Judge was obtained before fixing of the writ petition is also not supported by case file. There is no dispute to the law settled in various judgments presented by the appellant's learned counsel that no equitable relief can be granted to a person who comes to Court with unclean hands, but this principle is not applicable to the facts and circumstances of this case as already discussed above. Therefore, this objection is also over ruled.

36. Learned counsel for the respondents also raised preliminary objection that ICA No.81068/2017 and ICA No.86398/2017 are not maintainable as appellants in those appeals were not party before learned Single Bench, hence not aggrieved persons. We have considered this argument and found that the appellants in these appeals are admittedly either accused summoned or complainant in pending trial. They filed these appeals to ensure that order passed by learned Single Judge to release the Tribunal's report may not affect their right of fair trial guaranteed under article 10-A of the Constitution. The august Supreme Court in *H.M. Saya*

and Co. Karachi vs. Wazir Ali Industry Limited Karachi and others **(PLD 1969 SC 65)** held that where a person is aggrieved of the impugned order, he has locus standi to file appeal notwithstanding the fact that he was not party in the proceedings where impugned order was passed. In view of law settled by honourable apex Court, these appellants have locus standi to file these appeals, therefore, preliminary objection raised by the respondents is repelled.

37. Now coming to arguments on the procedural impropriety and administration of justice addressed by the appellants. Learned counsel for the appellants mainly argued that in order to ensure a well settled principle of "administration of justice" *that justice should not only be done but should manifestly be seen to have been done*, the learned Single Bench should have referred the matter to the learned Full Bench for its hearing alongwith already pending connected matters therein. We have meticulously examined this argument in the light of available record and documents. It is admitted on all hands that number of writ petitions including writ petitions No.19354 of 2014, 22334 of 2014, 22833 of 2014, 31752 of 2014, 33702 of 2014 and 33522 of 2016 were already pending before the learned Full Bench of this Court. No doubt in first writ petition No.19354 of 2014 (referred to learned Full Bench) the learned Single Bench in said petition, vide order dated 19.07.2014,

referred the matter to the Hon'ble Chief Justice for constitution of a Larger Bench on four different points, which related to the appointment of Tribunal under the provisions of Ordinance 1969 and the vires of Notification dated 17.06.2014 only. However, in subsequent writ petition No.22334 of 2014 vide order dated 17.09.2014 the matter was referred by learned Single Bench in said petition to the same Larger Bench on the Question whether report of the Inquiry Commission can be disclosed in the light of Article 19-A of the Constitution. For convenience the order dated 17.09.2014, passed in writ petition No.22334 of 2014 is reproduced hereunder:-

> *"This case raises an important issue regarding the scope and extent of the powers enjoyed by the Court under the Punjab Tribunals of Inquiry Ordinance, 1969, in particular the following question;-*
>
> *Whether once the Report of the Inquiry Commission (Court) is ready, can the same be disclosed to public in the light of Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973 which deals with freedom of information?*
>
> *Office has informed the Court that a Larger Bench has been constituted in this regard. Let this case be also placed before the same Bench after seeking permission from the Hon'ble Chief justice."*

38. From bare reading of the aforesaid order, it is evident that beside questions of validity of Tribunal and Notification

dated 17.06.2014, the question of disclosure of Commission/Tribunal Report in view of Article 19-A of the Constitution, was also a question subjudice before the learned Full Bench of this Court. It is also relevant to note that out of above referred writ petitions, three writ petitions i.e. 22334/2014, 22833/2014 and 33702/2014 came up before learned Single Benches but there after referred to the learned Full Bench being connected matter already pending there, whereas writ petition No.31752/2014 being similar matter was directly fixed before the learned Full Bench. Subsequently, writ petition No.33522 of 2016 was though not directly related matter but being relating to one man Tribunal was also referred to the same learned Full Bench.

39. Though there is no specific bar or requirement in Constitution or any statue that similar matters being already subjudice before Larger Bench must not be heard and decided by a Single Bench, however, under the well settled principles of administration of justice and to ensure that justice should not only be done but it should manifestly be seen to be done, the hierarchical arrangements of the courts are to be followed. The Courts presided over by Judges and Judicial Institutions are commanding respect, faith and confidence of public for

implementation of rule of law, justice and equity. Each and every step in a judicial proceeding including the manner in which the proceedings are entertained and proceed, should demonstrate and promote the feeling of confidence in the administration of justice. We are of the view that following the route of administration of justice, when a particular issue was already subjudice before a Larger Bench, then in all propriety the similar subsequent matter on same issue should have been referred to the same Larger Bench.

40. Indeed this principle does not apply to those cases which are distinct or different in nature from cases already pending before Larger Bench. The learned Single Bench dealt with the preliminary objection to entertain the petition despite being six similar writ petitions on the same subject matter pending before the learned Full Bench in Para 7 of the impugned judgment. The learned Single Bench while repelling the objection held that as petitions pending before the learned Full Bench are not filed by the legal heirs of the deceased or injured persons in the incident therefore they are not aggrieved persons, whereas writ petitioners are legal representatives of persons who lost their lives in the incident, therefore, their petition was required to be adjudicated independently. We are

afraid that this reasoning to adjudicate the case independently and not referring the same to the learned Full Bench is not supported by law. Under Article 19-A of the Constitution, every citizen of Pakistan has a fundamental right of information regarding matter of public importance regardless whether he is directly related to the incident or not. This right of information indeed subject to reasonable restrictions under the law, empowers the entire Civil Society of Pakistan to seek information from public institutions and hold them answerable. Learned counsel for the respondents, on Courts query also fairly conceded that fundamental right of information under Article 19-A of the Constitution regarding matter of public importance is equal for all citizens whether they are directly related to the victims of the incident or not.

41. We have also noted that in deciding this preliminary objection the learned Single Bench also held that the petitioners before the learned Full Bench are not aggrieved persons. The question whether petitioners before learned Full Bench were aggrieved persons or not was to be adjudicated by the learned Full Bench, where their petitions were pending and not by learned Single Bench. Therefore, the reasoning recorded by the learned Single Bench for not referring the matter to the learned

Full Bench for its hearing alongwith similar matters on touchstone of aggrieved party is not sustainable. In our view, the rule of procedural impropriety is not only meant for administrative decisions but same also applies to judicial proceedings, perhaps with more intensity.

42. Though, we have found that learned Single Bench erred in law, by not referring the writ petition No.62821 of 2017 to the learned Full Bench, however, at this stage, it will be an exercise in futility to remand the case back to the learned Single Bench, with direction to refer it back to this Full Bench, where above referred six similar writ petitions were also pending (but now five being withdrawn), especially when this matter has also been heard at length on merits by this Full Bench. It is also well settled law by the Apex Court that remand should only be resorted to when it is absolutely necessary for a fair and proper adjudication of the case. Unnecessary remand not only results in undue delay in cases but consequently also prolong the agony of the litigants. The august Supreme Court in case titled as *Mst. SHAHIDA ZAREEN v. IQRAR AHMED SIDDIQUI* reported in **(2010 SCMR 1119)** held as under:-

> *"Remand of the case should be ordered in exceptional circumstances when it is found necessary by the Appellate Court to determine the question of fact*

> *which appears to the Appellate Court to be essential for a right decision of the suit upon the merits. However, where evidence on record is sufficient for the Appellate Court to decide the question involved, then order of remand ought not to be passed."*

The same view was expressed by Hon'ble Supreme Court in cases titled as *Messrs SHAH NAWAZ KHAN AND SONS v. GOVERNMENT OF N.W.F.P. and others* reported in **(2015 SCMR 945)**, *HABIB ULLAH v. AZMAT ULLAH* reported in **(PLD 2007 Supreme Court 271)** & *REHMAN SHAH and others v. SHER AFZAL and others* **(2009 SCMR 462)**. Further this appeal being continuation of original proceedings, no prejudice be caused to any of the parties if we consider all aspects of the matter raised by the respective parties and adjudicate merits of the case.

43. However before dilating upon merits of the case, it is necessary at this juncture, to deal with two more preliminary objections/submissions made by the appellants. The learned counsel for the appellants argued that under the Law Reforms Ordinance, 1972, this appeal against the order of learned Single Bench, should have been heard by the Division Bench. We found no force in this objection in view of clear provision of section 3(2) of the Ordinance, 1972, which postulates that **"an**

appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a Single Judge of that Court". Under section 3(2) of the Ordinance, 1972 it is not necessary that an appeal be heard by a Division Bench but appeal before three members Bench is equally maintainable. We are also conscious of the fact that apparently this appeal was fixed before this Full Bench because above referred similar writ petitions were already pending before this Full Bench. Now merely because those five pending writ petitions were withdrawn by the petitioners in those petitions does not mean that this appeal cannot be heard by this Full Bench, especially when it is appellant's own case that writ petition No.62821 of 2017 should have been referred to and be heard by the Full Bench instead of learned Single Bench.

44. The other submission made by the appellant Government is that because appellant was not provided opportunity to file written statement, therefore, case be remanded to enable them to file written statement. Even this submission has no legs to stand. The facts involved in this case are undisputed, hence, there is no need to file any written statement at this stage to controvert the facts. Further detailed memorandum of appeal has been filed and the appellants were

given free hand by this Full Bench to raise any argument and produce any document which supports their case and in pursuance thereto, the appellants have also raised all their legal and factual submissions and also produced several documents. Hence, there is no need to remand the case only for the appellants to file written statement. We have also noted that before the learned Single Bench on 19.09.2017, the appellant government was given one week's time to prepare the brief. The appellant could file written statement, within this time if they so wished. Therefore, now it is too late in the day to request for filing of written statement, which is otherwise not required in the given circumstances.

DISCUSSION ON MERITS OF THE CASE.

45. The sanction of public inquiry at times is necessary for the purpose of maintaining a high standard of public administration, matters of public importance and indeed of public life. The machinery of inquiry under the ordinary process of law is geared to a charge or claim brought by one person against another. The ordinary process do not fit when its necessary and of prime importance to discover what has actually happened before the responsibility of or between individual can arise. In such cases true facts are not necessarily

to determine criminal offence or a civil wrong of individual but to restore public confidence in public conduct, administration and sitting elected government.

46. These ends are important in the life of a nation led by elected representative of the people. To achieve this goal many countries enacted law for public inquiries. In England "Tribunal of Inquiry (Evidence) Act, 1921", in Australia "Royal Commission Act, 1954", in Canada, "Inquiry Act, 1927", in India "The Commission of Inquiry Act, 1952" were promulgated. In Pakistan to inquire into any definite matter of public importance, "The Pakistan Commission of Inquiry Act, 1956" **(Act of 1956)** was enacted for the whole of Pakistan. This Act of 1956 was however, repealed and substituted on 31.03.2017 through Pakistan Commission of Inquiry Act, 2017 **(Act of 2017)**. Beside Federal Acts, the similar provincial law was promulgated on 14.04.1969, (as amended on 1975), under the titled "The (Punjab) Tribunals of Inquiry Ordinance, 1969.

47. For convenience section 3 of the Ordinance 1969 is reproduced hereunder:-

> ***"3. Appointment of Tribunal, Commission or Committee of Inquiry.—*** *(1) Government may, if it is of opinion that it is necessary so to do, by notification in the official Gazette, appoint a Tribunal, Commission or Committee of Inquiry for the purpose of making an*

> *inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Tribunal, Commission or Committee so appointed shall make the inquiry and perform the function accordingly.*
> *(2) The Tribunal may consist of one or more members appointed by Government, and where the Tribunal consists of more than one member, one of them may be appointed as the President or Chairman thereof."*

Plain reading of section 3 ibid shows that Provincial Government of Punjab may by notification in Official Gazette appoint a Tribunal, Commission or Committee of inquiry for purpose of making inquiry into any definite matter of public importance. The word "Tribunal" is defined under section 2(c) of the Ordinance 1969, which includes Commission or Committee appointed under section 3 above.

48. Admittedly an incident took place at Minhaj-ul-Quran Academy and Secretariat situated in Model Town Lahore (hereinafter referred to as **Model Town Incident**) causing loss of lives. This incident created unrest in general public and also attracted attention of local and international media. Therefore to ascertain the real facts and causes of the incident, in public interest, the Judicial Inquiry of the Model Town Incident was decided by the Government of Punjab. In this regard first request

letter dated 17.06.2014 addressed to Registrar, Lahore High Court is reproduced hereunder:-

> ***"NO.SO(JUDL-III) 9-53/2014***
> ***GOVERNMENT OF PUNJAB***
> ***HOME DEPARTMENT***
> *Dated Lahore the 17th June, 2014.*
>
> *To*
>
> *The Registrar*
> *Lahore High Court,*
> *Lahore.*
>
> ***Subject:*** ***JUDICIAL INQUIRY OF THE INCIDENT AT MINHAJ-UL-QURAN ACADEMY AND SECRETARIAT IN MODEL TOWN, LAHORE.***
>
> *Sir,*
>
> *I am directed to refer to the subject cited above and to state that an incident took place at Minjaj-ul-Quran Academy and Secretariat situated in Model Town, Lahore causing loss of lives.*
>
> *2. The foregoing incident created unrest in the general public and attracted the attention of local and international media. It is therefore expedient to determine in public interest the real fact(s), cause(s) of the incident, measures taken and pre and post handling of the incident.*
>
> *3. I am further directed to request you to kindly appoint a Judicial Commission to conduct a Judicial Inquiry under section 176 Cr.P.C. to ascertain the real fact(s), cause(s) of the incident, fix responsibility, if any and to make recommendations to avert such incidents in future.*
>
> *4. This may please be treated as "Most urgent".*
>
> ***SECTION OFFICER (JUDL-III)"***

49. In this first request letter, no specific reference was made to Ordinance 1969. However in its continuation, same day, another request letter was sent for appointment of Tribunal or Commission or Committee of inquiry in terms of section 3 of the Ordinance 1969, which reads as under:-

"NO.SO(JUDL-III) 9-53/2014
GOVERNMENT OF PUNJAB
HOME DEPARTMENT
Dated Lahore the 17th June, 2014.

To

The Registrar
Lahore High Court,
Lahore.

Subject: ***JUDICIAL INQUIRY OF THE INCIDENT AT MINHAJ-UL-QURAN ACADEMY AND SECRETARIAT IN MODEL TOWN, LAHORE.***

In continuation of this Department's letter of even number and date, I am directed to submit that it is clarified that Honourable Lahore High Court, Lahore may also kindly consider the appointment of a Tribunal or Commission or Committee of inquiry in terms of section 3 of Punjab Tribunals of Inquiry Ordinance, 1969, for the purpose of making an inquiry into the subject incident.

SECTION OFFICER (JUDL-III)"

50. Finally vide notification dated 17.06.2014, Mr. Justice Ali Baqar Najafi was appointed as one man Tribunal of inquiry (**Tribunal**) under section 3 and 5 of the Ordinance 1969. The said notification is reproduced below:-

"GOVERNMENT OF PUNJAB
HOME DEPARTMENT
Dated Lahore the 17th June, 2014.

NOTIFICATION.

No. SO(Judl.III)9-53/2014. *The Government of the Punjab in consultation with Chief Justice, Lahore High Court, Lahore has been pleased to appoint Hon'ble Mr. Justice Ali Baqar Najafi, as one man Tribunal of inquiry under sections 3 and 5 of the Punjab Tribunals of Inquiry Ordinance, 1969 for making inquiry and to*

ascertain the facts and circumstances of the incident at Minhaj-ul-Quran Academy and Secretariat in Model Town, Lahore.

SECRETARY TO GOVERNMENT OF THE PUNJAB HOME DEPARTMENT"

The Tribunal commenced its working on 19.06.2014 and completed its inquiry on 09.08.2014 and shared the final inquiry report with Government of Punjab through its Office of Secretary, Home Department on 09.08.2014. The said inquiry report was however not made public.

51. The respondents who are relatives of some victims and injured in Model Town Incident are insisting that inquiry report be supplied to them to know the real facts of the incident. The crux of respondents argument is that they have right to receive copy of inquiry report under three different laws. Firstly, the inquiry proceedings of the Tribunal being Judicial Inquiry and Inquiry Report of Tribunal being a public document under Article 85 of the Order 1984, they are entitled for its certified copy under Article 87 of the Order 1984. Secondly, argued that under Article 19 and 19-A of the Constitution, it is their fundamental right to have access to and receive inquiry report. Thirdly, they are claiming that though fundamental right to have information under Article 19-A is not subject to Act of

2013, however, even under Act of 2013, the respondents are entitled for inquiry report and exceptions containing in section 13 of the Act of 2013 are not applicable.

52. On the other hand, the appellants in nutshell have argued that inquiry before Tribunal was neither judicial inquiry nor inquiry report is public document, therefore, respondents are not entitled for its certified copy under Article 87 of the Order 1984. Further that inquiry report was only for the information of the Government and as it has already outlived its purpose, it is no more a live document. Appellants are also claiming that right to information under Article 19 and 19-A of Constitution is qualified right subject to law and that inquiry report will cause harm to "public order" and "administration of justice" in pending trial, hence fall under exceptions of sub clauses (a) and (f) of section 13 of the Act of 2013. Appellants also argued that fundamental right of fair trial under Article 10-A of the Constitution being unqualified right, will prevail over Article 19 and 19-A of the Constitution in case of any conflict.

53. Considering the respective arguments, first we will determine that **what is the nature of proceedings and status of inquiry report under the provisions of Ordinance, 1969**. Under section 3 of the Ordinance 1969, the Government may

appoint a Tribunal, Commission or Committee of inquiry for purpose of making inquiry into any definite matter of public importance. The Tribunal appointed under the Ordinance 1969 does not decide any dispute but merely ascertains real facts. There are neither any parties before the Tribunal or any lis. The procedure of the Tribunal is inquisitional rather than accusatorial. The Full Bench of this Court in *State vs. Zulfiqar Ali Bhutto and others* **(PLD 1978 Lah. 523)**, held that Tribunal under the Ordinance 1969 is not a Court and is not competent to render any judgment. Further held that report being merely an opinion of a Tribunal based upon the evidence recorded by it is not relevant under any section of evidence Act. The relevant observations by Full Bench are reproduced hereunder:-

> *"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 inquiry into any definite matter of public importance. Section 4 confers powers of a civil Court upon the Tribunal in order to enable it to perform its functions of enforcing attendance of persons for their examination on oath, for discovery and production of documents for receiving evidence on affidavits or through Commissions. Analogous powers are conferred by subsection (6) of section 5 for the limited purpose of requisitioning any public record or copy thereof from any Court or office.*
>
> *The Ordinance does not envisage the adjudications 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……

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 or reference to any such section was made by the learned counsel during arguments. The contents of the report and the reference in it to any statement made before the Tribunal is not therefore relevant."

54. In India, the analogous law is Commission of Inquiry Act, 1952. The nature of the inquiry under the said Act and status of its report were discussed in following judgments:-

(i). In case *M.V. Rajwade V. Dr. S.M. Hassan* **(AIR 1954 Nagpur 71),** it is held as under:-

"It would appear from Section 4 that it only clothes the Commission with certain powers of a Civil Court but does not confer on it the status of a Court. It is only under sub-section (4) of Section 5 that the Commission is deemed to be a Civil Court and sub-section (5) imparts to the proceeding before it the character of a judicial proceeding. However, these provisions only create a fiction which cannot extend beyond the purpose for which it is created.

The Commission in question was obviously appointed by the State Government for the information of its own mind, in order that it should not act, in exercise of its executive power, otherwise than in accordance with the dictates of justice and equity, in ordering a departmental enquiry against its officers. It was, therefore, a fact finding body meant only to instruct the mind of the

Government without producing any document of a judicial nature."

(ii). In case *Subramanian Swamy vs. Arun Shourie* **(AIR 2014 Supreme Court 3020),** it is held that:-

"We do not have any doubt that functions of the Commission appointed under the 1952 Act are not like a body discharging judicial functions or judicial power. The Commission appointed under the 1952 Act in our view is not a Court and making the inquiry or determination of facts by the Commission is not of judicial character."

(iii). In the case of *Barliram vs. Justice B. Lentin* **(AIR 1988 Supreme Court 2267),** the Court held:-

> *"A Commission of Inquiry is not a Court properly so called. A Commission is obviously appointed by the appropriate Government for the information of its mind in order for it to decide as to the course of action to be followed. It is, therefore, a fact finding body and is not required to adjudicate upon the rights of the parties and has no adjudicatory functions."*

(iv). In case *Kehar Singh vs. State* **(AIR 1988 Supreme Court 1883),** it is held:-

> "*The whole purpose of setting upon of a Commission of Enquiry consisting of experts will be frustrated and the elaborate process of enquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures and situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view, the recommendations of a Commission of Enquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil*

found or to implement the beneficial objections it has in view. From this point of view, there can be no objection even to the Commission of Enquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquent in future. But seeing that the Commission of Enquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore."

(v). In case *Md. Ibrahim Khan vs. Susheel Kumar* **(AIR 1983 Andhra Pradesh 69),** it is held as under:-

"In any inquiry before the Commission, there is neither a dispute nor a decision which prejudicially affects any right. There is an investigation and a mere report of the facts ascertained. There is no decision. Therefore, use of the accolade judicial or quasi-judicial to inquiries before a Commission of Inquiry appointed under the Commission of Inquiry Act is inappropriate. The commission is not an adjudicating body, but as assisting body that assesses the facts and assists the Government in the arrival of an appropriate decision.

It is clear from the provisions and the general scheme of the Act that a Commission of Inquiry appointed under the Act is a purely fact finding body which has no power to pronounce a binding or definitive judgment. It has to collect facts through the evidence led before it and on a consideration thereof it is required to submit its report which the appointing authority may or may not accept."

55. The same view was also expressed in *Dr. Bahram Waman Hiray vs. Mr. Justice B. Lentin and others* **(AIR 1988 SC 2267),** *Brajnandan Sinha vs. Jyoti Narain* **(AIR 1956 SC 66),** *Shri Ram Krishna Dalmia and others vs. Shri Justice S.R. Tendookar and others* **(AIR 1958 SC 538),** *State of J. & K. and*

others vs. Bakshi Gulam Muhammad and others **(AIR 1967 SC 122),** *P.V. Jagannath Rao and others vs. State of Orissa and others* **(AIR 1969 SC 215),** *M. Karunnanidhi vs. The Union of India, represented by the Secretary to Government Cabinet Secretariat Dept. of Personnel and Administration Reforms, New Delhi and others* **(AIR 1977 Mad 192),** *State of Karnataka vs. Union of India and others* **(AIR 1978 SC 68),** *Sham Kant vs. State of Maharashtra* **(AIR 1992 SC 1879)** and *T.T. Antony vs. State of Kerala and others* **(AIR 2001 SC 2637)**.

56. The crux of all these judgments is that inquiry commission does not perform any judicial functions. The provision of section 5(5) of the Ordinance, 1969, which imparts to the proceeding before Tribunal, a character of judicial proceedings, only create a fiction, which cannot extent beyond the purpose for which it is created. The Tribunal has no power of adjudication in sense of passing an order which can be enforced "Proprio vigore". There is a clear distinction between a decision which by itself has no force and no penal effect and a decision which become enforceable immediately or which may become enforceable by some action being taken. The Tribunal under the Ordinance 1969 was merely to carry out fact finding

probe, record its finding and recommendations without having any power to enforce them. Therefore, we can safely conclude that the inquiry or final report by Tribunal under Ordinance 1969 is not a judicial inquiry in the sense of its being an exercise of judicial function.

57. Now coming to the next question, **whether inquiry report of the Tribunal is a public document** in terms of section 85 of the Order 1984. Under section 3 of Ordinance, 1969, the government may appoint a Tribunal, Commission or Committee of inquiry. The word "Tribunal" is defined under section 2(c) of the Ordinance 1969, means a "Tribunal appointed under section 3 and includes a commission or committee of inquiry appointed under said section". In view of definition of "Tribunal" under section 2 (c) ibid, for the purpose of inquiry under the Ordinance 1969, there is no difference between a "Tribunal", a "commission" or "committee of inquiry". The argument of the respondents that Tribunal is appointed, when inquiry is to be done by Judge of High Court is not supported by law, as no specific reference has been made in Ordinance 1969 to inquiry by Judge of High Court.

58. The provision of sub-clause (ii) of Article 85(1) of Order 1984 is reproduced hereunder:-

> ***"85. Public documents.*** *The following documents are public documents: — (1) documents forming the acts or records of the acts—*
> *(ii) of official bodies and tribunals; and"*

The word "Tribunal" in sub clause (ii) of Article 85(1) ibid cannot be read in isolation but it has to be read alongwith word "Official bodies". The holistic reading of sub clause (ii) of Article 85(1) of Order 1984 and following the principle of *"ejusdem generis"*, it is manifest that documents forming the act or record of act of official bodies and of official Tribunals, which are also performing official functions, will be having status of public document. As already discussed above, the "Tribunal" under the Ordinance 1969 is not performing any official functions but merely a fact finding body to probe into particular matter of public importance, not different from commission or committee of inquiry for same purpose. Therefore by just change of nomenclature from Commission or Committee to Tribunal, it will neither change status of the Tribunal nor its report can be treated as public document under Article 85 of the Order 1984. The Full Bench of this Court in *State vs. Zulfiqar Ali Bhutto and others* **(PLD 1978 Lah. 523)** already held that report of Tribunal under the Ordinance, 1969 being merely an opinion is not relevant under any section of the

Evidence Act. Same view was also expressed by Indian Supreme Court in *Kehar Singh and others vs. The State (Delhi Admin.)* **(AIR 1988 SC 1883)**.

59. We have also noted that sub article 4 of Article 85 of Order 1984 provides that "documents required to be maintained by a public servant under any law is public document". No doubt the inquiry report was shared by the Tribunal with the Home Department, Government of Punjab, however, the Home Department is not maintaining the inquiry report rather only retaining it. There is difference between document required to be "maintained" and merely retained. As per Black's Law Dictionary, word "maintain" means "to continue something". In our view, if a document can be updated or further processed in any manner by public servant under any law, then it is maintained but where document is only to be kept in custody without any further process, then it does not amount to maintain the document under Article 85. Therefore, even under sub article 4 of Article 85 of Order 1984, the inquiry report is not a public document.

60. Notwithstanding the above status of inquiry proceedings and report of the Tribunal, it was admitted on all hands that mere fact that inquiry before Tribunal is not judicial

or its report is not public document, will not in any way curtail or impinge upon the right of information of public under Article 19 and 19-A of the Constitution. Any citizen will have access to the inquiry report in matter of public importance but indeed subject to regulations and reasonable restrictions imposed by law.

61. **Right to information and access to information in all matters of public importance** is indisputably a fundamental right guaranteed under Article 19 and 19-A of the Constitution. The right of information stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decision which may affect themselves. The people of Pakistan have a right to know every public act, everything that is done in public way, by their public functionaries and chosen representatives. People are entitled to know the particulars of every public transaction, acquire information in all matters of public importance and to disseminate it. It enables people to contribute on debate on social and moral issues and matter of public importance. Without information, a democratic electorate cannot make responsible judgments about its representatives. Freedom of information is the only vehicle of

political discourse so essential to democracy and it is equally important in facilitating artistic and scholarly endeavours of all sorts. In sum, the fundamental principle involved here is the people's right to know and freedom of information and freedom of speech and expression should therefore, receive a generous support from all those who believe in democracy and the participation of people in the administration and matters of public importance.

62. In 1984, the United Nations proclaimed a Universal Declaration of Human Rights. It was followed by the International Covenant on civil and political rights. Article 19 of the Covenant declares that "everyone has the right to freedom of opinion and expression". The right includes to seek, receive and impart information and ideas through any media regardless of frontiers. Similar declaration was made in 1950 by the European Convention of Human Rights through Article 10 of the declaration which guaranteed interalia "right of public to be informed". In keeping with the spirit of Universal Declaration of 1948, in Constitution of Pakistan, Article 19 was incorporated to guarantee every citizen "freedom of Speech and Expression". The august Supreme Court in *Mian Muhammad Nawaz Sharif vs. President of Pakistan and others* **(PLD 1993**

SC 473) held that freedom of speech and expression includes the right to receive information.

63. In year 2010, Article 19-A was inserted in Part II Chapter one of the Constitution through Constitutional (Eighteenth Amendment) Act 2010 **(Eighteenth Amendment)** and right to have access to information in all matters of public importance was made independent fundamental right. Article 19-A of the Constitution empowers every citizen of Pakistan to seek information from public institutions in all matters of public importance and also hold them accountable and answerable. The august Supreme Court in *Watan Party case* supra, while discussing Article 19-A of the Constitution held that Article 19-A of the Constitution has empowered the citizens of Pakistan by making access to information a justiciable right of the people rather than being largesse bestowed by the state at its whim. Further held that in those petitions, petitioners only sought to enforce the peoples' right to know the truth about what their government and its functionaries were up to, and that was by no means, a political question and was fully justiciable fundamental right enumerated in the Constitution. The honourable Supreme Court also held that fundamental right under Article 19-A is much broader and more assertive than the

statutory right under the "Freedom of Information Ordinance, 2002", which by its own terms was restricted to disclosure of official record only.

64. In *Hamid Mir and others vs. Federation of Pakistan and others* **(PLD 2013 SC 244)**, the honourable Supreme Court held that in view of provisions of Article 19-A of the Constitution, Ministry of Information and Broadcasting was obliged to disclose the nature and use of all funds allocated to it including the secret funds. Division Bench of Sindh High Court in *Saifan uz Zaman Khan vs. Federation of Pakistan through Secretary, Ministry of Finance, Government of Pakistan, Islamabad and seven others* (**PLD 2017 Sindh 559)** held that right to information under Article 19-A of the Constitution was of immense value in promoting transparency by ensuring that citizens had knowledge of matters concerning public administration. In *Shabbir Hussain vs. Executive District Officer (Education) Larkana and 5 others* (**2012 CLC 16)** and *Muhammad Ismail and others vs. Province of Sindh through Secretary, Education and Literacy Department, Karachi and others* **(2012 PLC (CS) 620),** it is reiterated that under Article 19-A, access to information in matters of public importance would be right of every citizen.

65. In India, there is no separate right for information. However, Courts there, liberally interpreted right of freedom of expression, under Article 19 of Indian Constitution to include right of information. Some of the case laws on right of information from Indian Jurisdiction are as under:-

(i). In case *Indian Express Newspaper (Bombay) Private Ltd. & others etc vs. Union of India etc* **(1985 (1) SCC 641),** Court held that:-

> *"Freedom of expression has four broad social purpose to serve: (i) it helps an individual to attain self fulfilment, (ii) it assists in the discovery of truth, (iii) participating in decision making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle is the people's right to know."*

(ii). In case *the Secretary, Ministry of Information & Broadcasting vs. Cricket Association of Bengal etc* **(AIR 1995 SC 1236),** it is held:-

> *"For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinion, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them."*

(iii). In case *State of U.P vs. Raj Narain and others* **(AIR 1975 SC 865),** it is held:-

> *"In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing."*

(iv). In case *S.P. Gupta and others vs. Union of India and others* **(AIR 1982 Supreme Court 149),** Court held that:-

> *"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy.*

(v). In case of *Sheela Barse vs. Union of India* **(AIR 1986 Supreme Court 1773),** the Court held:-

> *"We are of the view that the petitioner should have access to information and should be permitted to visit jails, children's home, remand homes, observation homes, borstal schools and all institutions connected with housing of delinquent or destitute children. We would like to point out that this is not an adversary litigation and the petitioner need not be looked upon as an adversary. She has in fact volunteered to do what the State should have done."*

(vi). In case of *Suri Dinesh Trivedi vs. Union of India etc* **(1997 (4) SC 306),** the Court held as under:-

> *"In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate, sound policies of governance aimed at their welfare."*

(vii). In case *Peoples Union for Civil Liberties vs. Union of India* **(AIR 2003 Supreme Court 2363),** it is held:-

> *"The aforesaid passage leaves no doubt that right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation, misinformation, non-information all equally create an uniformed citizenry which would finally make democracy a mobocracy and farce."*

66. Some case law on right of information from other International jurisdiction is as under:-

(i). In Inter-American Court of Human rights case of Claude-Reyes et al. v. Chile, it is held that:-

> *"The disclosure of State held information should play a very important role in a democratic society, because it enables civil society to control the actions of the Government to which it has entrusted the protection of its interests. Article 13 of the Convention should be understood as a positive obligation on the part of the State to provide access to the information it holds; this is necessary to avoid abuses by government officials, to promote accountability and transparency within the State, and to allow a substantial and informed public debate that ensures there are effective recourses against such abuses."*

(ii). In Cour Europeenne Des Droits De L' Homme European Court of Human Rights, case of *Tarsasag A Szabadsagjogokert vs. Hungary*, it is held as under:-

> *"The disclosure of public information on request in fact falls within the notion of the right "to receive", as understood by Article 10 & 1. This provision protects not only those who wish to inform others but also those who seek to receive such information. To hold otherwise would mean that freedom of expression is no more than the absence of censorship, which would be incompatible with the above-mentioned positive obligations."*

(iii). In United Nations International Covenant on Civil and Political Rights, it is held as under:-

> *"That in cases of violations of human rights, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or pending procedures. Moreover, when it comes to the investigation of punishable facts, the decision to qualify the information as secretive or to refuse to hand it over cannot stamp solely from a State organ whose members are charged with committing the wrongful acts. In the same sense, the final decision on the existence of the requested documentation cannot be left to its discretion."*

67. The above case law from Pakistan, India and other international jurisdiction, leaves no manner of doubt that citizens' right to know the facts, the true facts about the administration of the country in all matters of public importance is one of the most fundamental pillars of democratic state. A popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both.

68. The right of information under Article 19 and 19-A of the Constitution though well entrenched fundamental right of every citizen but this right is not absolute. This right is subject to reasonable restrictions imposed by law. The learned counsel for the respondents on one hand argued that inquiry report being matter of public importance, they have fundamental right to obtain this report. They further argued that Article 19-A being an offshoot of Article 19 of the Constitution, the only restrictions applicable to right of information are those prescribed under Article 19 of the Constitution which does not include public order and administration of justice. On the other hand, appellants are claiming that firstly respondents have no right to obtain this report under Article 19-A of the Constitution and secondly in any case, this information fall under exceptions of "public order" and "administration of justice" under section 13 of the Act of 2013.

69. To our mind, there are three following basic questions which require determination to resolve the legal controversy between the parties:-

(i). Whether Tribunal report is a matter of public importance under Article 19-A of the Constitution?

(ii). If answer to first question is in affirmative, then whether "public order" and "administration of justice and fair trial" are reasonable restrictions under law to Article 19-A of the Constitution?

(iii). If answer to second question is also in affirmative, then whether disclosure of report shall or likely to cause harm to "public order" and "administration of justice" and further whether in public interest, the right of disclosure will outweigh the exceptions of "public order" and "administration of justice" under the tests of proportionality and balancing of rights?

70. To express our opinion on the above three questions, it is necessary that Article 19, 19-A and 10-A of the Constitution and sub-clauses (a), (e) and (f) of section 13(1) and section 13(2) of the Act of 2013 be reproduced below:-

Articles 19, 19-A and 10-A of the Constitution.

> ***"Art. 19. Freedom of speech, etc.-****Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, 1[commission of] or incitement to an offence.*

Art. 19A. Right to information.—*Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.*

Art. 10A. Right to fair trial.—*For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process."*

Section 13(1), (a), (e), (f) and (2) of the Act of 2013.

"13. Exceptions.– *(1) A public information officer may refuse an application for access to information where disclosure of the information shall or is likely to cause harm to–*
(a) national defence or security, public order or international relations of Pakistan;
(e) the life, health or safety of any person;
(f) the prevention or detection of crime, the apprehension or prosecution of offenders, or the administration of justice;"

(2) Notwithstanding anything contained in subsection (1), if the Commission determines that the public interest in such disclosure outweighs the harm that shall or is likely to be caused by such disclosure, it may direct the public information officer to provide the information."

(Emphasis supplied).

71. In respect of first question, bare perusal of letter dated 17.06.2014 addressed to the Registrar High Court by the Government for judicial inquiry of the incident shows, that inquiry was requested due to loss of lives in Model Town Incident which created unrest in general public and attracted attention of local and international media. In these

circumstances, the Government found it expedient in public interest to find out the real facts, causes of the incident, measures taken and pre and post handling of the incident.

72. Under clause 19-A of the Constitution, every citizen shall have the right to have access to information in matter of "public importance". The word **"public importance"** used in Article 19-A of the Constitution is not defined term. However, term public importance according to dictionary meaning could be defined that "question which affects and has its repercussions on the public at large and it also includes the purpose and aim in which the general interest of the community particularly interest of individual is directly or widely concerned". The same interpretation was expressed by august Supreme Court in *Ch. Muhammad Akram vs. Registrar, Islamabad High Court and others* **(PLD 2016 Supreme Court 961)** and in *State of J. & K. and others vs. Bakshi Gulam Muhammad and others* **(AIR 1967 SC 122)**. The reasons recorded by Government itself in its letter dated 17.06.2017 for holding inquiry, when juxtapose with the definition of "public importance" narrated above, it can safely be concluded that the inquiry report of a Tribunal is a matter of public importance and every citizen has right under Article 19-A to have excess to this

inquiry report, indeed subject to reasonable restrictions imposed by law. Even otherwise under section 3 of the Ordinance 1969, inquiry could only take place in definite matter of public importance.

73. In response to second question, the provision of Article 19-A of the Constitution is an independent provision, which prescribes that every citizen shall have the right to have excess to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law. Plain reading of Article 19 and 19-A of the Constitution shows that reasonable restrictions under Article 19-A are not confined to the matters specified in Article 19 of the Constitution as argued by the respondents. The restrictions provided through section 13 of the Act of 2013 being restrictions imposed by law shall also be applicable to Article 19-A of the Constitution indeed subject to test of reasonableness.

74. No doubt Article 19 of the Constitution guarantees freedom of speech and Article 19-A of the Constitution provides right to information, however, both these Articles permit reasonable restrictions to be imposed by law. The word "administration of justice" is not referred to in Article 19 or 19

of the Constitution but the word “administration of justice” is clearly mentioned in exceptions provided under section 13(1)(f) of the Act of 2013. The administration of justice indeed include right of fair trial guaranteed under Article 10-A of the Constitution which is also covered under expanded definition of “right to life”. Section 3 of Contempt of Court Ordinance, 2003 also provides that any interference with, obstruction or prejudice caused to due course of any judicial proceedings, amounts to contempt. Therefore, it can safely be concluded that publication which will cause harm or likely to cause harm to the “administration of justice” including “fair trial” under Article 10-A of the Constitution, can be restricted and such restriction would be reasonable and valid under the law.

75. Similarly the expression “public order” specified in clause (a) of section 13(1) of the Act of 2013 as an exception, is also found mention in Article 19 of the Constitution as an exception to freedom of speech and expression. Therefore, we have no doubt that “public order” is also a reasonable exception under law to Article 19-A of the Constitution.

76. Now we come to the third and final question which is also the nub of the issue. In this discussion, we will analyse if disclosure of inquiry report shall actually or likely to cause

harm to public order and administration of justice and even if it does, whether in public interest such disclosure will outweigh the harm in terms of section 13(2) of the Act of 2013 and principle of balancing and proportionately.

77. In regard to the functioning of Government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. Where the State is protecting information relating to the matter of public importance, the Court has to perform a balance exercise between two competing dimensions of public interest namely the right of the citizen to obtain disclosure of information which competes with the right of the State to protect the information on the basis of exceptions which in this case are provided under section 13 (1) (a) and (f) of the Act of 2013. Court has to perform balancing exercise and after weighing the one competing aspect of the public interest against other, decide where balance lies. If Court comes to the conclusion **on the balance and under the principle of proportionality** that disclosure of information would cause greater injury to the public interest, than its non-disclosure, the Court would hold the objection to the disclosure and not allow the document to be

disclosed but if on the other hand, the Court found that balance between two competing interests lies other way, the Court would order for disclosure of document.

78. Aharon Barak (renowned Jurist and visiting Professor at "Yale Law School" USA), in his book "**Proportionality**" defined **Test of Proportionality** as under:-

> *"The test of proportionality is the proportional result or proportionality stricto sensu. This is the most important of proportionality's test. What does the test require? According to proportionality stricto sensu, in order to justify a limitation on a constitutional right, a proper relation (proportional) in the narrow sense of the term) should exist between the benefits gained by fulfilling the purpose and the harm caused to the constitutional right from obtaining that purpose. This test requires a balancing of the benefits gained by the public and the harm caused to the constitutional right through the use of the means selected by law to obtain the proper purpose. Accordingly, this is a test balancing benefits and harm. It requires an adequate congruence between the benefits gained by the law's policy and the harm it may cause to the constitutional right".*

In same book, Barak also discuss **centrality role of balancing** as under:-

> *"Balancing is central to life and law. It is central to the relationship between human rights and the public interest, or amongst human rights. Balancing reflects the multi-faceted nature of the human being, of society generally, and of democracy in particular. It is an expression of the understanding that the law is not all or nothing. Law is a complex framework of values and principles, which in certain cases are all congruent*

> *and lead to one conclusion, while in other situations are in direct conflict and require resolution. The balancing technique reflects this complexity. At the constitutional level, balancing enables the continued existence, within a democracy, of conflicting principles or values, while recognizing their inherent constitutional conflict. At the sub-constitutional level, balancing provides a solutions level, balancing provides a solution that reflects the values of democracy and the limitations that democracy imposes on the majority's power to restrict individuals and minorities in it."*

79. This balancing test is also recognized under section 13(2) of the Act of 2013 which provides that balance between two competing aspects of public interest to be performed even when an objection to the disclosure of document is taken on the ground that document comes under the exceptions of section 13 of the Act of 2013, because there is no absolute immunity for such documents. In *Conway vs. Rimmer* **(1968 AC 1910)**, Lord Reid prescribed the test to determine which aspect of public interest predominate i.e. whether public interest require disclosure outweigh the public interest which denies excess. The Court held as under:-

> *"The Court has to decide which aspect of the public interest predominates or in other words, whether the public interest which requires that the document should not be produced, outweighs the public interest that a Court of justice in performing its function should not be denied access to relevant evidence. The Court has thus to perform a balancing exercise and after weighing the one*

> *competing aspect of public interest against the other, decide where the balance lies*."

80. The same balancing test will apply where the right to disseminate information conflicts with private interest of an individual and Court will have to determine whether public interest will prevail over private interest. Right of access to information is a justiciable right of the people under Article 19 and 19-A of the Constitution. Even scheme of Act of 2013 and language employed thereof depicts that right of excess to information is to be provided unless its disclosure on balance would be contrary to the public interest. This Court in *Waheed Shahzad Butt vs. Federation of Pakistan and others* **(PLD 2016 Lah. 872)** held that duty of public body to disclose and provide information/record is thus displaced by exclusions only if public interest in disclosing information/record sought is outweigh by public interest in maintaining exclusions.

81. Now first applying the test of "proportionality" and "balancing" to actual or likely harm to "public order" on disclosure of report, we have noted that the word "public order" is not defined in Act of 2013. However, the "Public Order" is what the French call 'ordre publique' and is something more than ordinary maintenance of law and order situation. The test

to be adopted in determining whether a particular act affects merely law and order leaving the tranquility of the society undisturbed. Every breach of the peace does not lead to public disorder. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society.

82. During course of the Court proceedings, we were presented the report of the Tribunal for our perusal in Chamber. In said report, it was nowhere stated or apprehended by the Tribunal that this report should not be disclosed or its disclosure will cause or likely to cause harm to public order. We have also found substance in argument of the respondents that when after incident of Model Town, which resulted to loss of many lives and according to Government own stance (in request letter dated 17.06.2014) also created unrest in general public and attracted attention of local and international media, the situation after incident not went beyond ordinary maintenance of law and order, then there is no reason to

apprehend that disclosing of real facts regarding the incident, will cause or likely to cause harm to public order.

83. The exceptions and restrictions under section 13 of the Act of 2013 being serious encroachment of the freedom of speech and right of information under Article 19 and 19-A of the Constitution, the harm or likely harm to "public order" must be proved. It is not permissible to restrain right to information or freedom of expression merely on the basis of speculative possibility of harm or prejudice to public order but the information must be of such as would create real and substantial risk of prejudice and harm to public order.

84. The appellants have not shown the real or substantial risk of harm to public order from disclosure of report, which will be beyond more than ordinary maintenance of law and order situation. In any case, looking at the reasons for constitution of Tribunal by Government itself, by applying the test of "proportionality and balancing", the public interest to disclose report to public will easily predominate and outweigh the pleaded exception of public order apprehension.

85. Now we apply the same test of balancing to the exception of "administration of justice". In present case, the task assigned to the Tribunal was to find out the real facts,

causes of the incident, fix responsibility if any, measures taken and pre and post handling of the incident. The subject matter of the report was regarding the duties of the administration or their negligence to perform such duties but it had no nexus with the determination of cognizable offences which indeed is the job of the investigating agencies.

86. In criminal trial, finding of guilt against accused person has to be surely and affirmly rest on the evidence produced in the case. Mere conjectures, probability and media discussions cannot take the place of proof. If a case is to be decided on the probabilities, or extraneous consideration, the golden rule of "benefit of doubt" to an accused person which has a dominant features of the administration of criminal justice in this country will be reduced into naught. The august Supreme Court in *Azeem Khan and another vs. Mujahid Khan and others* **(2016 SCMR 274)** held as under:-

> *"It is also a well embedded principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an*

> *accused. In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In that even the justice would be casualty."*

87. Even otherwise as already discussed above, the report is only a fact finding probe which is neither binding on the Government or investigating agency nor has any evidential value in the eye of law. We have also noted that the decision of the learned Full Bench of this Court dated 05.12.2016 in W.P. No.33522/2016 has already dispelled the fear or apprehension of the appellants, if any, regarding fair trial by holding that *"the right to fair trial has always been considered a fundamental right of an accused and after insertion of Article 10-A in the Constitution of Islamic Republic of Pakistan 1973, right to fair trial has now been placed at a higher pedestal. However, in this case no direction can be given for bringing on record the report delivered by Mr. Justice Ali Baqar Najafi in Minhaj-ul-Quran Academy and Secretariat, Model Town Lahore's unfortunate incident as the petitioner in his capacity as complainant is to succeed if at all on the strength of the averments contained in the Private Complaint and cursory statement of witnesses."*

88. The learned counsel for the appellants vehemently argued that after aforesaid order of learned Full Bench dated 05.12.2016 in

W.P. No.33522/2016, the Tribunal's report cannot be published for information of the public or the respondents. We are afraid that this argument is misconceived. The perusal of order passed by learned Full Bench dated 15.12.2016, shows that the same was passed in writ petition where petitioner challenged the order of the Trial Court for not summoning the report of the Tribunal. The learned Full Bench to ensure fair trial under Article 10-A of Constitution rightly upheld the order for not bringing the report on the record of trial Court. Further the observation of the learned Full Bench for the "possibility of trial being influenced by the report", was in the context of making report part of judicial record. In the present case, respondents are neither seeking direction for making the report part of Trial Court's proceedings nor such relief can be granted under the law. They are only seeking disclosure of the report to know the real facts which prayer by no mean is in conflict with the judgment passed by learned Full Bench on 25.12.2016 or effect in any manner appellants' right of fair trial guaranteed under Article 10-A of the Constitution.

89. One of the arguments of the appellants against the disclosure of the Tribunals report is that its publication will result into media publicity which will influence the mind of the Judge conducting the trial. We are afraid that mere

apprehension of media publicity and its consequential influence on the mind of the Court is not only farfetched and extremely anticipatory argument but same is also against the well-established norms of criminal administration of justice. In criminal trial the conviction is only based on admissible incriminating evidence and not extraneous consideration or media publicity. The judges are expected to be impervious to influence by media publicity. The lord Denning MR in Court of appeal *Att Gen vs. BBC* [1981 AC 303 (315) CA] stated that *Judges will not be influenced by the media publicity.* "Cardozo, one of the greatest Judges of the American Supreme Court (in his lecture IV in Yale University on "The Sub-conscious Element in the Judicial Process") by referring to the forces which enter into the conclusions of Judges observed that *"the great tides and currents which engulf the rest of men, do not turn aside in their cause, and pass the Judges by".*

90. Though view of lord Denning was not accepted in the House of Lords in *Att. Gen vs. BBC* **[1981 AC 303 (H.L)]** but we feel that the above words of wisdom by lord Denning are to be applied even more emphatically in the current times. In past only print media or couple of government controlled television channels were source of public information, however, in current

time with an advance technology in the field of communication, the media and information is reaching all segment of society through multiple means. This access of information and media publicity is likely to increase manifold in future with further improvement in field of communication technology. In this scenario and media oriented era, the role of Judges not to be effected by any media publicity is more demanding. They are not only expected to be impervious to media publicity but must train and equip themselves consciously not to be influenced by media publicity even sub consciously, to ensure fair trial and administration of justice. We are not impressed by the argument and apprehensions of the appellants and have no manner of doubt in our mind that learned trial Court will decide the matter, without being influenced by any extraneous considerations or media publicity, if at all same take place.

91. Under Article 19-A of the Constitution, every citizen has the right to have access to information in all matters of public importance subject to reasonable restriction. The similar anticipated consequences arguments against right to information were raised before the Hon'ble Supreme Court in the case of *Watan Party* supra**.** The said arguments were repelled by the Apex Court and it was held that "a*s an objective*

enforcer of fundamental rights we cannot do that. Whether the petitioners or the respondents stand to benefit from our order or which institution or functionary of the state ends up being indicated by the Truth, we are not called upon to say. In fact, that is the very point of the inquiry; the only calculus this Court is entitled to engage in is the calculus of true information and its availability to the citizens of Pakistan." The Hon'ble Supreme Court in said judgment further observed that *"the truth will indeed be critical if the nation is to achieve the goal the Constitution, in its Preamble, sets for all organs of the state: viz. "the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny." It, therefore, will not do for this Court to deny to the citizens their guaranteed fundamental right under Article 19A."*

(underlining by us to add emphasis).

92. In case of *Gokulananda Roy v. Tarapada Mukharjee and others* **(AIR 1973 Calcutta 233)** the Calcutta High Court did not restrain the inquiry which relate to causes of incident and negligence of the police and other officials for the reason that the subject matter of the Commission is totally different and does not overlap. This finding of the Court is squarely applicable to this case where primary purpose of the Tribunal

was also to see the causes and negligence of the officials and does not relate to the commission of cognizable offence by the accused in the FIRs and criminal complaint, which are subject matter of the trial. In this context, the relevant Paragraph No.19 and 20 of the judgment is as under:-

> *"The next contention, on behalf of the appellant, was that the holding of a public inquiry by a Commission appointed under the impugned order would amount to interference with the course of justice, as it would result in a Parallel inquiry over a matter which was pending investigation by the Police, and which might ultimately be taken up by the Court for trial. In order to deal with this contention, it is necessary to examine the question, whether the subject-matter of the inquiry before the Commission on Inquiry, and the subject matter of the criminal proceedings, are such that it can be held that the proceedings before the two Tribunals are Parallel proceedings or that the subjects to be dealt with by them overlap each other. The matter, which is pending investigation by the Police and which may ultimately lead to a trial in a Criminal Court, is the Commission of one or more cognizable offences, leading to three deaths in the town of Bur-down. The first information report specifies the commission of such offences by certain persons unnamed. The appellant's name has not been mentioned in the first information report. In course of investigation, however, the appellant was arrested as an accused in the case. If the appellant is sent up for trial in the Criminal Court, it would be trial for commission of a cognizable offence, set out in the first information report or made out in course of the investigation. The matters which have been referred to the Commission of Inquiry are:*

(a) Causes which led to the incident, resulting in the death of three persons and injury to several others,
(b) Whether the Police and other local officials were negligent in the discharge of the duties to prevent occurrence and protect the life and property,
(c) If the police was negligent, cause of such negligence, and
(d) Matters relevant and incidental to the matters set out in the Clauses (a), (b) and (c).

It is clear that the aim of the inquiry by the Commission, apart from a probe into the causes of the incident, is directed plainly and manifestly against the performance of duties by the Police or their negligence to perform such duties and the causes of such negligence. The subject matter of trial before the Criminal Court if a trial follows the police investigation, would be the commission of cognizable offences by particular individual or individuals. To me, it seems that the subject-matter of inquiry by the two Tribunals is entirely different and such subject-matter does not overlap each other to such an extent, as to hold that the two inquiries before the two Tribunals will be Parallel in nature."

93. From above discussion, it is obvious that apprehension of the appellants is misplaced and with disclosure of report, there is no fear of harm or likely harm to administration of justice including fair trial. The right to know under Article 19 and 19-A of the Constitution, though not absolute, is a factor which should make one wary, when secrecy is claimed for a report which has no repercussion on public security. To cover with veil of secrecy, the real facts of

the incident of public importance is not in the interest of the public. Such secrecy can seldom be legitimately allowed if desire is for the purpose of politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts to the public is the chief safeguard against oppression.

94. Notwithstanding the above legal and factual position under section 13(2) of the Act of 2013, even exceptions will not apply when public interest outweighs the harm or likely harm. The word **"public interest"** used in section 13(2) of Act of 2013 is not defined in the Act of 2013. In case of *Registrar, Thiyagarajar College of Engineering vs. Registrar, Tamil Nadu Information Commission (Madras)* **(2013 (6) MLJ 669),** it was held that public interest in relation to public administration, includes honest discharge of services of those engaged in public duty and for the purpose of maintaining transparency, it is always open to a person interested to seek for information under the Right to Information Act. In present case, in incident where there was loss of many lives and unrest in general public, it is indeed in the public interest that the real facts be disclosed to public. Here public interest clearly outweigh the

apprehension of harm to fair trial, which is otherwise misplaced as discussed earlier.

95. Learned counsel for the appellants also produced case law from English and U.S jurisdiction to argue that where there is substantial risk of prejudice to be caused to the trail, the publications of reports can be postponed. They argued that on same analogy and applying the same principles, the disclosure of report may at least be postponed till conclusion of trial. From perusal of case law produced, we have noted that in U.K, section 4(2) of the U.K contempt of Court Act, 1981 provides as under:-

> *"Section 4(2): In any proceedings, the Court may, if it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings or any part of the proceedings, be postponed for such period as the Court thinks necessary for that purpose".*

In U.S.A, the right of freedom of speech being not subject to any limitation, the Courts in U.S.A provide only exceptions where there is "grave and present danger" prejudice to the trial.

96. Plain reading of section 4(2) ibid shows that postponement of publication is for any report of the proceedings or any part of the proceedings before trial Court

and not inquiry report like in this case, which is not part of proceedings of trial Court. Courts in U.K. repeatedly held that even regarding proceedings before trial Court not all publications can be harmful or prejudice to pending trial or accused summoned. There is no hard and fast rule that when information or publication will prejudice the proceedings of the trial. However, circumstances where test of "substantial risk of serious prejudice" and "grave and present danger" to trial of the accused were applied by England Courts against media publications in Contempt of Court Act, 1981 are as under:-

i) Publication concerning character of accused or his past criminal record (*AG(NSW) vs. Willisee* **(1980 (2) NSWLR 143 (150).**

ii) Publication of confessions to police (***R. vs. Clarke, ex p Crippen (1910) 103 LT 636)***

iii) Publications which comment or reflect upon merits of case i.e. trial by newspapers *R vs. Odham's Press Ltd ex P AG* **(1957 (1) QB 73).**

iv) Publications of photographs interfering with the procedure of identification of accused

(*AG vs. News Group Newspaper Ltd* **(1984) 6 Crl App Rep (S) 418).**

v) Direct imputations of the accused's innocence (*R vs. Castro Onslow's and Whelley's case* **(1873) L.R 9 Q.B 219).**

vi) Creating atmosphere of prejudice by implying a charge which is more serious than the actual charge. (*R. vs. Hutchison, ex p McMahon* **(1936 (2) All ER 1514).**

vii) Criticism of witnesses (*Labouchers, ex p Columbus Co. Ltd* **(1901) 17 TLR 578).**

viii) Pre-mature publication of evidence (*R. v. Evening Standard, ex p DPP* **(1924) 40 TLR 833).**

ix) Publication of interference with witnesses *(AG (NSW) vs. Mirror Newspapers Ltd* **(1980) (1) NSWLR 374 (CA).**

x) Not all police activity surrounding a crime *(R v Pacini,* **(1956) VLR 544)**.

97. The above category of cases from English jurisdiction held that three prompt tests must be satisfied before suspending the

media publication of report of proceedings or part of proceedings. The first question will be whether reporting would give rise to a substantial risk of prejudice to the administration of justice in the relevant proceedings and if not, that would be the end of the matter; that, if such a risk was perceived to exist, then the second question is whether a Sec 4(2) ibid order would eliminate the risk, and if not there could be no necessity to impose such a ban and again that would be the end of the matter; and that thirdly, value judgment might have to be made as to the priority between the competing interests by applying proportionate and balancing test.

98. In present case, firstly the inquiry report is not part of trial Court proceedings. Secondly, we already found that its publication will not harm or prejudice the administration of justice. Thirdly and finally, even under the test of balancing and proportionality, the right of information in public interest outweighs the apprehended risk of prejudice to trial. Further we have also noticed that under section 4(2) ibid, the publications of proceedings and part of proceedings can only be restricted, if by the date of publication proceedings are pending meaning that a charge sheet or Challan has been filed and summons or warrants are issued. In present cases, Trial Court's proceedings produced by appellants show that summons are not issued to all the accused.

Therefore, trial of those persons who are not summoned is neither pending nor can be prejudiced by publication of report.

99. There is another important aspect of the matter which requires our attention. This is regarding interpretation of provisions of Ordinance 1969 relating to publication of reports, after promulgation of Article 19-A in the Constitution. The Ordinance 1969 is in field much before introduction of Article 19-A (through 18th Amendment) in year 2010 in the Constitution. The similar Federal Act of 1956 has been repealed and replaced by Act of 2017. Section 15 of the Act of 2017 relates to publication of inquiry reports which reads as under:-

> *"15.* ***Report to be public.*** *The Final Report or an interim report of the Commission shall be made public:---*
>
> *Provided that Final Report of the Commission shall be made public within thirty days of the submission of the report to the Federal Government:---*
>
> *Provided further that the Commission may, in the public interest, recommend to the Federal Government that all or any part of the Final Report or an interim report may not be made public."*

100. From Section 15 of the Act of 2017, it is evident that after the 18th Amendment and promulgation of Article 19-A of the Constitution, the Parliament in order to achieve the goal of the

Constitution regarding right to information, has enacted Act 2017 and recognized the fundamental right of information by making every inquiry report public unless the Commission in the public interest itself recommends to the Federal Government that all or any part of the final report or interim report may not be made public.

101. No doubt in the Ordinance 1969, there is no similar specific provision that all inquiry reports will be made public but at same time, there is also no specific prohibition that reports shall not be published. It is settled law that when two constructions are reasonably possible, preference should go to one which helps to carry out the beneficial purpose of the Act and ensure smooth and harmonious working of the constitution and eschew the other which will lead to absurdity and make the fundamental right nugatory. In the light of above rule of construction, if absence of specific provision regarding publication in the Ordinance 1969 be construed that reports shall not be published, it will not only frustrate the object of inquiry in the matter of public importance but will also encroach upon the fundamental right of the information of every citizen under Article 19-A of the Constitution in the matter of public importance. It is also primary rule of construction that if provisions of the statute are reasonably capable

of a construction which does not involve the infringement of any fundamental right, that construction must be preferred though it may reasonably be possible to adopt another construction, which leads to the infringement of the said fundamental right. Therefore, absence of specific prohibition in the Ordinance 1969 regarding publication of report, can safely be construed that every report be published subject to reasonable restrictions under the law.

102. The above interpretation also express the intention of the legislation when provisions of section 3 and 9 of the Ordinance 1969 is read with Article 19-A of the Constitution. Section 3 of the Ordinance 1969 provides that Government may appoint Tribunal into any definite "**matter of public importance**" whereas Article 19-A of the Constitution provides that every citizen shall have the right to have access to information in "**all matters of public importance**". This gives the clear intention of the law makers that in respect of every inquiry report under the Ordinance 1969, which can only be in **"matter of public importance"**, every citizen of Pakistan will have fundamental right of information of this inquiry report being a **"matter of public importance".** This right is indeed subject to reasonable restriction by law which intention of legislation envisages from Article 19-A of the Constitution itself and also from provision of section 9 of the

Ordinance 1969 which provides protection to bonafide acts of Tribunal or Government in good faith interalia regarding "publication of report". This interpretation will also bring harmony between Federal and provisional law on same subject.

103. We have also noted that unlike repealed Act of 1956 and Act of 2017, in the Ordinance 1969, there is no specific reference to Tribunal or Commission consisting of Judges of superior Courts. Section 8 of the Act of 2017 provides that fair comments made in good faith and in the public interest on the working of commission or its final report will not constitute contempt of Court. The above provisions show the scheme of laws relating to public inquiries i.e. where inquiry is by Judge of a Supreme Court or High Court, the inquiry reports shall be available to public for fair comments. Such in short is the genesis of the laws relating to public inquiries.

104. In present case, the Government had option not to conduct any inquiry in the Model Town Incident. However, the Government of Punjab in the public interest and to ensure transparent and independent inquiry requested for Judicial Inquiry. Once the Government itself opted for inquiry through Judge of a High Court, then in absence of any provision to contrary in the Ordinance 1969, the final report shall be available

to public for information and also fair comments in public interest. The Government now cannot say that report is only for eyes of Government and not for public. Notwithstanding the above legal position, when the inquiry was conducted to find out real facts and causes of incident in public interest due to loss of lives and unrest in the general public, then we are at loss to understand that how public interest be served and unrest in general public be satisfied unless the inquiry report with real facts be made available to general public.

105. Before parting with this judgment, we have noted with concern that some of the language used in memorandum of this appeal regarding learned Single Judge is not appropriate. In this context in ground (j) words used are "*the Judge in his yarn to label the proceedings*". In ground (k), the words are "*one of the aspect of a judicial proceedings is legally misplaced and* ***infact naive***". In ground (m), it is written "*learned Judge came to the aid of petitioners*"……

106. It is well settled principle of law that judgments are open for honest criticism. Parties aggrieved are within their right to express their opinion on a judgment if the decision has gone wrong on a particular question. But if the motive is to scandalize and use disrespectful language to criticize the Judge, that will

cause potential menace to the confidence of public in Judges, therefore, would bring administration of justice into disrepute. No doubt, judges are not infallible and like any other human being, they are liable to error but if the criticism is on Judge instead of judgment, that will indeed obstruct the administration of justice. The above referred words used in the memorandum of appeal are not only inappropriate but they may also amount to contempt of Court in more than one way. We have also noted that the appeal was drafted by "Government Pleader" who being a Law Officer is expected to be well conversant with norms of administration of justice and language to be used in pleadings.

107. We were minded to further proceed in this matter, however, learned counsel for the appellant (Khawaja Haris Ahmad, Advocate) expressed his remorse on the above language and explained that it was not to criticize the learned Judge in any manner but these words were used bonafidely only to emphasize the grounds of appeal. This reminds us of the famous statement in *Ambard v. AG of Trinidad and Tobago* **(1936) A.C. 322** of lord Atkin in the context of criticism of Judges:-

> *"The path of criticism is a public way: the wrong headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are*

> *genuinely exercising a right of criticism, and are not acting in malice or attempting to impair the administration of justice they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men".*

The border line between fair criticism of Judgment and contempt may be thin and must be kept in mind. However, in view of explanation tendered by learned counsel for the appellant, while exercising judicial restraint, we are not further proceeding in the matter, however, deprecate the above language and expect the appellant to be more careful in future in choice of words in pleadings.

ORDER OF THE COURT.

108. For reasons recorded in the preceding paragraphs, all three appeals are dismissed with following further directions:-

(1). The copy of the inquiry report of Tribunal shall be supplied to the respondents for their information, by concerned official, forthwith.

(2). The inquiry report of the Tribunal shall be published by the concerned authorities within 30 days from the announcement of this judgment.

(3) To ensure fair trial and administration of justice, the disclosure of this inquiry report of Tribunal shall not impact upon the fate/outcome of the trial in progress in contravention of law applicable thereto.

(ABID AZIZ SHEIKH)
JUDGE

(QAZI MUHAMMAD AMIN AHMED)
JUDGE

(SHAHBAZ ALI RIZVI)
JUDGE

Announced in open Court on 05.12.2017.

JUDGE

JUDGE ***JUDGE***

Approved for reporting.

JUDGE

Riaz Ahmad