



RULING OF THE CHAIR

Issue: Entitlement of families of the sitting and former Members of Senate to medical facilities

Dates of Hearing: 06th May, 2015
13th May, 2015
14th May, 2015

The Senate Secretariat placed a file before the Chairman Senate regarding entitlement of families of sitting and former Members of Senate to medical facilities and pointed out a disparity in the legal position and the opinion given by the Ministry of Law & Justice.

2. Concisely, the facts in the instant case are, over a prolonged time a number of requests from sitting and former Members of the Senate have been received in the Senate Secretariat, for providing medical facilities to their family i.e. wife or husband and children. On the record are notes, letters, opinions, circulars and notifications giving various interpretations to the question of admissibility or otherwise of providing medical facilities to a Member and his family, particularly, with reference to a former Member and his family. These notes, letters, opinions, circulars and notifications are found in files No.3(10)/2013-14-Sen. and 3(6)/2011-12/5, of the Senate Secretariat.
3. That on one such occasion, the Senate Secretariat addressed a letter to the Ministry of Law, Justice and Parliamentary Affairs, Government of Pakistan, on the subject of, "Medical Facility for Families of Former Members," bearing letter No.3(6)/2011-12/Ser, dated 2-2-2012. The said letter was replied to by the Ministry of Law, Justice and Parliamentary Affairs through a U.O. No.F.9(1)/2006-PA(Senate), dated 10th February, 2012. The said U.O. is reproduced as under;

"Subject: Medical Facility for Families of Former Members.

Reference Senate Secretariat letter No.3(6)/2011-12/SER, dated 2-2-2012 on the above subject.

2. The matter regarding entitlement of the family members of the sitting parliamentarians has been earlier examined by this Ministry. According to Ministry of Law, Justice and Parliamentary Affairs opinion dated 9-7-2008 (copy enclosed), the family (husband, wife, parents, and children) of a sitting Members of Parliament is not found entitled to the medical facilities as that of a government servant. As such the family of the former Members of Parliament is also not entitled to the said facilities.

3. This issues with the approval of the Law Secretary.

*Javed Iqbal
Assistant Secretary"*

4. The opinion of the Ministry of Law, Justice and Parliamentary Affairs (law section-1) Islamabad, dated 9th July, 2008, which is referred to in para No.2 of the U.O. of the said Ministry, hereinabove, is reproduced as under;

"6. P.U.C. is a reference from the National Assembly Secretariat seeking legal advice of this Division as to who along with a member of the National Assembly are entitled to the medical facilities under section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974.

7. As provided under section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974, a Member is entitled to such facilities including medical facilities as were admissible to a Member of the National Assembly of Pakistan immediately before the commencement of this Act. The provisions of law regarding medical entitlement of the Member of the National Assembly of Pakistan, immediately before the commencement of the Act *ibid*, are traceable under section 3(1) read with item No.4 of the Schedule to the Members of the National Assembly (Salaries and Allowance) Act, 1966. Under these provisions a Member and the spouse, minor children and un-married daughters of the Member residing with and wholly dependent on the Member are entitled to the same medical facilities as are admissible to a Gazetted Officer (Class-I) of the Central Government and the spouse and children of such officer under the Central

Services (Medical Attendance) Rules, 1958. Under rule 10 of the Central Services (Medical Attendance) Rules, 1958, the family of a Government servant was entitled to the same medical facilities as were admissible to the Government servant himself under the rules under Rule 2(c) ibid, the wife, parents, husband and his parents, legitimate children and step children of the Government servant, residing with and wholly dependent upon him, were included in the definition of "family". These rules have since been superseded by the Federal Services Medical Attendance Rules, 1990. The term "family" as defined under rule 2(d) of the Federal Services Medical Attendance Rules, 1990, means parents, husband, wife, legitimate children and step children of Government servant's parents, sisters and minor brothers residing with and wholly dependent upon him.

8. *A careful perusal of the law/rules, referred to above, makes it clear that a Government servant is entitled to the medical facilities along with his "family" as defined under Rule 2(d) of the Federal Services Medical Attendance Rules, 1990. However, the persons entitled to the medical facilities along with a Member of the National Assembly have been specified under item No.4 of the Schedule to the Member of the National Assembly (Salaries and Allowances) Act, 1966 "Family" of a Member of the National Assembly is not found entitled to the medical facilities as that of a Government servant, except those Members specifically mentioned under section 3(1) read with Item No.4 of the Schedule to the Member of the National Assembly (Salaries and Allowances) Act, 1996, unless necessary amendment in this regard is made in section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974 and the relevant rules. The reference is answered accordingly."*
5. In the immediate matter, the Director Staff to the Leader of the House, Senate, forwarded an application of one Mrs. Saleeqa Begum, widow of Senator (Late) Raja Aurangzeb, seeking medical facility for her son who was admitted in the PIMS Hospital, Islamabad. The Leader of the House, through his Director Staff, on 30-3-2015, asked for an examination of the case and issuance of an entitlement letter if possible under the Rules. This generated a review of the laws, rules, circulars and Notifications, enacted, issued or repealed from time to time on this subject. The Section Officer (Services) came to a considered opinion dated 8-4-2015, that the son of Senator (Late) Raja Aurangzeb was not entitled to free

medical treatment in accordance with the existing rules. Thereafter, the Deputy Secretary (Services) on 10-4-2015, after a chronological review of the laws, rules and circulars came to the conclusion that there was an ambiguity arising from the various laws and rules which were in the field and also as a consequence of laws/rules which had been repealed, but the existing law draws from it, hence the matter may be referred to the Ministry of Law, Justice for their opinion. The Joint Secretary (Services), on 22-4-2015, reproduced a portion of the opinion of the Ministry of Law, Justice and Parliamentary Affairs more fully given in para No. 4 herein, and suggested that the advice of the legal council of the Senate may be obtained. On 23-4-2015, the Secretary Senate sought the orders of the Chairman. On 27-4-2015, the Chairman asked for o the relevant laws, rules, circulars and the complete opinion of the Law Ministry. Subsequently after perusal of the material on the record, the Chairman on 6-5-2015, noted that, "the matter be placed in the House", so as to benefit from the legal acumen of the prominent lawyers who are Members.

6. That in the Senate sitting held on 6th May, 2015, during the 115th Session, the Chairman, requested Senators Aitzaz Ahsan, Farogh Naseem, Barrister Saif, Javed Abbasi and issued notice to the Attorney General for Pakistan, to assist the Chairman on the following amongst other questions;

- i) Section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974. (Act No.XXVII of 1974).
- ii) Section 3(1) read with item No.4 of the Schedule of the Members of the National Assembly (Salaries and Allowances) Act, 1966, which was repealed by the Act of 1974.
- iii) Legal advise furnished by the Ministry of Law.

7. Subsequently notices alongwith relevant material was issued to Members mentioned in para No.6 above. That in the Senate sitting held on 13th May, 2015, during the 115th Session, the following Members, namely, Senator Javed Abbasi and Senator Muhammad Ali Khan Saif advanced their arguments, as under:-

- (a) While taking up the issues, Senator Javed Abbasi contended that provisions of the Members of Parliament (Salaries and Allowance) Act, 1974 are

very clear. Section 12 entitles a Member to all such facilities including medical facilities as were admissible to the Member of National Assembly of Pakistan immediately before the commencement of the said Act.' Accordingly, before the commencement of the said Act; Members of the National Assembly (Salaries and Allowances) Act, 1966 was in field wherein section 2(c) and section 3 read with item no. 4 of the Schedule to the said Act provided that 'a Member and the spouse, minor children and unmarried daughters of the Member residing with and wholly dependent on the Member shall be entitled to the same medical facilities as are admissible to a Gazetted Officer (Class-I) of the Central Government and the spouse and children of such Officer under the Central Services (Medical Attendance) Rules, 1958'. The Hon'ble Member further relied on following judgments of Apex Courts establishing that repeal of law does not effect the rights and privileges accrued:-

- (i) SCMR 2013 page 314.
- (ii) CLC 2013 page 1420.
- (iii) CLC 2008 page 222.
- (iv) PLD 2001 Lahore page 181
- (v) PLD 2002 Supreme Court page 757.

(b) Senator Muhammad Ali Khan Saif, reiterated the legal points raised by Senator Muhammad Javaid Abbasi and also contended that, with the passage of time, a 'right' is transformed into a 'vested right', hence such rights cannot be withdrawn without giving cogent reasons. He placed reliance on Maxwell's statutory interpretation which provides that "there is a presumption against intending which is inconvenient or unreasonable". He further contended that Law Division's interpretation is leading to manifest absurdity, which is in violation of general rules of interpretation.

8. In the Senate sitting held on 14th May, 2015, during the 115th Session, the Attorney General for Pakistan, who was on Notice, was present, and submitted that in terms of clause (1) of Section 12 of the Members of Parliament (Salaries and Allowance) Act, 1974, the sitting members are entitled to same benefits

which have been listed in schedule 2 item no. 4. However, clause (2) of Section 12 of the Members of Parliament (Salaries and Allowance) Act, 1974, is *ultra vires* to the Constitution, 1973, even otherwise the said provision could not have been introduced vide Finance Bill, for the following reasons:-

- a) Article 66(2) of the Constitution of the Islamic Republic of Pakistan regarding the power, immunities and privileges of Majlis-e-Shoora (Parliament) is restrictive to the Members of the House;
- b) Similarly, in the Federal Legislative List, Part-I, the Fourth Schedule, item no. 42 of the Constitution of the Islamic Republic of Pakistan, reference is made to the Members and not to the ex-Members;
- c) In view of Article 66(2) and item 42 of the Federal legislative list, legislation can only be done with regard to the members and not the ex-members.
- d) Other attempts with regard to extending suchlike benefits/privileges vide Finance Bill have been struck down by the courts. He cited PLD 2009 Supreme Court 879 (Sindh High Court Bar Association Case) and PLD 2011 Supreme Court 213 (Mir Muhammad Idrees vs. the Federation)

The learned Attorney General, while giving arguments, also referred to a fax received from the Law Division in his office, according to which, "every sitting member along-with spouse, minor children and unmarried daughters, residing with and wholly dependent, are entitled to medical facility".

- (b) The Minister of State for Information, Technology and Telecommunication was present in the House with reference to other Business. The MOS with permission of the Chair stated, that the interpretation provided by the Law Division has been prepared, arbitrarily and without consulting the lawmakers. The said interpretation is inconsistent with the established jurisprudence and it attempts to impinge upon the rights of Parliamentarians. The Minister also shared that she

had taken up the instant issue before the National Assembly, as well, during her last tenure, however, no meaningful result could be achieved.

- (c) Senator Aitzaz Ahsan, Leader of the Opposition, contended that there is a serious flaw in the interpretation made by the Law Division as privileges of a member means and include privileges and allowances extended to a member including his family members. This is in line with the national and international practices which have been developed and based upon legal provisions and their interpretation. The Hon'ble Member relied on Article 56 of the Constitution of Pakistan, 1956, Article 111 of the Constitution of Pakistan, 1962 and Article 66 of the Constitution of Islamic Republic of Pakistan, 1973, and argued that the constitutional scheme has remained same since the beginning i.e. the constitutional provisions relating to the Parliamentary Privileges find mention of the word 'Member' only, however, the subordinate legislation as well as legal interpretation enunciate and provide for the detailed procedure. Accordingly, the subordinate legislation i.e. the Members of the National Assembly (Salaries and Allowances) Act, 1966 and its sequel law i.e. the Members of Parliament (Salaries and Allowance) Act, 1974 has laid down that the word members, means and include, Members of the Parliament and their other family members.

He further relied upon Article-106 of the Indian Constitution which provides that, "Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and until provision in this respect so made allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in case of Members of the Constituent Assembly of the domain of India." under this Article the law that has been framed in India is the Salary, Allowances and Pension of Members of Parliament Act, 1954 and the rules made there under. The said Act of 1954 extends all facilities to the family members of the Parliamentarians as well. The Hon'ble Member further contended that from Law Division's opinion the perversity can be established as the Law Ministry labours under an impression that Members of Parliament are some alien people not under the same umbrella of facilities available to Civil

Servants and civil servants are the Praetorian Elite who must get all the privileges.

9. I have perused the available record on the files more particularly mentioned in para No.2 above, examined the various provisions of the relevant circulars, notifications, rules, law and the Constitution. I have also heard the submissions of the Hon'ble Senators mentioned herein and the Attorney General for Pakistan who was on Notice. The upshot of this entire discussion requires a chronological view of the various laws enacted or repealed from time to time and to place in juxta position the rules flowing from these enactments or issued from time to time by the Federal Government or any one of its Ministries or Divisions. They are as under:-

- (i) The Constituent Assembly (Legislature) Members Allowances Act, 1948, according to clause (2) of section 1 of the said Act, it came into force on the 1st day of February, 1948.

a) Section 2 of the said Act, provided as under:-

"2. Allowances of Members of Constituent Assembly (Legislature).- Members of the Constituent Assembly (Legislature) shall receive; travelling and daily allowances at the same rates and under the same conditions as are, or may hereafter be, applicable to the Members of the Constituent Assembly."

- (ii) The Members of National Assembly (Salaries and Allowances) Act, 1956, according to section 2 of the said Act, it came into force on the 15th April, 1956, received the assent of the President on 16th April, 1956.

a) Section 9 of the said Act, provided for medical facilities as prescribed by Rules to be framed under section 10 of the said Act. Both sections 9 and 10 are reproduced as under;

"9. Amenities- A Member shall be entitled to such medical, housing, telephone and postal facilities as may be prescribed under section 10.

10. For the purpose of making rules under this section, a Committee shall be set up which shall consist of the Speaker, the Finance Minister and 5

Members to be elected by the Assembly. The Speaker shall be the Chairman of the Committee and in his absence the Finance Minister shall act as Chairman.

(2) The Committee constituted under sub-section (1) shall have power to regulate its own procedure.

(3) The Committee constituted under sub-section (1) may make rules to provide for all or any of the following matters namely:--

(a) -----;

(b) -----;

(c) -----;

(d) -----;

(e) -----;

(f) ----- medical, housing, telephone and postal facilities mentioned in section 9; and

(g) -----;

(4) -----"

- b) That in pursuance of section 10 of the Members of National Assembly (Salaries and Allowances) Act, 1956. "The Members of National Assembly (Salaries and Allowances) Rules, 1956, were published in the Gazette Extra Ordinary, dated 24th July, 1958, having been approved by the President on the 22nd July, 1958.
- c) Rule 9 of the said Rules provided that a Member of the National Assembly for himself is entitled to the same medical facilities as are admissible under the Central Services (Medical Attendance) Rules, 1944, to a Gazetted Officer (Class-I) of the Government of Pakistan.
- d) That in exercise of powers conferred by sub-clause (a) of clause (2) of Article 182 of the Constitution, 1956, and in supervision of the Central Services (Medical Attendance) Rules, 1944, the President was pleased to

make the following new Rules namely "Central Services (Medical Attendance) Rules, 1958."

- iii) The Members of the National Assembly (Salaries and Allowances) Act, 1966, was given assent on 14th July, 1966. The said Act provided for the following:-

- (a) Section 3 of the said Act, provided for the salary, privileges and amenities of the Members and is reproduced as under:

"(3). Salary (1). Subject to the provisions of sub-section (2), a Member shall be entitled to receive a salary at the rate of five hundred rupees per mensem and to the privileges and amenities set out in the Schedule."

- (b) That item No. 4 of the said Schedule provided for medical facilities of a Member and is reproduced as under;

"(4). The Medical facilities. — A Member and the spouse, minor children and unmarried daughters of the Member residing with and wholly dependent on the Member shall be entitled to the same medical facilities as are admissible to Gazette Officer (Class-I) of the Central Government and spouse and children of such officer under the Central Services (Medical Attendance) Rules, 1958."

- (c) Through section 7 of the said Act, the Members of the National Assembly (Salaries and Allowances) Act, 1956, was repealed.

- iv) The Members of the Parliament (Salaries and Allowances) Act, 1974, received the assent of the President on 24th April, 1974. It was published in the Gazette of Pakistan, Extra Ordinary, dated the 30th April, 1974. The Act provides as under;

- a) Section (12) provides for medical facilities to Members and is reproduced as under;

"(12). Other facilities._ a Member shall be entitled to such facilities including medical facilities as were admissible to a Member of National Assembly of Pakistan immediately before the commencement of this Act."

- b) That vide section 15 of the said Act, the Members of Parliament (Salaries and Allowances) Act, 1966, was repealed.
 - iv) The chronological listings of the relevant Rules is as under;
 - (i) Central Services (Medical Attendance) Rules, 1944.
 - (ii) Special (Medical Attendance) Rules 1950.
 - (iii) The Central Services (Medical Attendance) Rules, 1958.
 - (iv) The Federal Services (Medical Attendance) Rules, 1990.
- 10. A reasonable perception can be drawn from the various notings on the files and legal opinions, that there is a deliberate attempt to cast a veil of reasonable suspicion, on whether a Member's family is entitled to medical facilities equivalent to those of a Gazetted Officer (Class-I). The reasoning in such notes and opinions are couched in language that in itself creates an uncalled for ambiguity.
- 11. Essentially, the following two proposition arise that need to be answered:-
 - a. Firstly, whether under sub-section (1) of section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974, a Member is entitled to such facilities including medical facilities as were admissible to a Member of the National Assembly of Pakistan immediately before the commencement of the Act, 1974 i.e. under the National Assembly (Salaries and Allowances) Act, 1966.
 - b. Secondly, whether sub-section (2) of section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974, is holding the field, thereby, allowing a former Member of Parliament and his family medical facilities.
- 12. Taking up the first proposition, section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974, states that a Member is entitled to such facilities as were admissible to a Member of National Assembly of Pakistan, immediately before the commencement of this Act, that is, under the Members of the National

Assembly (Salaries and Allowances) Act, 1966. The Act of 1966, provided under sub-section (1) of section 3 read with item No.4 of the Schedule to the said Act, that, a Member, spouse, minor children and unmarried daughters of the Member residing with or wholly dependent on the Member are entitled to the same medical facilities as are admissible to a Gazetted Officer (Class-I) of the Central Government and the spouse and children of such officer under the Central Services (Medical Attendance) Rules, 1958. Rule 10 of the said rules provides that the family of a Government Servant is entitled to the same medical facilities as were admissible to the Government Servant under Rule 2(C) *ibid*, the wife, parents, husband and his parents, legitimate children and step children of the Government Servant residing with and wholly dependent upon him, were included in the definition of family. These Rules have been superseded by the Federal Services (Medical Attendance) Rules, 1990. The term family as defined under rule 2(d) of the Federal Services (Medical Attendance) Rules, 1990, means parents, husband, wife, legitimate children and step children of the Government Servants parents, sisters and minor brothers residing with and wholly dependent upon him.

13. The arguments floated in some of these notes and legal opinions is that as, the Members of Parliament (Salaries and Allowances) Act, 1974, repealed the Members of the National Assembly (Salaries and Allowances) Act, 1966, therefore, the privileges and amenities accrued to a Member through the Act of 1966, cease to exist as also subsequent Rules were repealed by other Rules they also are not in the field. I am in concurrence with the arguments advanced by the learned Senators, that repeal cannot affect a right, privilege, obligation or liability acquired, accrued or incurred under the law. This preposition is substantiated by Article 264, Constitution, 1973, which deals with the effect of repeal of laws, further, section 6 of the General Clauses Act, 1897, provides for more or less the same. There are a number of Judgments other than those cited by the learned Senators, which reinforce the constitutional position reliance is placed on;

(iii) PTD 1998 page 2769

(iv) YLR 1999 page 2467

(v) PLD 1985 Supreme Court page 376

(vi) PLD 1985 Lahore page 195

(vii) PLD 1982 Supreme Court page 396

(viii) PLD 2005 Supreme Court page 1785

(ix) PLD 1975 Supreme Court page 469

(x) PLD 1972 Supreme Court page 252

14. The family of a Member has been specified in item No. 4 of the Schedule to the Members of the National Assembly (Salaries and Allowances) Act, 1966. Therefore, under sub-section (i) of section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974, a Member and his family i.e. spouse, minor children and unmarried daughters of the Members residing with and wholly dependent on the Member shall be entitled to the same medical facilities as are admissible to a Gazetted Officer (Class-I) of the Central Government and the spouse and children of such officer under the Federal Services (Medical Attendance) Rules, 1990. This position has also been accepted by the Ministry of Law, Justice and Human Rights Division, Government of Pakistan, vide its U.O. No.466/208-Law-I. Therefore, the first proposition stands disposed of in the above terms.

15. I now take up the second proposition related to the provision of medical facilities to a former Member and his family. I cannot agree with the contention of the learned Attorney General for Pakistan, when he states that sub-section (2) of section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974, is ultra vires of the Constitution, 1973, for the following reasons:-

- a) Article 66(2), Constitution, 1973 deals with and pertains to the powers, immunities and privileges of the Majlis-e-Shoora (Parliament), and is restricted to the Members of the House;
- b) Similarly in the Federal Legislative List, Part-I, the Fourth Schedule Item No. 42 of the Constitution of the Islamic Republic of Pakistan, reference is made to the Members and not to the Ex-Members;

- c) In view of Article 66(2) and item 42 of the Federal Legislative List, legislation can only be done with regard to the Members and not the Ex-Members.

16. In order to understand this more fully, the meanings of the words "privilege", "immunity", "amenity" and "allowance" as defined in Black's Law Dictionary, Stroud's Dictionary, Rafiq's Law Dictionary and Law Terms and Phrases by Sardar Mohammad Iqbal, is given as under;

Source	Privilege	Immunity	Allowances	Amenity
Black's Law Dictionary (Ninth Edition)	<p>Privilege. A special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability.</p> <p>Legislative privilege. Defamation. The privilege protecting (1) any statement made in a legislature by one of its members, and (2) any paper published as part of legislative business. — Also termed (in a parliamentary system) Parliamentary privilege. [Cases: Libel and Slander 37.]</p> <p>Parliamentary privilege. 1. See legislative privilege. 2. Privilege (5)</p> <p>Page No. 1316-1317</p>	<p>Immunity. 1. Any exemption from a duty, liability, or service of process; esp., such an exemption granted to a public official or governmental unit. Cf. Impunity.</p> <p>"An immunity is a defense to tort liability which is conferred upon an entire group or class of persons or entities under circumstances where considerations of public policy are thought to require special protection for the person activity or entity in question at the expense of those injured by its tortious act. Historically, tort litigation against units of government, public officers, and charities, and between spouses, parents and children has been limited or prohibited on this basis. "Edward J. Kionka, Torts in a Nutshell 341 (2d ed. 1992)</p> <p>Absolute immunity. (17c) A complete exemption from civil liability, usu. Afforded to officials while performing particularly important functions, such as a representative enacting legislation and a judge presiding over a</p>	<p>Allowance. (14c) 1. A share or portion, esp. of money that is assigned or granted.</p> <p>Page No. 89</p>	<p>Amenity. Something tangible or intangible that increases the enjoyment of real property, such as location, view, landscaping security, or access to recreational facilities.</p> <p>Page No. 96</p>

Source	Privilege	Immunity	Allowances	Amenity
		lawsuit. Cf. qualified immunity. [Cases: Officers and Public Employees 114] Constitutional immunity. (1852) Immunity created by a constitution. Legislative immunity. (1890) The immunity of a legislator from civil liability arising from the performance of legislative duties. See congressional immunity. [Cases Municipal Corporations 170] Page No. 817-8		
Stroud's Judicial Dictionary (7 th Addition)	Privilege. 'Privileges' are liberties and franchises granted to an office, place, town, or manor, by the Kings great charter, letters patents, or Act of Parliament: as toll, sake, socke, infangtheefe, outfangtheefe, turne, or delfe, and divers such like" (Termes de la Ley). See further Cowel; Jacob; Franchise. "Privilege" (R.S.C., Ord.31, r.19(a)(2), now Ord. 24, r.13) is not used in a narrow sense, but extends to every case in which inspection is sought to be resisted on any ground whatsoever (Ehrmann v Ehrmann (No.2) [1896] 2 Ch. 826). (Vol-III) Page No. 2133		Allowance. A mere "allowance", agreed to by a lessor by a memorandum on the lease, does not operate as a reduction of the rent reserved, but one as an independent agreement (Davies v Stacy, 4P. & D., 157) "Commission, discount, or allowance" (Companies Act 1900 (63 & 64 Vict. C.48), s.8(2) – see now Companies Act 1948 (c.38), s. 52(2)0: see Hilder v Dexter [1902] A.C. 474, cited Commission. "Exclusive of any allowance for past or future profits": see per Herschell, L.C., Edinburgh Street Tramways Co v Edinburgh [1894] A.C. 456, cited Tramway. "Allowance shall be made for ... debts". (Finance Act 1894 (c.30), s7(1).) The allowance was made under this section only for such debts as were payable out of the property charged with duty; consequently where estate duty was chargeable on gifts made by the deceased within	Amenities. The amenities of any place include any view of or from that place". Stat. Def., Petroleum (Amendment) Act 1928 (c.20), s.7, and Petroleum (Consolidation) Act 1928 (c.32), s.23. "Amenity" appears to mean "pleasant circumstances or features, advantages", e.g. wide streets and plenty of air and room between houses. "Amenities of the locality" (General Rate Act 1967 (c.9), s.20(1)(b)). "Amenities" embraces factors of an intangible nature as well as physical factors and applies to those aspects of the locality which are capable of affecting all the hereditaments in the locality, and not merely a separate class such as commercial premises. (Addis v Clement [1988] 1 W>L>R> 301). (Vol-1) Page No. 119-120

Source	Privilege	Immunity	Allowances	Amenity
			<p>three years of his death and the free estate was insufficient to pay the debts, the donees could not claim to deduct the debts from the value of the gifts.</p> <p>The meaning of allowance is a matter of fact (Girls' Public Day School Trust Ltd v Ereaut [1931] A.C. 12), although should it be a question of construction in its particular context it will be a matter of law (Binding v Great Yarmouth Port & Harbour Commissioners, 128 L.T. 743) (Finance Act 1965 (c.25), s.56(2)). By the ordinary meaning of the word an "allowance" cannot be automatic and has first to be claimed. Therefore for corporation tax purposes capital allowances to which a company is entitled should not be credited to it automatically (Ellis v BP Oil Northern Ireland Refinery [1987] S.T.C. 52)</p> <p>(Vol-I) Page No. 112</p>	
Rafiq's Law Dictionary (Second Edition)	<p>Privilege 1. A special legal right, favour, or immunity specially granted to a person or class of persons; a right or advantage or special favour. It stipulates a positive benefit, and not its negation</p> <p>Disadvantages, disfavour or negation of enjoyment of right cannot be said to be a privilege 2. The right of a witness when testifying to refuse to disclose the fact asked for on the ground of some special interest recognized by law ; the right of a party to</p>	<p>Immunity freedom or exemption from legal proceedings.</p> <p>Absolute immunity. A complete exemption from civil liability afforded to officials while performing important functions, such as a representative enacting legislation and a judge presiding over a lawsuit.</p> <p>Constitutional immunity. Immunity created by a constitution.</p> <p>Page No. 406-407</p>	<p>Allowance 1. A share or portion of something, especially of money that is assigned or granted. 2. A sum of money paid regularly to a person to meet expenses. 3. A deduction. 4. Service law. A payment beyond the agreed salary for additional services. 5. A reduction from the stated price; a concession; rebate.</p> <p>Page No. 48</p>	<p>Amenity A tangible or intangible thing that increases the enjoyment of real property, such as location, view, security, etc.</p> <p>Page No. 51-52</p>

Source	Privilege	Immunity	Allowances	Amenity
	<p>refuse to disclose a document or produce a document or to refuse to answer questions on the ground of some special interest recognized by law. 3. The right of a lawyer or official to refuse to divulge confidential information.</p> <p>Page No. 676-677</p>			
<p>Law Terms and Phrases</p> <p>By Sardar Muhammad Iqbal Khan Mokal</p>	<p>Privilege. An exemption from some duty or burden. "Privilege". Immunity from civil action is a privilege. Immunity from civil action is a privilege. Immunity from civil action may be described as a privilege, because the word "privilege" is sufficiently wide to include an immunity. Mohanlal Jain v. Maharaja Shri Sawai Man Singhji.</p> <p>Page No. 711</p>	<p>Immunity. Freedom from punishment; exemption</p> <p>Page No. 450</p>	<p>Allowances imports of voluntary act and implies a discretion in "doing something which a person is to perform or withhold at pleasure. To allow implies the right to determine and is the act of a superior towards a dependant granting a privilege which he has authority to confer or deny. It does not express the relations existing between co-contractors, vendor and vendee, or employer and employee, where there is a right secured by contract on one side and no voluntary action on the other.</p> <p>Page No. 74</p>	<p>Amenity. Something which enhances the value of the tenancies of the building and renders such tenancies agreeable and pleasant ... that no rigid rule can be laid down; it would entirely depend upon the history and facts of the individual case. S. Subramaniam V. K. V. Rajaram and others, A.I.R 1966 Mad.</p> <p>Page No. 80</p>

17. While examining clause (2) of Article 66, Constitution, 1973, it be noted, that in respect of Parliament, the said clause refers to "powers, immunities and privileges" on the other hand, with reference to Members of Majlis-e-Shoora (Parliament), it refers to the "immunities and privileges,". This clause deals with the powers, privileges and immunities of Parliament and its Members. In this context the word immunities, means any exemption from a duty, liability, or service of process; such an exemption granted to a public official. Privileges are those which accrue in the performance of parliamentary functions by Parliament or a Member and are dealt with under the Rules of Procedure and Conduct of Business in the Senate, 2012, or corresponding Rules of the National Assembly

framed under clause (1) of Article 67, Constitution, 1973. This clause does not deal with the amenities which are dealt with under the Members of Parliament (Salaries and Allowances) Act, 1974 or such other legislation prior in time to it.

18. Further in the book entitled Practice & Procedure of Parliament (Sixth Edition) by M.N. Kaul and S.L. Shakhder, which is considered an authority in Parliamentary practice, in Chapter XI, entitled Powers, Privileges and Immunities of Houses, their Committees and Members, at page 219, privilege is defined as under;

"In parliamentary language the term privilege applies to certain rights and immunities enjoyed by each House of Parliament and committees of each House collectively, and by members of each House individually. The object of parliamentary privileges is to safeguard the freedom, the authority and the dignity of parliament.

In interpreting these privileges, therefore, regard must be had to the general principle that the privileges of Parliament are granted to members in order that "they may be able to perform their duties in Parliament without let or hindrance". They apply to individual members "only insofar as they are necessary in order that the House may freely perform its functions. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects". Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws unless there are good and sufficient reasons in the interest of Parliament itself to do so".

19. In the light of Kaul cited above, it be noted that clause (2) of Article 66, Constitution, 1973, is *pari materia* to Article 105 of the Constitution of India which is reproduced as under;

"105. Powers, Privileges, etc., of the Houses of Parliament and of the members and committees thereof. - (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Parliament, there shall be freedom of speech in Parliament.

(2) No member of the Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any committee

thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, 1 [shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-Fourth Amendment) Act, 1978.]

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Parliament or any committee thereof as they apply in relation to members of Parliament."

20. From the definitions in Blacks Law Dictionary, Stroud's Dictionary, Rafiq's Law Dictionary and Law Terms and Phrases by Sardar Mohammad Iqbal, give in para No. 15 above, the distinction between the words "immunity" and the "amenity" is abundantly clear. The word "amenity" has been wrongly used as it has no nexus whatsoever, with the salaries, allowances and privileges of Members. Wherever such word appears in the existing laws or rules, the Ministry of Law Justice and Human Rights should move an appropriate amendment to delete the same. The Ministry of Law Justice and Human Rights should move an appropriate amendment to delete this word. Article 66(2), Constitution, 1973, is controlled by the words "immunities and privileges" as defined hereinabove.
21. The word "salaries and allowances" are covered under Article 250, Constitution, 1973, more particularly for a Member of the Senate under para (b) of clause 2 of the said Article. This is *pari materia* to Article 106 of the Constitution of India.
22. It may be noted that in the Constitution, 1973, for constitutional offices with the exception of the Chief Justice of the Federal Shariat Court, i.e. sub-clause (9) of Article 203(C), Constitution, 1973, and a Judge of the Supreme Court or of a High Court, remuneration and other terms and conditions of service, i.e. Article 205, Constitution, 1973, while the other offices are covered under Article 250, Constitution, 1973, and no separate provision has been provided for them.

23. In Article 250, Constitution, 1973, the word/words used are the President, the Chairman Senate and a Member of the Senate or of the National Assembly etc. The specific mention of the term, "a former President", "a former Chairman Senate", "a former Member of the Senate", or "a former Member of the National Assembly" is not found in Article 250, Constitution, 1973. The words "salaries", "allowances" and "privileges" collectively constitute the terms and conditions of service, which may or may not, include pension or other retirement benefits. Therefore, all legislation flowing from the said Article read with item 42 of the Federal Legislative List Part-I provides for amongst others, the terms and conditions of service or pension or other privileges and allowances after retirement. As a consequence, through enactment, Presidential Order or any other instrument, the salaries, allowances and privileges of the President are governed by the President's Salary, Allowances and Privileges Act, 1975, and pension by the President's Pension Act, 1974 (Act No. IX of 1975), where other post retirement privileges are provided. Similarly the Governor of a Province appointed under Article 101, Constitution, 1973, is allowed a pension vide President's Order No. 3 of 1974, Governor's Pension Order, 1974 The Judges remuneration (under Article 60, Constitution, 1973, includes pension) and other terms and conditions of service of a Judge of a Supreme Court or a High Court are controlled by Article 205 read with the Fifth Schedule, Constitution, 1973.
24. It may be pointed out, the appointments to the Service of Pakistan and conditions of service of a Civil Servant are governed by Article 240, Constitution, 1973. In pursuance of the said constitutional provision, The Civil Servants Act, 1973, has been enacted to regulate the appointment and terms and conditions of persons in the Service of Pakistan. Article 240, Constitution, 1973, does not find mention of the words, "Ex or retired Civil Servants", however, section 19 of the Civil Servants Act, 1973, provides as under:-
- "19. Pension and gratuity.- (1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.*
- (2) In the event of death of the civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.*

(3) No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such a civil servant, not exceeding two-thirds of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisional such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity; and any overpayment consequent on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family."

Flowing from the above mentioned provisions, the following rules have been adopted:-

- i) The Liberalize Pension Rules for Civil Servants, 1977.
- ii) The Pensioners Benefit Account Rules, 2003
- iii) The Revision of the Basic Pay Scales, Allowances and Pension of Civil Employees of Federal Government (2005).

25. If the argument of the Attorney General is to be relied upon then, all the laws enacted by Parliament that prescribe the salaries, allowances, privileges and pensions under law are illegal and ultra vires of the Constitution, 1973, because the said Article deals with only the incumbent. This view is incorrect. The conclusion that can be drawn from the above discussion is, the scheme of the Constitution, 1973, does not require a specific mention or references of a non-incumbent, for him to draw a pension or other amenities and privileges, as this is part and parcel of the service or terms and conditions of the incumbent. Therefore, subordinate legislation can be done in this behalf.
26. The intention of the legislature to provide privileges and facilities, including medical facilities is clear. Attention is drawn to SRO 131(1)-2012, dated 8th

February, 2012, wherein, the following facilities for all ex Members of Parliament, who remained a Member of either House for at least one term are as under:-

- i) *Free access to the Secretariats, Library and Lounges of the Senate, National Assembly and all the Provincial Assemblies;*
- ii) *A permanent Entry Pass to observe the proceedings of the Senate and National Assembly;*
- iii) *Use of VIP lounges at all Airports in the country;*
- iv) *All formal courtesies extended to Member, Majlis-e-Shoora (Parliament) by diplomatic missions abroad;*
- v) *Use of Federal Government Lodges and Guest Houses excluding Parliamentary Lodges on payment of normal rent subject to the availability of accommodation and giving priority to the sitting Member;*
- vi) *Entitlement for an official/gratis Passport; and*
- vii) *Have access to an interview with any Government functionary of the Federal and Provincial Government.*

27. On perusal of the said SRO, amongst others, particularly the entitlement of official/gratis passport, use of VIP Lounges at all Airports in the country, use of Federal Government Lodges and guest houses excluding Federal Lodges, courtesies extended to Member of Majlis-e-Shoora (Parliament) by diplomatic missions abroad to be extended to a former Member; read with the insertion of sub-section (2) to section 12 of The Members of Parliament (Salaries and Allowances) Act 1974, providing, for medical facilities at par with a Member, as provided under sub-section (1) of section 12 of the said Act. Is ample evidence that the legislators' intent is to place at almost an equal footing a former Member.
28. The contention of the Attorney General for Pakistan, that other attempts with regard to extending such like benefits/privileges vide Finance Bill have been struck down by the Courts, to that extent only is correct. In this context, it is pertinent to mention that the Senate of Pakistan, on 11th January, 2010, passed a

Private Members' Bill titled "The Members of Parliament (Salaries and Allowances) (Amendment) Bill, 2010" regarding facilities to the ex-members of Parliament. The said Bill was transmitted to the National Assembly in terms of Rule 106 of the rules of procedure and Conduct of Business in the Senate, 1988, however, the National Assembly Secretariat, vide letter No. F.23(2)/2010-Legis, returned the Bill to the Senate with the contention that the "Madam Speaker has declared the said Bill as a Money Bill can be originated in the National Assembly only".

- i) I have gone through the Judgments cited by the learned Attorney General for Pakistan and, find that they are distinguishable and do not apply on all fours in the instant case. In the case of "Mir Muhammad Idrees versus the federation" i.e. PLD 2011 Supreme Court, 213, the main question for determination was whether section 11(3)(b) of the Banks (Nationalization) Act, 1974, as amended by the Banks (Nationalization) amended Act, 1977, which related to the appointment of Chairman, President and Members of the NBP Board, could have been amended by the Finance Act, 2007 (Money Bill) passed in terms of Article 73 and 75 of the Constitution, 1973. In the said case, the Supreme Court held that the said amendment could not have been made by way of the Finance Act, 2007, as it lacked the constitutional requirements envisaged in Article 73 of the Constitution. In the matter of the Sindh High Court Bar Association verses the Federation of Pakistan i.e. PLD 2009, Supreme Court, 879, the question involved amongst others, was whether raising the strength of Judges in the Supreme Court, through an amendment in the Finance Act, 2008 was constitutional. The Court came to the conclusion that as Article 176 of the Constitution, 1973, provided that the strength of the Judges of the Supreme Court shall be determined through an Act of Parliament, the procedure of a Money Bill under Article 73 which is specific only to the National Assembly, whereas an Act of Parliament as envisages in the said Article requires the process prescribed in Article 70 of the Constitution, 1973, to be adopted. The said Judgments do not have an over arching effect for all past legislation carried out through

Finance Bills, nor do they provide a blanket retrospective effect. In fact they are essentially specific to the subject matters raised in the specific litigation. It can be said that they lay down the broad parameter as to which amendments to various existing laws are admissible under the process prescribed under Article 73 of the Constitution, 1973 i.e. a Money Bill, and which amendments have to follow the process under Article 70 of the Constitution, 1973. As caution the Government is advised to amend sub-clause (2) of section 12 of the Members of Parliament (Salaries and Allowances) Act, 1974, through the process provided in Article 70 of the Constitution, 1973, to avoid any test on the touchstone of the principles laid down in the said Judgments of the Supreme Court.

- ii) Therefore, the status of a former Member and his family who has served at least one term with respect to medical facilities, will be the same as those allowed to a Member, which includes his family, as has been discussed and held hereinabove in paras No. 9(iv), 12 and 14.

29. Therefore, in terms of above discussions the two propositions framed in para No. 11 above and answered in paras No. 14 and 28, above are collectively answered as herein:

Proposition No. 1: The family of a Member has been defined in Item No. 4 of the Schedule to the Members of the National Assembly (Salaries and Allowances) Act, 1966. Therefore, under sub-section (i) of section (12) of the Members of Parliament (Salaries and Allowances) Act, 1974, a Member and his family i.e. spouse, minor children and unmarried daughters of the Members residing with and wholly dependent on the Member shall be entitled to the same medical facilities as are admissible to a Gazetted Officer (Class-I) of the Central Government and the spouse and children of such Member under the Federal Services (Medical Attendance) Rules, 1990.

Proposition No. 2: Insertion of sub-section (ii) in section (12) of the Members of Parliament (Salaries and Allowances) Act, 1974 is through the Finance Act, 2011,

such benefits and privileges extended through the said amendment have not been specifically struck down by the Supreme Court of Pakistan.

30. Before parting with this Ruling, I am grateful to the learned Senator Aitzaz Ahsan, Senator Javed Abbasi, Senator Muhammad Ali Khan Saif and the Attorney General for Pakistan, for their valuable assistance to the chair. This reference is disposed off in terms referred to hereinabove.
31. The Senate Secretariat is directed to provide a copy of this Ruling to the office of the Speaker, National Assembly of Pakistan, Ministry of Law, Justice and Human Rights, Ministry of Parliamentary Affairs and Ministry of Finance.



MIAN RAZA RABBANI

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Chairman Senate

Announced in the House on: 8th July, 2015