

# LAHORE HIGH COURT BULLETIN



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## FORTNIGHTLY CASE LAW BULLETIN

(01-12-2022 to 15-12-2022)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**  
**Government of K.P. through Chief Secretary, Peshawar and others v. Maqсад Hayat**  
**Civil Petitions No. 84-P, 377-P, 307-P of 2020 & 469 -P, 474-P, 479 -P to 549 -P of 2021**  
**Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Amin-ud-din Khan, Mr. Justice Muhammad Ali Mazhar**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 84 p 2020.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 84 p 2020.pdf)

**Facts:** These 76 Civil Petitions for leave to appeal are directed against the Judgments passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, whereby the appeals filed by the respondents were allowed.

**Issues:**

- i) When a Tribunal or Court decides a point of law relating to the terms of service of a civil servant whether the same only covers the civil servant who litigated?
- ii) Whether terms and conditions of service of civil servants can be varied to their disadvantage?
- iii) Whether conveyance allowance of teachers can be stopped during summer or winter vacations?
- iv) What is the definition of word “pay”?

**Analysis:**

- i) If the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rules of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation, instead of compelling them to approach the Tribunal or any other legal forum.
- ii) As a reference, the first and foremost is the Civil Servants Act, 1973, wherein under clause (b) of Section 2, "pay" is defined as the amount drawn monthly by a civil servant as pay and includes technical pay, special pay, personal pay and any other emoluments declared by the prescribed authority to be pay. Under Section 3 of the same Act, it is provided that the terms and conditions of service of a civil servant shall be as provided in this Act and the rules, whereas Sub-Section (2) explicates that the terms and conditions of service of any person to whom this Act applies shall not be varied to his disadvantage, with a further rider under Section 23 that where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favourable to him than that provided by this Act or such rule. If we dwell on clause (e) of Section 2 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, “pay”, is defined as the amount drawn monthly by a civil servant as pay and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be pay. In the same way, Section 3 of the Act is related to the terms and conditions of service of a civil servant as provided in this Act and the rules; while Section 17 of the Act

provides that a civil servant appointed to a post shall be entitled, in accordance with the rules, to the pay sanctioned for such post. Likewise, under Section 23 (saving clause), it is clearly provided that where this Act or any rule is applicable to the case of a civil servant the case shall not be dealt with in any manner less favourable to him than that provided by this Act or such rule.

iii) A glimpse at Fundamental Rule 28(b) shows that vacations count as duty; there is no statutory provision under which conveyance allowance of the respondent could be stopped or reclaimed.

iv) The definition of “pay” refers to all emoluments, which are being paid to a civil servant under the terms and conditions of service, hence, no action less favourable to the terms and conditions of service could be taken, which otherwise amounted to a violation of the terms and conditions of service of a civil servant .

- Conclusion:**
- i) If Tribunal or Court decides a point of law relating to the terms of service of a civil servant that covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings.
  - ii) The terms and conditions of service of civil servants cannot be varied to their disadvantage or less favourable in view of Section 23 of Civil Servants Act, 1973.
  - iii) The payment of conveyance allowance to the teachers cannot be stopped during summer or winter vacations.
  - iv) The definition of “pay” refers to all emoluments, which are being paid to a civil servant under the terms and conditions of service.

- 2. Supreme Court of Pakistan**  
**M/s Pakistan WAPDA Foundation v.**  
**The Collector of Customs, Sales Tax, Lahore, etc.**  
**Civil Appeal No. 458 of 2017**  
**Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.a. 458 2017.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.a. 458 2017.pdf)

**Facts:** The appellant challenged the judgment of the Lahore High Court rendered in Excise Tax Reference, whereby three concurrent orders passed by the adjudicatory forums provided under the Central Excises Act, 1944 and the Sales Tax Act, 1990 had been maintained. The appellant was granted the leave to appeal by this court.

- Issues:**
- i) When Parliament can be said to have transgressed the legislative authority?
  - ii) When a person can be charged excise duty and at what rate under the Central Excise Act?
  - iii) What is scope and extent of term ‘manufacturer’ under Central Excise Act?
  - iv) What would constitute the transfer of possession of raw material by 2<sup>nd</sup> party to first party where title of raw material would remain with 2<sup>nd</sup> party?
  - v) What does the construction of words ‘not only...but also’ in definition of manufacturer u/s section 2(25) of Central Excise Act suggests?
  - vi) When a person can be charged tax under Sales Tax Act?



vii) What is difference between definitions of term “manufacturer” under the Sales Tax Act & Central Excises Act?

**Analysis:**

i) The legislative authority of the Parliament has been clearly laid down in the 4th Schedule to the Constitution, and where the Parliament transgresses the said authority and enacts a law encroaching upon a legislative field not provided for in the Federal List, or the erstwhile Concurrent List, the law so enacted would be without lawful authority in view of the clear mandate of Article 142 of the Constitution

ii) Central excise duty is an in-direct tax, the incidence whereof is to be passed on to the consumer. The subject matter is the specified ‘excisable goods’ and ‘excisable services’, as provided in the First Schedule to Central Excises Act; the ‘taxing event’ is when the ‘excisable goods’ are produced or manufactured, or when the ‘excisable services’ are provided or rendered; the person liable to pay the tax is who produces or manufactures the ‘excisable goods’, or the one who provides or renders the ‘excisable services’; and the extent of liability, that is the rate of excise duty, is specified in the First Schedule to the Central Excises Act. It is only when the first two essential conditions are fulfilled that the excise duty at the rate specified under the Central Excises Act would be chargeable to the person who manufactured the ‘excisable goods’, or the person who provided the ‘excisable services’.

iii) The definition of the term provided under the Central Excises Act of Pakistan is more expansive and exhaustive in scope, as it includes ‘any process of re-manufacture, remaking, reconditioning or repair’. Supreme court has, in several judgments, enunciated certain principles for adjudging what constitutes ‘manufacture’ within the purview of the scheme envisaged in the Central Excises Act. Some of the leading principles in this regard are: i. The Central Excises Act enlarges the scope of the word ‘manufacture’ to such acts, processes, works, and repair which may not generally be covered by the word literally. ii. The word ‘manufacture’ includes any process incidental or ancillary to the completion of a manufactured product and any process of re-manufacture, remaking, reconditioning or repair and the process of packing or repacking such product. iii. It is not necessary that any new article may be produced in this process. The article may even remain the same but the processing may make it a finished good different in quality or utility from the original one. iv. A process in which goods, though remain same, are made marketable and are, therefore, regarded by the purchasing public as different articles having a positive and specific use in their new state. v. The definition of the word ‘manufacture’ contained in the Central Excises Act is not an absolute one but a qualified one, and thus leaves ample scope for enlarging the scope of the definition.

iv) When two parties entered into an agreement, whereby raw material (waste transformer oil), was provided free of cost by 2<sup>nd</sup> party to 1<sup>st</sup> party for reclamation of transformer oil. The title of waste transformer oil during the entire process of reclamation remained with 2<sup>nd</sup> party. Therefore, the transfer of possession of

waste transformer oil by 2<sup>nd</sup> party to the 1<sup>st</sup> party under a contract, so that the same is reclaimed and made useable, and thereafter, is returned to 2<sup>nd</sup> party, would constitute ‘bailment’ within the contemplation of section 148 of the Contract Act, 1872.

v) The construction ‘not only....but also’ is called a correlative conjunction and is used to present two related pieces of information, with the second one being more surprising or different than or independent of the first. Use of a comma before ‘but also’ suggests that a new or different category starts after the comma, and the words ‘if those goods are intended for sale’ found at the end of the description of two instances relate to the latter category only. It may, thus, be said that the explanatory instances of the word ‘manufacturer’ leave us with the following two categories: i. a person who employs hired labour in the production or manufacture of excisable goods; and ii. a person who engages in the production or manufacture of excisable goods on his own account if those goods are intended for sale.

vi) Like any other indirect taxes, the incidence of this tax is also passed on to the consumer. But unlike the Central Excises Act, the Sales Tax Act is not restricted to specified goods and specified services provided in its schedule, rather it encompasses in its purview ‘supply’ of all goods other than exempted goods. It can be gathered from the definition of ‘taxable goods’ as provided in section 2(39) and the relevant portion of the charging section, that is section 3 of the Sales Tax Act that the intent of the legislature is to encompass two events to charge the tax: first, when taxable supplies are made in the course of furtherance of a taxable activity carried out by a registered person in Pakistan; second, when the goods are imported into Pakistan. The amount of sales tax is ad valorem, based on the value of the taxable supplies made in Pakistan or the goods imported into Pakistan. Regarding the responsibility of paying the sales tax, section 3(3) clearly identifies that this would be the person making the supply or importing the goods into Pakistan.

vii) The term ‘manufacture’ as defined in section 2(16) of the Sales Tax Act, has a marked difference from the definition of the same term provided in the Central Excises Act. A watchful reading of the definitions under the two enactments reveals that the one provided under the Central Excises Act has a more extensive scope, as it includes ‘any process of re-manufacture, remaking, reconditioning or repair’, which are not provided in the definition of the said term provided under the Sales Tax Act.

- Conclusion:**
- i) Parliament transgresses the legislative authority if it enacts a law encroaching upon a legislative field not provided for in the Federal List, or the erstwhile Concurrent List.
  - ii) The person who produces or manufactures the ‘excisable goods’, or the one who provides or renders the ‘excisable services’ is liable to pay the tax; and the extent of liability, that is the rate of excise duty, is specified in the First Schedule to the Central Excises Act.
  - iii) The definition of the term provided under the Central Excises Act of Pakistan is more expansive and exhaustive in scope, as it includes ‘any process of re-

manufacture, remaking, reconditioning or repair’.

iv) The transfer of possession of raw material by 2<sup>nd</sup> party to 1<sup>st</sup> party where title of raw material would remain with 2<sup>nd</sup> party would constitute ‘bailment’ within the contemplation of section 148 of the Contract Act, 1872.

v) The construction ‘not only....but also’ is called a correlative conjunction and is used to present two related pieces of information, with the second one being more surprising or different than or independent of the first. Use of a comma before ‘but also’ suggests that a new or different category starts after the comma, and the words ‘if those goods are intended for sale’ found at the end of the description of two instances relate to the latter category only.

vi) The intent of the legislature is to encompass two events to charge the tax under Sales Tax Act: first, when taxable supplies are made in the course of furtherance of a taxable activity carried out by a registered person in Pakistan; second, when the goods are imported into Pakistan.

viii) The definition of “manufacturer” under the Central Excises Act has a more extensive scope, as it includes ‘any process of re-manufacture, remaking, reconditioning or repair’, which are not provided in the definition of the said term provided under the Sales Tax Act.

- 3. Supreme Court of Pakistan**  
**Divisional Superintendent Postal Services Faisalabad etc. v.**  
**Khalid Mahmood & others**  
**C.M.As No. 3837 to 3845 of 2022 in civil petitions No. Nil of 2022.**  
**Mr. Justice Sardar Tariq Masood, Mr. Justice Amin -ud-Din Khan, Mr.**  
**Justice Muhammad Ali Mazhar**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 1874 2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 1874 2022.pdf)

**Facts:** Through these Appeals, the petitioners have assailed the common Judgment passed by the Federal Service Tribunal whereby the respondents sought the directions of the Tribunal against the petitioners to grant the arrears of pay and allowances as earlier directed by the Tribunal in the identical cases filed by the similarly placed employees of the Department.

**Issues:** i) Whether the Service Tribunal can be deemed to be a Civil Court?  
 ii) Whether Service Tribunal can decide the lis on the basis of admission on the analogy for decreeing the suit by the civil court under Order XII, Rule 6, CPC?

**Analysis:** i) According to the command of Section 5 (2) of the Service Tribunals Act, 1973, the Tribunal is deemed to be a Civil Court and have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 including the powers of enforcing the attendance of any person and examining him on oath; compelling the production of documents and issuing commission for the examination of witnesses and documents.  
 ii) The analogy and/or raison d'être of the provision for decreeing the suit by the civil court as encapsulated under Order XII, Rule 6, CPC is quite applicable in case Service Tribunals have such circumstances which empowers and qualifies

the civil court to dispose of the lis with regard to which there is no dispute between parties, but for this purpose the entire plaint or written statement is required to be read for the purposes of finding out the nature of the admission, whether it is clear, specific, unambiguous, definite and categorical and the Court is bound to examine the plaint and written statement with diligent application of mind to ascertain the nature of admission.

**Conclusion:** i) The Service Tribunal can be deemed to be a Civil Court.  
ii) Service Tribunal can decide the lis on the basis of admission on the analogy for decreeing the suit by the civil court under Order XII, Rule 6, CPC.

**4. Supreme Court of Pakistan**  
**Controller General of Accounts, Government of Pakistan, Islamabad v. Abdul Waheed etc.**  
**Civil Petitions No. 1775 to 1778 and 1793 of 2022**  
**Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 1775 2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 1775 2022.pdf)

**Facts:** The Respondent-Employees were not considered for promotion owing to amendments made in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. However their service appeals were allowed by Federal Service Tribunal and the Department was directed to consider them for promotion. Petitioners have filed Civil Petitions for leave to appeal against the said judgment of Federal Service Tribunal.

**Issues:** Whether amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 will operate retrospectively?

**Analysis:** It is a well-settled principle of interpretation of statutes that where a statute affects a substantive right, it operates prospectively unless, by express enactment or necessary intendment, retrospective operation has been given. The insertion or deletion of any provision in the rules or the law, if merely procedural in nature would apply retrospectively but not if it affects substantial rights which already stood accrued at the time when the un-amended rule or provision was in vogue.... In other words, before a law will be construed as retrospective, its language must imperatively and clearly require such construction. Amendatory statutes are subject to the general principles relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary.

**Conclusion:** Amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 will not operate retrospectively unless, by express enactment or necessary intendment, retrospective operation has been given.

- 5. Supreme Court of Pakistan**  
**Muhammad Ghaffar (deceased) through LRs and others v. Arif Muhammad**  
**C.P.L.A. No. 1511 OF 2022**  
**Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-din Khan**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.\\_1517\\_2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p._1517_2022.pdf)
- Facts:** Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 leave has been sought against the judgment passed by the learned Single Judge of the Peshawar High Court, Peshawar whereby Civil Revision filed by the petitioners was dismissed.
- Issues:**
- i) When property is not specific, whether a decree can be passed in the light of section 21 of the Specific Relief Act, 1877?
  - ii) When the evidence of payment of earnest money/partial consideration amount is in oral form which is in contradiction to the Agreement, whether it should have been pleaded so and it must be proved through strong and consistent with the other documentary evidence on record?
  - iii) Whether the grant of a decree for specific performance on the basis of an agreement to sell is a discretionary relief and the Court, for just and equitable reasons, can withhold the same?
  - iv) Whether a party can only prove the case pleaded by it?
- Analysis:**
- i) When property is not specific no decree can be passed in the light of section 21 of the Specific Relief Act, 1877.
  - ii) For the grant of a decree plaintiff has not only to prove the agreement to sell by producing two marginal witnesses but also the receipt/proof of payment of the consideration amount (averred to be paid). When the evidence of payment of earnest money/partial consideration amount is in oral form which is in contradiction to the Agreement, it should have been pleaded so, it must be proved through strong and consistent with the other documentary evidence on record.
  - iii) It is axiomatic Principle of law that for the grant of a decree for specific performance on the basis of an agreement to sell it is a discretionary relief and the Court, for just and equitable reasons, can withhold the even if the agreement is proved.
  - iv) A party can only prove the case pleaded by it. The rule of *secundum allegata et probata*, not only excludes the element of surprise, but also precludes the party from proving what has not been alleged or pleaded.
- Conclusion:**
- i) When property is not specific no decree can be passed in the light of section 21 of the Specific Relief Act, 1877.
  - ii) When the evidence of payment of earnest money/partial consideration amount is in oral form which is in contradiction to the Agreement, it should have been pleaded so, it must be proved through strong and consistent with the other documentary evidence on record.
  - iii) Grant of a decree for specific performance on the basis of an agreement to sell

is a discretionary relief and the Court, for just and equitable reasons, can withhold the same.

iv) A party can only prove the case pleaded by it.

- 6. Supreme Court of Pakistan**  
**Salah-ud-Din and Others. v. Govt. of Punjab through District Officer Revenue), Jhang and others**  
**Civil Appeal No.875/2017.**  
**Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.a. 875\\_2017.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.a. 875_2017.pdf)

**Facts:** Through these Appeals, the appellants have challenged the judgment of the High Court wherein the various orders of the revenue authorities were set aside and the contesting respondents' application under s. 3 of the Punjab Redemption and Restitution of Mortgaged Lands Act, 1964 was deemed pending and was ordered to be disposed of in accordance with law.

**Issues:** Whether Board of Revenue has the power to extend the period of limitation under the Punjab Redemption and Restitution of Mortgaged Lands Act, 1964?

**Analysis:** There is no provision of law under which the Board of revenue has the power to extend the period of limitation under the Punjab Redemption and Restitution of Mortgaged Lands Act, 1964 and, even if it has such power, whether it could be exercised retrospectively, i.e., revive claims that had become time barred for purposes of filing an application under s. 3 of the Punjab Redemption and Restitution of Mortgaged Lands Act, 1964. No such power has been shown for the simple reason that no such power existed.

**Conclusion:** Board of Revenue has no power to extend the period of limitation under the Punjab Redemption and Restitution of Mortgaged Lands Act, 1964.

- 7. Supreme Court of Pakistan**  
**Muhammad Azim Khan Afridi v. The President of Pakistan**  
**thr. Principal Secretary & others**  
**Civil Petition No.3413 of 2017**  
**Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 3413\\_2017.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3413_2017.pdf)

**Facts:** By way of this Civil Petition, the Petitioner seeks leave to appeal against a judgment of the Peshawar High Court.

**Issues:**

- i) What is the scope of writ of certiorari?
- ii) What is the scope of constitutional jurisdiction of High Court?
- iii) Whether decisions of JCP are amendable to judicial review under Article 199 of the Constitution?
- iv) Whether Additional Judge of High Court, can claim a vested right to be



confirmed as a Judge of the High Court on the sole ground that Chief Justice of High Court had recommended him for confirmation?

**Analysis:**

- i) From a reading of the above-reproduced extract, and for the purposes of this petition, it becomes clear that whenever a High Court is exercising its constitutional jurisdiction for the purposes of certiorari, it is directing a Court under its superintendence to correct any error of law or jurisdiction in a judgment/decision assailed before it in such a manner that the same order or judgment can be "certified" by the same High Court. However, whilst certiorari may be a prerogative of the High Court under Article 199 of the Constitution of Pakistan, it is still a discretionary power.
- ii) It is also a settled principle of law that when exercising constitutional jurisdiction, the High Court does not sit as a court of appeal.
- iii) By no stretch of imagination can it be assumed that the framers of the 18th and 19 amendment envisaged that decisions of JCP would be made amendable to judicial review by way of constitutional petitions filed under Article 199 of the Constitution. The JCP is also not a "Court" whose decisions can be made the subject of superintendence by the High Courts of Pakistan for the purposes of exercising certiorari under Article 199.
- iv) Moreover, the Petitioner cannot claim a vested right to be confirmed as a Judge of the Islamabad High Court on the sole ground that the then-Chief Justice of High Court had recommended him for confirmation. A recommendation from the Chief Justice of a High Court is nothing but a process of procedure and the said recommendation needs to be deliberated and ultimately voted on by the JCP before a name is either confirmed or dropped by a majority vote of the JCP. Even if it is to be assumed that a decision of the JCP was amenable to judicial review under Article 199 of the Constitution, this court has already found the JCP's decision that is the subject matter of this petition without any legal or jurisdictional defect.

**Conclusion:**

- i) High Court in exercise of its constitutional jurisdiction for the purposes of certiorari, directs a Court under its superintendence to correct any error of law or jurisdiction in a judgment/decision assailed before it.
- ii) It is a settled principle of law that when exercising constitutional jurisdiction, the High Court does not sit as a court of appeal.
- iii) The JCP is not a "Court" whose decisions can be made the subject of superintendence by the High Courts of Pakistan for the purposes of exercising certiorari under Article 199.
- iv) Petitioner cannot claim a vested right to be confirmed as a Judge of the High Court on the sole ground that the Chief Justice of High Court had recommended him for confirmation.

**8. Supreme Court of Pakistan**  
**Muhammad Naeem v. Federation of Pakistan, etc.**  
**C.P.4294/2019**  
**Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.4294\\_2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p.4294_2019.pdf)

**Facts:** A Notification was issued by the Finance Division (Internal Finance Wing), with the concurrence of the Law Division, Government of Pakistan, whereby it was clarified that National Bank of Pakistan (“NBP”) is a body corporate and its employees are not “civil servants” nor can be declared as “public servants” within the meaning of Section 21 The Pakistan Penal Code 1860 (“PPC”). The petitioner, an employee of the NBP, challenged the said Notification and Circular in the High Court through a writ petition which was dismissed. Thereafter, the petitioner sought leave to appeal against the judgment of the High Court, through the present petition.

**Issues:**

- i) Whether all civil servants are public servants and all public servants are civil servants?
- ii) Whether the employees of the NBP are government servants or civil servants as defined in the Civil Servants Act 1973 or have any other legal entity?
- iii) Whether the employees of NBP can recourse to the writ jurisdiction in respect of their service matters?

**Analysis:**

- i) The terms “civil servant” and “government servant”, having almost the same meaning and scope, are commonly used interchangeably in the civil service laws of Pakistan. The term “public servant” as defined in Section 21 of the PPC for the purpose of application of that law is, however, of wide import and scope than those terms. It cannot, therefore, be referred to or used as an equivalent or synonym of them, in the context of a person’s civil status, capacity or position. In the ordinary English language, the words “civil servant” and “public servant” may have the same meaning, but this is not so in the legal language as commonly used in the laws of Pakistan. It may be said that in legal parlance, particularly of the service and criminal laws, all civil servants are public servants as defined in Section 21 of the PPC, but not all such public servants are civil servants.
- ii) The definition of “public servant” as provided in Section 21 of the PPC is only for the purpose of application of the provisions of that substantive criminal law, as well as of the related procedural criminal law, the Code of Criminal Procedure 1898, and the extended definition of that term as given in Explanation of Section 161 (which brings the employees of any corporation or other body or organisation set up, controlled or administered by, or under the authority of, the Federal Government, within the ambit of the term “public servant”) is only for the purpose of application of that Section and Sections 162, 163, 164, 165, 166, 167, 168, 169 and 409 of the PPC. These definitions do not confer any civil status, capacity or position on the persons falling in the scope thereof. The NBP, as per Section 3(2) of the National Bank of Pakistan Ordinance 1949, is a body corporate, and its employees are employees of a statutory corporation, not of the



Federal Government. They are therefore not “government servants” or “civil servants” as defined in the Civil Servants Act 1973.

iii) NBP, being a statutory corporation, is amenable to the writ jurisdiction of the High Courts under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, and its employees when are governed or proceeded against under the statutory rules can recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters.

- Conclusion:**
- i) All civil servants are public servants as defined in Section 21 of the PPC, but not all public servants are civil servants.
  - ii) The employees of NBP are neither government servants nor civil servants as defined in the Civil Servants Act, 1973; rather they are employees of a statutory corporation.
  - iii) Yes, the employees of NBP can recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters.

**9. Supreme Court of Pakistan**  
**Capital Development Authority, CDA, through its Chairman,**  
**CDA, Islamabad v. Ahmed Murtaza and another**  
**Civil Petition No.3709 of 2022**  
**Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.\\_3709\\_2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p._3709_2022.pdf)

**Facts:** The Petitioner, Capital Development Authority (CDA), Islamabad, has impugned judgment passed by the Islamabad High Court, Islamabad (High Court) essentially on the ground that disputed plot was a non-transferable plot and could not have been sold or transferred outside of the family of the original allottee.

**Issues:**

- i) What should be done by an institution, when its officers have acted in contravention of their own policy?
- ii) Whether the Supreme Court may impose costs on a party who files a false or vexatious appeal or other proceedings and thereby wastes the time of the Court?

**Analysis:**

- i) An institution, such as the CDA, must take responsibility for its own decisions and actions even where its officers have acted in contravention of their policy and cannot expect that this Court should interfere and correct their wrongs, particularly when the matter has been litigated against and decided against them. This tendency cannot be condoned and has to be denounced because not only does it waste the time of this Court but it has also wasted a considerable amount of time of the Respondents who have been facing litigation pursued by the Petitioner since long.
- ii) Rule A (3) of Order XXVIII of Part VI of the Supreme Court Rules, 1980 provides that Supreme Court may impose costs on a party who files a false or vexatious appeal or other proceedings and thereby wastes the time of the Supreme Court. This Court has imposed such costs, to curb frivolous litigation, for prolonging the agony of the respondents and wasting the time of Supreme Court

which could have been spent in resolving legitimate disputes.

- Conclusion:** i) An institution, must take responsibility for its own decisions and actions even where its officers have acted in contravention of their own policy.  
 ii) Under Rule A (3) of Order XXVIII of Part VI of the Supreme Court Rules, 1980 the Supreme Court may impose costs on a party who files a false or vexatious appeal or other proceedings and thereby wastes the time of the Court.

**10. Supreme Court of Pakistan**  
**Syed Asad Hussain & others v. Syed Ghulam Khitab**  
**Civil Appeal No.232-P of 2014**  
**Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,**  
**Mr. Justice Muhammad Ali Mazhar**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.a.232\\_p\\_2014.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.a.232_p_2014.pdf)

**Facts:** The appellant filed appeal against three concurrent findings, the appellants took up the point on which leave to appeal was granted, that the first talb was not made timely and in the manner required by law, but belatedly.

**Issues:** i) Whether the same meaning is to be given to a word, term or phrase throughout the statute?  
 ii) Whether question of knowledge is the question of fact, and whether it can be raised in the court of final appeal?

**Analysis:** i) As per the judgment of a learned two members Bench of this Court, reported as Muhammad Nafeez Khan v Qulbat Khan and others (2012 SCMR 235). It was held therein that the word "sale" as used in s. 13 had a meaning different from that as given in the definition in S. 2(d). It is observed that while ordinarily it is to be presumed that the same meaning had to be given to a word, term or phrase throughout the statute, it is also well settled that the same word, term etc. could have different meanings in different parts thereof, or even in the same section.  
 ii) The question of knowledge of the sale is a question of fact. It has to be determined on the basis of the evidence as led by the parties. The crucial finding of fact at this stage can be a new finding. Indeed, the nature of this new finding would be such that it can be based (in at least important part) on surmises and conjectures. This is not permissible to raise this question at this stage and certainly not before a Court of final appeal.

**Conclusion:** i) Ordinarily it is presumed that same meaning is given to a word, term or phrase throughout the statute but it could have different meanings in different parts thereof, or even in the same section.  
 ii) Question of knowledge is the question of fact and it is not permissible to raise this question before the court of final appeal.

11. **Supreme Court of Pakistan**  
**Malik Tariq Mahmood, etc. v. Province of Punjab, etc.**  
**Civil Appeal No.914-L of 2013**  
**Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.a.914\\_1\\_2013.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.a.914_1_2013.pdf)

**Facts:** The District Collector issued notice u/s 4 of LAA, 1894 for acquisition of land which included land of appellants. The Land Acquisition Collector (LAC) adopted the procedure for determination of payable compensation. The appellants demanded compensation at higher rate due to commercial nature of property but the LAC declared the land Gahir Mumkin chapper & Nul chahi and compensation was fixed accordingly. Being dissatisfied with award, the appellant filed application before LAC u/s 18 of LAA, 1894 for reference to Court for adjudication and LAC made the required reference which was dismissed. The appellant filed appeal before Lahore High Court which was accepted and compensation was enhanced but the appellant being dissatisfied with enhanced rate of compensation filed this civil appeal.

**Issues:**

- i) What factors should be taken into consideration for determination of market value of land acquired?
- ii) Whether local commission can be appointed for the purpose of assessing the market value of property acquired?

**Analysis:**

- i) Under section 23(1) of the Act, compensation is to be determined on the basis of the market value of the land at the date of publication of the notification under section 4 of the Act. The Court assessing compensation is required to take into consideration not only the present purpose or the present use to which the land is applied but also any other more beneficial purpose to which it might reasonably be put by the owner. Indubitably, it is true that regard can be had only to the existing conditions and what is likely to happen in reasonably near future and compensation cannot be fixed on the basis of what might happen in the dim and distant future. Where there is a reasonable possibility of the land being put to a more profitable use within a reasonable period the same cannot be ignored in assessing its value. Compensation has always to be determined by reference to the price which a willing vendor may reasonably expect to obtain from a willing purchaser. When the land possesses some unusual, special or unique features as to its location or potentialities, due weight must be attached to all these elements. It is also true that an entry in the revenue record as to the nature of the land may not be conclusive. If the land acquired is found to be useful both for agricultural or non-agricultural purposes, merely on the ground that it was used as agricultural land by the owner till the time of its acquisition, its potentiality as non-agricultural land cannot be ignored.
- ii) Under Article 24 of our Constitution, the landowner has a fundamental right to get fair and just compensation for the land acquired, and must, therefore, take all possible steps to protect the landowner from denial of that right, and to do so the

law does not restrict it to merely rely on the evidence of the parties, but obliges it to exercise its suo motu powers under Order XXVI, Rule 9 CPC and, to obtain the Commission's report on the matters relating to the location, type and use of the land acquired and its market value.

- Conclusion:** i) The Court assessing compensation is required to take into consideration not only the present purpose or the present use to which the land is applied but also any other more beneficial purpose to which it might reasonably be put by the owner. Compensation has always to be determined by reference to the price which a willing vendor may reasonably expect to obtain from a willing purchaser. When the land possesses some unusual, special or unique features as to its location or potentialities, due weight must be attached to all these elements.
- ii) Yes, local commission can be appointed for the purpose of assessing the market value of property acquired.

**12. Supreme Court of Pakistan**  
**Saghir Ahmad vs. The State etc.**  
**Jail Petition No. 300 of 2022**  
**Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/j.p. 300 2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/j.p. 300 2022.pdf)

**Facts:** Through instant jail petition, the petitioner has sought leave to appeal against the conviction and sentence awarded by the trial court and maintained by the High Court.

**Issues:** When the medical evidence offers two interpretations, one favouring the accused and the other prosecution then which one is to be adopted by the court?

**Analysis:** There is no denial to the fact that the victim was medically examined on the same day by Medical Officer. The medical report clearly states that the child has not yet defecated nor took shower or clean the area after the act. On general physical examination, no signs of physical trauma were noted on the body. The doctor further observed that there is mild redness around the anal sphincter. No bruise, no swelling, no abrasion or laceration was noted on the skin around the anal sphincter. The victim neither complained of pain on walking or defecation. The doctor took two external and three internal anal swabs and sent the same to Forensic Science Laboratory for DNA analysis. The Punjab Forensic Science Agency gave its report, but it did not give any definite finding and the report just denotes that "the victim may have been victimized with the act of sodomy." In this view of the matter, the report of the Forensic Science Agency can be interpreted in two ways, one in favour of the petitioner and the second against him. However, it is a well-settled principle of law that if two views are possible on the evidence adduced in the case, one indicating the guilt of the accused and the other to his innocence, the view favourable to the accused is to be adopted.

**Conclusion:** The Court will adopt the interpretation which favours the accused.

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**13. Lahore High Court**  
**Riaz Hussain v. Chairman, PLAT, Lahore etc.**  
**W.P. No. 18156 of 2017**  
**Mr. Justice Shujaat Ali Khan**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8035.pdf>

**Facts:** The petitioner/workman was terminated from service by one of the respondents/ Sugar Mill on the allegation of absence from duty without any notice or inquiry. He was reinstated in service with all back benefits by Labour Court. However on appeal by respondent Sugar Mill before the Punjab Labour Appellate Tribunal, the decision of Labour Court was reversed to the extent of back benefits. The petitioner has challenged the said decision.

**Issues:**

- (i) Whether a workman can be terminated from service by an employer without following the procedure prescribed under the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968?
- (ii) Whether back benefits can be refused to a workman subsequent to his reinstatement in service?
- (iii) Whether the mere pendency of proceedings before a higher forum *per se* can be used as an impediment in the way of implementation of an order passed by the lower forum?
- (iv) Whether the concurrent findings of the *fora* below *qua* reinstatement in service of a workman can be interfered with by the High Court in its constitutional jurisdiction?
- (v) Whether matters decided under PEEDA Act 2006 and the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 can be cross-referred?

**Analysis:**

- (i)...Standing Order 15 of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 deals with the grounds of action by the employer against a workman and procedure for such action... According to Clause 4 of the Standing Order, the employee is entitled to due notice of alleged misconduct by the employer within thirty (30) days from the said action or within thirty (30) days from the knowledge of the employer. As the allegation of absence from duty against the petitioner fell within the definition of misconduct, the said charge could not be decided without following the procedure provided under Standing Order 15 *ibid*.
- (ii) It is well entrenched by now that when an employee is reinstated in service on the ground that the penultimate order, passed against him, was not in consonance with the law on the subject, grant of back benefits in such cases is rule and refusal is an exception...while refusing back benefits to an employee, it is mandatory for the establishment *inter-alia* to prove that either the reinstatement of an employee in service was conditional or penultimate order issued against

him was set aside on technical grounds or he remained gainfully employed elsewhere from the date of his ouster from service till the date of his reinstatement...

(iii) The Apex Court of the country has held in a number of cases that mere pendency of proceedings before a higher forum *per se* cannot be used as an impediment in the way of implementation of an order passed by the lower forum until and unless operation of the said order has been suspended by the higher forum.

(iv) Undeniably, the findings of the *fora* below *qua* reinstatement of the petitioner, being concurrent in nature, cannot be interfered with by High Court in exercise of its constitutional jurisdiction until and unless it is established that the same are found to be perverse or are result of some misreading or non-reading of material available on record...

(v) The criteria provided for departmental proceedings under the PEEDA Act 2006 and the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 have no over-lapping effect, thus, the matters decided under said laws cannot be cross-referred.

**Conclusion:** (i) A workman cannot be terminated from service by an employer without following the procedure prescribed under the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968.

(ii) Back benefits cannot be refused to a workman subsequent to his reinstatement in service unless it is proved that either the reinstatement of an employee in service was conditional or penultimate order issued against him was set aside on technical grounds or he remained gainfully employed elsewhere from the date of his ouster from service till the date of his reinstatement.

(iii) The mere pendency of proceedings before a higher forum *per se* cannot be used as an impediment in the way of implementation of an order passed by the lower forum.

(iv) The concurrent findings of the *fora* below *qua* reinstatement in service of a workman cannot be interfered with by the High Court in its constitutional jurisdiction until and unless it is established that the same are found to be perverse or are result of some misreading or non-reading of material available on record.

(v) Matters decided under PEEDA Act 2006 and the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 cannot be cross-referred.

14.

**Lahore High Court**

**Akmal Aziz and 3 Others v. Habib Bank Limited and another**  
EFA No. 66967 of 2021

**Mr. Justice Abid Aziz Sheikh, Mr. Justice Sultan Tanvir Ahmad**

<https://sys.lhc.gov.pk/appjudgments/2022LHC7982.pdf>

**Facts:**

The appellants filed Execution First Appeal u/s 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 against judgment passed by learned



Banking Court, whereby, the objection petition filed by the appellants under Order XXI, Rule 89 of CPC has been dismissed.

- Issues:**
- i) What choice is left with court if a person fails to file application under Order XXI, Rule 89 of CPC and his application under Order XXI, Rule 90 of CPC has been dismissed?
  - ii) What remedies left for legal representatives if deceased judgment debtor during his life filed application under Order XXI, Rule 89 or Rule 90 of the CPC and got them disallowed?

- Analysis:**
- i) If a person fails to file application under Order XXI, Rule 89 of the CPC and his application under Order XXI, Rule 90 of the CPC is also dismissed, the Court does not have choice but to proceed to pass an order confirming the sale, which then becomes absolute. In “*Zakaria Ghani and 4 Others*” case, the Honourable Supreme Court of Pakistan has observed that where application under Order XXI, Rule 90 or 89 of the CPC is not made or such application is rejected, it becomes mandatory for the Court to make an order of confirmation. The Honourable Supreme Court of Pakistan has also held that if judgment debtor chooses not to take advantage of the opportunity provided to him by the law (i.e. failure to file application under above said rules), the matter comes to an end.
  - ii) If the deceased judgment debtor filed application under Order XXI, Rule 90 of CPC and same was dismissed in the life time of the deceased judgment debtor, who also failed to exercise his right under Order XXI, Rule 89 of CPC, within permissible time, the deceased judgment-debtor after, if alive, could not have done anything, thus, exhausting practically all the remedies available to deceased judgment-debtor. Therefore, left little or nothing for any one, much less for his legal representatives, to agitate thereafter.

- Conclusion:**
- i) If a person fails to file application under Order XXI, Rule 89 of the CPC and his application under Order XXI, Rule 90 of the CPC is also dismissed, the Court does not have choice but to proceed to pass an order confirming the sale, which then becomes absolute.
  - ii) No remedy left for legal representatives if deceased judgment debtor during his life filed application under Order XXI, Rule 89 or Rule 90 of the CPC and got them disallowed.

**15. Lahore High Court**  
**Muhammad Anwar Jawed v. Ghulam Muhammad, etc.**  
**Civil Revision No.58436/2022**  
**Mr. Justice Ch. Muhammad Masood Jahangir**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC7960.pdf>

- Facts:** Petitioners instituted declaratory suit for confirmation of their title, but thereafter it was withdrawn with permission to file fresh one. Then petitioner along with his brother long thereafter filed another suit for declaration of title regarding the same subject matter, which was also accompanied by application U/O. XXXIX rule.1 &

2 CPC for grant of temporary injunction, but regretted by the Courts below. Being aggrieved, this petition has been filed.

- Issues:**
- i) Whether in case of withdrawal of first suit plaintiff(s) can file his/their subsequent suit?
  - ii) What is the duty of the Court on the point of limitation under Section 3 of the limitation Act?
  - iii) Whether the suit for declaration of title on the basis of alleged agreement to sell (from non-title holder) is maintainable?
  - iv) Whether Court is empowered to reject the plaint suo motu without there being any application filed by rival party, when concludes that it does not disclose any cause of action or barred by time/law?

- Analysis:**
- i) In case of withdrawal of first suit, plaintiff(s) is/are bound by law of limitation to proceed with his/their subsequent suit, as if the first one was never filed. It is so, because Section 9 of the Limitation Act, 1908, reproduced as: - “Where once time has begun to run, no subsequent disability or inability to sue stops it.” made it clear that time once starts running, no subsequent event can stop the same.
  - ii) Per mandate of Section 3 of the Act, sine non-qua for the Court to scrutinize the plaint, application & appeal on the point of limitation regardless of the fact that said issue had been agitated by either party or not.
  - iii) When the petitioner sought decree for declaration of title on the basis of alleged agreement to sell (from non-title holder), which even did not create any right, title or interest in the property. On this score as well, suit for declaration on the face of it was not maintainable.
  - iv) It cannot be denied that the Court is empowered to reject the plaint suo motu without there being any application filed by rival party, when comes to the conclusion that it does not disclose any cause of action or barred by time/law, the Court can pass any order needed in the circumstances of the case including rejection of plaint, if the same is required on the touchstone of the point of cause of action or barred by time/law.

- Conclusion:**
- i) In case of withdrawal of first suit plaintiff(s) can file their subsequent suit subject to the law of limitation.
  - ii) Under Section 3 of the limitation Act, it is the duty of the Court to scrutinize the plaint, application & appeal on the point of limitation regardless of the fact that said issue had been agitated by either party or not.
  - iii) The suit for declaration of title on the basis of alleged agreement to sell (from non-title holder) is not maintainable.
  - iv) Yes, Court is empowered to reject the plaint suo motu without there being any application filed by rival party, when concludes that it does not disclose any cause of action or barred by time/law.
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**16. Lahore High Court**  
**The State v. Hafeez Ahmed etc.**  
**Murder Reference No.34 of 2020, Criminal Appeal No.113 of 2020 & 190 of 2020, Criminal Revision No.63 of 2020.**  
**Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8058.pdf>

**Facts:** Challenging their conviction and sentence, appellants filed Criminal Appeal, whereas complainant approached this Court through Criminal Appeal against the acquittal of respondents No.2 to 8. At the same time, the complainant preferred Criminal Revision for the enhancement of sentence of respondent No.3. Likewise, trial court sent reference under Section 374 Cr.P.C. for the confirmation or otherwise of death sentence awarded to convict.

**Issues:**

- i) Whether data generated through modern devices is admissible in evidence?
- ii) When the evidence of chance witness is admissible in evidence?
- iii) Whether injuries on the person of PWs would stamp them as truthful witnesses?
- iv) What is the importance of medical evidence in ocular account?
- v) Whether prosecution evidence can be discarded if it has been disbelieved to the extent of co-accused having somewhat similar role?
- vi) What is the requirement for awarding conviction?

**Analysis:**

- i) Living in a technological era and well conversant with the prevailing menace of false depositions, the Courts can legitimately use data generated through modern devices for ascertaining the truth of a fact through the enabling provisions of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984.
- ii) It will not be out of context to mention here that if an eyewitness has abode in a different vicinity, situated at some distance from the crime scene, he is treated as a chance witness and his deposition attains acceptance only if some plausible explanation for his acclaimed presence at the spot is furnished.
- iii) A pressing need is felt by us to mention here that injuries statedly received by a witness during a homicide incident do not warrant acceptance without scrutiny of what he deposes before the court. At the most such traumas can be taken as indication of his presence at the spot but still his evidence is to be examined on the benchmark of general and well settled principles laid down for the appraisal of evidence. There is no hard and fast rule that a witness who is in receipt of injury will depose nothing but truth. Even otherwise this is not a simple presence of a witness at the crime scene but his credibility which makes him a reliable witness.
- iv) The collection of medical evidence at investigation stage and its subsequent tendering during trial is primarily aimed at enabling the Court to get help for ascertaining the truth behind deposition of an eyewitness. If the ocular account gives rise to some inconsistency after being subjected to scrutiny through medical evidence, it warrants rejection of the tale of incident furnished by eyewitnesses. Judicial archives are not bereft of precedents wherein ocular account was

discarded after finding it in conflict with the medical evidence.

v) The law is settled that if the eye-witnesses have been disbelieved against some accused persons attributed effective roles then the same eye-witnesses cannot be believed another accused person attributed a similar role unless such eye-witnesses receive independent corroboration qua the other accused person. The evidence of a witness cannot be appraised through cherry-picking approach and instead it is to be scrutinized in its entirety.

vi) There is no cavil to the fact that without legal justification taking the life of an individual, the accused stoops down to the level symbolic to a beast as such act is bereft of all human norms but still the conviction is required to be awarded only if the guilt of such person is impeccably proved by the prosecution. A guilty verdict pronounced by the Court after being driven from sentiments, emotions or perceptions cannot by any stretch be equated with the dictates of justice.

- Conclusion:**
- i) Courts can legitimately use data generated through modern devices for ascertaining the truth of a fact through the enabling provisions of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984
  - ii) Deposition of chance witness attains acceptance only if some plausible explanation for his acclaimed presence at the spot is furnished.
  - iii) There is no hard and fast rule that a witness who is in receipt of injury will depose nothing but truth. At the most such traumas can be taken as indication of his presence at the spot but still his evidence is to be examined on the benchmark of general and well settled principles laid down for the appraisal of evidence.
  - iv) The collection of medical evidence at investigation stage and its subsequent tendering during trial is primarily aimed at enabling the Court to get help for ascertaining the truth behind deposition of an eyewitness.
  - v) If the eye-witnesses have been disbelieved against some accused persons attributed effective roles then the same eye-witnesses cannot be believed another accused person attributed a similar role unless such eye-witnesses receive independent corroboration qua the other accused person.
  - vi) Conviction is required to be awarded only if the guilt of such person is impeccably proved by the prosecution.

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**17. Lahore High Court**  
**Nemat Ullah Khan v. Province of the Punjab, etc.**  
**Writ Petition No. 17916 of 2022**  
**Mr. Justice Shahid Jamil Khan**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC7950.pdf>

**Facts:** Through this constitutional petition, the petitioners being owners of “Brick Kilns”, challenged imposition of penalty and proposed sealing of business premises for alleged violation of using old technology (‘BTK’) instead of approved ‘zigzag’ technology.

**Issue:** What is the procedure under the Punjab Environmental Protection Act, 1997 for

taking action against any anti-environmental activity?

**Analysis:** Under Section 5 of the Act of 1997, Provincial Environmental Protection Agency is established, which is empowered, under Section 7(g), to enter and inspect, under authority of search warrant, a place, having reasonable ground to believe that an offence under the Act of 1997 is being committed. Under Section 11, there is prohibition for every person against anti-environmental activity including discharge or emission of a substance, causing air pollution. Environmental Protection Order can be passed, under Section 16 of the Act of 1997, where the Provincial Agency is satisfied that any anti-environmental activity, as prescribed in the law, is likely to occur, is occurring or has occurred. It can direct the person to take appropriate measure, as prescribed in Section 16(2) of the Act of 1997. ... If zigzag technology is not being used, the respondent Agency can pass an Environmental Protection Order by calling the responsible person (Sections 18 & 19) or by visiting the premises, where violation is being committed. Keeping in view the gravity of the violation; hearing can be provided at the premises and protection order should be passed immediately. If such order, in writing, is violated, the anti-environmental activity should be stopped for a specified period or permanently. In case of further violation, criminal action should be taken against the owner or responsible person violating the direction.

**Conclusion:** Provincial Environmental Protection Agency after inspection and hearing the concerned can pass Environmental Protection Order and upon violation of Protection order, can stop the anti-environmental activity for a specified period or permanently. In case of further violation, criminal action can be taken against the owner or responsible person violating the direction.

**18. Lahore High Court, Lahore**  
**Malik Zarin Khan v. Adnan Ali Malik etc.**  
**C.R.No.3659 of 2016**  
**Mr. Justice Faisal Zaman Khan**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8005.pdf>

**Facts:** Through this civil revision, the order dismissing application under Order VII Rule 11 CPC has been assailed.

**Issues:** Whether the subsequent suit instituted during the pendency of the earlier suit was hit by the bar contained in Order XXIII Rule 1(3) CPC ?

**Analysis:** Order XXIII Rule 1(3) CPC places an embargo on a plaintiff to file a suit on the subject matter of an earlier suit, which he has already withdrawn/abandoned, without seeking permission of the court, to re-agitate the same.

**Conclusion:** If during the pendency of a suit, without withdrawing the same, on the same subject matter, a subsequent suit is filed, the subsequent suit will be maintainable and by no means will hit by the bar contained in Order XXIII Rule 1 CPC.

**19. Lahore High Court, Lahore**  
**Shahid Mehmood, etc. v. District Collector/Land Acquisition Collector, etc.**  
**W.P.No. 2439 of 2021**  
**Mr. Justice Mirza Viqas Rauf**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC7991.pdf>

**Facts:** The notifications under section 4 of the Land Acquisition Act, 1894 are assailed in writ petitions on the ground that these became ineffective with the afflux of time as, after issuance of said notifications, no notification under Sections 5, 6 and 17 of the Act *ibid* is issued till date.

**Issues:** What would be the reasonable time for keeping the notification under Section 4 of the Land Acquisition Act, 1894 alive?

**Analysis:** The Constitution of the Islamic Republic of Pakistan, 1973 guarantees the fundamental rights of the citizens in Article 24 and a person cannot be deprived of his property in the ordinary circumstances. However, law permits to acquire the property of any person for the public purpose and after payment of due compensation as ordained under the relevant law. Article 173 of The Constitution of the Islamic Republic of Pakistan, 1973 bestows power upon the executive to acquire property on behalf of Federal Government or the Provincial Government subject to any Act of the appropriate Legislature. Land Acquisition Act, 1894, deals with the acquisition of land needed for public purpose and for companies and for determining the amount of compensation to be paid on account thereof. Section 4 of the Land Acquisition Act, 1894 authorizes the Collector of the District to issue a notification whenever it appears to him that land in any locality is needed or likely to be needed for any public purpose or for a Company and subsection (1) of section 4 of said Act requires that a notification shall be published in the official Gazette, stating the District or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area & situation, where a plan has been made of the land and the place where such plan may be inspected as well as the Collector shall cause public notice to be given of the substance of the notification at convenient places on or near the land to be acquired. Any person interested in any land having been notified under Section 5 of the Land Acquisition Act, 1894, within 30 days after the issuance of said notification, may object to the acquisition of land or any land of the locality as the case may be. The executives were required to complete the acquisition proceedings within a reasonable time. The "reasonable time" means, "as soon as circumstances permit.". A period of one year provided in the amendment in Section 4 of the Land Acquisition Act, 1894 through Act No. XXIII of 2017 for all intent and purposes is reasonable time. If it is assumed that there is no change in the Land Acquisition Act, 1894 to the extent of province of Punjab and the amended Act XXIII of 2017 is restricted only to the Islamabad Capital territory, even then on the touchstone of Article 143 of the "Constitution", latter shall

prevail.

**Conclusion:** Even in absence of any time frame in Section 4 of the Land Acquisition Act, 1894, further steps for the purpose of acquisition must have been taken within reasonable time, which in no case should exceed one year from the date of issuance of notification under Section 4 of the Act *ibid*.

**20. Lahore High Court**

**Mst. Shabeena Younas. v. Addl. District Judge, Lahore, etc.**

**I.C.A. No. 69878 of 2022**

**Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir**

<https://sys.lhc.gov.pk/appjudgments/2022LHC8087.pdf>

**Facts:** Through this Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called in question order passed by learned Single Judge of this Court, whereby writ petition filed by the appellant has been dismissed.

**Issues:**

- i) Whether order passed on application under section 12 of the Guardians and Wards Act, 1890 whereby custody of minor is changed is appealable?
- ii) Whether Intra Court Appeal would be maintainable, if the law provides remedy of appeal, review or revision against the original order?

**Analysis:**

- i) The question of original order passed on Application under section 12 of the Guardians and Wards Act, 1890 being appealable or not came up for consideration in judgments reported as 1987 MLD 2563 Mst. Lali versus Muhammad Raheem Bakhsh and another, 2006 YLR 2604 (Ms Quratulain Aleem v. Muhammad Rehan Khan), 2012 YLR 2266 (Shazia Akbar v. Maqsood Ahmed & Another) and 1987 CLC 1630 (Mst. Hafeeza Barohi versus Guardian Judge/Family Judge and Another), which judgments on the basis of section 14(1) of the Family Courts Act, 1964 have declared the order passed on application under section 12 of the Guardians and Wards Act, 1890 whereby custody of minor is changed as appealable.

- ii) Finality is attached to order that had been passed on application under Section 12 of the Guardians and Wards Act, 1890 and is challengeable before the Appellate Court as “a decision given” in terms of Section 14(1) of the Family Courts Act, 1964 which appeal is entertained and Appellate Court had reversed the said order which is challenged through constitutional petition. So, it is held that original order passed by the learned Guardian Judge is an appealable order against which appeal had been availed, hence, Intra Court Appeal against dismissal of constitutional petition filed against the order of Appellate Court is not maintainable in proviso of Section 3(2) of Law Reforms Ordinance 1972.

**Conclusion:** i) Order passed on application under section 12 of the Guardians and Wards Act, 1890 whereby custody of minor is changed is appealable in terms of Section 14(1)

of the Family Courts Act, 1964.

ii) Where the law provides remedy of appeal, review or revision against the original order, Intra Court Appeal would not be maintainable.

**21. Lahore High Court**  
**Mohsin Rasool v. Federation of Pakistan, etc.**  
**ICA No. 68367 of 2022**  
**Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8172.pdf>

**Facts:** Through this Intra Court Appeal, the appellant has challenged the order of dismissal of his constitutional petition passed by learned Single Judge in Chambers.

**Issues:** Whether a direction can be sought to issue writ of mandamus/prohibition by any person other than aggrieved one?

**Analysis:** The Hon'ble High can issue writ of mandamus and prohibition under Article 199 1(a)(i) for which the appellant is required to be an aggrieved person to seek such an order. Not everyone claiming to be associated with the dispute in some manner can challenge an order by filing constitutional petition in the nature of mandamus or certiorari and has to show the nexus with the impugned order whereby he has a right to challenge the said order.

**Conclusion:** A direction cannot be sought to issue writ of mandamus/prohibition by any person other than aggrieved one.

**22. Lahore High Court**  
**Commissioner Inland Revenue, Legal Zone, LTO, Multan v.**  
**M/s Usman Trade Linkers, New Central Jail Road, Multan.**  
**STR No.35 of 2022**  
**Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muhammad**  
**Raza Qureshi**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8015.pdf>

**Facts:** A show cause notice was issued to respondent confronting that as per proviso to section 2(17) of the Sales Tax Act, it did not qualify to be a "Manufacturer-cum-Exporter" for the purpose of refund, therefore, its sales tax registration was liable to be modified as "Commercial Exporter", which culminated in passing of order by Commissioner (Enforcement). Feeling aggrieved, registered person filed appeal before learned Appellate Tribunal, which was accepted and aforesaid order was set aside. Hence, instant Reference Application.

**Issues:** i) What is the meaning and scope of term "manufacturer" under clause (17) of section 2 of the Sales Tax Act of 1990?



- ii) Whether the words “owns and has his own manufacturing facility” in the proviso to clause (17) section 2 of Act of 1990, have been used to convey different meanings?
- iii) What is one of basic condition to announce a registered person as “Commercial Exporter”?
- iv) Whether the Commissioner Inland Revenue has power to *suo motu* make any change in the particulars of registration?

**Analysis:**

- i) The “manufacturer” is a person who is employed, wholly or partially, in producing or manufacturing the goods, irrespective of the raw material being owned by him and inter alia, includes any person, firm or company which owns, holds, claims or uses any patent, proprietary, or other rights to goods being manufactured, whether in his or its name, or on his or its behalf, notwithstanding that such person, firm or company sells, distributes, consigns or otherwise disposes of the goods. Section 2(17) of the Act of 1990 has given a broader meaning to the word “manufacturer” by including those who owned, held, claimed, or used any patent, proprietary or other rights to the goods being manufactured whether in their name or on their behalf.
- ii) Words owns and has his own manufacturing facility are not expressing one and same meaning. It is cardinal principle of interpretation that in legislative instruments / provisions, the word “or” is employed in the disjunctive sense (means it separates things) and word “and” in conjunctive sense (means it combines things). Though in certain cases, the words “and” and “or” may be interchangeable, however course of action is only permissible in order to give effect to the clear and obvious intention of the legislature or to avoid absurdity, unreasonableness or redundancy. The word “or” appearing in the proviso is used in disjunctive sense, which means that words owns and has his own manufacturing facility have been used to convey different meanings. The words owns and has his own manufacturing facility both do not connote exclusive ownership over the manufacturing facility in stricto sensu, rather includes persons who have legal hold, command, possession, belonging, dominion, authority etc.
- iii) In order to announce a registered person as “Commercial Exporter”, one of the basic conditions is that due to lack of manufacturing facility, it is exporting the goods after receiving the same from other registered person(s), irrespective of the fact that the goods were in the same state or processed or manufactured.
- iv) Rule 7 is explicitly providing procedure for change in particulars of registration, on the application of a registered person and under sub-Rule (4), the Commissioner, after scrutiny of available information, necessary inquiry and providing opportunity of hearing to registered person, may pass an order regarding modification(s) in the particulars of registration. This Rule is not bestowing any power upon the Commissioner Inland Revenue to *suo motu* make any change in the particulars of registration.

**Conclusion:**

- i) The “manufacturer” is a person who is employed, wholly or partially, in producing or manufacturing the goods, irrespective of the raw material being

owned by him and inter alia, including those who owned, held, claimed, or used any patent, proprietary or other rights to the goods being manufactured whether in their name or on their behalf.

ii) The word “or” appearing in the proviso is used in disjunctive sense, which means that words owns and has his own manufacturing facility have been used to convey different meanings.

iii) The one of basic condition to announce a registered person as “Commercial Exporter” is that due to lack of manufacturing facility, it is exporting the goods after receiving the same from other registered person(s).

iv) Rule 7 is not bestowing any power upon the Commissioner Inland Revenue to suo motu make any change in the particulars of registration.

**23. Lahore High Court**  
**M/s Haji Mehdi Hassan & Sons & others v. Allied Bank Limited.**  
**RFA No.13 of 2017**  
**Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muhammad Raza Qureshi**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8030.pdf>

**Facts:** The appellants have challenged the vires of judgment & decree passed by learned Judge Banking Court, whereby respondent-bank’s suit for recovery was decreed against appellants.

**Issue:** Whether court has power to itself compare the signature along with other relevant material?

**Analysis:** Under Article 84 of the Qanun-e-Shahadat Order, 1984, the Court enjoins plenary powers to itself compare the signature along with other relevant material to effectively resolve the main controversy.

**Conclusion:** Yes, the court enjoins plenary powers to itself compare the signature along with other relevant material.

**24. Lahore High Court**  
**Muhammad Uzair Aslam etc. v. Government of Pakistan etc.**  
**I.C.A No.20/2018**  
**Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muhammad Raza Qureshi**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8183.pdf>

**Facts:** Seven Intra Court Appeals of same question of law arising out of same controversy under Section 3 of the Law Reforms Ordinance, 1972 call into question vires and legality of Order passed by learned Single Judge, pursuant where to Writ Petitions filed by the Appellants were dismissed.

**Issues:** Whether before issuance of appointment letter the scrapping or cancellation of the recruitment process creates any vested right in favour of a person who



participated in the recruitment process?

**Analysis:** The term “vested right” is an expression that completely and definitely belongs to a person that it cannot be impaired or taken away without person’s consent and is independent of any contingency and is absolute, complete and unconditional. A mere expectancy of future benefits or contingent interest does not constitute a vested right and once a right matures into enforceable legal right under the law, the same cannot be taken away arbitrarily capriciously and in a malafide manner. Since the subject matter recruitment process had not yet reached to a decisive step either through recommendations by selection board or through issuance of appointment letters, therefore, it is held that Appellants cannot claim a vested right for appointment at the subject matter post merely by passing the written examination or qualifying in interview. Therefore, it is declared that passing these two stages in a recruitment process does not vest a candidate with an enforceable fundamental right for appointment.

**Conclusion:** Before issuance of appointment letter, the scrapping or cancellation of the recruitment process does not create any vested right in favour of a person who participated in the recruitment process.

**25. Lahore High Court**  
**Ahmad Bakhsh v. Imam Bakhsh & others**  
**Civil Revision No.950 of 2019**  
**Mr. Justice Muhammad Sajid Mahmood Sethi**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8148.pdf>

**Facts:** Through instant revision petition, petitioner has assailed vires of judgment and decree whereby respondents’ appeal was accepted and suit was dismissed. Petitioner has also challenged order whereby application for production of additional evidence, filed by respondents, was allowed and petitioner’s application seeking amendment in plaint was dismissed.

**Issues:** i) What factor the court has to take into consideration while deciding application for amendment in pleadings, and at which stage it can be allowed?  
 ii) Whether alteration in the relief changes the character or substance of the suit?

**Analysis:** i) Needless to say that while deciding application for amendment of pleadings, the Court has to keep in view the interest of justice and allow the case to run on correct lines for decision of real controversy. Moreover amendment can be allowed while ignoring delay whatsoever, even at any stage of proceedings in the trial, and in certain cases amendments can be permitted at the stage of appeal or even in the revisional jurisdiction, however, keeping in view the beneficial rule, that proposed amendment is expedient for the purpose of determining the real questions in controversy between the parties and it is not changing the nature of pleadings.

ii) An alteration in the relief does not ordinarily change the character or substance of the suit if it is based on the same averments, and if such an amendment is allowed, no injustice could be done to the other party.

**Conclusion:** i) The Court has to keep in view the interest of justice and it can be allowed while ignoring delay whatsoever, even at any stage of proceedings in the trial, and in certain cases amendments can be permitted at the stage of appeal or even in the revisional jurisdiction.  
ii) An alteration in the relief does not ordinarily change the character or substance of the suit if it is based on the same averments.

**26. Lahore High Court**  
**Allah Ditta v. Ali Shah (deceased) through Legal Heirs & others**  
**Civil Revision No.1095-D of 2010**  
**Mr. Justice Muhammad Sajid Mehmood Sethi**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8152.pdf>

**Facts:** The petitioner filed a suit for declaration regarding his share being legal heir while challenging an inheritance mutation. The suit was concurrently dismissed whereupon the petitioner has filed civil revision.

**Issues:** Whether a wrong entry in an inheritance mutation can be legitimized with efflux of time?

**Analysis:** No illegal act or wrong entry can be legitimized with efflux of time howsoever long it might be. No limitation would run in the matter of inheritance having recurring cause of action. Party having its right in the inherited property can claim the same at any time. Any transaction found to be result of misrepresentation cannot be protected on the sole score of limitation as it does not apply in the case of inheritance as barrier of limitation is no more a hurdle in the enforcement of rights of inheritance unless a party is shown to be guilty of gross negligence and abandonment of his / her rights. Entries in the revenue record afford fresh cause of action to the plaintiff and adverse entries if allowed to remain unchallenged do not extinguish right of a party against whom such entry had been made.

**Conclusion:** A wrong entry in an inheritance mutation cannot be legitimized with efflux of time unless a party is shown to be guilty of gross negligence and abandonment of his / her rights.

**27. Lahore High Court**  
**Mehmood Ahmad v. ASJ, etc.**  
**W.P. No.73916 of 2022**  
**Mr. Justice Sardar Muhammad Sarfraz Dogar**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC7955.pdf>

**Facts:** The petitioner filed this petition against order of learned Addl. Sessions Judge/ex-

Officio Justice of Peace whereby the application filed by the petitioner u/s 22-A & 22-B Chr.P.C, for registration of case against the proposed accused was dismissed.

**Issues:** i) What remedies are available for aggrieved party when the FIR is refused to be registered by the police?  
ii) Whether writ jurisdiction can be invoked in the presence of adequate remedy being available?

**Analysis:** i) When the FIR is refused to be registered by the police then other remedies are available for the aggrieved party; firstly, by approaching the Sessions Judge/Ex-Officio Justice of Peace, for exercising of power U/S 22-A (6) Cr.PC; secondly, by approaching the Magistrate for exercising of power under section 156 (3) Cr.PC; and lastly, by filing a direct complaint U/S 200 Cr.PC.  
ii) Invoking of writ jurisdiction in the presence of alternate adequate remedy being available is not desirment of law.

**Conclusion:** i) When the FIR is refused to be registered by the police then aggrieved party may file petition u/s 22-A (6) Cr.P.C , approach the Magistrate for exercising of power u/s 156 (3) Cr.P.C and may file a direct complaint U/S 200 Cr.P.C.  
ii) Invocation of writ jurisdiction in the presence of adequate alternate remedy is not permissible.

**28. Lahore High Court**  
**Wajid Ali v. The learned Judicial Magistrate,**  
**W.P. No.12205 of 2021**  
**Mr. Justice Sardar Muhammad Sarfraz Dogar**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC7945.pdf>

**Facts:** Through this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the legality & constitutionality of proceedings made by respondent and also seeks superdari of 410-whey powder bags, which was taken into possession under section 13(3) of the Punjab Food Authority Act, 2011 amended 2016.

**Issues:** i) Whether there is any parameter or guidelines as to when the power of “sealing of premises” could be invoked by the Food Safety Officer (FSO) under section 13 (1) (c) of the 2011 Act. ?  
ii) Is there any remedy available to a food operator or food business after the premises have been sealed?

**Analysis:** i) Punjab Food Authority Act, 2011 (‘the 2011 Act’) did not lay down any parameters or guidelines as to when the power of “sealing of premises” could be invoked by the Food Safety Officer (FSO) under section 13 (1) (c) of the 2011 Act. No ground or any other legislative guideline had been given in section 13 (1) (c) that permitted or empowered the FSO to exercise his discretion and invoke the

power of sealing. Section 13 (1) (c) simply stated that FSO could seal any premises where he believes any food is prepared, preserved, packaged, stored, conveyed, distributed or sold, examined any such food and examined anything that he believes that was used, or capable of being used for such preparation, preservation, packaging, storing, conveying, distribution or sale. Nowhere did section 13 (1) (c) provide when the sealing power could be invoked. Further, the act of “sealing” is not supported by a remedial mechanism as in the case of seizure of food.

ii) There is no legal remedy available to a food operator or food business after the premises have been sealed. There is also no provision for de-sealing under the Act. More importantly, a similar power has been actually vested in the FSO under section 18 of the Act for passing emergency prohibition orders whereby a food operator can be restrained from carrying on food business. The difference is that within twenty-four hours the aggrieved party can approach the Food Authority for its redressal against such order (Section 18(2)). The so called sealing power under section 13(1) (c) amounts to frustrating section 18 and the scheme of the Act. In the absence of any legislative policy or guideline clearly spelling out when the sealing can take place and there being no remedial process provided against sealing, the power of sealing in the hands of the FSO can easily be applied arbitrarily which cannot be permitted under our constitutional scheme, as any such act would offend fundamental rights under Articles 18, 23 and 25 of the Constitution.

- Conclusion:** i) Punjab Food Authority Act, 2011 did not lay down any parameters or guidelines as to when the power of “sealing of premises” could be invoked by the Food Safety Officer (FSO) under section 13 (1) (c) of the 2011 Act.
- ii) There is no legal remedy available to a food operator or food business after the premises have been sealed. There is also no provision for de-sealing under the Act.

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**29. Lahore High Court, Lahore**  
**Muhammad Aamar vs. The State etc.**  
**Crl. Misc. No.54853/B of 2022**  
**Mr. Justice Tariq Saleem Sheikh**  
<https://sys.lhc.gov.pk/appjudgments/2022lhc8114.pdf>

**Facts:** Through this application, the petitioner seeks post-arrest bail in FIR registered in offences punishable under sections 365-B & 376 PPC.

**Issues:** i) What does the Anti-Rape (Investigation and Trial) Act, 2021 specifically prohibits in rape cases?  
 ii) What measures Federal and Provincial governments should take to ensure the proper implementation of the ibid Act of 2021?  
 iii) What legal directives shall be followed by media and courts while reporting the rape cases?

- Analysis:**
- i) Section 13(1) of the Anti-Rape (Investigation and Trial) Act, 2021 prohibits two-finger virginity testing of the victim for medico-legal examination. It further states that it shall have no probative value. The status of the hymen is also unimportant because it can tear for various reasons, including cycling and riding. A torn hymen does not prove previous sexual intercourse, and an intact hymen does not rule out sexual violence. Hymen must therefore be treated like any other part of the genitals when documenting examination findings in cases of sexual violence. Only the observations relevant to the episode of sexual assault, such as fresh tears, bleeding, edema, etc., were to be documented. Instead of burdening themselves with reporting the victim's sexual history, medical officers must ensure that in the case of a sexual offence of rape, they examine the external genital area for evidence of injury, seminal stains, and stray pubic hair.
  - (ii) The Court issued following directions to Federal and Provincial governments for the proper implementation of Anti-Rape (Investigation and Trial) Act, 2021.
    - a) The Federal Government shall immediately review the steps taken to implement the Act and ensure that the requisite systems are in place within thirty days, including the creation of the Fund under section 20, to achieve the Act's objective.
    - (b) The Ministry of Law and Justice shall appoint the Special Committee in terms of section 15 within the next 30 days.
    - (c) The Special Committee shall formulate recommendations for carrying out the purposes of the Act and submit them to the Ministry of Law and Justice within two months of its appointment. The Ministry shall then make the rules under section 19.
    - (d) The Federal and the Punjab Governments shall give wide publicity to the rights granted to the victims of sexual violence under the Act through print and electronic media.
  - iii) The print, electronic and the social media are reminded of the prohibitions imposed by section 376A PPC and sections 12(3) & 26 of the Anti-Rape (Investigation and Trial) Act, 2021. They are restrained from publishing or broadcasting anything that violates these provisions. In particular, they are enjoined to exercise caution when doing anything that might reveal the identities of victims or their families. The law enforcement agencies shall proceed against the offenders. Pakistan Electronic Media Regulatory Authority (PEMRA) shall also play its due role in curbing the violations. The courts have an equal obligation to protect the identity of the victims of sexual violence. Therefore, they should be very cautious while writing judgments. Henceforth, they shall identify them by their acronyms rather than their full name. The District and Sessions Judges in the Punjab shall ensure compliance with this direction.

- Conclusion:**
- i) The Anti-Rape (Investigation and Trial) Act, 2021 specifically prohibits two finger virginity test and reporting the sexual history of a rape survivor.
  - (ii) Federal and Provincial governments should take following measures for the

proper implementation of Anti-Rape (Investigation and Trial) Act, 2021.

a) The Federal Government shall immediately review the steps taken to implement the Act and ensure that the requisite systems are in place within thirty days, including the creation of the Fund under section 20, to achieve the Act's objective.

(b) The Ministry of Law and Justice shall appoint the Special Committee in terms of section 15 within the next 30 days.

(c) The Special Committee shall formulate recommendations for carrying out the purposes of the Act and submit them to the Ministry of Law and Justice within two months of its appointment. The Ministry shall then make the rules under section 19.

(d) The Federal and the Punjab Governments shall give wide publicity to the rights granted to the victims of sexual violence under the Act through print and electronic media.

iii) Media is required to strictly follow the prohibitions contained under section 376 PPC and sections 12(3) & 26 of the Anti-Rape (Investigation and Trial) Act, 2021. Both media and courts must protect the identities of rape victims and their families while reporting the rape cases.

**30. Lahore High Court, Lahore**  
**Kabeer Akbar vs. The State etc.**  
**CrI. Misc. No. 52233/B of 2022**  
**Mr. Justice Tariq Saleem Sheikh**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8156.pdf>

**Facts:** The petitioner has sought pre-arrest bail in a case registered against him for an offence punishable under section 489-F of PPC on dishonouring of a cheque issued on company's behalf.

**Issues:** i) Is criminal liability under section 489-F PPC attributable to a company?  
 ii) Does the person who signs the cheque on behalf of the company have any criminal liability under section 489-F PPC?

**Analysis:** i) Section 489-F PPC begins with the word "whoever". The Pakistan Penal Code does not define this word. According to the Merriam-Webster Online Dictionary, it connotes "whatever person: no matter who". The Oxford Advanced Learner's Dictionary (Eighth Edition) explains it as: "(1) the person or group who; any person who; (2) used to say that it does not matter who, since the result would be the same." Corpus Juris Secundum states that "whoever" is a comprehensive term which refers to a person or persons, and may include artificial persons, such as a municipality, corporations, and public officers as well as private persons. In *Seena M. Haniff & Co. vs. Liptons Limited* (23 Indian Cases 689), the Lower Burma Chief Court while interpreting sections 482 and 486 of the Indian Penal Code, held that the word "whoever" therein does not refer only to a definite individual or definite individuals and can apply to a corporate body. In *Mst. Gulshan Bibi*



and others v. Muhammad Sadiq and others (PLD 2016 SC 769), the Supreme Court of Pakistan has made a similar observation while interpreting the term “land grabbers” mentioned in Illegal Dispossession Act, 2005. In short, the term “whoever” in section 489-F PPC encompasses all offenders without distinction, whether natural or juristic persons. Resultantly, criminal liability for dishonestly issuing a bad cheque is attributable to a company and it can be prosecuted.

ii) The criminal liability under section 489-F PPC of the person signing the cheque on the company’s behalf should depend on his role, position and authority within the company. We have already seen that the mens rea of those managing the company’s affairs, and its directing mind and will, may be attributed to it in certain circumstances. However, the prosecution must prove that that particular person was in-charge of the company's operations at the time of the commission of the offence. It is also important to point out that the offence under section 489-F PPC is not one of strict liability. Penal consequences depend on proof of dishonesty. The company issuing the cheque is a family owned, limited liability company with two directors i.e., the petitioner and his wife. The petitioner is also the company's Chief Executive Officer. Admittedly, he has complete control over its affairs, and keeping in view the documents available on record, it is reasonable to conclude that the company thinks and acts through him, and his actions and intent are those of the company. He is its nerve centre. In the circumstances, he cannot invoke the concept of a separate legal identity to avoid criminal liability for any wrongdoing. In the given scenario, the petitioner and the company can both be prosecuted under section 489-F of the PPC.

**Conclusion:** i) The criminal liability U/S 489-F of PPC for dishonestly issuing a bad cheque is attributable to a company and it can be prosecuted.  
ii) The criminal liability under section 489-F PPC of a person signing the cheque on the company’s behalf depends upon his role, position and authority within the company.

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**31. Lahore High Court**  
**Ms. Fozia Naseem v. Higher Education Commission, etc.**  
**Writ Petition No. 75487 of 2022.**  
**Mr. Justice Muzamil Akhtar Shabir**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8077.pdf>

**Facts:** Through this constitutional petition, petitioner has challenged advertisement issued for the purpose of appointment to various posts in the Government College University to the extent of the criteria fixed for appointment of Associate Professor in BPS-20 and seeks direction to the respondent-university to receive application of the petitioner for the said post and consider her on merit in the pending selection process.

**Issues:** Whether any person can challenge the criteria for recruitment when the process for recruitment is at final stage?

**Analysis:** It is well settled principle that law favours the vigilant and not the indolent, hence, delay of 22 months in filing the petition for challenging of criteria fixed through the advertisement after the last date for filing applications has already expired makes the petition not only barred by laches but the petitioner is also estopped by conduct to challenge the said process at this stage.

**Conclusion:** The criteria for recruitment cannot be challenged when the process for recruitment is at final stage.

**32. Lahore High Court**  
**Aina Bano v. Pakistan Medical Commission and others**  
**W.P. No.75998 of 2022**  
**Mr. Justice Rasaal Hasan Syed**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8190.pdf>

**Facts:** The petitioner has challenged Public Notice issued by Pakistan Medical Commission (PMC) which was to the effect that candidates who passed their F.Sc /HSSC or equivalent exam in the year 2021 and were applying for admission in medical/dental colleges for the session 2022-23, were informed that only their elective subject marks and percentage would be considered for merit calculation for admission for the session 2022-23.

**Issues:** Whether the policy approved by PMC for calculation of merit for the admissions in medical and dental colleges in line with the Government policy due to covid-19 pandemic can be interfered with in Constitutional jurisdiction?

**Analysis:** ...it is observed that the regulation requiring 40% weightage qua the F.Sc score is couched in general terms and does not specify as to how that weightage of F.Sc score will be actually calculated. By notification this calculation of merit qua the F.Sc score was specifically limited to only the elective subjects as they were the only subjects in which examinations were actually held and taken...The expectation that the Constitutional jurisdiction may be pressed into service as expressed is not admissible which will have the effect of reshaping the modality structured by the regulatory body in its statutory role to equitably and reasonably attend to the subject-matter in given circumstances that squarely fell in its regulatory domain.

**Conclusion:** The policy approved by PMC for calculation of merit for the admissions in medical and dental colleges in line with the Government policy due to covid-19 pandemic cannot be interfered with in Constitutional jurisdiction.



- 33. Lahore High Court**  
**Ghulam Muhammad (deceased) through L.Rs., etc. v.**  
**Hakim-ud-Din (deceased) through L.Rs., etc.**  
**Civil Revision No.363-D of 1999.**  
**Mr. Justice Ahmad Nadeem Arshad**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8129.pdf>

**Facts:** Petitioners filed connected civil revisions against the judgments and decree passed by the courts below in a suit for declaration having common question of law and facts.

- Issues:**
- i) Under which law the scheme of the inheritance of a Muslim female after termination of her limited interest was described?
  - ii) Whether an evacuee property allotted to a female in lieu of a limited estate left by her in India would, on her death, devolve on her own heirs or on the heirs of the last male heir of the property abandoned in India?
  - iii) Whether the allottee can surrender the area of land of his own choice if required for cancelling the allotment?
  - iv) Whether a person being transferee during pendency of litigation and being aware of litigation can get the benefit of bonafide purchaser without any notice?

- Analysis:**
- i) The Rehabilitation Commissioner, West Pakistan, under Section 6(1) of the Pakistan Rehabilitation Act, 1956 (XLII of 1956) introduced West Pakistan Rehabilitation Settlement Scheme and under Para 46-A of the said scheme described the inheritance of a Muslim female after termination of her limited interest.
  - ii) Section 5 of the West Pakistan Muslim Personal Law (Shariat Application Act), 1962 describe the rule of devolution on the termination of life estate. The august Supreme Court of Pakistan in a case titled “Addl. Settlement Commissioner (Land), Sargodha Vs. Muhammad Shafi & others” (PLD 1971 SC 791) while answering the question that whether an evacuee property allotted to a female in lieu of a limited estate left by her in India would, on her death, devolve on her own heirs or on the heirs of the last male heir of the property abandoned in India, observed that the evacuee property allotted to her would, on her death, under para No.46-A of Rehabilitation Settlement Scheme deemed to open out on the termination of her limited interest to all persons who would have been entitled to inherit the property at the time of the death of the last full owner had the Shariat Law been applicable at the time of such death devolve on the heirs of the last male owner of the property left in India and not on her own heirs.
  - iii) The august Supreme Court of Pakistan in a case titled “Muhammad Yousaf & others V. Settlement Commissioner Land, & others (1985 SCMR 1669) observed that where allotment was made at one time and land remained with the allottee, it would be in the fitness of things to allow him choice as to which area of land he would surrender if required for cancelling the allotment.
  - iv) A person who became transferee during pendency of litigation and being aware of litigation cannot get the benefit of bonafide purchaser without any

notice. Even otherwise, protection under Section 41 of the Transfer of Property Act, 1882 is not available as the suit property is an evacuee property.

- Conclusion:**
- i) The Rehabilitation Commissioner, West Pakistan, under Section 6(1) of the Pakistan Rehabilitation Act, 1956 (XLII of 1956) introduced West Pakistan Rehabilitation Settlement Scheme and under Para 46-A.
  - ii) The evacuee property allotted to her would, on her death, deemed to open out on the termination of her limited interest to all persons who would have been entitled to inherit the property at the time of the death of the last full owner had the Shariat Law been applicable at the time of such death devolve on the heirs of the last male owner of the property left in India and not on her own heirs
  - iii) Yes, the allottee can surrender the area of land of his own choice if required for cancelling the allotment.
  - iv) A person being transferee during pendency of litigation and being aware of litigation cannot get the benefit of bonafide purchaser without any notice.

**34. Lahore High Court**  
**Altaf Ahmad v. Muhammad Anwar and 4 others**  
**Civil Revision No.599-D of 1983**  
**Mr. Justice Ahmad Nadeem Arshad**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8093.pdf>

**Facts:** Through this Civil Revision, petitioner has called in question the validity and legality of judgment & decree of learned Appellate Court whereby while accepting appeal of the respondents, petitioner's suit for possession through pre-emption was dismissed.

- Issues:**
- i) Whether under Order XLI Rule 27 CPC, a party to the appeal can be allowed to produce additional evidence so as to patch-up the weaker parts of its case or fill-up omissions?
  - ii) What is the meaning of the term "co-sharer" in the context of the Punjab Pre-emption Act, 1913?
  - iii) Whether in terms of section 3 of the Punjab Pre-emption Act, 1913 "Immovable property" either village or urban does include agricultural land?
  - iv) Whether the Pre-emption Act 1913, speaks only of "Urban immovable property" and not of "Urban Property"?
  - v) How many stages are available for pre-emptor to prove his right of pre-emption?
  - vi) Whether right of pre-emption can be enforced in case of commercial property?

**Analysis:** i) The appellate Court may require any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause. The expression "to enable it to pronounce judgment" has been subject to general decision of superior Court wherein it has been held that when appellate Court finds itself unable to pronounce judgment owing to lacunas or defects in the evidence as it stands it may admit additional evidence but a party to the appeal

cannot be allowed to produce additional evidence so as to patch-up the weaker parts of its case or fill-up omissions. The scope of order XLI Rule 27 C.P.C. is limited as it contemplates very few circumstances or conditions in which the appellate Court may allow a party to the appeal to produce additional documentary evidence.

ii) The term “co-sharer” is not defined anywhere in the Punjab Pre-emption Act, 1913, but its meaning is quite clear. The word ‘co-sharer’ postulates that there are some other persons as well who have a right in the property. The very conceptions of “joint property” presuppose that it also belongs to a person or persons other than the vendor. All the persons who so own a property among themselves are the co-sharer of each other. Their relationship is mutual. The word ‘co-sharer’ signifies persons owning a share or shares in the whole of the property or properties of which another share or other shares were the subject of sale. In other words, the word ‘co-sharer’ denotes a person who holds an existing joint proprietary interest, whether absolute or limited, in an un-divided property.

iii) The right of pre-emption by virtue of Section 6 of the Act, 1913 exists in respect of “agricultural land” and “village immovable property”. A right of pre-emption also exists under section 7 of the Act, 1913 in respect of “urban immovable property” in any town or sub division of a town subject to proof of existence of custom of pre-emption in such town or subs Division. All these three terms are defined in Section 3 of the Act, 1913. “Immovable property” either village or urban does not include agricultural land. This is clear from the respective definition of “village immovable property” and “Urban immovable property”, which both exclude “agricultural land”, which terms, by adoption of its definition from the Punjab Alienation of Land Act, 1900, means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purpose or for purpose sub serving to agricultural or for pasture and for this purpose shall even excludes the sites of buildings and other structures on such land. The term “urban immovable property”, therefore, will not cover “agricultural land” mainly on account of its being located in an urban area.

iv) It will indeed be a misconception of the law to equate the term “Urban immovable property” with “urban property”. The Pre-emption Act speaks only of “Urban immovable property”. The Board of revenue is no doubt empowered by Section 8(2) of the Act, 1913 to declare by a notification that no right of pre-emption or only such limited right as the Board may specify shall exists with respect to any land or property or class of land or property or with respect to any sale or class of sales.

v) There is no cavil with the proposition that requirement from pre-emptor to prove his right of pre-emption on three stages, one on the date of pre-empted sale, secondly on the date of institution of pre-emption suit and thirdly when it is finally culminated.

vi) Right of pre-emption was only to safeguard the privacy of Muslim families and the same could not be enforced in case of commercial property because the question of disagreeable neighbours in such cases does not arise.

- Conclusion:**
- i) Under Order XLI Rule 27 C.P.C., a party to the appeal cannot be allowed to produce additional evidence so as to patch-up the weaker parts of its case or fill-up omissions.
  - ii) The word ‘co-sharer’ denotes a person who holds an existing joint proprietary interest, whether absolute or limited, in an un-divided property.
  - iii) In terms of section 3 of the Punjab Pre-emption Act, 1913, “Immovable property” either village or urban does not include agricultural land.
  - iv) The Punjab Pre-emption Act 1913, speaks only of “Urban immovable property” and not of “Urban Property”.
  - v) The pre-emptor has right to prove his right of pre-emption on three stages, one on the date of pre-empted sale, secondly on the date of institution of pre-emption suit and thirdly when it is finally culminated.
  - vi) Right of pre-emption cannot be enforced in case of commercial property because the question of disagreeable neighbours in such cases does not arise.

**35. Lahore High Court**  
**Mst. Kaneeza Bibi and 4 others v. Sabir Hussain and 3 others**  
**Civil Revision No.296-D of 2012**  
**Mr. Justice Sultan Tanvir Ahmad**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC7967.pdf>

**Facts:** Through the present Civil Revision, the revision-petitioners have assailed the judgment and decree passed by learned Additional District Judge, whereby, while accepting civil appeal, the learned Appellate Court has set-aside the judgment and decree passed by learned Civil Court.

**Issues:**

- i) What is the requirement of proving the entry of the mutation in the diary or the relevant record?
- ii) Whether mere entry of mutation in the diary or the relevant page of the diary is a primary evidence or is required to be proved through the corroborative evidence?
- iii) How the element of consideration is required to be proved?
- iv) How the Court has to evaluate evidence when both parties led their respective evidence?

**Analysis:**

- i) Law clearly reflect that when the mutation is of inheritance or it is followed by a registered deed or it is being incorporated on an order of the Court, the same is required to be caused in presence of the person whose right has been acquired and it is necessary that such person is identified by two respectable persons preferably Lambardar, Member Union Committee, Union Council or Town Committee. In the absence of fulfillment of the said requirement of law, the factum of entry in the record cannot carry any presumption of truth.
- ii) Mere entry in the diary or the relevant page of the diary is not a primary evidence, especially when the revenue officer effecting the entry has not himself produced the daily diary before the Court and he has not faced the cross-

examination of the rival party.

iii) It is imperative to independently prove the element of consideration, which is one of the most essential ingredients of contract, by producing direct evidence. Payment of consideration is something that can be seen, therefore, there should have been some reliable statement(s) of the witnesses who can confirm that he has seen payment being made by the purchaser to the seller.

iv) There are no two views about the proposition that onus is normally on the one who asserts. The person seeking relief fails when he has not led evidence in his support. In the present case, both parties led their respective evidence, thus, the Court has to evaluate evidence on the balance of probabilities and the case is to be decided in favour of one party, unless the evidence of rival arises to the same degree of cogency as is required to discharge the burden in civil matters.

- Conclusion:**
- i) In order to prove the entry of the mutation in the diary or the relevant record, the same is required to be caused in presence of the person whose right has been acquired and it is necessary that such person is identified by two respectable persons.
  - ii) Mere entry of mutation in the diary or the relevant page of the diary is not a primary evidence; but the revenue officer effecting the entry and the daily diary has to be produced before the Court and the revenue officer has to face the cross-examination of the rival party in order to corroborate the entry of mutation.
  - iii) The element of consideration is required to be proved by producing direct evidence.
  - iv) When both parties led their respective evidence, the Court has to evaluate evidence on the balance of probabilities and the case is to be decided in favour of one party, unless the evidence of rival arises to the same degree of cogency as is required to discharge the burden in civil matters.

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**36. The Punjab Subordinate Judiciary Service Tribunal  
Muhammad Afzal Khan v. The Lahore High Court, Lahore  
Service Appeal No.09 of 2022  
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood  
Sethi, Mr. Justice Sardar Muhammad Sarfraz Dogar  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8025.pdf>**

**Facts:** Through instant appeal, appellant has challenged vires of order / letter whereby appellant's representation for proforma promotion as District & Sessions Judge was declined.

**Issue:** Whether the representation for proforma promotion filed by the appellant after his retirement can be considered under the law?

**Analysis:** Admittedly, appellant had been pursuing the matter before the department, this Tribunal and Hon'ble Apex Court and decision of this Tribunal, affirmed by Hon'ble Apex Court, was also passed in his favour while he was in service. Record duly reflects that pursuant to direction of this Tribunal the matter of

appellant's proforma promotion was before Performance Evaluation Committee, therefore, delay in rendering decision attributed to respondent cannot be construed to adversely affect the appellant. In somewhat similar case, the Hon'ble Apex Court while responding to question regarding non-filing of specific representation for award of promotion during service, in the case reported as Secretary School of Education and others v. Rana Arshad Khan and others (2012 SCMR 126), has made following observations:- "6.... Coming to the facts of this, we find that it has not been disputed before this Court that much before the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason and in the meanwhile respondents attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse. The argument of learned Law Officer that the respondents were not entitled at the relevant time to be granted promotion for one reason or the other is rather misconceived as the operative part of the impugned judgment has candidly directed that the working paper of the respondents shall be prepared and they will be considered for grant of next grade notwithstanding their retirement, if they are even otherwise found entitled thereto. This in fact would now be pro forma promotion."

**Conclusion:** The representation for proforma promotion filed by the appellant after his retirement can be considered under the law if he started pursuing the matter of promotion while he was in service.

### **LATEST LAGISLATION/ AMENDMENTS:**

1. Rules 3 and 19 of "The Punjab Drugs Rules, 2007" are amended.
2. Rule 42 of "The Punjab Motor Vehicle Rules, 1969" is amended.

### **SELECTED ARTICLES**

1. **Manupatra**  
<https://articles.manupatra.com/article-details/Natural-Justice>

#### **Natural Justice by Sankalp Mirani**

*The term "principle of natural justice" is derived from the Latin word "jus natural," and although it is not codified, it is closely tied to common law and moral principles. It is a natural law that has nothing to do with any statute or constitution. All inhabitants of civilised states place the highest value on adherence to the natural justice principle. The Supreme Court issued its directive with the passage of time and the formation of social, just, and economic statutory protection for workers during the early days of fair practise, when industrial regions were governed by a strict and rigid law to hire and fire.*

*Making an informed and fair judgement regarding a specific matter is known as natural justice. Sometimes, the reasonable decision is irrelevant; what important is the*



*process and the participants in arriving at the reasonable decision. It is not constrained by the idea of "fairness," and it comes in a variety of hues and tones depending on the situation.*

2. **Manupatra**

<https://articles.manupatra.com/article-details/the-hole-shedding-light-at-solitary-confinement>

**The Hole-Shedding Light At Solitary Confinement by Akshita Tandon**

*Solitary confinement refers to the punishment where the accused is confined in isolation, away from all the other prisoners, under strict surveillance. It has been accepted that this form of punishment is the most rigorous and torturous one. This sort of imprisonment is awarded to hard-core criminals who are a threat not just to the society but also to the jail inmates. This kind of control is extremely intensive. The psychological impact of this imprisonment is immensely dangerous and vicious. Many activists have raised their voices against solitary confinement as it has been described as inhumane, torturous, barbaric, cruel and grievous. However, the administration has established the need for this strict imprisonment for hardened and benumbed criminals. Though against the human rights, solitary confinement is still prevalent for toughened criminals. Solitary confinement is used as a preventive measure to protect the jail inmates and officials from cold-hearted criminals.*

3. **Manupatra**

<https://articles.manupatra.com/article-details/the-hole-shedding-light-at-solitary-confinement>

**Reverse Piercing Of Corporate Veil: How Does It Support The Present Insolvency By Ishita Chandra**

*A company is regarded as an entity different from its members as an artificial person, thus relishing and being responsible for all the rights and duties arising under law. Therefore, the company is neither an agent nor a trustee of its members and accordingly they are not accountable for the actions of each other, in any form or shape, besides those as provided by the law governing the corporate. This means that the company after incorporation is not answerable for any action or omission of the members or shareholders and vice versa. In the legal sense, this security or shell between the company and its members/shareholders is understood as the 'corporate veil'.*

4. **Springer Link**

<https://link.springer.com/article/10.1007/s10691-022-09493-7>

**Credibility, Trauma, And The Law: Domestic Violence-Based Asylum Claims In The United States By Christina Gerken**



*In 2018, Attorney General Jeff Sessions, in Matter of A-B-, attempted to bar victims of non-state actors—such as intimate partners and local gangs—from obtaining asylum in the United States. This article focuses on domestic violence-based asylum claims that made it to the US Circuit Court of Appeals during the Trump administration and the first five months of the Biden administration. My interdisciplinary approach goes beyond analysing the effect that Matter of A-B- has had on the outcomes of cases and asks how judges evaluate the credibility of petitioners, determine whether domestic violence can rise to the level of persecution, and decide whether a government was unwilling or unable to protect the victim. A systematic analysis of 83 appellate level verdicts shows that asylum decisions are fraught with inconsistencies and that many judges lack a sophisticated understanding of domestic violence, credibility, and trauma.*

##### 5. **Springer Link**

<https://link.springer.com/article/10.1007/s10691-022-09494-6>

##### **Emily Grabham: Women, Precarious Work And Care: The Failure Of Family-Friendly Rights By Ebru Demir**

*The process of globalisation has had a tremendous impact on the structure of employment: the service sector became vital to economic growth; women’s participation in the workforce increased; “a new economy” centring around flexibility in the labour market emerged (Fudge and Owens 2006,). In this new economy, precarious work—which is often poorly paid and thus falls short of sustaining one’s household—became prevalent (Fudge and Owens 2006,), and the precariat was born. As Guy Standing explained, precariat—globalism’s child—lacks a work-based identity and income security (Standing 2011). The precariat have “career-less jobs, without traditions of social memory, a feeling they belong to an occupational community steeped in stable practices, codes of ethics and norms of behaviour, reciprocity and fraternity” (Standing 2011). Women comprise the vast majority of precariat; thus they are the majority of those who are temporary, seasonal, outsourced or in zero-hours positions in the UK and beyond. Precarious contracts reduce women’s bargaining power and give managers a high degree of control over shifts, incomes, and renewal of contracts.*

##### 6. **Latest Laws**

<https://www.latestlaws.com/articles/need-for-improving-pharmaceutical-laws-draft-of-the-drugs-medical-devices-and-cosmetics-bill-2022-187591/>

##### **Need For Improving Pharmaceutical Laws - Draft Of The Drugs, Medical Devices And Cosmetics Bill, 2022 By Jinni Sinha & Sakshi Arora**

*With the rising need to accommodate the new requirements and adaptation of modern technology in the pharmaceutical sector, the draft of the ‘Drugs, Medical Devices and Cosmetics Bill, 2022’ (the “Bill”) has been released by the Ministry of Health and Family Welfare (MoHFW) on July 8, 2022, which seeks to replace the existing archaic law under the Drugs and Cosmetics Act of 1940 (“Act”) and the Drugs and Cosmetic*

*Rules 1945 (“Rules”). The process of review of the Act gained momentum in the last few years, and in the year 2021, the Drug Controller General of India constituted a committee to frame the Bill, on which the MoHFW has sought consultation and feedback from the public and stakeholders, within a period of 45 days from the date of issue of notice (i.e. from July 8, 2022). While the Rules have been amended a few times in the past, it is laudable that the Bill has been introduced to give a fillip to the existing law, by providing for a broader coverage of an improved and a comprehensive regulatory framework for medical devices, clinical trials and e-pharmacies, apart from medicines and cosmetics. It is yet another attempt to enforce the proposed provisions added to the existing law, to ensure synchronisation with international standards as needed, and have an improved regulatory process in place.*

7. **Brill**

<https://brill.com/view/journals/hrlr/aop/article-10.1163-22131035-11020005/article-10.1163-22131035-11020005.xml>

**Re-Colonisation Of Jammu And Kashmir And The Right To Self-Determination By Niaz A Shah**

**Abstract:**

*On 5 August 2019, India unilaterally ended the autonomous status under Article 370 of the Indian constitution 1949. The state of Jammu and Kashmir (J&K) was established under the terms of the Instrument of Accession by the Ruler of j&k. To change the demographic composition of j&k, Article 35A of Indian constitution 1949 was also abolished and new domicile rules were introduced paving the way for non-Kashmiri Indians to settle permanently in j&k. Under the Jammu and Kashmir Reorganisation Act 2019, Kargil and Leh districts were cut from Jammu and recategorized as Union Territory of Ladakh and the state of j&k was relegated to a Union Territory directly governed by the central government. On 5 May 2022, a delimitation report was published giving more seats to Hindus compared to Muslims against the population criterion. This article argues that India had started re-colonisation of j&k since October 1947. Eliminating its autonomous status in August 2019 was not the starting but a tipping point of the re-colonisation. After decolonisation of British India in August 1947, major Indian states such as Hyderabad; Junagadh and j&k were given the option to join India or Pakistan. India saw this as a ‘grave threat’ to her organic unity and invaded Hyderabad on 13 September 1947; j&k on 27 October 1947 and Junagadh on 9 November 1947. It is argued that India secured accession from the Ruler of j&k under compelling circumstances and on the condition that a free and impartial plebiscite would be held to ascertain the wishes of Kashmiri people. Since 1947, the pledge of plebiscite did not materialise. As freedom from colonialism has become a jus cogens, it is argued that the United Nations (UN) and its members have erga omnes obligations to respect and support the right to self-determination of the Kashmiri people.*

