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FORTNIGHTLY CASE LAW BULLETIN

(01-11-2022 to 15-11-2022)

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

JUDGMENTS OF INTEREST

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- 1. Supreme Court of Pakistan**
The Commissioner of Income Tax v.
M/s Dye Chemical Industries (Pvt) Ltd, etc.
Civil Appeal No.630 of 2010
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._630_2010.pdf

Facts: The petitioner Department challenged the orders of the High Court whereby the tax references were decided against the Department on different dates through separate orders on the ground that the industrial undertakings of the respondents having been setup after 07.11.1990 were entitled to the relief under section 6 of the Protection of Economic Reform Act, 1992 (“Act”).

Issue: Whether a taxpayer enjoyed exemption from the payment of minimum tax charged under section 80D of the repealed Income Tax Ordinance, 1979 by virtue of section 6 of the Protection of Economic Reform Act, 1992 read with clause 122C, Part-I of the Second Schedule to the Ordinance?

Analysis: Section 80D of the Ordinance introduced in the year 1991, much after the insertion of Clause 122C, is a non-obstante provision and therefore overrides the other provisions of the Ordinance including any tax exemption granted under the Ordinance prior to the introduction of section 80D. ... Collective reading of the above reproduced provisions show that “economic reforms” which are protected under the Act are the ones that were announced, promulgated or implemented by the Government on or after the 7th day of November, 1990. ... The fiscal incentives (part of the “economic reforms”) that are protected under section 6 are the fiscal incentives that were announced, promulgated and implemented by the Government on or after 07.11.1990. Therefore, the two notifications mentioned in the Schedule to the Act are tax incentives announced in December 1990. Section 6 also protects other fiscal incentives notified under the statutes mentioned in section 3 of the Act but the condition precedent for the “economic reforms” (including the fiscal incentives) to enjoy the protection of the Act is that they must have been announced, promulgated or implemented by the Government on or before 07.11.1990. In this case the fiscal incentive under clause 122C of Part-I of the Second Schedule was promulgated in 1987. The argument of the learned counsel for the taxpayer that the industrial undertaking set up by the respondents was after 07.11.1990 is immaterial. It is the promulgation of the fiscal incentive by the Government that has to be on or before 07.11.1990 and not the actual setting up of the industrial undertaking. Even otherwise, if the industrial undertaking was setup after 07.11.1990 then clause 122C does not apply as it only applied to industrial undertaking setup between January 1987 to June, 1988.

Conclusion: A taxpayer enjoyed exemption from the payment of minimum tax charged under

section 80D of the repealed Income Tax Ordinance, 1979 by virtue of section 6 of the Protection of Economic Reform Act, 1992 read with clause 122C, Part-I of the Second Schedule to the Ordinance if it is announced, promulgated or implemented by the Government on or after 07.11.1990.

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- 2. Supreme Court of Pakistan**
Muhammad Tahir v. Commissioner Inland Revenue,
Zone-II, Regional Tax Office, Abbottabad and another
Civil Appeal No. 317 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan
Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 317 2022.pdf

Facts: The appellant is a resident of a Provincially Administered Tribal Area and income tax was deducted from him with regard to tax years 2011, 2012 and 2013 which was not leviable on the appellant so, he sought refund thereof by submitting an application under section 170 of the Income Tax Ordinance, 2001. He further states that no notification was issued pursuant to the then Article 247(3) of the Constitution applying the Ordinance to the said tribal area.

Issues:

- i) Whether the order of the president can change the status of tribal area to non-tribal area?
- ii) Whether there is any distinction between the powers exercised by the president under article 247(6) and article 247(3)?
- iii) Whether the law/ordinance shall extend automatically to that area which is declared non-tribal area by the order of the President?

Analysis:

- i) The President has the constitutional power to issue the order and such order changes the status of the tribal area and makes it a non-tribal area. The order passed by the President under Article 247(6) of the Constitution means that the area lost its status as a tribal area.
- ii) There is a distinction between the powers exercised by the President under Article 247(6) of the Constitution, which determines the status of an area, with that exercised under Article 247(3) which may be used to extend any particular law to a tribal area.
- iii) When the President passes the order under Article 247(6) and the said tribal area is converted into non-tribal area prior to notification of any Law/Ordinance then it will automatically stand extended to the said area.

Conclusion:

- i) The President has the constitutional power to change the status of the tribal area and make it a non-tribal area
- ii) Powers under Article 247(6) of the Constitution determines the status of an area whereas Article 247(3) is used to extend any particular law to a tribal area.
- iii) When the President passes the order under Article 247(6) prior to notification of the Ordinance then it automatically stands extended to the said area.

**3. Supreme Court of Pakistan
Commissioner Inland Revenue, Lahore v.
Sui Northern Gas Pipeline Limited, Lahore
Civil Petition Nos. 1854-L, 1855-L, 1899-L and 1900-L of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan
Mandokhail**

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1854_1_2022.pdf

Facts: The office of the Court noted that the titled civil petitions for leave to appeal were filed with delay but the applicants stated that the petitions were filed within the prescribed period as per the documents attached therewith because the judgments were reserved and not written, signed and pronounced when they were heard.

Issues: i) Whether it is mandatory under the law that every judgment must inscribe the date when it is written, signed and pronounced?
ii) What are the consequences when the date of writing, signing and pronouncing of judgment is not inscribed?

Analysis: i) Order XX, rule 3 of the Code stipulates that, ‘The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it...’. And, decrees are attended to by Order XX, rule 7 of the Code that decree shall be dated and signed by the Judge on the day which the judgment was pronounced. With regard to the appellate jurisdiction Order XLI, rule 30 and Order XLI, rule 31 of the Code clearly stipulates that a judgment, whether in a court’s original or appellate jurisdiction, must be dated. The Supreme Court Rules, 1980 prescribes that after the case has been heard, the judgment shall be pronounced in an open court and if a judgment is to be pronounced later, notice thereof must be given as to the parties or their Advocates-on-Record and the decree or order shall be drawn up in accordance therewith. Having considered the above, it is clear that every judgment must inscribe the date when it is written, signed and pronounced because this is what the law mandates.
ii) When the date of writing, signing and pronouncing of judgment is not inscribed, it amounts to wasting the time of the courts’ personnel. Moreover, the valuable court time is also wasted in ascertaining when an impugned judgment may have been written, signed and pronounced, and then to determine whether it was assailed within the time prescribed for doing so.

Conclusion: i) Yes, it is mandatory under the law that every judgment must inscribe the date when it is written, signed and pronounced.
ii) When the date of writing, signing and pronouncing of judgment is not inscribed, the valuable court time is wasted in ascertaining when an impugned judgment may have been written, signed and pronounced, and then to determine whether it was assailed within the time prescribed for doing so.

- 4. Supreme Court of Pakistan
Lakson Tobacco Company Limited v.
NWFP through Secretary Finance
Civil Appeal Nos. 174 to 177 of 2012 &
Criminal Original Petition No. 59 of 2004
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar.
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 174 2012.pdf**

Facts: These four appeals assail the same judgment of a learned Division Bench of the Peshawar High Court rendered in constitutional petitions filed by the appellants challenging the levy of tobacco development cess. The tobacco development cess was levied by the North West Frontier Province Finance Act, 1996 as amended by the North West Frontier Province Finance Act, 1999.

Issues: i) Whether rule of strict construction is applicable to fiscal laws as well?
ii) Whether levy is enforceable to the extent of the tobacco purchased from other Province under section 11 of the NWFP Finance Act 1999?

Analysis: i) There are no two views that fiscal laws are to be strictly construed and that nothing is to be presumed or implied. This has been so held in the judgment cited by the learned counsel for the petitioner and very clearly stated by the Hon'ble Supreme Court in the case of Bisvil Spinners Limited, *ibid*, where a quote to that effect from Maxwell on interpretation of statute has been reproduced with approval. That quote also includes a sentence which says "one can only look fairly at the language used".
ii) Obviously, the impugned development cess can be levied only on the tobacco grown in NWFP. The levy thus become enforceable to the extent of the tobacco purchased from this Province. (...)The principle thus laid down by the august Supreme Court is that law is to be saved rather than destroyed and made enforceable if possible. In the light of this pronouncement of the Honourable Supreme Court, section 11 of the NWFP Finance Act 1999 is enforceable by restricting the levy of the tobacco development cess to the tobacco grown in NWFP.

Conclusion: i) Fiscal laws are to be strictly construed and that nothing is to be presumed or implied.
ii). Section 11 of the NWFP Finance Act 1999 is enforceable by restricting the levy of the tobacco development cess to the tobacco grown in NWFP.

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- 5. Supreme Court of Pakistan
M/s Pakistan Telecommunication Company Ltd. v.
Collector of Customs, Karachi
Civil Appeal No. 24 of 2015
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar**

https://www.supremecourt.gov.pk/downloads_judgements/c.a._24_2015.pdf

Facts: The appellant claimed concessionary rate for payment of custom tax on imported equipment under SRO.457(I)/2004 dated 12.06.2004 but custom officials cleared the imported equipment on standard rate. The appellant filed refund claims which were declined by Additional Collector of Customs. The appellant filed this civil petition assailing the finding of both the Learned Tribunal as well as High Court of Sindh and this Court granted the leave to appeal.

Issues:

- i) How it is determined that a new law has prospective or retrospective effect?
- ii) What is legal implication of a rebuttable presumption, in contradistinction to that of an irrebuttable presumption?
- iii) If section 19A of Customs Act, contains only a procedural law, then what is the source of the substantive law it aims to address?
- iv) Whether presumption u/s 19A of the Customs Act, that the incidence of the customs duty paid is presumed to have been passed on to the buyer as a part of the price of such goods, is applicable when imported equipment not sold to any third party?

Analysis:

- i) It is trite that, a new law, which deals with the procedure and does not affect the rights or liabilities of the parties, generally applies to all proceedings, pending as well as future, while a new law, unless expressly provided, which affects the rights or liabilities of the parties, being substantive in nature, is applied prospectively, and not retrospectively.
- ii) As far as the legal implication of a rebuttable presumption, in contradistinction to that of an irrebuttable presumption is concerned, a rebuttable presumption falls in the realm of the procedural law of evidence, and thus would have retrospective application; though there is a difference of judicial opinion across the border on the true nature of an irrebuttable presumption, as to whether the same would fall in the legal sphere of substantive law or procedural law, and thus have prospective or retrospective application. This Court has, however, affirmed, in *Abdul Rehman v. Allah Wasai*, that a rebuttable presumption of fact is part of the rules of evidence regulating the burden of proof.
- iii) Section 19A of the Customs Act was inserted vide the Finance Act, 2005. A reading of section 19A shows that in essence, it provides for a rebuttable presumption requiring the adjudicatory authority to presume the existence of a fact, that the incidence of the paid customs duty has been passed on to the buyer, as a part of the price of the goods, and places the burden on the payer of the customs duty to rebut this fact by adducing evidence. Admittedly, the substantive law on refund of customs duty is contained in section 33 of the Customs Act, which at the time of filing of the refund claims by the appellant did not expressly require a claimant to show that the incidence of the paid customs duty has not been passed on to the buyer as part of the price of the imported goods. In fact, sub-section (4) of section 33 of the Customs Act, expressly mandating that no refund is to be allowed, if the incidence of the customs duty has been passed on to

the buyer, was first incorporated in the Customs Act, as a proviso to section 33(1) by the Finance Act, 2009, and later, as subsection (4) of section 33 by the Finance Act, 2017.

iv) The presumption under section 19A of the Customs Act, that the incidence of the customs duty paid is presumed to have been passed on to the buyer as a part of the price of such goods unless the contrary is proved by the payer of the duty, is not applicable in the case the imported equipment are admittedly installed and utilized by the taxpayer in its own project of telecommunication services and were not sold to any third party, either directly or indirectly.

- Conclusion:**
- i) Generally, a new law dealing with procedure and not affecting the right etc. of parties, applies to all proceedings whereas, unless expressly provided, if it is substantive in nature affecting the rights of parties then it applies only prospectively.
 - ii) The legal implication of a rebuttable presumption, in contradistinction to that of an irrebuttable presumption is that a rebuttable presumption falls in the realm of the procedural law of evidence, and thus would have retrospective application.
 - iii) The substantive law on refund of customs duty is contained in section 33 of the Customs Act.
 - iv) The presumption u/s 19A of the Customs Act, that the incidence of the customs duty paid is presumed to have been passed on to the buyer as a part of the price of such goods, is not applicable when imported equipment not sold to any third party.

6. Supreme Court of Pakistan
Mushtaque Ahmed Memon and Ali Akbar Abro v.
Arshad Hussain Bhutto, etc.
Civil Appeal Nos. 1292 to 1301/21 & Civil Misc. Appeal No. 103 of 2022
Mr. Justice Qazi Faez Esa, Mr. Justice Yaha Afridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 1292_2021.pdf

Facts: These ten Civil Appeals assail the common judgment of the Sindh Service Tribunal Karachi.

Issue: What is the scope and applicability of the Sindh Civil Servants (Regularization of Adhoc Appointments) Act, 1994 and amendment thereto made by the Sindh Civil Servants (Regularization of Adhoc Appointments) (Amendment) Act, 2014?

Analysis What the 2014 Act sought was to give an advantage to the appellants with retrospective effect at the expense of the vested rights of the private respondents. Unlike the appellants the private respondents entered into the service of Pakistan in terms of Article 240(2) of the Constitution of the Islamic Republic of Pakistan ('the Constitution') by being selected by Sindh Public Service Commission ('the Commission') constituted by the Sindh Public Service Commission Act, 19898, which was enacted pursuant to Article 242 of the Constitution. While the appellants came through the proverbial back door and were saved by the 1994

Act. However, we need not consider the constitutionality of the 1994 Act because that issue is not before us and twenty-eight years have passed since the appellants' regularization. However, having secured their employment by the 1994 Act an unjustified, illegal and unconstitutional benefit was sought to be extended to them through the said notifications and the 2014 Act. Incidentally, the reasons to enact the 2014 Act are neither given therein nor provided by the appellants. Article 25(1) proscribes discrimination and Article 27(1) of the Constitution prohibits discrimination in the service of Pakistan (except positive discrimination mentioned in the provisos thereto). The deeming clause brought twenty years after the promulgation of the Act itself in 1994 is, on the face of it, against the object and scheme of the original Act itself. The purpose of the original Act was only to validate and regularize the adhoc appointment of the employees from the date of its promulgation whereas the subsequent deeming clause goes much beyond the scheme of the original Act, therefore, it has to be accepted to the extent it is inconformity with the original Act.

Conclusion: The purpose of the original Act was only to validate and regularize the adhoc appointment of the employees from the date of its promulgation whereas the subsequent deeming clause goes much beyond the scheme of the original Act, therefore, said clause has to be accepted to the extent it is inconformity with the original Act .

7. Supreme Court of Pakistan
Allah Ditta v. Deputy Postmaster General (Admn), Office of the Postmaster General, Northern Punjab Circle, Rawalpindi & another
Civil Petition No. 2602 of 2019
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. 2602 2019.pdf

Facts: The petitioner who was performing his duties as Postmaster in BPS-9 through this civil petition for leave to appeal has challenged the judgment passed by the learned Federal Service Tribunal whereby his service appeal was dismissed.

Issue: i) Whether in case of proven fraud and misappropriation of public money, the delinquent can be exonerated for the reason of considerable length of service?
 ii) What is meant by the doctrine of *Mens rea*?

Analysis: i) In case of fraud and misappropriation of public money, the responsible person cannot be let free or exonerated with a low degree of penalty. Merely for the reason that the petitioner served the department for 34 years is no justification to convert the punishment of dismissal from service into compulsory retirement. If such type of leniency is shown in the heinous matters of misappropriation of public money or public funds, then it will amount to giving a license to all such civil servants to first join service, then serve at considerable length and commit crimes or misconduct at the verge of retirement without any fear of disciplinary proceedings, but with the confidence and assurance that the dismissal order from service will be converted into compulsory retirement by the competent authority

by taking a lenient view or else the same request will be made to the Court or Tribunal to convert the punishment into compulsory retirement under the garb of long length of service which is a dangerous idea and cannot be fortified or encouraged as it would seriously spoil the entire corpus and fabric of the civil servants service structure.

ii) The doctrine of *Mens rea* refers to the intent or awareness of wrongdoing behind the crime and the criminal intent which means the criminal act must be voluntary or purposeful. The literal translation of this word from Latin is "guilty mind." It is apparent from the facts of the case that the petitioner misappropriated the public money purposely and consciously and also knowing that his act is an offence and intentionally and recklessly overlooked the considerable risk and jeopardy.

- Conclusion:**
- i) In case of fraud and misappropriation of public money, the responsible person cannot be let free or exonerated with a low degree of penalty merely for the reason that the petitioner served the department for a considerable period.
 - ii) The doctrine of *Mens rea* refers to the intent or awareness of wrongdoing behind the crime and the criminal intent which means the criminal act must be voluntary or purposeful.

8. Supreme Court of Pakistan
Ijaz Badshah v. The Secretary, Establishment Division, Govt. of Pakistan, Cabinet Block, Constitution Avenue, Islamabad & others.
Civil Petition No. 3813 of 2019
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._3813_2019.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the learned Federal Service Tribunal, Islamabad ("Tribunal"), whereby the Service Appeal along with the Miscellaneous Petition was dismissed.

Issues:

- i) Whether Supreme Court may examine and judicially review the executive discretion on the ground of proportionality and reasonableness?
- ii) Whether the primary objective of carrying out a departmental inquiry is to catch on the truth whether a case of misconduct is made out or not?
- iii) Whether the award of punishment is the dominion of the competent authority and the role of the Tribunal or Court is secondary?

Analysis:

- i) No doubt Supreme Court may examine and judicially review the executive discretion on the ground of proportionality and reasonableness but at the same time the gravity of the charges raised in the statement of allegations are also to be considered. While exercising the role of judicial review in order to examine whether the punishment awarded by the competent authority may be converted into some lesser punishment or not, the set of circumstances of each and every

case have to be considered minutely to determine whether the person deserves such treatment or not. In fact, it is the gravity of misconduct and charges which predominately guides the exercise of judicial review.

ii) The primary objective of carrying out a departmental inquiry is to catch on the truth whether a case of misconduct is made out or not. The guilt or innocence of a civil servant can only be thrashed out from the outcome of the inquiry.

iii) The award of punishment is the dominion of the competent authority and the role of the Tribunal or Court is secondary unless the punishment imposed upon the delinquent employee is found to be unreasonable, disproportionate or against the law. However, at the same time, the rationale of deterrent punishment in the case of gross misconduct is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure in order to maintain discipline for the general administration of the institution or organization. If in such cases of grievous misconduct any latitude is shown for conversion of penalty, then it would also seriously prejudice the discipline of the civil servants service structure.

- Conclusion:**
- i) Supreme Court may examine and judicially review the executive discretion on the ground of proportionality and reasonableness but at the same time the gravity of the charges raised in the statement of allegations are also to be considered.
 - ii) The primary objective of carrying out a departmental inquiry is to catch on the truth whether a case of misconduct is made out or not.
 - iii) The award of punishment is the dominion of the competent authority and the role of the Tribunal or Court is secondary unless the punishment imposed upon the delinquent employee is found to be unreasonable, disproportionate or against the law.

- 9. Supreme Court of Pakistan**
Amanullah Khan v. Hospital Director, KTH (MTI), Peshawar & others.
Civil Petition No. 2092 of 2019
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._2092_2019.pf

Facts: This Civil Petition for leave to appeal was directed against the judgment passed by the learned Peshawar High Court in whereby the petitioner's claim for upgradation was dismissed.

Issue:

- i) Whether upgradation can be claimed as a vested right?
- ii) What is the criteria to justify the upgradation?

Analysis: The upgradation of a post is not a vested right, but it stems from a policy decision for its implementation for the particular set of employees as per scheme embedded in the Policy which cannot be mixed up with the promotion. By and large, upgradation is accorded to all positions in a category upon completion of a

required length of service in accordance with the benchmarks laid down by the competent authority as a policy decision. Upgradation is the process of improving the quality or usefulness of something or of giving a person a more important job, but in one fell swoop if the upgradation is concomitant and coexisted to all the posts in a group of employees, then obviously there is no sense in calling it a promotion of all the persons in that category. A promotion involves advancement in rank, grade or a footstep en route to a higher position, whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate sufferings which is a translucent distinction between the two genres. In the case of upgradation, the candidate continues to hold the same post without any change in his duties but he is accorded a higher pay scale. In order to lessen the distress or misery as a result of stagnation, the modus of upgradation moves in on for reparation. Upgradation under the scheme is personal to the incumbents of a particular post for a sufficient length of service without any progression or avenue of promotion. The upgradation cannot be made to benefit a particular individual in terms of promoting him to a higher post or further providing him with the avenues of lateral appointment or transfer or posting. To justify the upgradation, the Government is required to establish that the department needs restructuring, reform or to meet the exigency of service in the public interest.

- Conclusion:** i) Upgradation cannot be claimed as a vested right.
 ii) Upgradation must be based on the Policy decision of the competent authority. The competent authority must establish that the department needs restructuring, reform or to meet the exigency of service in the public interest. The objectives of the upgradation may either to improve the quality or usefulness of something or of giving a person a more important job or provide reparation against stagnation in service.

10. Supreme Court of Pakistan
Azra Bibi v. General Manager, Personnel (CPO),
Pakistan Railways HQ, Lahore & others
Civil Petition No.2628 of 2019
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._2628_2019.pdf

Facts: This Civil Petition for leave to appeal is brought to challenge the judgment passed by the Federal Service Tribunal, Islamabad in Service Appeal, whereby the appeal filed by the petitioner was dismissed.

Issue: i) How civil servant is defined under Section 2 of the Civil Servants Act, 1973 and under Section 2 (a) of the Service Tribunals Act, 1973?
 ii) Whether the law permits the legal heirs to knock the doors of the Service Tribunal after the death of the civil servant?
 iii) Whether personal right to an action dies with the person?

iv) What are the circumstances when legal representatives can be impleaded to continue the suit or legal proceedings?

- Analysis:**
- i) According to Section 2 (b) (Definitions clause) of the Civil Servants Act, 1973, a "civil servant" means a person who is a member of All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does include (i) a person who is on deputation to the Federation from any Province or other authority; (ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or (iii) a person who is "worker" or "workman" as defined in the Factories Act, 1934, or the Workman's Compensation Act, 1923. Whereas under Section 2 (a) of the Service Tribunals Act, 1973, a "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973.
 - ii) There is no scope or prospect for filing any appeal before the Service Tribunal under Section 4 other than by the civil servant himself, and the law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant.
 - iii) We are sanguine to the legal maxim "actio personalis moritur cum persona" which is a legal turn of phrase of Latin origin. In the well-read literary connotation it means that the personal right to an action dies with the person. There are certain categories of legal proceedings or lawsuits in which the right to sue is personal and does not survive to the legal representatives and, as a consequence thereof, the proceedings are abated.
 - vi) In case of survival of the cause of action, according to the genres of the lis, the legal representatives may be impleaded to continue the suit or other legal proceedings for which relevant provisions are mentioned under Order XXII, Rule 1, C.P.C. that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives and further modalities are mentioned in succeeding rules, how to implead the legal heirs in case of death of one of several plaintiffs or the sole plaintiff and in case of death of one of several defendants or of the sole defendant.

- Conclusion:**
- i) A person who is a member of All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence.
 - ii) Law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant.
 - iii) The personal right to an action dies with the person in certain categories of legal proceedings and law suits and consequently proceedings are abated.
 - iv) The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.
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11. **Supreme Court of Pakistan**
Javed Iqbal v. The State through D.A.G., Islamabad & another
Criminal Petition No.1251 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/crl.p. 1251 2022.pdf

Facts: The petitioner was allowed post arrest bail in case FIR No.27/19 for the offences under sections 13/14 of the Prevention of Electronic Crimes Act, 2016 (PECA, 2016) read with sections 420, 468, 471 and 109 of the Pakistan Penal Code, 1860 (PPC) registered at Police Station F.I.A, Cyber Crime Reporting Centre, subject to his furnishing of bail bonds in the sum of Rs.500,000/- with one surety in the like amount to the satisfaction of the trial Court. The petitioner was, however, further directed to deposit Rs.3.5 million in the trial Court. Although the petitioner has been granted bail but due to the condition of depositing of Rs.3.5 million in the trial Court, he is still lying in the jail; hence, this petition for leave to appeal.

Issues:

- i) Whether the Court while granting bail to an accused can impose any condition other than submission of sureties?
- ii) When bail is granted to an accused not as a mean of enforcing recovery of fine, but on its own merits, whether the same could be made dependent on the payment of fine?
- iii) Whether in terms of section 499 of the Code, the Court can require an undertaking from an accused person before granting bail to desist from the repetition of the offence with which he is charged, as a condition precedent to the grant of bail?

Analysis:

- i) In case the Court considers it expedient to release an accused on bail during pendency of trial, it can certainly require him to execute a bond, either personally or through sureties, setting an amount therein having regard to the facts and circumstances of each case. In order to ensure future attendance, the accused is required to submit bail bond under section 499 of the Code of Criminal Procedure, 1898 (the Code) and while asking the accused to submit sureties, the Court is not required to impose any condition upon the accused for further depositing of money. When the Court comes to a conclusion that an accused is entitled to be released on bail then of course such bail granting order cannot be subjected to riders and conditions.
- ii) When bail is granted to an accused not as a mean of enforcing recovery of fine, but on its own merits, the same could not be made dependent on the payment of fine; any such condition would amount to curtail his liberty, for which he otherwise is entitled.
- iii) In terms of section 499 of the Code the Court cannot require an undertaking from an accused person before granting bail to desist from the repetition of the offence with which he is charged, as a condition precedent to the grant of bail;

such a condition cannot be incorporated in a bail or surety bond itself.

- Conclusion:**
- i) The Court while granting bail to an accused cannot impose any condition other than submission of sureties.
 - ii) When bail is granted to an accused not as a mean of enforcing recovery of fine, but on its own merits, the same could not be made dependent on the payment of fine.
 - iii) In terms of section 499 of the Code the Court cannot require an undertaking from an accused person before granting bail to desist from the repetition of the offence with which he is charged, as a condition precedent to the grant of bail.

12. Supreme Court of Pakistan
Muhammad Usama v. The State
Jail Petition No. 496 of 2019
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p. 496 2019.pdf

Facts: Petitioner was tried by the learned Sessions Judge, pursuant to a case registered under Section 302 PPC for committing murder. The learned Trial Court convicted the petitioner under Section 302(b) PPC and sentenced him to imprisonment for life. In appeal, the learned High Court maintained the conviction and sentence recorded by the learned Trial Court.

Issues: Whether the conviction and sentence recorded by the court should commensurate with the act of the accused?

Analysis: We have noted certain material aspects of the case, which clearly reflect that the petitioner was minor at the time of occurrence; the occurrence has taken place at the spur of the moment and without any preparation or premeditation; the weapon used by the petitioner is ordinarily attached to the motorcycle/cycle for safety and the same without any stretch of imagination cannot be termed as a weapon for committing such like crimes. All these aspects when read conjointly with the statement of the petitioner under Section 340(2) Cr.P.C., it further strengthens the view of this Court that the occurrence has taken place without premeditation and possibility cannot be ruled out that the same was result of some trivial altercation/use of filthy language as stated by the petitioner. These aspects when adjudicated, there is no second cavil to this proposition that the petitioner has made out a case, which squarely attracts the provision of Section 302(c) PPC. (...) Keeping in view the nature of the occurrence as stated above, we are of the view that the sentence of imprisonment for life would be too harsh for the petitioner.

Conclusion: Conviction and sentence recorded by the courts must commensurate with the act of the accused.

- 13. Supreme Court of Pakistan**
Naseer Ahmed and others etc. v. Returning Officer
U/c 31 Khuda Dan, Mirpur Khas & others.
Civil Appeal No.3090 of 2022
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. 3090 2022.pdf

Facts: On an application moved by respondents no. 2 to 4 filed, the ECP vide impugned order declared the election to be void and directed that there be re-polling. The appellants filed this appeal under s. 9(5) of the Elections Act, 2017 (“2017 Act”).

Issues: i) Whether s. 9(5) of the Elections Act, 2017 is a standalone provision, which provides for a general right of appeal to this Court?
 ii) What would be the effect if the correct statutory provision is not mentioned by the authority making the order under challenge?

Analysis: i) Section 9(5) of the 2017 Act is not a standalone provision, which provides for a general right of appeal to this Court. Rather, it is particular to s. 9 alone: “Any person aggrieved by a declaration of the Commission under this section may, within thirty days of the declaration, prefer an appeal to the Supreme Court” (emphasis supplied).
 ii) It is well settled that even if the correct statutory provision is not mentioned by the authority making the order under challenge, if the relevant power or jurisdiction has been conferred the Court will consider the matter in terms thereof.

Conclusion: i) Section 9(5) of the 2017 Act is not a standalone provision, which provides for a general right of appeal to this Court rather it is particular to s. 9 alone.
 ii) If the correct statutory provision is not mentioned by the authority making the order under challenge but jurisdiction has been conferred, the Court will consider the matter in terms thereof.

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- 14. Supreme Court of Pakistan**
Zakia Begum and another etc. v. Nasir--ul-Islam Khan and others etc.
Civil Appeals No.10-Q and 1273 of 2021, CMA No. 0780 of 2021 and
Criminal Appeal No.4-Q of 2021.
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar Mrs. Justice Ayesha A.
Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 10 q 2021.pdf

Facts: Through these Appeals, the respective appellants have challenged the judgment of the High Court wherein an appeal filed by one Zakia Begum, etc. was accepted and the judgment and decree of the Senior Civil Judge was set aside and the suit of the Appellants was decreed. She is however aggrieved of certain portions of the impugned judgment as well as the fact that her contempt application filed against the Respondents was dismissed. On the other hand, appellants Shams-u-Islam and others are aggrieved of the impugned judgment on the basis that by setting

aside the judgment and decree of the Senior Civil Judge the suit of Zakia Begum, etc. has been decreed by the High Court.

Issues:

- i) Whether a sharia compliant will would act as an ex-ante instrument?
- ii) Whether a will can take precedence over the inheritance rights of the Quranic inheritors of deceased?
- iii) Under what circumstances, a bona fide purchaser is entitled to the equitable protection available to him under Section 41 of the Transfer of Property Act, 1882?

Analysis:

- i) A sharia compliant will would not act as an ex-ante instrument which regulates the inheritable shares of all legal heirs before the actual opening of the testator's estate even where the ultimate value received by all the legal heirs is equivalent to what would have been their receivable Quranic share at the time of the opening of the estate.
- ii) If the will has been found to have been compliant with Sharia, the right to inheritance under the will would not take precedence over the inheritance rights of the Quranic inheritors of deceased. Any such will taking precedence over the inheritance rights is contrary to the principles of Sharia and is, as a result, null and void.
- iii) If a purchaser exercised due diligence by approaching the revenue records for ascertaining title of the property and vendor was owner of the property by virtue of the unchallenged will then he is entitled to the equitable protection available under Section 41 of the Transfer of Property Act, 1882.

Conclusion:

- i) A sharia compliant will would not act as an ex-ante instrument.
- ii) A will cannot take precedence over the inheritance rights of the Quranic inheritors of deceased.
- iii) A bona fide purchase is entitled to the equitable protection available under Section 41 of the Transfer of Property Act, 1882 if the vendor was owner of the property in record by virtue of the unchallenged will.

15. Supreme Court of Pakistan
Amjad Hussain v. Nazir Ahmad & others.
C.M.A.3610 of 2022 in C.R.P.NIL of 2022 in C.A.1256 of 2014 and
C.M.A.3611 of 2022 in C.R.P.NIL of 2022 in C.A.1257 of 2014
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a. 3610_2022.pdf

Facts: These applications have been filed under Order XXVI, Rule 6 of the Supreme Court Rules 1980 (“Rules”).

Issues: What is the legal ground for substitution of counsel in review petition before Supreme Court?

Analysis: Order XXVI of the “Rules” lays special emphasis on the role and obligation of the Advocate who is to draw up the application for review and appear in support of it before the Court. Under Rule 6 an application for review has to be drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made. Under Rule 4, the Advocate who draws up the review application has not only to specify the points upon which the prayer for review is based but he has also to add his certificate to the effect that the review would be justifiable in accordance with the law and practice of the Court. Rule 5 provides that in case the Court comes to the conclusion that the review application filed was vexatious or frivolous, the Advocate or the Advocate on Record drawing the application shall render himself liable to disciplinary action. Rule 6, thus, has to be seen and applied in the overall scheme of Order XXVI of the Rules. It is not hard to see that the same Advocate and the same Bench can best appreciate the grounds of review. A review argued by a new Advocate before a new Bench would inevitably amount to rehearing of the main case and going beyond the scope of review under the law. The requirement of “sufficient ground” for granting the special leave for substitution of counsel is not expressly stated in Rule 6, but this does not mean that the discretion of the Court to grant or decline the special leave is arbitrary or is mechanical on filing of an application in this regard by a petitioner. This discretion, like all other discretions, is to be exercised judiciously for valid reasons by considering the circumstances of the case.

Conclusion: The special leave to substitute a counsel in a review petition is to be granted only when appearance of the earlier counsel is not possible due to some unavoidable circumstances.

16. Supreme Court of Pakistan
Muhammad Nadim s/o Pervaiz Akhtar v.
The State and another
Criminal Petition No.1072-L of 2022
Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.1072_1_2022.pdf

Facts: By means of this Criminal Petition for leave to appeal the petitioner impugns the order passed by learned Lahore High Court whereby he was declined post-arrest bail in FIR lodged under Sections 365 and 337-L(2), PPC.

Issues:

- i) What is criteria and yardstick laid down under section 497 of CrPC?
- ii) What rule of consistency or the doctrine of parity encapsulates in criminal cases including bail matters?
- iii) What do words “reasonable grounds” contained in section 497 CrPC mean?

Analysis: i) According to the criteria and yardsticks laid down under Section 497 Cr.P.C, if the accused of any non-bailable offence is arrested he may be released on bail but he shall not be released if there appear reasonable grounds for believing that he

has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.

ii) The rule of consistency or in other words, the doctrine of parity in criminal cases including bail matters encapsulates that where the incriminated and ascribed role to the accused is one and the same as that of the co-accused then the benefit extended to one accused should be extended to the co-accused also on the principle that like cases should be treated alike but after accurate evaluation and assessment of the co-offenders' role in the commission of the alleged offence. While applying doctrine of parity in bail matters, the Court is obligated to concentrate on the constituents of the role assigned to the accused and then decide whether a case for the grant of bail on the standard of parity or rule of consistency is made out or not.

iii) In the case of *Zaigham Ashraf v. State and others (2016 SCMR 18)*, this Court held that the words "reasonable grounds" as contained in Section 497, Cr.P.C., required the prosecution to show to the court that it was in possession of sufficient material/evidence, constituting 'reasonable grounds' that accused had committed an offence falling within the prohibitory limb of Section 497, CrPC. For getting the relief of bail accused only has to show that the evidence/material collected by the prosecution and/or the defence plea taken by him created reasonable doubt/suspicion in the prosecution case and he was entitled to avail the benefit of it.

- Conclusion:**
- i) The criteria and yardsticks laid down under Section 497 CrPC is that if the accused of any non-bailable offence is arrested he may be released on bail except there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.
 - ii) The rule of consistency the doctrine of parity in criminal cases including bail matters encapsulates that like cases should be treated alike but after accurate evaluation and assessment of the co-offenders' role in the commission of the alleged offence.
 - iii) The words "reasonable grounds" as contained in Section 497, Cr.P.C., requires the prosecution to show to the court that it was in possession of sufficient material/evidence, constituting 'reasonable grounds' that accused had committed an offence falling within the prohibitory limb of Section 497.

17. Lahore High Court
Premier Insurance Limited v.
M/s Ihsan Yousaf Textile Private Ltd. etc.
R.F.A. No.1064 of 2011
Mr. Justice Shahid Bilal Hassan, Mr. Justice Muhammad Raza Qureshi
<https://sys.lhc.gov.pk/appjudgments/2022LHC7336.pdf>

Facts: Respondent No.1 filed an application under section 75, 76 and 122 of the Insurance Ordinance, 2000 for the recovery against the appellant before the

Insurance Tribunal. On conclusion of trial, the learned Judge, Insurance Tribunal accepted the application filed by the respondent No.1 and held him entitled to Insurance Claim/Policy Proceed alongwith liquidated damages. Hence, the instant appeal has been preferred.

Issues: i) What will be the value of verdict of Insurance Tribunal which has not been constituted as per law?
ii) Whether court is bound to decide the objection of party qua admissibility or inadmissibility of evidence then and there?

Analysis: i) sub-section (2) of section 121, *ibid*, provides that, ‘The Tribunal shall consist of a Chairperson who shall be serving or retired Judge of the High Court and not less than two members being persons of ability and integrity who have such knowledge or experience of life insurance, non-life insurance, actuarial science, finance, economics, law, accountancy, administration or other discipline as would, in the opinion of the Federal Government, enable them to discharge the duties and functions of members of the Tribunal.’ and sub-section (3) *ibid* demands that, ‘To constitute a sitting of a Tribunal the presence of the Chairperson and at least one other member shall be necessary.’ By using word “shall” the legislators have made it mandatory and any deviation therefrom would make the verdict of such Tribunal illegal and not sustainable in the eye of law.
ii) The learned Tribunal did not ponder upon and decide the point of admissibility of the said report at the relevant time, which otherwise ought to have been decided then and there instead of deferring the same till the end of trial and even at the time of passing the impugned judgment, the objection raised by the respondent No.1 was not decided.

Conclusion: i) Judgment rendered by an Insurance Tribunal which has not been constituted as per mandate of law, is not sustainable in the eye of law.
ii) It is the duty of the trial court to decide the objection qua admissibility or inadmissibility of evidence then and there and not to defer the same till the end of the trial.

18. Lahore High Court
Shehzad Akhtar v. Muhammad Saleem Shad Qureshi, etc.
R.F.A. No.39735 of 2020
Mr. Justice Shahid Bilal Hassan
<https://sys.lhc.gov.pk/appjudgments/2022LHC7326.pdf>

Facts: A suit under Order XXXVII Rule 2 C.P.C., for recovery was decreed to the extent of principal amount. The appeal against decree was accepted and matter was remanded for fresh decision. The said suit was decreed to the extent of principal amount along with profit and the compensation was also granted, hence, the instant regular first appeal.

Issues: i) Which court has to be approached when recovery of certain amount of benefit or interest along with paid amount is claimed?
ii) Whether “Promissory Note” and “Bond” are same having similar remedies available under law?

Analysis: i) A suit with regards to negotiable instruments, without claim of any other amount is to be instituted under the Rule 2 of Order XXXVII, Code of Civil Procedure, 1908 and if part payment is made, the transaction with regards to investment is carried out and instead of paid amount, certain amount of benefit or interest is also claimed, such suit is not covered by above provision of law. ii) The definition of Negotiable Instruments given in section 4 of the Negotiable Instruments Act makes it vivid that it does not require attestation by any witness as it is a promise by its maker for the payment of amount received under Negotiable Instruments Act and in case the said document i.e. Promissory Note requires certain attestation, it becomes a “Bond”, which has been defined in section 2(5) of the Stamp Act, 1899, as an instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed as the case may be and this instrument is attested by a witness.

Conclusion: i) When recovery of certain amount of benefit or interest along with paid amount is claimed, then the court of ordinary jurisdiction i.e. Civil Court has to be approached.
ii) “Promissory Note” and “Bond” are different documents and against both different remedies are available under law.

19. Lahore High Court
Dr. Hassan Shahryar v. Sana Waqar and 2 others.
Civil Revision No. 13538 of 2020
Mr. Justice Shahid Bilal Hassan
<https://sys.lhc.gov.pk/appjudgments/2022LHC7304.pdf>

Facts: Learned Civil Court by accepting the application of the petitioner under Order VII, Rule 11 CPC rejected the plaint of the respondent but the learned Appellate Court accepted the appeal and set aside the judgment of learned Trial Court and remanded the matter for deciding the same afresh after framing issues and recording evidence. Petitioner through this civil revision challenged the judgment of learned Appellate Court.

Issue: i) Whether the Union Council in Pakistan would have the jurisdiction in matters of divorce when the spouses are residing in a foreign country?
ii) Whether the Civil Court can issue an injunction to, or stay any proceedings pending before a Chairman or an Arbitration Council?

Analysis: i) In view of the Sections 2(b) and 7 of the Muslim Family Laws Ordinance, 1961 and Rule 3(b) of the West Pakistan Rules under the Muslim Family Laws

Ordinance, 1961, the Union Council and/or the Chairman, which would have jurisdiction in the matter would be the Union Council and/or the Chairman within whose territorial jurisdiction the wife was residing at the time of pronouncement of divorce and in this case the respondent No.1 was residing in the USA as has been admitted by the petitioner. When the position is as such, as observed above, as per Notification S.R.O.No. 1086(K)61 dated 09.11.1961, officers of Pakistan Mission abroad are authorized to discharge the functions of Chairman under the aforesaid Ordinance.

ii) So far the argument that the Family Court cannot issue an injunction to, or stay any proceedings pending before a Chairman or an Arbitration Council under section 22 of the Family Courts Act, 1964; in this regard it is observed that when an act is performed without any jurisdiction, as discussed above, the civil Court being a Court of plenary jurisdiction has authority and competence to look into the matter and proceed with the same in accordance with law as well as pass an appropriate order in this regard. Even if the Chairman/respondent No.2, for the sake of arguments, is considered to have jurisdiction, the trial Court, though its jurisdiction is barred, can look into the matter as has been held in Messrs Mardan Ways SNG Station v. General Manager SNGPL and others (2022 SCMR 584).

- Conclusion:** i) The Union Council in Pakistan would have no jurisdiction in matters of divorce when the spouses are residing in a foreign country rather the officers of Pakistan Mission abroad are authorized to discharge the functions of Chairman under the aforesaid Ordinance.
- ii) When an act is performed without any jurisdiction the civil Court being a Court of plenary jurisdiction has authority and competence to look into the matter and proceed with the same in accordance with law as well as pass an appropriate order in this regard.

20. Lahore High Court
Chanan alias Channu and others v. Hassan Raza and others
Civil Revision No. 3471 of 2016
Mr. Justice Shahid Bilal Hassan
<https://sys.lhc.gov.pk/appjudgments/2022LHC7356.pdf>

Facts: The petitioners through this civil revision challenged the judgment of learned Appellate Court whereby the appeal of the respondents was accepted and the judgment of the learned Trial Court was set aside and the suit of the petitioners for administration of property was dismissed.

Issue: i) What is the scope of an Administrative suit?
 ii) Whether the issues which are not framed as per pleadings can resolve the controversy between the parties?

Analysis: i) Under the administrative suit, the Court assumes the jurisdiction of an administrator, realizes the assets, discharges the debts and legacies, takes an

account of the income of the property and distributes the assets amongst those entitled to it. ... In 'administrative suit' only the admitted legal heirs of a deceased are to be impleaded and if right of a stranger who is not sharer are involved, the 'administrative suit' is not competent and such rights are to be determined through separate proceedings provided under law.

ii) Evidence is led after framing of issues. The stage of framing of issues is very important in trial of civil suit because at that stage the real controversy between the parties is summarized in the shape of issues and narrowing down the area of conflict and determination where the parties differ and then parties are required to lead evidence on said issues. The importance of framing correct issues can be seen from the fact that parties are required to prove issues and not pleadings as provided by Order XVIII, Rule 2, CPC. The Court is bound to give decision on each issue framed as required by Order XX, Rule 5, CPC. Therefore, the Courts while framing issues should pay special attention to Order XIV of CPC and give in depth consideration to the pleadings etc. for the simple reason that if proper issues are not framed, then entire further process will be meaningless, which will be wastage of time, energy and would further delay the final decision of the suit.

- Conclusion:**
- i) Under the administrative suit, the Court assumes the jurisdiction of an administrator, realizes the assets, discharges the debts and legacies, takes an account of the income of the property and distributes the assets amongst those entitled to it.
 - ii) The issues which are not framed as per pleadings cannot resolve the controversy between the parties and entire further process will be meaningless, which will be wastage of time, energy and would further delay the final decision of the suit.

21. Lahore High Court
M/S Makkah Traders etc. v. MCB Bank Limited
Case No. FAO No.46550 of 2019
Mr. Justice Abid Aziz Sheikh, Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2022LHC7493.pdf>

Facts: Respondent bank filed two separate suits for recovery against the appellants. Then appellants filed petitions for leave to defend the suits (PLAs). The said PLAs were replied by respondent bank, however, during proceedings, appellants were proceeded against *ex parte* and PLAs were decided on merits through two separate *ex parte* judgments and decrees. The appellants being aggrieved filed applications for setting aside *ex parte* judgments and decrees, however, the same were dismissed, hence these appeals.

Issues:

- i) Whether the case can be decided on merits in the absence of the counsel for the petitioners/appellants?
- ii) Whether application u/s 12 and appeal u/s 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 can be filed when PLA is filed?

iii) Whether applications under Order IX Rule 13 CPC can be filed for setting aside the judgments and decrees passed under the Financial Institutions (Recovery of Finances) Ordinance, 2001?

- Analysis:**
- i) If the case is adjourned with specific direction that no further adjournment will be granted even then no lawful excuse has been rendered for non-availability of learned principal counsel for the appellants. In such circumstances, the request for adjournment may be declined and the appeal can be decided on merits in view of law settled by august Supreme Court in M. Haleem and others v. H. Muhammad Nasim and others (PLD 1969 SC 270).
 - ii) The holistic and conjunctive reading of section 12 along with section 10(1) and 9(5) of the Ordinance shows that decree can only be set aside under section 12 of the Ordinance if it is passed for failure to file PLA. Such application can be filed within a period of 21 days of the date of decree or where the summons is not duly served, when he has knowledge of the decree. However, if PLA is filed and the same is decided on merits, application under section 12 of the Ordinance is not maintainable rather only appeal under section 22 of the Ordinance is maintainable.
 - iii) No doubt under section 7(2) of the Ordinance, the procedure of CPC will be followed, however, the same will only be applicable in those cases where Ordinance is silent and no procedure has been laid down therein. Since section 22 of the Ordinance provides the procedure that any person aggrieved by judgment, decree, sentence or final order passed by Banking Court may within 30 days prefer an appeal to High Court, therefore, provision of CPC to that extent will not be applicable.

- Conclusion:**
- i) The appeal can be decided on merits in the absence of the counsel in view of law settled by august Supreme Court in M. Haleem and others v. H. Muhammad Nasim and others (PLD 1969 SC 270).
 - ii) If PLA is filed and the same is decided on merits, application under section 12 of the Ordinance is not maintainable rather only appeal under section 22 of the Ordinance is maintainable.
 - iii) The procedure of CPC will only be applicable in the matters where Ordinance is silent.

22. Lahore High Court
Sikandar Hayat Gondal, etc. v. Bashir Ahmad Qureshi, etc.
C.R No. 46700 of 2021.
Mr. Justice Ch. Muhammad Masood Jahangir
<https://sys.lhc.gov.pk/appjudgments/2022LHC7475.pdf>

Facts: Through this Civil Revision, the petitioner has called into question the validity and propriety of judgments & decrees of courts below whereby suit of the petitioner has been dismissed.

Issues: i) What material is to be considered for resolving point of jurisdiction?

ii) Whether every Court/Tribunal is bound to decide the question of its jurisdiction at the first instance?

Analysis: i) There is no cavil that point of jurisdiction depends upon respective pleadings of the parties. Thus, if any such objection is raised by the defendants, the forum proceeding with the matter must address the question of its jurisdiction.
ii) Needless to mention here that every Court/Tribunal is bound to look into issue relating to bar of its jurisdiction at prior point of time and decide it under the law instead of escaping to answer such important aspect of the case on the mere concession of one or the other party and defect of this type cannot be removed by mere conclusion of trial as the same being point of law even can be raised at any subsequent stage.

Conclusion: i) Pleadings of the parties are to be considered for resolving point of jurisdiction.
ii) Every Court/Tribunal is bound to decide the question of its jurisdiction at the first instance.

23. Lahore High Court
Allied Bank Limited v. Appellate Tribunal Inland Revenue, Lahore & others
ITR No.63041 of 2022
Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Sajid Mehmood Sethi)
<https://sys.lhc.gov.pk/appjudgments/2022LHC7421.pdf>

Facts: The applicant has filed this reference under Section 133 of the Income Tax Ordinance, 2001 (“Ordinance of 2001”).

Issues: Whether Commissioner Inland Revenue can delegate, under Section 210, his powers to amend or further amend, under Section 122(5A) of the Income Tax Ordinance, 2001, when the law envisages consideration by the Commissioner?

Analysis: The law dealing with the delegation of power is not alien to the jurisprudence under taxation and other laws. Basic restriction is that the power of delegation cannot be further delegated and this restriction is enforced in Section 210(1) by using the phrase “other than power of delegation”. The Commissioner can delegate all or any of its powers and functions to any other taxation officer meaning thereby that the notification or order of delegation shall determine the extent of power to be exercised by the delegatee taxation officer. Section 122(5A) has to be read with Sections 210 & 211 of the Ordinance while conferring power of amendment or further amendment on the ground of erroneousness and prejudicial to the interest of revenue, which cannot be divided between consideration and passing final order. The other principle under the doctrine of delegation is that the delegatee is not absolved of the responsibility after delegation of the power and functions conferred by the statute/law. This aspect is taken care of through the provisions under Section 211 of the Ordinance of 2001. The powers under Section 122(5A) cannot be divided. Subsection (1) of Section 210 is the main section

which allows delegation of all or any powers and functions unequivocally. In subsection (1A) of Section 210 *ibid*, the phrase “power” is used to curtail delegation to an officer lower than the Additional Commissioner. The word “power” used in subsection (1) includes functions as well because subsection (1A) is subsidiary to subsection (1) of Section 210 of the Ordinance of 2001 and both are to be read together.

Conclusion: Yes, Commissioner Inland Revenue can delegate, under Section 210, his powers to amend or further amend, under Section 122(5A) of the Income Tax Ordinance, 2001, when the law envisages consideration by the Commissioner.

24. Lahore High Court
The Commissioner Inland Revenue, Lahore v. M/s Tasneem Akhtar
ITR No.61061 of 2022
Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
<https://sys.lhc.gov.pk/appjudgments/2022LHC7268.pdf>

Facts: Appellate Tribunal Inland Revenue (“Appellate Tribunal”), in the order dated 16.06.2022, impugned before us, has vacated the order under Section 111 of the Income Tax Ordinance, 2001 (“the Ordinance of 2001”) on payment of the Agricultural Tax.

Issues: Whether tax charged under Section 111 of the Income Tax Ordinance, 2001, for non-payment of Agricultural Tax, would sustain, if the tax and Agricultural Income Tax is paid during proceedings of appeal before the Appellate Tribunal Inland Revenue?

Analysis: Bare reading of section 111 of the Ordinance of 2001 shows that it envisages explanation, *inter alia*, of source of any income or asset to the satisfaction of Commissioner concerned. However, the proviso to subsection (1) makes it obligatory by using the word “shall”, to accept the explanation, if agriculture income tax paid under the relevant provincial law for the amount credited, investment made, money or valuable article owned and funds from which the expenditure was made. The amount declared as agriculture income, though not taxable under Ordinance of 2001, would be credited in the books of account of taxpayer, therefore, falls in category (a) under the Section 111. Taxpayer’s claim of agriculture income would fail, if on explanation sought, proof for payment of provincial agriculture income tax is not produced. The consequence would be that the amount so credited in the books of account shall be taxed under Ordinance of 2001 as “income from other sources” and not as agriculture income. Agriculture income cannot, by any interpretation, be taxed under the Ordinance of 2001, being beyond competence of the Federation under Entry 50 of Fourth Schedule to the Constitution of the Islamic Republic of Pakistan, 1973. It is a settled proposition that a matter during proceedings cannot be taken to be past and closed transaction, therefore, if agricultural income tax is paid during appeal before

Appellate Tribunal, the effect of charging provisions, in the Section 111, would be obliterated.

Conclusion: Tax charged under Section 111 of the Income Tax Ordinance, 2001, for non-payment of Agricultural Tax, would not sustain, if the tax and Agricultural Income Tax is paid during proceedings of appeal before the Appellate Tribunal Inland Revenue.

25. Lahore High Court
Rao Tariq Islam, etc. v. Federation of Pakistan, etc.
W.P.No.228757 of 2018
Mr. Justice Shahid Jamil Khan
<https://sys.lhc.gov.pk/appjudgments/2022LHC7580.pdf>

Facts: The petitioners have assailed the amendment in Section 236D of the Income Tax Ordinance, 2001(Ordinance) brought through Finance Act, 2018, whereby minimum slab for collection of the advance tax was fixed at Rs.20,000/-, which was to be collected of a person receiving services of or holding/arranging function in a marriage hall, irrespective of the fact, whether the person was liable to file income tax return. In the connected petition a widow has challenged tax under Section 236 of the Ordinance of 2001, against cellular phone services, being not liable to pay income tax or file return under the Section 114.

Issues:

- i) Whether the procedure in Rule 2 of the Tenth Schedule of the Income Tax Ordinance 2001 is impracticable and unreasonable?
- ii) What is the effect of introducing the concept of withholding tax on transaction in the Income Tax Law, and allowing it to be a final tax, under PTR?
- iii) Whether tax can be expropriatory or confiscatory and whether the Constitution supports the same?
- iv) Whether the collection of an unadjustable advance income tax from a person not liable to pay income tax or file income tax return is lawful?

Analysis: i) The procedure in Rule 2 of the Tenth Schedule of the Income Tax Ordinance 2001 is impracticable and unreasonable, whereby the person receiving the bill (withholding agent) or the person from whom the tax is to be collected, is burdened to issue notice to the Commissioner for knowing whether a person is liable to file return and wait for thirty days before finalizing the bill, with or without collection of advance tax. Absence of a person in active taxpayer list and a person not required to file income tax return cannot be equated, because a person filing return may be deleted from active taxpayer's list by any tax authority for a noncompliance under the Ordinance of 2001. How would a person, having marriage hall business at a lower level, would verify whether person booking or managing a function is on active taxpayer's list or would wait for thirty days for Commissioner's response and finalize bill thereafter. Imposition of statutory duty to withhold another person's tax and deposit in the exchequer may be justified on transaction in usual course of business. Under the impugned

provisions, the burden is imposed, in an unusual manner upon a person, who is recipient of money against services or supply, therefore, is confiscatory for having adverse impact on the business. This procedure, being impracticable and casting an unreasonable irrational burden is, hence, declared void.

ii) Advance Tax means, originally, to facilitate the taxpayer as well as department to pay tax in advance based on the tax determined and paid in last tax year, which facilitates the taxpayer for payment of tax in instalments, besides timely recovery of tax. Later, withholding tax was introduced on transaction with the rational of collecting data of the transactions with minimal tax collection. The tax so withheld was adjustable against final tax liability. Eventually, the tax withheld on business transactions was brought into Presumptive Tax Regime (“PTR”) by treating the same as final liability. It is important to observe here that for collection of data of business transactions, at various stages of value addition, Sales Tax Act, 1990 (“Act of 1990”) is serving the purpose. By introducing this concept in the Income Tax Law, and allowing it to be a final tax, under PTR, practically, it has become an indirect tax, burden of which passes on to end consumer.

iii) A tax which diminishes the original property, moveable or immovable, is expropriatory and a tax withhold/deducted and not adjusted against any income tax liability is confiscatory. It is globally settled principle of taxation law that a tax cannot be expropriatory or confiscatory, which takes away a citizen’s property without compensation or destroys the business of a taxpayer. The State is meant to serve the citizen and for running its affairs, attribute of charging tax is bestowed by Article 7 of the Constitution but a tax can be levied by or under the authority of Parliament under Article 77. The act of the Parliament, levying a tax, should not offend any of the fundamental rights guaranteed by the Constitution. An unreasonable taxing procedure, if destroys business, offends the right under Article 18 and an income tax taking away property without compensation offends Article 23 and 24.

iv) Income tax is meant to be charged from citizens, who are earning income and citizen, who are not earning any income, deserves to be compensated by the State to meet their basic and essential requirement for living. When, the later class of citizens is being already subjected to indirect taxes, is now taxed through unadjustable advance income tax, which can only be termed as expropriatory and confiscatory. It is, therefore, held that collection of an unadjustable advance income tax from a person not liable to pay income tax or file income tax return, is without lawful authority and unconstitutional.

- Conclusion:**
- i) The procedure in Rule 2 of the Tenth Schedule of the Income Tax Ordinance 2001 is impracticable and unreasonable, hence declared void.
 - ii) By introducing the concept of withholding tax on transaction in the Income Tax Law, and allowing it to be a final tax, under PTR, practically, it has become an indirect tax, burden of which passes on to end consumer.
 - iii) A tax cannot be expropriatory or confiscatory and the Constitution does not

support the same.

iv) The collection of an unadjustable advance income tax from a person not liable to pay income tax or file income tax return, is without lawful authority and unconstitutional.

26. Lahore High Court
Ghazi Fabrics International Ltd. & 34 others v.
Federation of Pakistan & others
W.P No.67112 of 2021
Mr. Justice Shahid Karim
<https://sys.lhc.gov.pk/appjudgments/2022LHC7446.pdf>

Facts: The petitioners have challenged the revision in additional security by Sui Northern Gas Pipelines Ltd. (SNGPL) on the pretext that the petitioners have furnished lesser amount of bank guarantee as security amount and additional security is required (of varying amounts).

Issues: (i) Whether a decision taken by management of SNGPL can be termed as policy decision of SNGPL?
(ii) Whether judicial review can be applied in to the exercise of public contractual power?

Analysis: (i) It is otiose to state that any policy of SNGPL must be based on a decision taken by the Board of SNGPL and cannot be done unilaterally by some officers whose source of authority is clearly doubtful. When we square the impugned notices with this clause, it becomes abundantly clear that the impugned notices merely state that the revision in additional security has been made as per approval received from the management. The term “management” has not been elaborated upon nor any further documents have been produced which would show any policy decision to have been taken by the Board of SNGPL.
(ii) It is not every case of contractual relationship that bars the jurisdiction of this Court. If the matter relates to undisputed facts and has wider implications which relate to the economic life of a nation in general, this Court will not skirt its duty to exercise judicial review in the matter... Judicial review may be applied in certain circumstances to the exercise of public contractual power. Public law principles may be applied to executive agencies such as SNGPL as it is not formally separate from its sponsoring department and also because it is engaged in public service delivery. The test being applied by courts is that the process might have a sufficient public law element irrespective of any connection with a statute or policy. Regarding contractual powers, the preponderant approach has been to regard contracts made by public authorities as subject to judicial review if there is a sufficiently “public law element” to the case.

Conclusion: (i) A decision taken by management of SNGPL cannot be termed as policy decision of SNGPL.

(ii) Judicial review may be applied in certain circumstances to the exercise of public contractual power.

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- 27. Lahore High Court**
Javed Khan, etc. v. Federation of Pakistan Through Secretary Ministry of Defence, Government of Pakistan, etc.
W.P.No.4069 of 2021
Mr. Justice Mirza Viqas Rauf
<https://sys.lhc.gov.pk/appjudgments/2022LHC7591.pdf>
- Facts:** The grievance of the petitioners is that though they are entitled for the upgradation of their posts but the respondents, in disregard of the Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 are creating unnecessary hurdles in their way. Hence the petitioners have filed instant petition.
- Issues:** Whether upgradation can be claimed as a matter of right by an employee or group of employees?
- Analysis:** Upgradation cannot be thus claimed as a matter of right by an employee or group of employees but at the same time when once the competent authority decides to redress sufferings of employees who may remain as dormant in future and proceeded to upgrade a particular post, such benefit cannot be extended only to single or one set of persons serving at the same post. Article 25 of the “Constitution” ordains that every citizen shall be dealt with equally and there shall be no discrimination.
- Conclusion:** Upgradation cannot be claimed as a matter of right by an employee or group of employees but it can be made to redress sufferings of employees.

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- 28. Lahore High Court**
Mohammad Arshad Qureshi. v. Government of Pakistan, etc.
ICA No. 59950 of 2019
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2022LHC7575.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, wherein the appellant had prayed for setting-aside the order, whereby departmental representation filed by the appellant for seeking recruitment to the post of Registrar (BPS-17) for Special Courts i.e., Accountability Courts, etc., has been dismissed.
- Issues:** Whether the appointing authority has discretion and is well within its jurisdiction to fix or change criteria for appointment and promotion to a particular post?
- Analysis:** The appointing authority has discretion and is well within its jurisdiction to fix or change criteria for appointment and promotion to a particular post and the

aspiring candidate has no right to object to fixation of the said eligibility criteria unless the same is shown to be against any express provision of law, perverse, unreasonable or against a vested right.

Conclusion: Yes, the appointing authority has discretion and is well within its jurisdiction to fix or change criteria for appointment and promotion to a particular post.

29. Lahore High Court
Nasrullah Khan v. Station House Officer,
Police Station Saddar, Mianwali, etc.
Writ Petition No. 60241 of 2021
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2022LHC7503.pdf>

Facts: The respondent No.2 got registered FIR against the petitioner with allegations that the petitioner held sacrilegious beliefs that he began propagating to the general public. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner prays for the quashing of that FIR.

Issues:

- i) Whether it is sufficient to constitute an offence under section 295-A PPC that insult should be deliberate and malicious?
- ii) Whether a person can be prosecuted for what he sees in his dreams or for sharing his thoughts, visions, or emotions during those times with others?
- iii) Whether High Court can interfere with the investigation or trial process and quash the proceedings by invoking its constitutional jurisdiction?
- iv) When investigation regarding an offence usually begins and what is its object?
- v) Whether a person of “unsound mind” who is incapable of assisting in his own defence can be tried?
- vi) Whether psychiatric evaluation of accused of unsound mind is required for fair investigation of an offence under Chapter XV of the Penal Code?

Analysis:

- i) This section establishes a high standard. The insult should not only be deliberate and malicious but also intended to offend a community’s religious feelings.
- ii) A person cannot be prosecuted for what he sees in his dreams or for sharing his thoughts, visions, or emotions during those times with others.
- iii) The general rule is that the High Court should not interfere with the investigation or trial process and should let it run its course. However, it may quash the proceedings by invoking its constitutional jurisdiction or inherent powers under section 561-A Cr.P.C. to prevent the abuse of the process of law.
- iv) Investigation regarding an offence usually begins when information about it is given to the officer in-charge of a police station. Its primary objective is to determine the facts and circumstances of the case. It includes, by definition, all the proceedings conducted by a police officer under the Code of Criminal Procedure for collecting evidence.
- v) The law in Pakistan protects people with mental illnesses or impairments.

Section 464 Cr.P.C. ordains that a person of “unsound mind” who is incapable of assisting in his own defence cannot be tried. Section 84 PPC recognizes the legal insanity defence. It states that a person cannot be held criminally responsible for an act, if due to unsoundness of mind at the time of committing it, he was incapable of knowing the nature of the act or that it was wrong or illegal.

vi) Article 10A of the Constitution and the principle of fair investigation discussed above require that when a police officer investigates an offence, particularly one under Chapter XV of the Penal Code, he should determine whether the accused is of sound mind. He must apply to the competent forum for his psychiatric evaluation if he suspects mental illness.

- Conclusion:**
- i) The insult should not only be deliberate and malicious but also intended to offend a community’s religious feelings to constitute an offence under section 295-A PPC.
 - ii) A person cannot be prosecuted for what he sees in his dreams or for sharing his thoughts, visions, or emotions during those times with others.
 - iii) High Court should not interfere with the investigation or trial process but can quash the proceedings by invoking its constitutional jurisdiction.
 - iv) Investigation regarding an offence usually begins when information about it is given to the officer in-charge of a police station and its object is to determine the facts and circumstances of the case.
 - v) A person of “unsound mind” who is incapable of assisting in his own defence cannot be tried
 - vi) Psychiatric evaluation of accused of unsound mind is required for fair investigation of an offence under Chapter XV of the Penal Code.

30. Lahore High Court
State Bank of Pakistan v. Federation of Pakistan and four others.
Writ Petition No.1026 of 2018
Mr. Justice Jawad Hassan
<https://sys.lhc.gov.pk/appjudgments/2022LHC7273.pdf>

Facts: The Petitioner/State Bank of Pakistan (the “SBP”) filed Writ of Prohibition and Certiorari under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”) with prayer to declare the acts of Respondents aimed at levying property tax from the “SBP” under the Cantonment Act, 1924 (the “Cantonment Act”), as illegal and without lawful authority.

Issues:

- i) Whether the SBP is entitled to exemption from payment of property tax under Section 99 (2) (f) of the Cantonment Act?
- ii) Whether SBP, by paying the property tax in previous years, is estopped by its own conduct to claim such exemption?
- iii) Whether the SBP should have availed the appropriate remedy before knocking the door of this Court?

Analysis:

i) The premises are occupied by the SBP-Banking Service Corporation, wholly owned subsidiary of “SBP” and functioning under the SBP Banking Service Corporation Ordinance, 2001 (the “SBP Ordinance”). Section 5 of the “SBP Ordinance” provides that except for the functions mentioned in Section 5(2), all other functions of the “SBP” can be performed by the “SBP Corporation”. The functions of the “SBP” mentioned in section 17 and onwards of the State Bank of Pakistan Act, 1956 (the “*SBP Act*”) are the functions which can also be delegated to the “SBP Corporation”. The Cantonment Board under Section 60 of the “Cantonment Act”, with the previous sanction of the Federal Government, may impose in any cantonment any tax which, under any enactment for the time being in force, may be imposed in any municipality in the Province wherein such cantonment is situated. Section 99 (2) (f) of the “Cantonment Act” provides for exemption from any tax on property of any building or land (a) which is used or acquired for the public service or for any public purpose and (b) which is property of the Government or in the occupation of the Federal or any Provincial Government, is by law exempt from any tax on property other than a tax imposed to cover the cost of specific services rendered by the Cantonment Board. Sections 4B and 4C have been inserted in the SBP Act vide State Bank of Pakistan (Amendment), Act, 2022. Section 4B explains that primary objective of the “SBP” is to achieve and maintain domestic price stability while Section 4B (2) provides that without prejudice to the SBP’s primary objective, the “SBP” shall contribute to the stability of the financial system of Pakistan. Section 4B (3) of the SBP Act states that, subject to forgoing sub-sections, the “SBP” shall support the Government’s general economic policies with a view to contributing to fostering the development and fuller utilization of Pakistan’s productive resources. Section 4C of the SBP Act in its sub section (h) provides for regulating the scheduled banks and financial institutions, Sub-Section (i) narrates the resolution of the scheduled banks and Sub-Section (j) allows the “SBP” to adopt and implement macro-prudential policy measures for scheduled banks and financial institution. Section 37 of the SBP Act empowers the “SBP” to declare any bank a scheduled bank carrying on business of banking in Pakistan. The “SBP” is empowered as a regulator of the scheduled banks under the Banking Companies Ordinance, 1962. The affairs relating to the financial institutions, development of financial institutions and microfinance banks are controlled/run by the “SBP” under Section 2(g) of the Microfinance Institutions Ordinance, 2001 read with Section 3(1) of the Foreign Exchange Regulation Act, 1947. Electronic fund transfer is regulated under Section 3 of the Payment System and Electronic Fund Transfer Act, 2007 and public debt also constitutes part of Federal Legislative List Part 1 at serial 10 while supervision and management of public debt is mentioned in Part-II of the Federal Legislative List. The “SBP” is also empowered to issue directives, instructions and regulations for carrying out the functions of a bank and the regulatory powers are available to the “SBP” under Section 17H of the SBP Act as well as mentioned at item No. 28 in the Federal Legislative List Part-I. The “SBP” has a consumer protection department as well

as Banking Policy and Research Department (the “BPRD”) which provides guidelines for banking practices as well as redressal to grievances of general public in connection with the commercial banks in Pakistan. The functions of the “SBP” are indeed functions of the Federal Government because the regulatory powers conferred on the “SBP covers a broad range of areas which play a vital role in the country’s economy. After promulgation of the SBP Act, 49% shares of the “SBP” were vested in general public, therefore, no exemption was earlier claimed and practice of payment of property tax was continued. Vide State Bank of Pakistan (Amendment) Act, 2015, now the entire share capital of the “SBP” vests in the Federal Government and is also non-transferable. Vide amendment in Section 4 (3) of the SBP Act introduced through the State Bank of Pakistan (Amendment) Act, 2022, share capital of the “SBP” has been considerably increased but it still vests in the Federal Government and is nontransferable. The “SBP” is a statutory corporation under the control of Federal Government, all its share now vests in the Federal Government, its income is actually income of the Federal Government and also exempted from income tax, super tax and wealth tax as provided in the SBP Act. Tax on immovable properties is a provincial subject and Article 165 of the Constitution is relevant in context of determining the application of property tax on “SBP”. Petitioner exercises sovereign powers and performs public service in the premises owned by it. makes out a perfect case for grant of exemption from payment of property tax.

ii) If a mandatory provision of law is deliberately ignored, the same shall make the provision of law redundant and such scheme can never be allowed to operate. The word “shall” has been used in Section 99(2) of the “Cantonment Act” but it has been made redundant by actions of Respondents. When there is an express admission let alone the implied one, even that does not create an estoppel against an express provision of law.

iii) The Petitioner’s objections against reassessment of property tax were not acceded to, the concerned authority of the Cantonment Board raised demand and also demanded additional payment in lieu of the property tax. In Petitioner’s appeal, in spite of having explained the functions & role of the “SBP” as well as its subsidiary, claim for exemption was turned down by Appellate Authority/Forum. Section 99(2) (f) of the “Cantonment Act” also restricts jurisdiction of the Military Lands and the Cantonment Department on the issue of exemption from payment of property tax. The Petitioner has not questioned the assessment of property tax, rather the authority to levy property tax, which falls within the jurisdiction of this Court.

- Conclusion:**
- i) SBP is entitled to exemption from payment of property tax under Section 99 (2) (f) of the Cantonment Act.
 - ii) Right of the SBP for exemption from property tax originated by provision of a law and it cannot be withheld simply on the basis of estoppel.
 - iii) Not exhausting the remedy of revision is non-fatal and constitutional petition before this Court is maintainable.

31. Lahore High Court
Habib Bank Limited v. Ayub-ul-Hassan Khokhar and others.
W.P. No. 36795 of 2019
Mr. Justice Jawad Hassan
<https://sys.lhc.gov.pk/appjudgments/2022LHC7514.pdf>

Facts: The eviction petition was filed by the respondent no. 01 one among the thirteen co-owners against the petitioner Bank. Thereafter, litigation started between several co-shares of the Property and the Bank also instituted an Interpleader Suit against thirty-nine persons/defendants who were claiming rent from it. The court dismissed the petitioner's application for leave to contest, and accepted the eviction petition. The Bank, then, preferred an appeal which was allowed and the matter was remanded back to the Special Judge Rent for a fresh decision. During the remand proceedings, Respondent No.1 filed an application under Section 24 of the Punjab Rented Premises Act, 2009 and the Bank was directed to deposit monthly rent in the Court. The Bank, did not deposit the monthly rent, therefore, the Special Judge Rent proceeded to pass the final order against the Bank in terms of Section 24 of the Act. The parties, then, again approached the Lower Appellate Court which dismissed their appeals, therefore, the matter has been agitated before this Court by the parties in this writ petition as well as the connected writ petition.

Issues:

- i) What is the criteria of tentative determination of the rent under Section 24(1) and (2) of the Act?
- ii) How the rent is tentatively determined in respect of a property?
- iii) Whether the Court can exempt the mandatory requirement of Section 9(b) of the Act, if so, at which stage?

Analysis:

- i) Under Section 13(6) of the 1959 Ordinance, the Rent Controller had the authority to determine rent (such amount approximately) and consequently, direct the tenant to pay the same before the date to be fixed for the said purpose. Since the promulgation of the Act, the Rent Controller, by virtue of Section 24(1) and (2) of the Act, shall now direct the tenant to deposit the rent within a specific time period and if any dispute arises as to the amount of rent or the rate of rent arises, the Rent Tribunal shall tentatively determine the amount of rent and pass an order for deposit of the rent in terms of Sub Section (1).
- ii) The (Rent) Controller has to exercise his/her discretion in order to determine fair rent, which is premised on the factors, such as rent of similar premises situated in similar circumstances in the same or adjoining locality, rise in cost of construction and repair charges, the annual value of premises etc.
- iii) The Hon'ble Supreme Court of Pakistan in a number of judgments, has given view that the Court cannot exempt the mandatory requirement of Section 9(b) of the Act of deposit of fine paid by the party approaching the Rent Tribunal. The Hon'ble apex Court of the country has also declared, in a number of judgments, that the Rent Tribunal shall assess the case and then decide the fine due and pass

an order in this regard providing a time frame to the person filing application before the Tribunal to pay the fine so that the Tribunal may be allowed to proceed on merits of the case.

- Conclusion:**
- i) Under Section 24(1) and (2) of the Act, if any dispute arises as to the amount of rent, the Rent Tribunal shall tentatively determine the amount of rent and pass an order for its deposit.
 - ii) The rent is tentatively determined by considering the factors such as rent of similar premises situated in similar circumstances in the same or adjoining locality, rise in cost of construction and repair charges, the annual value of premises etc.
 - iii) The Court cannot exempt the mandatory requirement of Section 9(b) of the Act at any stage.

32. Lahore High Court
Ghulam Mahmood Dogar v. Federation of Pakistan, etc.
W.P. No. 70222 of 2022
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2022LHC7480.pdf>

Facts: Through this constitutional petition, petitioner has called in question three separate notifications issued by respondent whereby petitioner was transferred from Punjab Government to Federal Government, directed to relinquish the charge and submit his joining report and services of petitioner were placed under suspension.

Issue:

- i) Whether High Court has jurisdiction to entertain matters relating to disputes qua terms and conditions of civil servant?
- ii) Whether the order of transfer of a civil servant falls within terms and conditions of his services?

Analysis:

- i) Constitutional petition under Article 199 of the Constitution is not maintainable by civil servant in relation to any matter connected with terms and conditions of his service in respect whereof the Service Tribunal has jurisdiction in view of Article 212 of the Constitution. Orders, even if mala fide, ultra vires or coram non iudice fell within the ambit of Service Tribunal and jurisdiction of Civil Courts including High Court is ipso facto ousted as a result of barring provision of Article 212 of the Constitution.
- ii) The order of transfer of a civil servant squarely falls within terms and conditions of his services and resultantly could not be called in question before this Court. The order to relinquish the charge and join service at the place of posting is a continuation of earlier order of transfer and as a necessary corollary same also falls within the ambit of terms and conditions of services of civil servant and beyond jurisdiction of this Court in ordinary circumstances.

Conclusion: i) High Court has no jurisdiction to entertain matters relating to disputes qua terms

and conditions of civil servant.

ii) The order of transfer of a civil servant squarely falls within terms and conditions of his services.

33. Lahore High Court
Akeel Ahmad. v. Chairman, Punjab Public Service Commission, Lahore, etc.
Diary No. 149609 of 2022 dated 11.10.2022
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2022LHC7414.pdf>

Facts: The petitioner downloaded copy of judgment from official website of the Lahore High Court Lahore and placed the said copy on record. Office has raised objection to file certified copy of said judgment.

Issues: i) Whether a copy claimed to be downloaded from official website of Lahore High Court Lahore can be treated as an equivalent or at par with the certified copy?
 ii) Whether under section 03 of the Electronic Transactions Ordinance, 2002, an unsigned copy of electronically generated printout of document is per se admissible as a valid document?

Analysis: i) The perusal of the afore-referred pages shows that apparently the same comprise of an unsigned copy of judgment passed in the aforementioned case, however, nothing is available on the record to substantiate that the said pages have been downloaded from the official website of this Court and have remained un-altered or un-changed thereafter. Besides, there is no mechanism available with the office of this Court to verify whether the said copy has been compared with the original judgment/order of this court by any competent authority and is free from errors and omissions so as to be treated as a true and real copy of the judgment actually passed by this Court. Moreover, such a copy has neither been made per se admissible in a court of law as evidence of what has been decided therein through permission granted by the Lahore High Court Rules and Orders nor by any notification issued by this Court in this regard rather the said copies are uploaded subject to all just and legal exceptions and not claimed to be authentic and true copies of the orders actually passed by this Court and free from errors or omissions. Although Qanun-e-Shahadat Order, 1984, and certain other laws permit production of certified copies with a presumption that such certified copies are genuine yet such presumption of genuineness and correctness is not per se applicable to an unsigned copy of an order or judgment of this Court even if it is stated to be downloaded from the official website of this Court. For the purpose of clarity, reference may be made to Section 12 of The Electronic Transactions Ordinance, 2002 are also verified in the manner that may be laid down by the appropriate authority. Hence, the presumption of authenticity provided under Section 12 ibid attached to printouts or other forms of electronic documents etc., would be applicable to copies of judgments of this Court only in cases where the

same are verified in the manner that may be laid down by the appropriate authority, which is High Court in this case in view of Section 2(e)(iv) of the Ordinance, whereas the High Court has not declared such copies permissible to be produced as authentic copies of the original judgment or order or its substitute. Moreover, the afore-referred copy is an unsigned copy downloaded by the petitioner himself, statedly from the official website, without any involvement of and authentication by the office of this Court. Such a copy could be allowed to be placed on the record where the High Court would have permitted the same or made the same as admissible.

ii) Section 3 of the Ordinance, although makes a document admissible if it is in electronic form and has not been attested by any witness, yet the same does not mean that an unsigned copy of electronically generated printout of document is per se admissible as a valid document rather as per Section 5, the requirement under any law for any document, record, information, communication or transaction to be presented or retained in its original form would only be satisfied if there exists a reasonable assurance as to the integrity thereof from the time when it was first generated in its final form and that too through proper authorization of relevant authority in view of Section 12 thereof. Besides, Section 16 of the Ordinance specifically mentions that nothing contained in the Ordinance shall confer a right upon any person that any appropriate authority should accept, issue, create, retain, preserve any document in electronic form or effect monetary transaction in electronic form.

Conclusion: i) A copy claimed to be downloaded from official website of Lahore High Court Lahore cannot be treated as an equivalent or at par with the certified copy.
ii) Section 3 of the Ordinance, although makes a document admissible if it is in electronic form and has not been attested by any witness, yet the same does not mean that an unsigned copy of electronically generated printout of document is per se admissible as a valid document.

34. Lahore High Court
Rizwan Ellahi & another v. Province of Punjab & 8 others.
W.P.No.91 of 2022
Muhammad Sufian Abbasi & 3 others v. Province of Punjab & 8 others.
W.P.No.106 of 2022
Faraz Ahmed & another v. Province of Punjab & 8 others.
W.P.No.107 of 2022
Bar Association Murree v. Province of Punjab & 10 others.
W.P.No.136 of 2022.
Mr. Justice Ch. Abdul Aziz
<https://sys.lhc.gov.pk/appjudgments/2022LHC7533.pdf>

Facts: Through these petitions issuance of directions is sought, against different departments of the province of Punjab, in public interest.

- Issues:**
- i) Whether a person can be held disentitled from seeking relief under Article 199 of the Constitution when alternate remedy is available?
 - ii) Whether the High Court can issue directions for the enforcement of fundamental rights?
 - iii) Whether the term 'life' used in Article 9 is restricted to mere existence of a living person?
 - iv) What is the object of Pakistan Environmental Protection Act, 1997?
 - v) Whether prior approval from the concerned authority is necessary for residential & commercial construction and development projects in Punjab?
 - vi) Whether any step is taken to restrict the vehicles causing air and noise pollution?
 - vii) What is the purpose of the enactment of the Punjab Hotels and Restaurants Act, 1976?

- Analysis:**
- i) To hold a person disentitled from seeking relief under Article 199 of the Constitution, the alternate remedy must be convenient, beneficial and effective. If the alternate remedy, upon evaluation, is found to be less effective, time consuming and calls for invoking the jurisdiction of multiple courts/forums, then the High Courts are all competent to exercise jurisdiction within the framework of Article 199 of the Constitution. The constitutional jurisdiction of High Court can be set in motion, if the agitated grievance gives rise to an exceptional case and is directed against indifferent attitude of public functionaries towards fulfillment of their statutory obligations, likely to affect public-at-large.
 - ii) It is explicitly stems out from the plain reading of Article 199 (1) (c) & Article 199 (2) of the Constitution that High Court is well equipped with the powers to issue a direction for the enforcement of fundamental rights of the subjects, guaranteed under Chapter 1 of Part-II.
 - iii) One of the fundamental rights guaranteed under Part-II of Chapter 1 of the Constitution is envisaged in Article 9 whereby no person shall be deprived of life or liberty saves in accordance with law. The term 'life' used in Article 9 cannot be restricted to mere existence of a living person rather is stretc.hed to all and every aspect of quality human life. The word 'life' is not defined in the Constitution, thus cannot be given a restricted meaning rather is of wider import.
 - iv) The PEP Act, 1997 is legislated with an object of protection, conservation, rehabilitation and improvement of the environment as well as for the prevention and control of pollution, promotion of sustainable development as is evident from its preamble
 - v) Section 12 of PEP Act, 1997 makes it incumbent that no project shall commence unless approval of initial environmental examination or environmental impact assessment is not obtained from the Environmental Protection Agency. Unfortunately, the projects of various magnitudes are being carried out not only in Murree but in whole of the Punjab province without adhering to the mandatory requirement of Section 12 (ibid) and indeed the foregoing provision has become nothing but a dead statutory letter.

vi) According to Section 15 of the PEP Act, 1997 a restriction is imposed upon operating a motor vehicle causing air and noise pollution in excess of National Environmental Quality Standards and certain measures are provided in this regard but again the appropriate steps are still awaited.

vii) The Punjab Hotels and Restaurants Act of 1976, is enacted to provide measures for controlling and regulating the standards of services and amenities for tourists in hotels as well as in the restaurants as is evident from its preamble. For regulating and monitoring the hotel industry in Punjab, certain officials like Controller, Deputy Controller, Assistant Controller and Inspectors are appointed under Section 3 and besides that an Advisory Committee is also established through necessary implication of Section 4. For maintaining the standards of the hotels, it is mandatory under Section 6 to make classification of hotels as one star, two star, three star, four star and five star. Under Sections 10 and 11 of the Act of 1976, the Controller is empowered to fix fair rates of these hotels and also to limit the number of persons to be accommodated in their rooms. It is essentially required under Section 13 for a hotel to display at conspicuous place the fair rates of the rooms and maximum number of guests to be accommodated therein. Likewise, for the prior reservation of room in a hotel, a mechanism is provided in Section 14. Under Section 8 (a) the Controller can order for sealing of a hotel or restaurant if found to be operating in violation of the Act of 1976 and for such delinquencies, penalties are also provided in its Section 22.

- Conclusion:**
- i) A person can be held disentitled from seeking relief under Article 199 of the Constitution, when the alternate remedy is convenient, beneficial and effective.
 - ii) High Court is well equipped with the powers to issue a direction for the enforcement of fundamental rights.
 - iii) The term 'life' used in Article 9 cannot be restricted to mere existence of a living person rather is stretched to all and every aspect of quality human life.
 - iv) The PEP Act, 1997 is legislated with an object of protection, conservation, rehabilitation and improvement of the environment.
 - v) Section 12 of PEP Act, 1997 makes it incumbent that no project shall commence unless approval of initial environmental examination or environmental impact assessment is not obtained from the Environmental Protection Agency.
 - vi) According to Section 15 of the PEP Act, 1997 a restriction is imposed upon operating a motor vehicle causing air and noise pollution.
 - vii) The purpose of enactment of Punjab Hotels and Restaurants Act of 1976, is to provide measures for controlling and regulating the standards of services and amenities for tourists in hotels as well as in the restaurants as is evident from its preamble.

35. Lahore High Court
Riaz Shah v. The State, etc.
CrI. Misc. No.40039-B of 2022
Mr. Justice Farooq Haider
<https://sys.lhc.gov.pk/appjudgments/2022LHC7296.pdf>

- Facts:** Through instant petition, petitioner has sought post-arrest bail in case arising out of F.I.R. registered under Sections: 302, 324, 109, 34 PPC (during investigation offences under Sections: 337-D, 337-F(v) PPC were also added subsequently).
- Issues:**
- i) Whether the delay caused in conclusion of trial due to act of the Court can be attributed to any party?
 - ii) Whether abscondence can create any hurdle in the way of grant of bail on statutory grounds?
 - iii) From which date the calculating period for considering delay in conclusion of trial for statutory ground of bail shall be counted?
- Analysis:**
- i) When it is admitted fact that proceedings of the court did not remain pending due to any act/omission of petitioner or any other person acting on his behalf. It is trite of law that act of court should not prejudice anyone.
 - ii) If delay is caused in conclusion of trial under 3rd proviso of sub-Section (1) of Section: 497 Cr.P.C. or on the ground of further inquiry under sub-Section (2) of Section 497 Cr.P.C., then bail is to be granted to the accused as a matter of right and not as concession. It is by now well settled that when accused becomes entitled for grant of bail as a matter of right, then he cannot be declined such relief due to abscondence which is matter of propriety.
 - iii) The calculating period for considering delay in conclusion of trial for statutory ground of bail shall be counted from the date on which the petitioner is arrested.
- Conclusion:**
- i) The delay caused in the conclusion of trial due to act of the Court cannot be attributed to any party.
 - ii) No, abscondence cannot create any hurdle in the way of grant of bail on statutory grounds.
 - iii) The calculating period for considering delay in conclusion of trial for statutory ground of bail shall be counted from the date on which the petitioner is arrested.

36. Lahore High Court
Bakhtawar Bibi v. Additional District Judge & 2 others etc.
W. P. No. 5819 of 2017
Mr. Justice Abid Hussain Chattha
<https://sys.lhc.gov.pk/appjudgments/2022LHC7466.pdf>

- Facts:** This constitutional Petition is directed against the impugned Judgments & Decrees passed by Judge Family Court and appellate court.
- Issues:** What approach court should adopt to determine validity of Nikah when a women claims performance of her Nikah without her free consent?
- Analysis:** In a r case titled, “Matloob Hussain v. Mst. Shahida and 2 others” (PLD 2006 Supreme Court 489), the Hon’ble Supreme Court of Pakistan held that where the claim of the woman is in negative form and nature, obviously she could not have

been burdened to substantiate the same by producing further evidence as she did not in the exercise of her own free will and accord enter into a contract of marriage, especially when the alleged Nikah was not performed where the woman ordinarily resides but much away from her ordinary abode. In such a case, the surrounding circumstances were required to be examined to determine that Nikah between the parties was validly and lawfully performed by the lady in exercise of her free will and consent being persona majora.

Conclusion: Where the claim of the woman is in negative form and nature, obviously she could not have been burdened to substantiate the same by producing further evidence. In such a case, the surrounding circumstances were required to be examined to determine that Nikah between the parties was validly and lawfully performed.

37. Lahore High Court
Muhammad Akram v. Additional District Judge and 5 others.
Writ Petition No.10469 of 2022
Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2022LHC7437.pdf>

Facts: Petitioner filed surety bond before the learned Family Court and rendered himself liable for payment under. The surety paid the amount that was outstanding at the time of filing of bond then he applied to discharge the surety bond. The learned Family Court discharged him from any further liability accruing under the decree. The said order was assailed and the learned Appellate Court allowed the appeal. Aggrieved from same, present petition has been filed.

Issues: i) What is extent of liability of surety toward payment of decree?
 ii) What course ought to be adopted if the stipulation or words in surety-bond are unambiguous?

Analysis: i) When a person becomes surety for performance of any decree or its part, or restitution of any property taken in execution of decree or payment of any money under an order of the Court in any suit or proceedings, the decree can be executed against him, to the extent for which surety has rendered himself personally liable in the manners, therein. The wording in section 145 of the Code of Civil Procedure, “to the extent of which he has rendered himself personally liable”, depict that it is imperative to see the stipulation(s) in the bond that surety has filed to ascertain the extent to which surety has rendered himself liable, if the second execution petition is filed with respect to the same decree for which surety rendered himself liable.
 ii) It is well settled principle of construction that stipulation(s) and / or words in surety-bond must be read in their ordinary meaning and when words contained therein are unambiguous, there is no reason to apply any other construction.

- Conclusion:** i) The decree can be executed against surety to the extent for which surety has rendered himself personally liable.
- ii) Stipulation(s) and / or words in surety-bond must be read in their ordinary meaning and when words contained therein are unambiguous, there is no reason to apply any other construction.

LATEST LEGISLATION/AMENDMENTS

1. “The Diplomatic and Consular Officer (Oath and Fees) Act, 1948 (Act No. XXI of 1948) is amended through “Diplomatic and Consular Officers (Oath and Fees) Amendment Act, 2022” vide which in section 3 sub-section (1) after the word “administer”, the expression” either online or in physical form” is inserted, whereas new section 9 “Power to make rules” has been added.
2. “The Export-Import Bank of Pakistan Act, 2022” is enacted to establish the Export-Import Bank of Pakistan for the promotion of International trade.
3. “The publication of Laws of Pakistan Act, 2016 (XIII of 2016) is amended through “The Publication of Laws of Pakistan (Amendment) Act, 2022” vide which sections 2, 3, 5, 7, 8, 13, 14, 15, 17 & 19 to 24 are amended, sections 4, 6, 11 & 25 are substituted, sections 9, 10 & 12 are omitted and section 26A is inserted.
4. “The Dyslexia special Measures Act, 2022” is enacted to provide for special measures for the education of children suffering from dyslexia and/or associated disorders.
5. “The Islamabad Capital Territory Domestic Workers Act, 2022” is enacted to provide for regulation of employment of domestic workers in Islamabad Capital Territory.
6. Section 4, Subsection (3) of “The Punjab Commission on the Status of Women Act, 2014” is omitted through “The Punjab Commission on the Status of Women (Amendment) Act, 2022”.
7. Section (1), subsection (3) of “The Punjab Free and Compulsory Education Act, 2014” is substituted through “The Punjab Free and Compulsory Education (Amendment) Act, 2022”.
8. Section 11 of “The Trade Organizations Act, 2013 (II of 2013)” is amended through “The Trade Organizations (Amendment) Act, 2022”.
9. At page 388 of the Gazette of Pakistan, Extraordinary, Part-I dated 24th May, 2018, in first line of section 2 of the House Building finance Corporation (Repeal) Act, 2018, the expression “(Repeal)” is omitted through Corrigenda dated 1st November 2022.

10. “The Torture and Custodial Death (Prevention and Punishment) Act, 2022” is enacted to provide protection to a person during custody from all acts of torture perpetrated by public officials.

SELECTED ARTICLES:

1. **THE YALE LAW JOURNAL**

<https://www.yalelawjournal.org/forum/electoral-adequacy>

Electoral Adequacy By Joshua s. Sellers

Abstract

This Essay considers the function of election law, as an academic field, in strengthening democratic institutions and improving democratic accountability. In undertaking this inquiry, this Essay advocates an interdisciplinary research program oriented around the concept of electoral adequacy. Electoral adequacy’s premise is that states are obligated to provide a minimal set of entitlements, or a baseline level of election services, to all voters.

Electoral adequacy seeks to unite institutional political theory, empirical research on election systems, and strategic political thinking, with the goal of improving the electoral process. It is centered on three policy components: adequate funding, competent management, and democratic structures. Finding success in these policy areas would mitigate many specific election-administration disputes.

2. **INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION**

<https://www.tandfonline.com/doi/full/10.1080/09695958.2022.2129661>

The Dichotomy Of “First Timer” And “Regular” And Its Implications For Legal Advice And Assistance By Roxanna Dehaghani & Daniel Newman

Abstract

When an individual is suspected or accused of committing a criminal offence, they are brought into the realm of the criminal process. This process can be complex and alien, and the accused person may not understand – or be able to engage with – elements thereof. This paper examines how experiences of the criminal process are framed by lawyers, drawing from interviews conducted with lawyers (N = 36) as part of a larger project on the experiences of criminal justice in (south) Wales. Lawyers, when discussing the experiences of the accused, made frequent distinctions between “first timers” and “regulars”. Whilst this distinction has been touched-upon in previous studies, it has not yet been subject to much exploration and interrogation. Within this paper, we explore and critique the how and why of this distinction, querying the utility and limits of such a distinction. We argue that whilst an accused’s experience should be accounted for, it is unhelpful to frame “regulars” as not needing – or being undeserving – of attention.

3. COLUMBIA LAW REVIEW

<https://columbialawreview.org/content/body-worn-camera-footage-retention-and-release-developing-an-intermediate-framework-for-public-access-in-a-new-affirmative-disclosure-driven-transparency-movement/>

Body-Worn Camera Footage Retention And Release: Developing An Intermediate Framework For Public Access In A New Affirmative Disclosure-Driven Transparency Movement By Tolulope Sogade

The widespread use of body-worn cameras (BWCs) by law enforcement agencies calls into question how those departments store and publicly release the large amounts of video footage they amass under public access laws. This Note identifies a changing landscape of public access law, with a close look at the federal Freedom of Information Act (FOIA) and its state analogues, as the result of the Capitol Insurrection and the national Movement for Black Lives. Namely, legislative enactments, DOJ programs, agency policy statements, and judicial opinions all indicate a movement toward more access and potentially more proactive disclosure of government records. This Note considers what a disclosure regime of BWC footage should look like in light of the new developments in freedom of information laws; it proposes an intermediary framework for release that balances proactive disclosures and agency responses to requests for disclosure. Three policy goals should serve as guideposts to achieve this intermediary framework: minimizing privacy violations and unnecessary oversurveillance, improving cost efficiency, and assessing the need for redistribution of resources from police to other more community-improving apparatuses. The congressional investigation of the Capitol Insurrection, the George Floyd Justice in Policing Act, and the Colorado Enhance Law Enforcement Integrity Act are exemplary, in some ways, of what disclosure should resemble. This model for approaching disclosure will be important for considering what types of information the public can access, what the public can do with that information, and how resources can be diverted or otherwise reconsidered as a part of disclosure regimes.

4. MANUPATRA

<https://articles.manupatra.com/article-details/BID-RIGGING-IN-GLOBECAST-MATTER>

Bid Rigging In Globecast Matter By Aman Kumar Gupta

Introduction: *The research paper is about the study of the Globecast case¹ this is a significant precedent for the bid-rigging issue under the country's competition laws. Bid Rigging is an anti-competitive practice where the bid members perceive that a healthy bid process is going on. Nevertheless, it is just an illusion, and the bid members compete on pre-determined bid prices to receive profits by fixing the number of bids. This practice is prohibited as per the principles of Competition Law. It finds its relevance under Section 3(3) (d) of the Competition Act, 2002² where bid-rigging is supposed to create an appreciable adverse effect on the competition, the explanation in this section states that every agreement involving stakeholders mentioned under sub-section (3) found to be involved under analogous production or trading of goods or stipulation of services that create an effect of minimizing competition for bids or adversely affecting or manipulating the process for bidding will be termed as bid-rigging.*

The Globecast case is the first significant precedent where the Commission examined the status of individual liability concerning bid-rigging. The Commission also examined the

extent to which an individual can be held liable or the extent to which the information provided by the whistle-blower can be used for prosecution under the Act. This paper analyzes the lacunae about bid-rigging and individual liability as observed by the Commission in the instant case. It also digs into the liability under Section 3 of the Competition Act. The research is not only limited to the extent of the facts and circumstances of the present case but also extends to a comparative analysis with other cases on the same concept.

5. **MANUPATRA**

<https://articles.manupatra.com/article-details/Moonlighting>

Moonlighting By Rushil Gupta

The concept of "moonlighting" is now in the news. Is moonlighting a recent occurrence? Why is it making headlines? Why are so many IT businesses against employees doing second jobs? Read out to find.

Information technology behemoth Infosys recently threatened contract termination if its workers moonlighted. According to the firm's employee handbook and code of conduct, dual employment is not permissible, the company stated. The software company further asserted that employees were prohibited from accepting positions at other companies without Infosys' consent. Earlier, Swiggy revealed a "industry first" policy that let its staff to moonlight.

